

## **WIPO General Assembly**

### **Forty-First (21<sup>st</sup> Extraordinary) Session Geneva, October 1 to 9, 2012**

#### **REPORT ON THE WORK OF THE STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS**

*prepared by the Secretariat*

1. The Standing Committee on Copyright and Related Rights (SCCR) met twice since the Forty-Ninth Series of Meetings of the Assemblies of the Member States of WIPO in September 2011, namely in its 23<sup>rd</sup> session from November 21 to 25, 28, 29 and December 2, 2011; and its 24<sup>th</sup> session from July 16 to 25, 2012.
2. At its Fortieth Session, which took place from September 26 to October 5, 2011, the WIPO General Assembly took note of the current status of the work of the SCCR, and requested the Secretariat to report at its 2012 session on the deliberations of the SCCR on the protection of broadcasting organizations and limitations and exceptions to copyright and related rights.
3. This document provides an update on the status of the work related to the above matters.

#### **A. PROTECTION OF BROADCASTING ORGANIZATIONS**

4. It is recalled that the updating of the rights of broadcasting organizations in response to technological developments has been under discussion in all SCCR sessions since 1998, including two special sessions exclusively devoted to that subject in 2007.
5. Informal Consultations on the Protection of Broadcasting Organizations were organized in Geneva on November 26, 2011. The discussions contributed to progress on a draft treaty to update the protection of broadcasting and cablecasting organizations in the traditional sense. The outcome of the consultations was presented to the 23<sup>rd</sup> session of the SCCR and the report of the meeting is contained in document SCCR/23/9.

6. During the 23<sup>rd</sup> and 24<sup>th</sup> sessions of the SCCR, the Committee took note of new proposals received by Member States, namely the draft treaty proposal presented by South Africa and Mexico (documents SCCR/23/6 and SCCR/24/5) and by Japan (document SCCR/24/3). The Committee also took into account various proposals and comments on this issue from previous SCCR sessions.

7. During the 24<sup>th</sup> session of the SCCR, the Committee pursued discussions that led to the adoption of a single text titled "Working document for a treaty on the protection of broadcasting organizations" (document SCCR/24/10), which will constitute the basis of further text-based discussions to be undertaken by the Committee in its 25<sup>th</sup> session, subject to any modifications or further textual comments to be submitted by the Members.

8. The protection of broadcasting organizations will be maintained on the agenda of the 25<sup>th</sup> session of the SCCR.

9. The Committee reaffirmed its commitment to continue work on a signal based approach, consistent with the 2007 General Assembly mandate, towards developing an international treaty to update the protection of broadcasting and cablecasting organizations in the traditional sense. The Committee also agreed to recommend to the WIPO General Assembly that the Committee continue its work toward a text that will enable a decision on whether to convene a diplomatic conference in 2014.

## **B. LIMITATIONS AND EXCEPTIONS**

### **LIMITATIONS AND EXCEPTIONS FOR VISUALLY IMPAIRED PERSONS/PERSONS WITH PRINT DISABILITIES**

10. It is recalled that the SCCR has agreed to address the issue of limitations and exceptions to copyright and related rights for visually impaired persons/persons with print disabilities, libraries and archives, education, and persons with other disabilities. The topic of limitations and exceptions has been discussed at every ordinary SCCR session from the 12<sup>th</sup> session held in November 2004 up to the present.

11. During the 23<sup>rd</sup> session of the SCCR, the Committee took note of the "Chair's proposal for an international instrument on limitations and exceptions for persons with print disabilities" (document SCCR/22/16).

12. On the basis of this proposal and taking into account the various comments made, and text-based options presented by delegations, a "Working document on an international instrument on limitations and exceptions for visually impaired persons/persons with print disabilities" was adopted by the Committee (document SCCR/23/7).

13. During the 24<sup>th</sup> session of the SCCR, the Committee moved forward with text-based work on the above mentioned document SCCR/23/7, and adopted a revised version contained in document SCCR/24/9.

14. The Committee noted: (a) that substantial progress had been made on the substantive provisions of a draft legal instrument on appropriate exceptions and limitations for persons with visual impairment and/or print disabilities, (b) that further work on substantive provisions still remains to be done, and (c) that the SCCR is committed to resolution of outstanding questions at its next session. In this connection, the Committee agreed on the following recommendations to the WIPO General Assembly:

(a) that an inter-sessional meeting of the SCCR be held in Geneva between the 2012 General Assembly and the 25<sup>th</sup> session of the SCCR, and that funding be provided, according to the usual formula, for experts from developing countries to participate in the meeting. The exact dates will be determined by the WIPO Secretariat.

(b) that the item of limitations and exceptions for visually impaired persons/persons with print disabilities will continue in the 25<sup>th</sup> session of the SCCR with a view to conclude or advance substantially the text-based work on limitations and exceptions for visually impaired persons/persons with print disabilities.

(c) that the General Assembly convene an extraordinary session to be held in December 2012 to evaluate the text from SCCR/25 and to make a decision on whether to convene a diplomatic conference in 2013.

15. The Committee took note of the “Fifth Interim Report of the Stakeholders’ Platform” (document SCCR/24/2) and encouraged the stakeholders to continue the work of the Stakeholders’ Platform. The Platform has been led by the Director General of WIPO since January 2009.

#### LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES

16. Regarding the issue of limitations and exceptions for libraries and archives, during the 23<sup>rd</sup> session of the SCCR the Committee took note of three new documents, namely the “Case for a Treaty on Exceptions and Limitations for Libraries and Archives: Background Paper by IFLA, ICA, EIFL and INNOVARTE”, by Brazil (document SCCR/23/3); “Objectives and Principles for Exceptions and Limitations for Libraries and Archives”, by the United States of America (document SCCR/23/4); and the “Proposal on Limitations and Exceptions for Libraries and Archives”, by Brazil, Ecuador and Uruguay (document SCCR/23/5).

17. A compilation of the proposals on relevant topics identified by the Committee was prepared by the Secretariat from the provisions on libraries and archives of the “Draft WIPO Treaty on Exceptions and Limitations for the Persons with Disabilities, Educational and Research Institutions, Libraries and Archives”, proposal by the African Group (document SCCR/22/12), the above documents SCCR/23/4 and SCCR/23/5, and the comments made by delegations.

18. This compilation, including further legal, textual or other comments or corrections sent by delegations to the WIPO Secretariat, constituted a provisional working document adopted by the Committee during its 24<sup>th</sup> session as document SCCR/23/8, and titled “Working document containing comments on and textual suggestions towards an appropriate international legal instrument (in whatever form) on exceptions and limitations for libraries and archives”. This document will constitute the basis for the future text-based work on the matter to be undertaken by the Committee in its 25<sup>th</sup> session.

19. The Committee agreed to recommend to the WIPO General Assembly that the SCCR continue discussion to work towards an appropriate international legal instrument or instruments (whether model law, joint recommendation, treaty and/or other forms), with the target to submit recommendations on limitations and exceptions for libraries and archives to the General Assembly by the 28<sup>th</sup> session of the SCCR.

#### LIMITATIONS AND EXCEPTIONS FOR EDUCATIONAL AND RESEARCH INSTITUTIONS AND PERSONS WITH OTHER DISABILITIES

20. As to the issues of limitations and exceptions for educational and research institutions and persons with other disabilities, during the 24<sup>th</sup> session of the SCCR the Committee took note of the new documents, namely "Limitations and Exceptions regarding Education", by Ecuador, Peru and Uruguay (document SCCR/24/6), and "Draft Articles and Thematic Clusters on Limitations and Exceptions to Copyright for the Benefit of Educational, Teaching and Research Institutions", by Brazil (document SCCR/24/7), in addition to the updated provisions on the "Draft WIPO Treaty on Exceptions and Limitations for the Persons with Disabilities, Educational and Research Institutions, Libraries and Archives", by the African Group (document SCCR/22/12).

21. A compilation of the text proposals and text comments on the above topics proposed by the Members was prepared by the Secretariat as a provisional working document. The Committee noted that there was substantial divergence of views about how to organize the document, and particularly the relationship of comments to textual proposals. The Committee agreed that the document should be restructured in a similar manner to document SCCR/23/8 on limitations and exceptions for libraries and archives, with textual proposals and comments separated under each topic.

22. This compilation will constitute a Committee document titled "Provisional working document towards an appropriate International Legal Instrument (in whatever form) on Limitations and Exceptions for Educational, Teaching and Research Institutions and Persons with Other Disabilities Containing Comments and Textual Suggestions" (document SCCR/24/8 Prov.). Elements of this provisional working document yet to be agreed will constitute the basis for the future text-based work to be undertaken by the Committee in its 25<sup>th</sup> session.

23. The Committee agreed to recommend to the WIPO General Assembly that the SCCR continue discussion to work towards an appropriate international legal instrument or instruments (whether model law, joint recommendation, treaty and/or other forms), with the target to submit recommendations on Limitations and Exceptions for Educational, Teaching and Research Institutions and Persons with Other Disabilities to the General Assembly by the 30<sup>th</sup> session of the SCCR.

24. The issue of limitations and exceptions will be maintained on the Agenda of the 25<sup>th</sup> session of the SCCR.

## **C. CONTRIBUTION TO THE IMPLEMENTATION OF THE DEVELOPMENT AGENDA RECOMMENDATIONS**

25. Further to the 2010 WIPO General Assembly decision “to instruct the relevant WIPO Bodies to include in their annual report to the Assemblies, a description of their contribution to the implementation of the respective Development Agenda recommendations,” the following declarations extracted from the draft Report of the 24<sup>th</sup> session of the SCCR (document SCCR/24/11) are reproduced hereafter:

“Item 8 Contribution of the SCCR to the implementation of the respective Development Agenda recommendations

“The Delegation of Brazil on behalf of the Development Agenda Group (DAG) expressed its satisfaction with the progress made in all areas of the SCCR during the session, and in particular the progress achieved in the agenda of limitations and exceptions. The work program adopted in SCCR/21 could be considered one of the most important contributions of the SCCR to the implementation of the 45 Development Agenda recommendations. The SCCR was on the right path and should be seen as a model to other bodies in terms of implementation of the coordination mechanism and the attention given to Cluster B of the Development Agenda recommendations. The work program represented a very important contribution to the mainstreaming of the Development Agenda recommendations, because it provided a norm-setting mandate taking into account the development needs and contributions to a more balanced Intellectual Property system in a very pragmatic way. The DAG highlighted the value of copyright in encouraging creative cultural developments; at the same time it also recognized the need to establish limitations and exceptions in key areas, with a view to strike the necessary balance in the IP system to ensure that those rights do not adversely affect access to knowledge and culture to disadvantaged segments of the population, especially those in developing countries. The Group was encouraged by the progress made during the session towards the conclusion of a Treaty for the benefit of visually impaired persons and it was ready to engage in negotiations on international instruments for libraries and archives, teaching and research institutions and persons with all disabilities with the same enthusiasm and commitment. Those areas also demanded effective and concrete results. The DAG was convinced that appropriate limitations and exceptions for those beneficiaries played an important role in the promotion of cultural and economic development, not only for developing countries but for all WIPO Member States. One of the key lessons learned during the negotiations was that all WIPO membership could benefit from the results arising from a balanced and fair copyright system. The DAG also commended the efforts being made towards the conclusion of a treaty on the protection of broadcasting organizations. Progress had been made and further work still remained to be done on substantive issues, taking into account the 2007 WIPO General Assembly mandate and the Development Agenda. In terms of process, the need to conduct the discussions formally was emphasized, even though informal consultations were also needed. In that regard, it recalled Recommendation 44 which dealt with the need to consult formally and informally in an inclusive and transparent manner. Because that session had been conducted mainly in an informal manner, it considered that such Recommendation should be observed when conducting discussions within the SCCR. The successful conclusion of the Diplomatic Conference of Beijing, which resulted in a new Treaty on audiovisual performances, was made possible due to the constructive engagement and productive efforts of all Member States. The DAG was satisfied by the inclusion of a clause in the preamble in the treaty referring to the importance of the Development Agenda

recommendations adopted in 2007 by the General Assembly. It was meaningful that the first international instrument to be created after the adoption of the Development Agenda recommendations contained such a reference. It hoped that future WIPO instruments would also be fully consistent with the 45 Development Agenda recommendations, especially those provided by its Cluster B.

“The Delegation of the Islamic Republic of Iran associated itself with the statement of Brazil on behalf of the Development Agenda Group. Development objectives lie at the heart of the SCCR and the 45 recommendations of WIPO Development Agenda were immediately relevant to its ongoing work and already integrated therein. It was pleased to see the valuable work of the SCCR taking into account various Development Agenda recommendations especially in the area of norm setting as stipulated in Cluster B. WIPO norm setting activities on all aspects related to exceptions and limitations, namely visually impaired persons, libraries and archives, and educational and research institutions, could be supportive of the development goals of Member States and had direct linkages with their development. Therefore, it welcomed the commitment of the SCCR to develop a comprehensive and inclusive framework in its work plan agreed upon at the 21<sup>st</sup> session of the SCCR. The approach should be continued to reach tangible results in all areas. While acknowledging the importance of copyright for creativity, the Delegation attached great importance to the issue of exceptions and limitations to copyright and related rights which had an outstanding role in upholding the public interest and essentially contributed towards achievement of the development goals. Exceptions and limitations allowed governments to strike the necessary balance in their Intellectual Property systems to ensure that those goals did not affect access to science and knowledge for their population. In that context, the Delegation attached great importance to the limitations and exceptions for people with disabilities including the visually impaired. It committed to establish a strong Treaty to ensure sustainable accessibility for blind persons to copyrighted works and was happy to see significant progress in the text and towards holding the diplomatic conference; it looked forward to similar progress being made with regard to libraries, archives and education and research institutions as outlined in the SCCR work program. It hoped that the Development Agenda recommendations, especially those pertaining to norm setting in Cluster B, would be fully taken into account while negotiating various treaties in that Committee. Broadcasting also played an important role in the social, cultural and economic development of all countries, but particularly in developing countries. The protection of rights of broadcasting organizations could help broadcasters in developing countries to rely on their national or local TV programs and audiovisual productions; that could assist the industry in the developing country to produce original TV and radio programs compatible with their local, traditional and cultural values. If the industry was not supported sufficiently by updating their existing rights in the platforms, only powerful broadcasting organizations could continue to survive. It was confident that the new treaty on protection of broadcasting organizations as it was decided by the WIPO General Assembly in 2007 would be a balanced approach to help promotion of cultural diversity in that leading world industry. It invited the Secretariat to enhance its technical assistance activities for developing countries to assist them in using appropriate limitations and exceptions in favor of the public interest, including making appropriate amendments in their national laws. It also requested the CDIP to come up with projects on the best practices on the effectiveness of limitations and exceptions in developing countries with the view of enhancing the capacity of Member States to benefit from limitations and exceptions.

“The Delegation of Egypt on behalf of the African Group said that the implementation and mainstreaming of the Development Agenda recommendations in all areas in WIPO was of great importance. The SCCR made significant progress in the past year in addressing the three main substantive agenda items, including limitations and exceptions, audiovisual performances and protection for broadcasting organizations. The group was pleased to

see the work of the Committee continuing to be guided by the Development Agenda principles, especially regarding innovation, creativity, public domain and norm setting. The Beijing Treaty on Audiovisual Performances was the first treaty to be concluded after the adoption of the WIPO Development Agenda and had clearly recognized the importance of its recommendations as an integral part of WIPO's work. Negotiations on copyright exceptions and limitations were also progressing, especially towards a Treaty for VIP. In that regard it supported the statement made by the WBU. It was crucial that the SCCR continued to work in accordance with the Development Agenda recommendations so that norm setting activities were inclusive, member-driven, took into account different levels of development, and were aligned with the principle of WIPO neutrality. The international copyright system was making contributions to important public policy objectives such as education, especially to support the development goals agreed within the United Nations system in accordance with recommendation 22, as well as to preserving the human rights of visually impaired persons' access to information and knowledge. Most importantly the international copyright system was contributing to the preservation of human heritage and knowledge through supporting the role of libraries and archives. The African Group believed that SCCR future work should be guided by recommendation 21 to ensure that WIPO shall conduct informal open and balanced consultations prior to any norm setting activities through a member-driven process, while promoting the participation of experts from Member States, particularly developing countries. In addition, its collective objective should remain seeking to achieve the right balance between the protection of moral and economic rights of writers, creators and innovators and the need that their works are accessible so that they could contribute to overall human development, progress, and accumulation of knowledge.

"The Delegation of South Africa associated itself with the statements made by Egypt on behalf of African Group and Brazil on behalf of the Development Agenda Group. South Africa attached great importance to the WIPO Development Agenda and was interested in promoting the mainstreaming of the Development Agenda recommendations in all WIPO activities. It was pleased that the Committee was going to be reporting to the General Assembly for the second time on its contribution towards implementation of the Development Agenda. However, it reiterated its preference to have the issue as a standing agenda item in the SCCR sessions preceding the General Assembly. The SCCR was currently engaged in norm-setting activities pertaining to limitations and exceptions for libraries and archives, educational and research institutions, and for visually impaired persons as well as for the protection of broadcasting organizations. It attached significance to the implementation of Cluster B recommendations on norm setting in relation to the work of the Committee, especially the principles outlined in recommendation 15. The work of the Committee on limitations and exceptions should be viewed within a broader international development agenda. There were three years until the review of the Millennium Development Goals, and the work of the Committee could provide clarity on the potential role Intellectual Property could play in advancing the MDGs related to education. Although the Committee would not be in a position at that stage to submit recommendations, at least for its Delegation achieving a legally binding international instrument on all limitations and exceptions was important. South Africa noted that significant progress had been made especially on the issue of visually impaired persons. South Africa was pleased that the 23<sup>rd</sup> and the 24<sup>th</sup> session of the Committee advanced work on limitations and exceptions and it urged the conclusion of all instruments at the earliest possible time. It would be prudent for the Committee to convene a diplomatic conference in 2013 to develop a Treaty on limitations and exceptions for visually impaired persons. For South Africa the pursuit of the protection of broadcasting organizations was a national imperative central to the development of the creative industry, in particular the cultural industry. It realized that the Treaty on the protection of broadcasting organizations had been a challenging endeavor, but one that eventually needed to be accomplished in order to curb the scourge of signal piracy and its associated

socioeconomic impact. It welcomed the progress that had been made in terms of expediting the progress towards the completion of the treaty, particularly the informal consultations held in November 2011 aiming at reviving interest on that issue. The Delegation had benefited substantially from interacting with interested Member States and other stakeholders on the issue in the spirit of the Development Agenda. It was ready to continue to work in close cooperation with a range of stakeholders for the successful conclusion of the treaty on protecting broadcasting organizations in the near future. Its preference was to have a diplomatic conference convened in 2014 to adopt the treaty. South Africa recognized that the Committee was able after a decade to resolve issues that stalled the adoption of the Treaty for the protection of audiovisual performances. It was pleased that the Treaty was eventually adopted in Beijing in June 2012. It was worth noting that it encompassed provisions striking a balance between the interests of rightholders and the public interest. It noted that the outcomes of Beijing were already having a positive impact on the remaining issues being discussed in the Committee. To make sure that the Beijing spirit did indeed affect the work of the Committee, a clear and shared vision of the scope and expected outcomes was needed. Therefore, a work program providing clear guidelines on the future of the Committee was highly desirable. The program must be guided by the principle of equal treatment of issues, taking into account their different levels of maturity. The Delegation of South Africa was ready to engage proactively and constructively in ensuring that the development issues in the agenda of the Committee received the priority and attention they deserved.

“The Delegation of India joined the distinguished Delegations of Iran, Egypt and South Africa in supporting the statement of the Development Agenda Group. The Development Agenda recommendations had achieved recent success in the Beijing spirit when Member States included the paragraph on the Development Agenda in the preamble of the new Treaty. It recalled the importance of the success of the United Nations Millennium Development Goals and linked it to limitations and exceptions for educational institutions and research organizations. Similarly it supported another reference made about the human rights issues in reference to the adoption of a treaty for limitations and exceptions for the visually impaired and other print disabled. Without any conditions, the Diplomatic Conference on that issue was to be convened in the year 2013. Overall limitations and exceptions were not creating any imbalance in the international copyright system. Also the Berne Convention, the WCT, the WPPT and the TRIPS agreement recognized the importance of the balance of rights. Equal treatment for those treaties was very important. It reminded the Committee of the importance of contributing to the development of the knowledge economy and the progress of the knowledge society because access to knowledge was essential.

“The Delegation of the European Union and its Member States noted that some recommendations of the Development Agenda were relevant to the SCCR. In particular, recommendation 15 which mentioned *inter alia*, the importance of taking into consideration a balance between costs and benefits for norm setting activities. Such an approach was particularly relevant when discussing new topics in the Committee for which instruments in whatever form were envisaged, like limitations and exceptions for libraries and archives or limitations and exceptions for educational and research institutions. Taking into account also the different levels of development, the Committee should carefully look into the socioeconomic dimension and potential impact of such possible instruments. The EU and its Member States were satisfied with the progress made in the Committee in the previous year, including first and foremost, the conclusion and adoption of the Beijing Treaty on the Audiovisual Performances. Important tasks remained on the agenda, including as regards VIP and broadcasters. The Committee should strive to adopt a balanced and inclusive work program. In that respect the European Union and its Member States stood ready to make concrete and constructive proposals.

“The Delegation of Algeria supported the statements of the Development Agenda Group and of the African Group. The mechanism approved by the Assembly in 2011 made it possible for all Committees of WIPO to determine how the work undertaken by the organization could improve the Intellectual Property system and make it more efficient and ensure that knowledge and information was available and accessible to all Member States. Concrete proposals should be made in order to better integrate the development issues in WIPO's program. First of all, the very spirit of those recommendations implied an examination of the work of the Committee to create a balanced Intellectual Property system. Therefore, through an agenda to achieve international instruments on exceptions and limitations, the SCCR contributed in a notable manner to the Development Agenda. On the other hand, there was consideration of the restrictions. It believed that the SCCR was on the right path when it talked about Cluster B on norm setting. Furthermore, the Delegation also shared the views of the declaration made regarding Recommendation 44, as it believed that the process of debate should be inclusive and transparent. However, it believed that only once its work program had been concluded would the SCCR have formally and substantively contributed to the spirit of the recommendations. That was why it urged Member States to work together in order to adopt a Treaty on exceptions and limitations for visually impaired persons, for libraries, archives, educational and research institutions, and finally a treaty on broadcasting.

“The Delegation of Indonesia associated itself with the statement of the Development Agenda Group and of the African Group. It also recognized progress achieved in the SCCR. Although certainly more work was still needed it was important to take into account the Development Agenda recommendations to ensure all WIPO members could benefit from the outcomes.

“The Delegation of Nigeria supported the statement of the Development Agenda Group and informed the Committee that the first copyright act for Africa was 100 years old. That copyright act extended to 11 countries, all of which remained independent countries in the African continent. Looking back at developments in international relations but also in particular in international copyright law, it was clear that is a system that would always need adjustments. It was important to note that the accomplishments today were only the first steps in a very long journey with regard to the treaty for the visually impaired. When they were addressing the needs of the visually impaired, there could be no question that the responses must be law, and not only sentiment. They must be a commitment, not just an ideal. Copyright law was government policy, not private policy. It was not the entitlement of users, consumers, authors or intermediaries. Member States must have the leadership and the moral courage to establish principles that were sustainable, fair, and implemented at the highest levels of integrity. Nigeria was proud to have produced the first blind physiotherapist and the first blind professor on the continent, and to have established the first organization to train and teach the blind and the visually impaired. The exceptions and limitations agenda was a reflection of a long history and commitment to ensure that the copyright system and indeed all other systems supported the full integration of individuals into a meaningful and productive life. It was time to convene a Diplomatic Conference in 2013. Regarding the WIPO Development Agenda, it was clear that the legal, social, and political reality was that an international copyright system that did not work for all would not work at all.

“The Chair declared that the Committee took note of the statements on Agenda Item 8 and announced that they would be recorded in the report of the SCCR to be submitted to the WIPO General Assembly.”

26. *The WIPO General Assembly is invited to:*

*(i) take note of the information contained in this document;*

*(ii) encourage the Standing Committee on Copyright and Related Rights to continue its work regarding the issues reported on in this document; and*

*(iii) approve the recommendations of the SCCR as set out in paragraphs 9, 14, 19 and 23 of this document regarding broadcasting organizations and limitations and exceptions.*

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