

## **WIPO General Assembly**

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

#### REPORT

*adopted by the General Assembly*

1. The General Assembly was concerned with the following items of the Consolidated Agenda (document A/50/1): 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 25(i), 26, 27, 28(i), 28(ii), 28(iii), 28(iv), 33, 37 and 38.
2. The reports on the said items, with the exception of items 9, 13, 14, 22, 23, 24, 25, 25(i), 26, 27, 28(i), 28(ii), 28(iii), 28(iv), 29, 30, 31, 32, 33, 34, 35 and 36 are contained in the General Report (document A/50/18).
3. The reports on items 9, 13, 14, 22, 23, 24, 25, 26, 27, 28 and 33, are contained in the present document.
4. Ambassador Uglješa Ugi Zvekić (Serbia), Chair of the General Assembly, and, in his absence, Ambassador Alfredo Suescum (Panama), Vice-Chair, presided over the meeting.

## ITEM 9 OF THE CONSOLIDATED AGENDA

### 2011 FINANCIAL STATEMENTS AND THE STATUS OF THE PAYMENT OF CONTRIBUTIONS

5. Discussions were based on documents WO/GA/41/2 containing document WO/PBC/19/7 (Status of the Payment of Contributions as of June 30, 2012), WO/GA/41/3 (Status of the Payment of Contributions as of September 10, 2012) and A/50/14 (Summary of Decisions and Recommendations made by the Program and Budget Committee at its 19<sup>th</sup> session (September 10 to 14, 2012)).

6. The Chair invited the Secretariat to introduce the documents.

7. The Secretariat explained that document WO/GA/41/2 provided details of the status of the payment of contributions as at June 30, 2012. This had now been superseded by document WO/GA/41/3 which gave the status as at September 10, 2012. This second document had been prepared on September 14, 2012, since which time a number of contribution payments had been received. Belgium had paid all of its contribution and its arrears, Panama had paid all of its contribution and Côte d'Ivoire had reduced its arrears. The Secretariat wished to draw attention to the progress of the contribution arrears over the past 15 years. These had fallen from 16 million Swiss francs to 9.5 million Swiss francs which represented a 40 per cent fall in arrears.

8. Comments and questions on document WO/GA/41/1, 2011 Financial Statements, were taken during Agenda Item 13, Reports of the External Auditor.

9. The Chair read out the decision paragraph inviting Member States to approve the recommendation made by the Program and Budget Committee in respect of document WO/PBC/19/7, which was:

*"The Program and Budget Committee recommended to the General Assembly of WIPO to take note of the contents of document WO/PBC/19/7."*

10. The WIPO General Assembly also took note of the status of the payment of contributions and of working capital funds on September 10, 2012.

## ITEM 13 OF THE CONSOLIDATED AGENDA

### REPORTS OF THE EXTERNAL AUDITOR

11. Discussions were based on documents WO/GA/41/1, 2011 Financial Statements, WO/GA/41/4, Report by the External Auditor: Audit of 2011 Financial Statements, WO/GA/41/5, Financial Supervision Audit of WIPO's Involvement with the United Nations International Computing Center (UNICC), WO/GA/41/6, Financial Supervision Audit by the External Auditor on the Construction Projects and the Building Security Project, WO/GA/41/7, Information Technology Audit on the Project to Implement the AIMS System, and A/50/14, Summary of Decisions and Recommendations made by the Program and Budget Committee at its 19<sup>th</sup> session (September 10 to 14, 2012).

12. The Chair invited the External Auditor to present his report.

13. Mr. Kurt Grüter, the External Auditor, made the following presentation:

“Mr. Chair, Director General, Ladies and Gentlemen, Delegates. As External Auditor, I thank you for the opportunity to present to you the work of the External Auditor to the Organization. This is quite a special event for me, since it is my very last appearance before the Member States of WIPO. As I am sure you are aware, the Auditor General of India will succeed me as External Auditor.

“Without any false claim, I would say that a page in history has been turned today, not only because I have carried out this mandate personally since 1999, but also because the mandate of WIPO External Auditor has belonged to Switzerland for more than a century. What you perhaps do not know is that the long collaboration between the institution I head and WIPO can be estimated at 119 years. Without being totally sure, because I was not there to check, I would say that this collaboration began at the end of the 19<sup>th</sup> century when the Swiss auditors at the Federal Audit Office, founded in 1877, audited the accounts of another brand new international institution, established in Bern in 1893 and which was named “United International Bureau for the Protection of Intellectual Property”, that brought together the Paris and Berne Conventions. Since that time, generations of Swiss auditors have succeeded each other and have followed and monitored all the important events involving the Organization, such as the move from Bern to Geneva in 1960, then the foundation of WIPO in 1967, its subsequent transformation into a United Nations specialized agency in 1974, its “physical growth” through the construction of numerous infrastructures and finally, if you will allow me, the transition to the International Public Sector Accounting Standards (IPSAS), in 2010.

“Following this brief historical reminder, I will not dwell here on all that is entailed by “an IPSAS-based audit” for my teams of auditors and for your Organization. I have already had the opportunity to do so from this same platform on several occasions.

“I would simply like to emphasize that, in order to certify the conformity of WIPO’s financial statements, the External Auditor’s teams invested about 150 days’ work between the second half of 2011 and the first half of 2012. Furthermore, in order to carry out my traditional audits of the financial statements by means of financial surveillance audits, I requested my teams to devote a little over 100 days to three audits, the reports on which have also been issued to you by the Secretariat. These are:

“– the “Financial Surveillance Audit on WIPO’s Participation in the United Nations International Computing Centre (UNICC),

“– the audit concerning the three construction projects and the building-security project, and,

“– the IT audit of the project to implement the AIMS system.

“Firstly, however, before commenting on these different audit reports, and in particular that relating to the 2011 financial statements, I would like to remind you once again how I have perceived the respective roles of the WIPO Finance Services and the External Auditor. WIPO Finance Services are responsible for explaining to the Member States all the financial, budgetary and accounting policies. Finance Services play a crucial role in providing details of and explaining what happens at the financial level. This is especially important and all the more difficult when the subject to be explained is IPSAS. Finance Services must also explain and provide convincing evidence that their actions in relation to this complex subject coincide with the will of the decision-makers, i.e. your will. Having followed one of my recommendations, Finance Services now have the IPSAS knowledge required for that purpose.

“As for the role of the External Auditor, this is to be able to certify that the accounting processes in place lead to presentation of financial statements in accordance with IPSAS. I would simply like to confirm that, for the second year running, the financial statements submitted

to you comply with IPSAS. With the application of these standards, anyone reading the financial statements now has in clear form all the information required to form his or her personal opinion on the state of the Organization's finances. Firstly, the reader is informed of the financial objectives and the main accounting policies of WIPO. Subsequently, each financial heading refers to a detailed explanatory note justifying the corresponding figure. As External Auditor, I can confirm to you that the content of all these notes has been examined in detail by my teams and that the notes comply with the information required under IPSAS.

"The detailed result of these examinations is mentioned in my audit report on the financial statements for 2011. I wanted the last report I have produced to be a little more detailed than usual with 99 paragraphs, in order to facilitate the task of our Indian successors. I will return later to the process of change of External Auditor. However, as Swiss tradition requires, I also wanted to remain concise and pragmatic in my observations.

"I would like to emphasize one or two points relating to audit technique. My colleagues and I have had the good fortune to become very familiar with this Organization, thereby facilitating our risk analysis. However, with the introduction of IPSAS we have been obliged to make this analysis more comprehensive. With the introduction of new standards, the risk of error naturally increases, as does the risk of not having available the necessary knowledge. Furthermore, there is the risk that the internal control system is no longer suitable. You also have the risk linked to the computer processing of accounting data. IT systems must guarantee that accounting and financial information are correct. Another important risk was that, with the application of the accrual principle, the entry into the accounts of receipts for patent fees is not correct. Errors in terms of the recognition of revenue may have a very significant impact on WIPO's finances.

"Ladies and Gentlemen, delegates, I consider that, during the past two years, my teams have worked on the basis of these risks and I can assure you that all these risks have been taken into consideration in the plans for audit and in the performance thereof. Suitable audits have been carried out and the results of all this work are shown in different audit reports. Furthermore, I would like to refer to the excellent work done by the WIPO internal audit unit. While it was the task of the External Auditor to focus his audit resources on the main risks linked to the introduction of IPSAS, for his part the External Auditor has carried out several audit missions, on which I will not dwell, but which demonstrate once again the complementary nature of the relationship between the Internal Auditor and the External Auditor.

"As to the content of the audit report, I would note that, as last year, the most substantive elements are, on the asset side, the correct valuations of liquid assets and immovable assets. Such assets are based on estimates by external property surveyors with a component-based approach which is, we consider, the best method closest to a true fair value. As regards liabilities, the largest element is constituted by commitments linked to staff benefits. All these elements have been valued by external actuaries, whose assumptions I consider to be those which actually correspond to the reality of the situation at WIPO. In relation to the risk for WIPO of having to participate, sooner or later, in the technical deficit of the United Nations Joint Staff Pension Fund, I would like to recall that the current non-entry of this risk into the accounts complies fully with IPSAS. Finally, the "Receipts" heading has been a particular source of work for my colleagues, in particular with a review of the whole process of collection of PCT fees in order to determine whether the amount of PCT fees coincides with the economic aspect, as required by IPSAS.

"I would be unable to conclude this aspect of the audit of the 2011 financial statements without thanking, and paying a final tribute to the work done by, all the people at WIPO who have allowed such an exemplary transition to IPSAS.

“It would be inappropriate for the last statement by the serving External Auditor to be given without mentioning the process of change of External Auditor. For your information, this process was discussed, set up and then approved in December 2011 by the United Nations System Panel of External Auditors. My task was therefore to do everything possible to follow these instructions. I would also like to emphasize that one of the main aims of these instructions was to avoid, to the greatest extent possible, a situation where the Organization had to explain everything basically from scratch to the new External Auditor. Furthermore, I would like to add that the main aim of the Swiss auditors in this process was to provide a detailed explanation of the way in which they had interpreted the main headings of the financial statements in relation to IPSAS. The aim was to acquire a sound mutual understanding of things. I am completely convinced that I have acquired such mutual understanding with my Indian opposite number. A protocol certifying that the necessary information has been passed between auditors has been signed in accordance with these guidelines. I would even go further in saying that in relation to certain aspects of the exchanges and communication, the Swiss and Indian auditors have gone beyond the guidelines and in that respect I wish to thank all my colleagues representing the Auditor General of India.

“I will now move briefly to the three other audit reports and I would like to begin by returning to the auditing work concerning the construction of the new administrative building and the new conference hall. This is a subject which has been examined very regularly since 2004 by the External Auditor himself, given that WIPO did not, at the time, have an internal audit mechanism as effective as today. Since 2004 I have issued eight reports. Since this is a very important subject and given that my mandate was due to expire on June 30, 2012, I considered that it was important to provide the Member States, for the last time, with a statement of the situation relating to these projects of importance for the Organization. The last report is dated December 22, 2011, and emphasizes that the latest recommendations have been implemented, that the information on the construction projects is well documented, the project organization is appropriate, monitoring of the projects is guaranteed and that risk analysis of the projects has been carried out in a professional manner.

“As regards the audit report on the project to update the AIMS system, our risk analysis showed that such an audit was essential since the correct establishment of parameters and updating of IT systems managing the area of finance and accounting are prerequisites for a successful transition to IPSAS. Without going into details, I would say that the project contained sound preparations for the evaluation of the new accounting needs, that the project followed good management practices, that the management of change during the project was carefully controlled and that the parameters were correctly established thanks to good knowledge of IPSAS and as a result of planned and carefully controlled data migration. The main weakness lay in the fact that the knowledge of software users was not yet at the optimum level and that the new procedures and regulations were not yet fully respected.

“As regards the audit report on WIPO’s participation in UNICC, I wished to ascertain how this participation worked and whether the Organization was satisfied with it. My colleagues noted that a framework agreement for service provision existed, which set the respective tasks and responsibilities of the Center and WIPO. Furthermore, the quality of the services provided by the Computing Center was regularly verified by external consultants. The only problem noted relates to the entry into the accounts of invoices, but this problem may be characterized as negligible in relation to the Organization’s finances as a whole.

“Mr. Chair, Director General, Ladies and Gentlemen, Delegates, I have provided you with as complete as possible an overview of the situation at WIPO, as reported in my latest work as External Auditor. I am of course available for additional comments and to respond to any questions you may have in this regard. Thank you.”

14. The Delegation of the United States of America wished to thank the External Auditor for the current report and for all the work that had been done over the years. The Delegation was pleased to see that the 2011 financial statements of WIPO had, once again, been prepared in compliance with IPSAS and noted, once again, that WIPO had been one of the leaders amongst the United Nations (UN) organizations with regard to implementing IPSAS.

15. The Director General spoke as follows:

“Director, Mr. Grüter: The 2010/2011 biennium brings to an end your mandate as WIPO External Auditor. The Federal Audit Office has worked together with WIPO for more than a century and has made a great contribution in allowing the Organization to acquire its solid state of financial health. The reports you submit to us are merely the visible part of the enormous work you and your teams do each year, for several months, on our premises and on yours. Your teams study carefully our financial transactions, question them and assess them. Your teams are respected by our staff members for their professionalism, competence, independence, unflinching courtesy and their acute sense of the general interest. In addition to the WIPO financial audits, you have carried out regular audits of our IT services, our human resources services, internal audit, our registration unions, our relations with the United Nations Development Programme (UNDP) and our trust funds. In the past, at our request, you have undertaken evaluations and, at the request of the Member States, specific investigations. Your work has enabled you to guide us and to give us advice. I would like to emphasize two areas in which you have once again recently contributed to our success: the construction of the new buildings, which you have monitored constantly, and the adoption, by WIPO, of the International Public Sector Accounting Standards (IPSAS). Your assistance in these two areas has been decisive. We thank you for the spirit of openness and the constructive approach which has characterized your work. You have enabled us to make progress and we are grateful to you for that. During the past nine months, you have passed on your files and your knowledge to our new audit authority, the Auditor General of India. We welcome him. We wish to thank you personally, Mr. Grüter, to thank your teams, your institution, which has borne the costs of the services provided over all these years, and to thank the host country which has cooperated with us in this procedure. We convey to you our immense gratitude”.

16. The Chair also wished to thank the External Auditor for his work and to welcome on board the External Auditor from India.

17. The Delegation of Spain thanked the Secretariat for the 2011 financial statements and the External Auditor for his excellent work both in recent years and in the past. An analysis of the 2011 financial statements provided some very important information which was linked to some of the ideas that the Delegation had mentioned during their opening statement to the Assemblies. Prudence in budget management and in medium and long-term strategy should guide debate and decisions, and the financial statements provided food for thought in this respect. A deficit of 32.2 million Swiss francs had been recorded for 2011 which represented approximately 11 per cent of the Organization’s income. In 2010 the deficit had been approximately 10 million Swiss francs and in both years, actual income had not reached forecast levels. WIPO had to take the 32.2 million Swiss francs from the Organization’s reserves in order to cover the deficit. With regard to the valuation of buildings and land, WIPO had obtained this valuation by reference to current market values which was permitted but it could also have used historical values which would have given a better indication of the long term value of these assets. This was important as the valuation of land and buildings was relatively high when compared with the current figure for reserves, 162 million Swiss francs. A future reduction in the value of the buildings would actually put the Organization in a very difficult or delicate situation. The Delegation thanked the Secretariat for the efforts that had been made in order to achieve IPSAS compliance. They hoped that, in the future, provision would be included to cover future pension liabilities. Such inclusion would give a full picture of all current and future obligations of the Organization and this would enable Member States to have a better idea of the future and of what budgetary strategies to adopt. The Delegation

wished to highlight that the deficits, the use of reserves and the shortfall in income, the possible revaluation of land and buildings and the non-inclusion of future pension costs in the current budget were all elements of risk that needed to be taken into consideration. Only by correctly identifying and preparing for such risks would Member States be able to decide upon the future budget of the Organization with some element of guarantee. The Delegation referred to the possible pension fund commitments that had been explained within the External Auditor's report. These were 200 million Swiss francs but had not been included in the Organization's accounts. The Delegation wished to know the External Auditor's views on the magnitude of risk that this commitment represented and the legal position of the agreement between UN external auditors not to account for such a commitment. In addition, the Delegation wished to know whether each UN organization had a required minimum level of reserves and whether WIPO's reserves satisfied this minimum level.

18. The External Auditor referred to page 5 of the financial statements which showed a deficit of 32.2 million Swiss francs, the result for 2011. However, page 9 of the statements, the Statement of Comparison of Budget and Actual Amounts – Expenses, clearly indicated that the Organization had made a surplus of 0.8 million Swiss francs against budget and that expenditure on projects financed from the reserves was 36.2 million Swiss francs. This expenditure related to decisions made by the General Assembly to finance projects from reserves and, as a result, the overall reserves of the Organization had fallen when compared with 2010 by 32.2 million Swiss francs. When applying IPSAS, there were certain rules to be followed concerning the evaluation of assets and liabilities. The evaluations of land and buildings had been carried out by experts and gave a true and accurate view. With regard to the pension fund and the commitments to that pension fund, the financial statements of the Organization were sound. WIPO had reserves that were far larger than those of other organizations. However, it was possible that the Organization could encounter risks in the future. All UN organizations treated the possible pension liabilities in the same way as WIPO. The UN pension fund was an independent organization and was not currently in a position to calculate the true liabilities for all of the UN organizations and so, for the moment, there was no accurate figure that could be included within the accounts. Furthermore, if UN organizations were obliged to pay these liabilities, this would not be immediate. Organizations would first be able to take the necessary measures to address such financial challenges effectively.

19. The Delegation of Spain referred to IPSAS 25 (Employee Benefits) and the External Auditor's report in which the risk attached to the non-inclusion of the pension fund liability had been explained. The Delegation believed that this was an autonomous financial risk and asked whether organizations outside the UN system had accounted for such a risk. The External Auditor had stated that the figure of 200 million Swiss francs was not precise but the Delegation wished to know whether the pension-related liability should be included within the accounts despite the technical difficulties of so doing. Furthermore, the Delegation required clarification as to whether all external auditors to the UN had agreed on the current practice of non-inclusion and whether such an agreement was in violation of IPSAS standards.

20. The External Auditor referred back to pages 2 and 12 (English version) of his report in which his position regarding the possible liability regarding the UN pension fund was clearly explained. Switzerland was a member of the UN panel of external auditors and other members had determined that, as it was impossible to set a precise figure for these liabilities to the pension fund, nothing should be included within the accounts. This was consistent with IPSAS. However, in order to be transparent and to raise awareness regarding this potential future risk, he had wished to draw the attention of Member States to the fact that if the UN pension fund did run into financial difficulties, then WIPO could have 200 million Swiss francs worth of liabilities. This would not be required immediately. WIPO would have time to take corrective measures as, indeed, would the UN pension fund. He reiterated that the statements were compliant with IPSAS but there was the possibility of WIPO having liabilities with regard to the UN pension fund in the future.

21. The Chair thanked the External Auditor for his detailed explanation of the implications of complying with IPSAS standards whilst recognizing a possible risk in connection with the UN pension fund.

22. The Chair read out the decision paragraphs inviting Member States to approve the recommendations made by the Program and Budget Committee in respect of the documents under discussion, which were:

WO/GA/41/1 (containing document WO/PBC/19/4)

*“The Program and Budget Committee recommended to the WIPO General Assembly the approval of the 2011 Financial Statements contained in document WO/PBC/19/4.”*

23. The WIPO General Assembly approved the recommendation of the Program and Budget Committee made in respect of document WO/PBC/19/4, as recorded in document A/50/14.

WO/GA/41/4 (containing document WO/PBC/19/6)

*“The Program and Budget Committee recommended to the Assemblies of the Member States of WIPO to take note of the contents of document WO/PBC/19/6.”*

24. The WIPO General Assembly approved the recommendation of the Program and Budget Committee made in respect of document WO/PBC/19/6, as recorded in document A/50/14.

WO/GA/41/5 (containing document WO/PBC/19/17)

*“The Program and Budget Committee recommended to the WIPO General Assembly to take note of the contents of document WO/PBC/19/17.”*

25. The WIPO General Assembly approved the recommendation of the Program and Budget Committee made in respect of document WO/PBC/19/17, as recorded in document A/50/14.

WO/GA/41/6 (containing document WO/PBC/19/18)

*“The Program and Budget Committee recommended to the WIPO General Assembly to take note of the contents of document WO/PBC/19/18.”*

26. The WIPO General Assembly approved the recommendation of the Program and Budget Committee made in respect of document WO/PBC/19/18, as recorded in document A/50/14.

WO/GA/41/7 (containing document WO/PBC/19/19)

*“The Program and Budget Committee recommended to the WIPO General Assembly to take note of the contents of document WO/PBC/19/19.”*

27. The WIPO General Assembly approved the recommendation of the Program and Budget Committee made in respect of document WO/PBC/19/19, as recorded in document A/50/14.



## ITEM 14 OF THE CONSOLIDATED AGENDA

## PROPOSED AMENDMENTS TO THE FINANCIAL REGULATIONS AND RULES (FRR)

28. Discussions were based on documents WO/GA/41/8 (containing document WO/PBC/19/21) and A/50/14.

29. The Chair invited the Secretariat to introduce the document.

30. The Secretariat explained that many of the proposed amendments in the document were to terminology only, whilst others aligned the Financial Regulations and Rules (FRR) with the requirements of International Public Sector Accounting Standards (IPSAS). A key example of such alignment was the amendment which reflected the fact that, under IPSAS, WIPO was now required to produce annual financial statements which were then subject to an annual external audit. A further example related to the fact, that again, under IPSAS, the Organization was required to recognize non-expendable property on WIPO's balance sheet. No expendable property included such things as equipment and furniture. This property was subject to a periodic physical inventory and a rule had been included within the FRR to take account of this.

31. The Delegation of the United States of America supported the proposed changes to the FRR, which would enable them to comply with IPSAS. It was the Delegation's view that the amended regulations and rules were better aligned with sound international accounting practices and, further more, that some of the changes would further promote the transparency of the Organization's accounting records.

32. The Chair read out the decision paragraph inviting Member States to approve the recommendation made by the Program and Budget Committee in respect of this document, which was:

*"The Program and Budget Committee: (i) recommended the approval of the amended Regulations 3.13, 5.10, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 8.10 and 8.11 to the WIPO General Assembly listed in document WO/PBC/19/21; and (ii) recommended to the WIPO General Assembly to take note of the amendments to Financial Rules and terminology used in the Annexes to the Financial Regulations and Rules."*

33. The WIPO General Assembly approved the recommendation of the Program and Budget Committee made in respect of document WO/PBC/19/21, as recorded in document A/50/14.

## ITEM 22 OF THE CONSOLIDATED AGENDA

## SUMMARY ANNUAL REPORT OF THE DIRECTOR OF THE INTERNAL AUDIT AND OVERSIGHT DIVISION

34. Discussions were based on document WO/GA/41/9.

35. The Director of the Internal Audit and Oversight Division (IAOD or the Division) presented the IAOD Summary Annual Report which included the results of audit, evaluation and investigation work as well as follow-up of oversight recommendations, other activities and IAOD's resources and procedures. The Director, IAOD stressed the independence of IAOD and underlined that the Division establishes its annual work plan as well as individual work plans for audit, evaluation and investigation work in full independence. Five audit reports, three evaluation reports and various investigation reports were issued by IAOD during the reported period.

36. The Director, IAOD stated that IAOD, being an internal division of WIPO, did not limit its independence but being independent did not mean being irresponsible. He added that IAOD reports on its work to the Director General and to the Independent Advisory Oversight Committee (IAOC) and oversight work was carried out in strict respect of the various professional standards. IAOD plans its work in consultation with audited/evaluated entities. As regards the results of IAOD's activities, IAOD has reported its conclusions in the following areas: the program project management, the results-based management, the management of human resources and the information and communication technologies. This has been done through five audit reports, three evaluation reports and various investigation reports.

37. Regarding program and project management, IAOD reached the conclusion that the support provided by WIPO was adapted to the needs of its beneficiaries and was producing the required results. It could therefore turn more to the use of SMART performance indicators to produce Specific, Measurable, Achievable, Relevant and Time-bound results to measure the impact of projects, in particular at the level of beneficiaries. As far as measuring the impact of projects could be possible, IAOD estimated that the project viability could be improved through strategies supported by the governments. The Director urged that greater attention should have been given to strengthening synergies within and outside WIPO.

38. Concerning human resources management, IAOD indicated the possibilities of strengthening the internal controls framework and better aligning WIPO's human resources management with best practices in human resources. A formal human resources management strategy, in line with the strategies and the plans of WIPO, should be drawn up along with well-defined policies for post and talent management. This should allow WIPO to acquire and retain skills within the Organization, while making sure that technical knowledge and experience correspond best to the needs of organizational units where they are the most useful. This would need the revision, if necessary, and the consistent implementation of human resources policies and procedures, especially as regards recruitment, reclassification, career development and dispute settlement. WIPO would benefit from a thorough analysis of the causes of staff absenteeism which has a significant cost. As regards investigations, 18 new cases were received or opened compared to 14 cases in the previous period. Sixteen cases were closed as compared to 27 in the previous period. The Summary Annual Report (SAR) submitted to Member States describes the types of investigation cases.

39. The Director, IAOD mentioned that at the time of the presentation of the SAR, 140 outstanding oversight recommendations, made by IAOD, were being implemented and there is an ongoing dialogue with program managers so that a proper follow-up of oversight recommendations is performed.

40. The Director, IAOD also added that IAOD provided two types of advisory services. Firstly, IAOD staff attend various WIPO committees as observers and secondly, IAOD provides advice on general policy documents and/or regulatory framework. This was mentioned to indicate that IAOD is an active component of the Organization.

41. As regards IAOD's resources, human resources problems have long held up the effective and satisfactory functioning of internal oversight activity at WIPO. IAOD has 11 positions for the 2012/2013 Biennium. While the budget and the personnel of the Division only represent 1.6 per cent and 0.9 per cent of the budget and staff of WIPO respectively, the Organization is obviously within the average of other UN organizations. The Director, IAOD stated that a major concern was to go from a structure relying on engagement of consultants with short-term contracts to a structure composed of a majority of staff with fixed-term contracts which would bring IAOD in line with other UN agencies.

42. The Delegation of Germany stated that IAOD had explained that the audit report on human resources, as also recommended by IAOC, would be made available to all Member States for viewing and that only seven Member State representatives had actually gone to the

Director's office to read the report. The Delegation also noted that this report was presented and discussed in the PBC. The Delegation asked whether, following the latest change to the Internal Oversight Charter (IOC), access to audit reports by Member States would be made easier in the future and if there was a way to make this report available for the Member States this week. The Delegation also asked whether it would be possible for the Director, IAOD, as author of this report, to attend the Coordination Committee session to present this report in a more detailed way because the human resources issues were primarily discussed at the Coordination Committee and thus far this report was not on the agenda.

43. The Director, IAOD suggested that the Legal Counsel might be able to answer the question asked by the Delegation of Germany. As regards access to the IAOD report, the Director, IAOD pointed out that the General Assembly had adopted amendments to the IOC which provide for access to IAOD reports and that his understanding was that access was granted for future reports, as of the adoption of the amended IOC. As the audit report on human resources management was issued before the amended IOC was adopted, the previous rules would apply to that report unless the Member States would decide otherwise. He stated that if requested and if possible under the rules, he would attend and present the human resources management report to the Coordination Committee.

44. The Delegation of France reiterated the question asked by the Delegation of Germany and stated that the Delegation would expect to have an answer to the question asked to the Legal Counsel whether retroactive access to audit reports would be possible. The Delegation stated that in their interpretation, the amendment was on the principle of access and that without a provision to the contrary, it allowed access to existing IAOD reports. The Delegation reiterated that an answer as to whether this interpretation was correct was necessary and asked when such an answer could be provided.

45. In the afternoon session, the Legal Counsel explained that the Member States are now guaranteed access to the internal audit and evaluation reports following the decision taken to amend the IOC and that decision will be formalized when the reports are adopted on Tuesday, October 9, 2012. In respect of access for future documents as explained by the Director, IAOD, the Legal Counsel explained that Member States will have guaranteed access and the Director, the Division will make these available to them. That does not preclude the possibility that Member States would also be given, if they requested, access to existing or previous documents. The Legal Counsel informed Member States that they should feel free to consult with the Director, IAOD who will make the reports available to them as well. All these documents both previous, pre-existing and future will be available to Member States. The Delegation of France was satisfied with the clarification given.

46. The WIPO General Assembly took note of the Summary Annual Report of the Director, IAOD.

#### ITEM 23 OF THE CONSOLIDATED AGENDA

#### REVISION OF THE TERMS OF REFERENCE OF THE INDEPENDENT ADVISORY OVERSIGHT COMMITTEE (IAOC) AND THE INTERNAL OVERSIGHT CHARTER AND THE TERMS OF REFERENCE GOVERNING EXTERNAL AUDIT

47. Discussions were based on documents WO/GA/41/10 Rev. and A/50/14.

48. The Chair of the WIPO Independent Advisory Oversight Committee (IAOC) recalled that, when the new membership first met in March 2011, it had reviewed the WIPO Internal Oversight Charter, the Terms of Reference Governing External Audit and the IAOC's Terms of Reference to understand, among other things, the functional relationships of WIPO's triangular oversight architecture. It was clear to the IAOC that there was room for improvement to reduce

incoherence between the three texts and to bring them in line with international standards. The Chair further recalled that the IAOC's proposal for revisions had been reviewed independently by the External Auditor and the Director, IAOD, and discussed jointly at the IAOC's 25<sup>th</sup> session, which had resulted in a joint proposal to the PBC. The PBC had approved this proposal with minor changes, including additions to strengthen further the independence of the Director, IAOD and the IAOC. The Chair summarized the principle changes to the Internal Oversight Charter as follows: a refined definition of the independent status of the Director, IAOD; clarification of IAOC oversight of IAOD workplans; access for the IAOD Director to the Coordination Committee Chair; modifications to provisions on follow-up on oversight recommendations to bring them in line with best practices; facilitated access for Member States to IAOD audit and evaluation reports; access for the External Auditor and the IAOC to investigation reports; provision for any investigation reports concerning the Director General to be copied additionally to the Chair of the Coordination Committee; reporting by the Director, IAOD to the PBC in writing; IAOC consultation on the selection process for the Director, IAOD; and, endorsement by the Coordination Committee and the IAOC on the appointment, replacement or dismissal of the Director, IAOD. With respect to the Terms of Reference Governing External Audit, the Chair stated that only one change had been proposed, which was to enable the External Auditor to draw the attention of the IAOC to any cases where access to information was denied. Concerning the IAOC's Terms of Reference, the principle changes were: designation of the IAOC as a subsidiary body of the PBC and GA; strengthening of the oversight role of the IAOC for all internal oversight functions; provision for IAOC review, at least every three years, of Financial Regulations and Rules; IAOC review of IAOD self-assessment and external assessment reports; non-eligibility for employment at WIPO for IAOC members and their immediate family during their mandate and for a period of five years thereafter; and, submission of a written IAOC annual report to the PBC and GA.

49. The Delegation of the United States of America wished to address several aspects under this agenda item. First, with regard to the IAOC, the Delegation very much appreciated the Committee's efforts and its activities, which had provided insights into the Organization which were critical for Member States to execute their governance and oversight responsibilities. The quarterly information sessions had been a very useful forum for learning about the Committee's assessments of WIPO oversight structures, internal control systems, and risk management. The Delegation supported the concept of a five-year roadmap for the Committee contained in the Annex to document WO/IAOC/21/2 but thought that some detail might be missing. It realized that the IAOC would look at a number of recurring issues, such as the annual plans for the IAOD, the Ethics office, Ombudsman, etc. However, the roadmap gave very little indication about how the Committee would handle non-recurring and emerging issues. The Delegation stated that it would therefore appreciate some insight and further information on this. The Delegation also wished to encourage the IAOC to consider including in future reports recommendations to the PBC on issues within its purview. In this connection, it had found the practice of the Audit Committee of the International Telecommunication Union (ITU) to be particularly helpful to all Member States. With regard to the proposed revisions to the Internal Oversight Charter, the Delegation wished to ask some questions before joining consensus on the revised Charter. In particular, on paragraph 4, it wondered what the rationale was for deleting from the original text "...he/she should be free to carry out any action within the purview of his/her mandate". The Delegation thought it prudent to retain or include a statement that the Director, IAOD may initiate audits and investigations and audits based upon his or her own authority and wondered why that phrase had been deleted. Secondly, with regard to paragraph 19, the Delegation thought that more detail might be needed on the handling of investigation reports, which contained sensitive information and required additional protection. The Delegation wished to ensure that access to investigation reports would not compromise due process or confidentiality rights of any WIPO staff and personnel. Paragraph 19 was a very "bare bones" statement: "The external auditor and the IAOC shall have access to investigation reports". The Delegation wondered about the safeguards that, in its view, should accompany that provision. On paragraph 31, it wondered why the Coordination Committee was involved in the appointment process for the Director, IAOD and asked if the PBC was a more appropriate

body to consider the suitability of the candidate's qualifications. Finally, the Delegation strongly supported remote access to WIPO internal audit reports, a first step towards full transparency. It noted that, by the end of this year, four UN organizations would have approved public disclosure of their internal audit reports, namely the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF), the United Nations Office for Project Services (UNOPS) and the United Nations Population Fund (UNFPA).

50. The Delegation of Brazil, speaking on behalf of the Development Agenda Group (DAG), stated that the DAG had engaged in the PBC discussions on the revisions to the Terms of Reference of the Internal Oversight Charter, the Terms of Reference Governing External Audit and the Terms of Reference of the Independent Advisory Oversight Committee. The purpose of the revisions was to ensure the effectiveness, independency and transparency of WIPO's audit and oversight system. The DAG considered that a proper auditing and oversight structure, which was independent and without conflicts of interest, was a major feature of a Member States driven organization.

51. The Chair of the IAOC, referring to paragraph 4 of the Internal Audit Charter, stated that while the IAOC had proposed deletion of the phrase "(...) but he/she should be free to carry out any action within the purview of his mandate" it had, in the same paragraph, proposed a new sentence: "He/she has the authority to initiate, carry out and report on any action, which he/she considers necessary to fulfill his/her mandate." Consequently, the proposal was not so much a deletion as a change in language from "he/she should be free" to "he/she has the authority to initiate (...)". The IAOC strongly supported this change because, although the Director, IAOD was independent, it believed that this should not imply that he/she could initiate action at will, but only on a basis disclosed beforehand, such as a risk analysis and the annual work plan. The purpose of the change was therefore to strengthen due process.

52. The Secretariat, referring to the question raised on how to ensure that access for the External Auditor and the IAOC to investigation reports would not compromise due process or confidentiality rights, noted that Article 13(b) of the Charter provided for clear establishment by the IAOD, in consultation with Member States, of policies and guidelines for all oversight functions. Consequently, the IAOD would prepare a document on operational procedures to guarantee all the necessary protections for those under investigation and the investigators themselves. Concerning full disclosure by some organizations of audit reports, the IAOD Director noted that such a decision had been made following a transitional period during which Member States had facilitated access to audit and the evaluation reports in line with that which had been proposed in the Charter.

53. The Secretariat, referring to paragraph 31 of the Charter, confirmed that the Coordination Committee was the appropriate body to deal with the appointment process for the Director, IAOD as it was the Committee responsible for WIPO staff matters.

54. In the absence of further comments the Chair read out the decision paragraph in document WO/GA/41/10 Rev.

55. The WIPO General Assembly: (i) approved the proposed revisions to the WIPO Internal Oversight Charter, the Terms of Reference Governing External Audit and the Terms of Reference of the WIPO Independent Advisory Oversight Committee contained in the Annex to document WO/GA/41/10 Rev.; and (ii) took note that the relevant sections of the Financial Regulations and Rules will be amended accordingly.

## ITEM 24 OF THE CONSOLIDATED AGENDA

### REPORT ON THE OUTCOME OF THE BEIJING DIPLOMATIC CONFERENCE ON THE PROTECTION OF AUDIOVISUAL PERFORMANCES

56. Discussions were based on document WO/GA/41/11 Rev.

57. The Secretariat introduced document WO/GA/41/11 Rev., The Report on the Outcome of the Beijing Diplomatic Conference on the Protection of Audiovisual Performances, and celebrated the Beijing Treaty as a historic achievement. The adoption of the text for a substantive WIPO treaty for the first time in 16 years was clearly an achievement that merits celebration. Thanks were extended to China for its superb hosting of the Beijing Diplomatic Conference. In addition, thanks were extended to the many performers and creators and producers representatives who engaged in positive collaborative discussions in Geneva and in Beijing in order to achieve this result after many years of effort. The Secretariat explained that the work on the Beijing Treaty was not finished. As the Report indicated, 48 Member States signed the Treaty at the end of the Diplomatic Conference. The Report also indicated that 30 ratifications were needed for the Treaty to enter in to force.

58. The Delegation of Brazil, speaking on behalf of the DAG, welcomed the adoption of the Treaty on the Protection of Audiovisual Performances and congratulated WIPO and all its Member States on the successful conclusion of the Beijing Diplomatic Conference, which was possible due to the constructive engagement and productive efforts of all Member States. The Group hoped that the positive spirit that prevailed in Beijing would continue to guide the work in WIPO. This was the first treaty concluded after the adoption of the DA recommendations and it recognized their importance in its preamble. Cluster B of the recommendations provided clear guidance for the entire normative agenda at WIPO. The Delegation highlighted the statements in the Treaty that were intended to give a higher degree of balance between the interests of rightsholders and those of society and public policy. The Group was of the view that the statements and the recognition of the importance of the DA resulted in more balanced and updated Treaty which incorporated developments inside and outside of WIPO during the last 12 years.

59. The Delegation of Hungary, speaking on behalf of the Group of Central European and Baltic States (CEBS), welcomed the success of the Diplomatic Conference on the Protection of Audiovisual Performances that took place in Beijing China. The Delegation thanked the Government of China for its hospitality, generosity and efficiency and extended its great appreciation to the Director General, his Senior Management Team, the WIPO Secretariat, and the officers of the Diplomatic Conference for their extremely hard work that made it possible to reach the finish line. The Delegation stressed its satisfaction over WIPO Member States having accomplished their task to conclude the Diplomatic Conference on Audiovisual Performances. It highlighted that the arrival at an overall success had not been easy, as it required utmost flexibility from all participating delegations. It indicated that the Beijing Treaty concluded on June 24, 2012, was a Treaty of huge importance as it would remedy the longstanding imbalance in the international copyright system by granting audiovisual performers, including actors, singers, musicians, dancers and others, both economic and moral rights similar to those already recognized for other performers. It also indicated that it was the most appropriate tool for the broadest international recognition of rights of audiovisual performers. It expressed on behalf of the CEBS Group its confidence that the conclusion of the Beijing Treaty was a good thing for multilateralism, as it clearly demonstrated that the international community was still capable of agreeing on new global standards for the protection of rightholders and thus had reaffirmed WIPO's leading role in international norm setting. The Delegation stressed it's certainty that much would depend on how the Treaty was put into national legislation and implemented into practice. It concluded by urging all WIPO Members to sign the Beijing Treaty and to examine domestically its ratification. It looked forward to the timely entry into force of the long-awaited Treaty.

60. The Delegation of Mexico said that the work that was being done during the Assemblies was in the same renewed spirit of unity as the one that had prevailed at the Beijing Diplomatic Conference when the Treaty for the Protection of Audiovisual Performances was adopted. It highlighted that adoption as an historic moment in the normative work of WIPO on copyright and a clear example of how Member States could strengthen the multilateral system. It observed that with the signing of the Beijing Treaty the parties thereto had finally managed to guarantee protection for performers beyond the borders of their own countries, both in relation to traditional media and also digital networks. It stressed that, in the context of such renewed spirit, efforts would continue to be made to promote the multilateral agenda that was being examined at WIPO and which Mexico firmly supported. The step that had been taken in Beijing towards the creation of international rules on copyright constituted clear proof of the parties' commitment and determination. The Delegation noted that those countries which had signed the Beijing Treaty, including Mexico itself, consequently had the task of reaching a national agreement on the ratification of that important international instrument. It urged all delegations to build on the historic achievement of Beijing by reaching that further agreement to create a new environment for performers. It highlighted that performers, including actors, musicians and all those working in the audiovisual sector, were grateful. It said that at the national level, Mexico had already embarked on the process of ratifying the Beijing Treaty and hoped to deposit the instrument with the Director General of WIPO as soon as possible. It reminded delegations that thanks to the work they had done together and to the political will that States had demonstrated when doing so, they had been able to take giant strides towards an international copyright and related rights instrument which was more inclusive, fairer and, above all, corresponded to the current reality.

61. The Delegation of Japan appreciated the adoption of the Beijing Treaty and recognized its extreme importance from the perspective of protecting the rights of audiovisual performers, which were not covered by the WPPT. It also indicated its belief that the Treaty would grant performers world economic rights and other protections, ensuring an updated protection for audiovisual performances while maintaining balance with facilitation of use of them in the new information society. It concluded by hoping that the Treaty would enter into force as soon as possible to form a well-balanced framework of protection for performers worldwide.

62. The Delegation of Trinidad and Tobago expressed its satisfaction that the void in the international rights system for actors and other audiovisual performers had now been filled by the adoption of a new Treaty on Audiovisual Performances, which was concluded at the Beijing Diplomatic Conference. The new Treaty marked an evolutionary shift since for the first time in history audiovisual performers were brought into the fold of the international copyright framework. The Delegation supported Article 12 of the Beijing Treaty, which dealt with the transfer of rights. Balance was formed so that both performers and producers could live harmoniously with the transfer of rights. Trinidad and Tobago was not a signatory of the Treaty. However its cabinet had directed that subsequent to the relevant amendments to the Copyright Act of 1997, Trinidad and Tobago would accede to the Treaty. Culture, music and dance were one of the greatest exports of Trinidad and Tobago, having regard to its world-renowned artists and world-class indigenous music, as well as to renowned jazz festivals, all of which would benefit from the Treaty.

63. The Delegation of Nigeria was most pleased with the successful conclusion of the Beijing Treaty, which represented a remarkable achievement for WIPO and its Member States in 2012. The commitment and good faith of the WIPO Director General, the Government of China and all Member States helped to achieve a positive combination of collective efforts to provide better protection for audiovisual performers. It also ensured that multilateralism, however challenging, was feasible and worthwhile when countries were willing to cooperate and to appropriately share the burden and benefits of intellectual property harmonization. Africa was home to a vibrant entertainment industry and the Treaty would provide greater protection for all performers and performances in the international use of audiovisual productions. Many African countries were prepared to join that important Treaty on the grounds of its balance and development benefits. The African Group had indeed been very active in critical areas of discussion in WIPO

including its norm setting agenda and always stood on the platform of balance and fairness, a trend that needed to continue after the Beijing Treaty.

64. The Delegation of the United States of America was very pleased with the successful conclusion of the WIPO Audiovisual Performances Treaty also known as the Beijing Treaty in June of this year. The efforts of the Director General in facilitating that outcome were greatly appreciated, as were those of the Secretariat. With 48 signatories of the Treaty to date and approximately 122 signatories to the Final Act it was the first successful example of international norm setting in the copyright area in WIPO in more than 15 years. With the strong support of United States stakeholders, the United States of America planned to work towards ratification as soon as possible. The United States of America believed that the Beijing Treaty held great promise to strengthen the rights of film and television actors around the world by providing a clear international legal framework for their protection, particularly for their performances in the digital environment.

65. The Delegation of Chile congratulated the organizers, the regional coordinators and the members of delegations that contributed to the success of the conference. The adoption of the Beijing Treaty provided the needed legal clarity and security for the use of performances in the international environment. It was also going to be helpful for countries that did not yet have domestic legislation on the issue. The signature of the Treaty showed it was still possible to reach consensus and the Delegation hoped to keep up with that momentum in other WIPO committees.

66. The Delegation of Cyprus passed the floor to the Representative of the European Union.

67. The Representative of the European Union, speaking on behalf of the European Union and its member states, commended the agreement made during the Diplomatic Conference. It thanked China for its hospitality and efficient organization of the Diplomatic Conference as well as WIPO Member States for their hard, constructive work. The gratitude also extended to Mr. Francis Gurry and to the WIPO Secretariat for their tireless efforts before and during the Conference. The Beijing Treaty was a very important step with regard to the international copyright framework. More than 15 years after the 1996 international treaties it closed a gap in the international protection of copyright by finally recognizing the valuable contribution made by actors, dancers and other performers around the globe. Member States should not forget a final step was needed before audiovisual performers could start reaping their long-awaited benefits. Ratification was required for the Treaty to enter into force. The European Union and its member states looked forward to engaging in the process in a smooth and timely manner and encouraged all WIPO Members to do the same.

68. The Delegation of Costa Rica expressed its congratulations to WIPO and to the Government of China for the excellent organization of the Diplomatic Conference. Costa Rica was an active participant in the negotiations and in Beijing it signed the corresponding international instrument. The Delegation informed the meeting that its interests went beyond signing the Treaty in Beijing; the Government was also providing detailed information about the Treaty to interested parties in the country, such as artists, actors, dancers and other performers. It also announced that soon the necessary steps were going to be taken in order to ratify the Treaty at the national level.

69. The Representative of Knowledge Ecology International (KEI) said that some experts believed that the signature of the Treaty would not modify in practice the conditions of performers. Certain political compromises undermined some possible bigger improvements. KEI hoped that would not happen in the negotiations on the instrument for the benefit of the visually impaired.



70. The Delegation of the Philippines stated that the Beijing Treaty had proved that the multilateral system was working efficiently. Other diplomatic conferences were waiting in the wings and with a correct approach and work in the Standing Committee other issues would be able to progress and it was therefore worth waiting.

71. The Delegation of China expressed its gratitude to WIPO, to the WIPO Member States, and to the Secretariat for their confidence. It had been delighted to host the Diplomatic Conference on the Protection of Audiovisual Performances, which had led to the adoption of the Beijing Treaty, and it looked forward to continuing the cooperation with Member States in this area.

72. The Delegation of Peru expressed its satisfaction at the results of the Beijing Diplomatic Conference on the Protection of Audiovisual Performances. The Treaty that was concluded not only strengthened the national protection systems which many countries already had, as was the case with Peru in the form of Law No. 28113 on Performers and the regulations thereunder, but would also establish a fairer economic relationship between performers and the other members of the teams that create and distribute audiovisual works, such as producers, commercial representatives, and others. By promoting performers' rights in this way, the Treaty would help to strengthen performing arts in developing countries.

73. The Chair stated that the effects of the Treaty would only be seen after a certain period of time for which the prerequisite was that the Treaty came into force. He made a plea to Member States to speed up the process of signing and then subsequently the process of ratification. Thirty ratifications were required. He informed the meeting that the Delegations of Botswana and Honduras had expressed the wish to sign the Beijing Treaty during these Assemblies and therefore a signing ceremony would be organized for these countries.

74. The Assembly took note of the contents of document WO/GA/41/11 Rev.

#### ITEM 25 OF THE CONSOLIDATED AGENDA

#### REPORT OF THE COMMITTEE ON DEVELOPMENT AND INTELLECTUAL PROPERTY (CDIP)

#### ITEM 25(i) OF THE CONSOLIDATED AGENDA

#### REVIEW OF THE IMPLEMENTATION OF THE DEVELOPMENT AGENDA RECOMMENDATIONS

75. Discussions were based on documents WO/GA/41/12 and WO/GA/41/13 Rev.

76. The Chair introduced Agenda Item 25, which addressed two items, namely, the Report of the Committee on Development and Intellectual Property (CDIP) contained in document WO/GA/41/12, and the sub-item on the Review of the Implementation of the Development Agenda Recommendations, document WO/GA/41/13 Rev.

77. The Secretariat presented the Report of the CDIP, with respect to the two sessions of the CDIP held since the last session of the General Assembly. The eighth session was held from November 14 to 18, 2011, and the ninth session was held from May 7 to 11, 2012. The Committee had agreed earlier that the Summary of the Chair for those two sessions would constitute the Committee's report to the General Assembly. During the eighth session, the Committee was chaired by Ambassador Abdul Hannan, the Permanent Representative of Bangladesh, and the ninth session was chaired by the newly elected Chair, Ambassador Mohamed Souad Doualeh, Permanent Representative of Djibouti. The Committee was assisted by two Vice-Chairs, Mrs. Alexandra Grazioli, Switzerland, and Mr. Garikai Kashitiku, Zimbabwe. The Secretariat expressed profound gratitude to both the Chairs and the Vice-Chairs for the

excellent stewardship of the Committee which had contributed to the efficient management and atmosphere during those Committee meetings. The Secretariat introduced the two documents presented under Agenda Item 25. First, document WO/GA/41/12 contained the Report of the CDIP, made up of the Summaries of the Chair for the eight and ninth sessions. Second, document WO/GA/41/13 Rev. contained a description of the contribution of the relevant WIPO bodies to the implementation of the respective DA recommendations in accordance with the Coordination Mechanism and Monitoring, Assessing and Reporting Modalities ('the coordination mechanism') approved by the General Assembly at its thirty-ninth session in 2010. The respective bodies' reports were included by reference to the relevant paragraphs in those reports. In the Secretariat's view, significant progress had been made in implementing and mainstreaming the DA into the work of the Organization, as one of the core objectives of the DA. The last two sessions of the Committee had witnessed a consolidation of achievements on the one hand, and new activities being undertaken on the other hand. Twenty-four projects were underway and six of the completed projects had been evaluated by independent evaluators, with further evaluations due for completion and reporting to the tenth session of the Committee to be held in November 2012. The Committee had also considered the Report on an External Review of WIPO Technical Assistance in the Area of Cooperation for Development (CDIP/8/INF/1), and would further deliberate on that Report in its forthcoming session. The Committee had further discussed a proposal to organize in 2013, an International Conference on Development and Intellectual Property. It was also notable that the Committee had unanimously approved the project on Strengthening and Development of the Audiovisual Sector in Burkina Faso and Certain African Countries, proposed by the Delegation of Burkina Faso. Finally, the Secretariat noted the constructive dialogue and engagement which had exemplified the approach by the Member States in the work of the Committee. It was noted that while there were important issues still to be agreed upon, the Secretariat was always ready and willing to engage and help in the process of reaching consensus on the important work the Committee had to perform.

78. The Chair of the CDIP, Ambassador Mohamed Souad Doualeh, noted that the Committee had been established by the General Assembly in 2007, in response to the wishes of the Member States. The WIPO DA represented a high water mark to promote the use of the IP system. The DA sought to maintain a judicious balance between the rights of civil society and those of the IP rightholders in order to promote creativity and the intellectual progress of mankind. As noted by the Deputy Director General, significant progress had taken place in the implementation of the DA, which took a leap forward in 2009, with the adoption of a project-based approach by the Committee and progress in other areas such as flexibility in international instruments, the contribution of IP to the Millennium Development Goals (MDGs) and the mainstreaming of various DA principles in the work of WIPO. The Chair of the CDIP expressed appreciation to the Director General for his achievements and leadership. The Report of the CDIP demonstrated the substantive progress made during the previous year. The Committee had adopted four new projects, considered a number of important documents related to various issues such as flexibilities, the external review of WIPO's technical assistance and recommendations made in a scoping study on copyright and related rights. In addition, the Committee considered the outputs of completed DA projects, progress reports including one by the Director General, and reviewed six external evaluation reports. At the tenth session of the CDIP, to be held in November 2012, the Committee had an important agenda before it, including the convening of a conference on Development and Intellectual Property, resuming discussion on the technical assistance review, undertaking further work on flexibilities and other work of significant importance. There clearly remained certain points of differences in various areas, but confidence was expressed that in view of Member States' collective will and efforts, the Committee would be able to forge consensus on all of those issues. The Chair of the CDIP sought to carry forward the previous achievements, and remained committed to promoting multilateralism and consensus building. The Members of the Committee were called upon to continue to positively engage in the process. The Chair of the CDIP expressed thanks to all Delegations, the Director General and the Secretariat for their considerable support.

79. The Delegation of China congratulated the Organization on its achievements in this area. Over the five years since the adoption of the DA, the Member States had approved a total of 23 projects covering 29 DA recommendations, and the implementation of those projects had already enabled some developing countries to benefit in tangible ways from the DA. It was hoped that in future CDIP meetings, all parties concerned would continue to show inclusiveness and constructiveness in participating in the discussions on related topics so as to further the implementation of the DA so that more countries could benefit in the same way as other developing countries. The Delegation appreciated the annual report submitted to the General Assembly by some committees demonstrating how they contributed to the implementation of the DA recommendations. Those explanations were conducive to gaining a better understanding of how relevant Committees had been implementing the DA recommendations, and would assist in monitoring the implementation of the DA. The Delegation requested that relevant committees should continue to report on implementation of the DA in their future reports to the General Assembly.

80. The Delegation of Argentina welcomed the efforts made by the CDIP over the past year. With regard to the progress made in various areas, the Delegation paid tribute to the tremendous work on the DA within WIPO. The Delegation reiterated the key importance of the CDIP in incorporating, through its discussions, the development dimension in the overall IP framework. It was very important for the future work of the Committee and WIPO to consider the specific challenges and needs of developing countries, such as safeguards and flexibilities, so that developing countries could implement national IP strategies consistent with their cultural, technological, social and public needs. With a view to meeting the growing needs for technical cooperation, there was a need to increase the budget in various areas, particularly in financing the participation of delegates from capitals in the CDIP and other committees to enable developing country delegates to play a role in the work of the Organization. The CDIP was encouraged to continue with its work on the relevant projects and on implementing the 45 recommendations and further efforts should be made to ensure that evaluation and oversight mechanisms were put in place to enable Member States to obtain real information about the achievements made in implementing the DA.

81. The Delegation of Singapore congratulated the CDIP on its work and progress made on various projects towards achieving a common goal of mainstreaming the WIPO DA. Such progress was being felt on the ground. Two specific points were highlighted. The attention of the CDIP was drawn to the WIPO Singapore Office. Since its establishment on February 1, 2005, the WIPO Singapore Office had made great strides in bringing advantages from the DA to the Asia Pacific Region. The WIPO Office between 2010 and 2011, reached out to 450 policymakers, government officials, IP practitioners, IP owners and user communities from over 27 countries, and a number of target programs were completed. Those efforts had been instrumental in assisting countries to embrace IP as a driver for growth. Those efforts had also brought the Region closer as it continued to integrate its national economies with the world. In that connection, the Delegation noted with pleasure that a consultation meeting had been held for the first time between the WIPO Director General and the ASEAN economic ministers on August 28, 2012. That meeting provided a timely exchange of views on IP at the highest levels. ASEAN ministers expressed sincere appreciation to WIPO for IP development in the region. Specifically, ministers expressed commitment to continuing to work with WIPO towards improving IP policies and laws and all ASEAN member states had committed to work towards accession to WIPO treaties, namely the Madrid Protocol and the Hague Agreement. ASEAN ministers also made special note of the vital role and contribution of the WIPO Singapore Office. Good progress in IP and development had been brought about as a result of a good IP regime. The ASEAN Economic Ministers' attention was focused on IP issues, and it was hoped that the WIPO Singapore Office would play a better role to reach out to more participants in ASEAN as well as the wider Asia Pacific Region. The Delegation expressed its continued support for the goals of WIPO and the WIPO Singapore Office.

82. The Delegation of Brazil, speaking on behalf of the DAG, welcomed the Report of the CDIP as well as the Director General's Report on Implementation of the DA. The DAG remarked on the work being carried out in the CDIP. First, it was important to recall the principles that inspired the DA in 2007, when Member States agreed on the need to replace the one-sided simplistic notion that IP was good and more was even better. IP was good when it served as a tool for enhancing economic growth and social development and was tailored to suit a country's specific needs and situation. There was agreement on the need to place IP in the larger context of socio-economic development instead of viewing it as an end in itself. Member States had agreed on the need to strengthen WIPO as Member-driven and development oriented and a more transparent Organization. Recognizing those elements would support a confidence-building process among Member States and thereby allow Member States to make progress on WIPO activities, including norm-setting processes. Following the adoption of the DA, there was the challenge of its implementation. Despite differing understanding on what constituted effective implementation, it was fair to say that Member States shared the goal of the mainstreaming of the recommendations. The DAG welcomed the progress made on implementation of the DA in the previous five years, and also recognized that there were outstanding issues to solve in order to ensure that the process was really effective. In that regard, the Delegation highlighted the challenges related to the coordination mechanism adopted by the General Assembly in 2010. Full use was not being made of that tool in order to coordinate and monitor the implementation of the DA. The DAG and other developing countries stood for a strong mechanism that provided Member States with valuable information on the strategies and activities related to the implementation of the DA, and which also facilitated the decision-making process on the future of implementation in all relevant bodies. Relevant bodies, in the DAG's perspective, should comprise the PBC and the Committee on WIPO Standards (CWS) due to their nature and responsibilities. The Report of the Relevant Bodies on the Implementation of the DA was key to the coordination mechanism, and the mandate was very clear. The Report should include a description of the relevant bodies' contribution to the implementation of the respective DA recommendations and identify the ways in which the DA recommendations were being mainstreamed in those relevant bodies' work. It was the responsibility of the CDIP to monitor, assess and report on the implementation of all recommendations adopted and to coordinate with other WIPO bodies in a flexible, effective, transparent and pragmatic way. The CDIP should at least be able to engage in meaningful analysis of information provided by the relevant bodies and should find a common understanding on how to move forward in the analysis of those reports. The Delegation also noted that south-south cooperation in WIPO technical assistance was important. With respect to south-south cooperation, the DAG welcomed the results of the meeting held in Brazil and of the first annual conference that took place the previous Friday in Geneva. The two meetings confirmed not only the interests of Member States in the south-south cooperation project but also the expectation that WIPO was fully engaged in the promotion of such cooperation modalities. It was hoped that the next regional meeting would be held in Cairo, and confidence was expressed that the Cairo meeting would deepen the discussions. The Group urged Member States to give further consideration to the future work of the south-south cooperation project in the next session of the CDIP, and consideration should be given to a second phase. Further consideration should also be given to the proposal on technical assistance which the Group co-sponsored with the African Group. The main objective of proposal was to give effective follow-up action based on the recommendations that were made by the External Review Report on WIPO Technical Assistance. The proposal was entirely based on the External Review Report and on the Management Response that was provided by WIPO Secretariat. The DAG requested that further consideration be given to the proposal for the addition of a new standing item to the agenda of the CDIP, entitled IP and Development. One of the mandates of the CDIP was to serve as a forum for broad and open discussion on the interface between IP and development. It was hoped that the Committee could agree on the establishment of the new extended agenda item in the near future. The Group welcomed the

preparatory process being carried out in the CDIP for the convening of a conference on intellectual property and development. That event should allow for a strategic reflection on the interplay between IP and development and for opening new perspectives for further work of the Organization.

83. The Delegation of Sri Lanka aligned itself with the statement made by the Delegation of Brazil on behalf of the DAG. The Delegation welcomed the Report of the CDIP as contained in document WO/GA/41/12, and also the Report on the Implementation of the DA. Support was expressed for the progress made in mainstreaming the DA into all areas of WIPO's work, which could truly enhance the quality of the Organization's work in all committees. In view of the importance of the relationship between IP and development, the Delegation emphasized the request also made in its general statement that a permanent agenda item on IP and development be included on the agenda of the CDIP, and expressed confidence that such an addition would be beneficial to all Member States. The Delegation welcomed the preliminary process for convening a conference on IP and development, which had been undertaken by the CDIP. The Delegation reiterated that it remained committed to the deliberations within the CDIP and thanked the Director General and Chair of the CDIP for their continued efforts.

84. The Delegation of Trinidad and Tobago commended WIPO on the work the CDIP had been able to complete in 2012. The Director General was congratulated for his personal commitment to the DA, which signaled the core importance of the DA to all. The Delegation was well aware of the efforts made by WIPO to draft and implement documents so as to further the state of IP. The recommendations were well conducted and the work program of the CDIP was very complementary to IP development in Trinidad and Tobago, such as the National IP Academy project, and regionally, in the form of the regional patent administration. The Delegation believed it ought to become more of a core issue for the future of WIPO and the development of IP systems among Member States. That required a commitment to implement the recommendations. Member States had to recognize that much of the success of the CDIP depended on how success was achieved after implementing these recommendations.

85. The Delegation of the United States of America noted that the CDIP had made significant progress since its first meeting in March 2008. Twenty-three projects had been approved and activities were being carried out pursuant to the DA recommendations. That was a collective accomplishment for which all Member States could be proud because it required a spirit of compromise on the part of Member States and willingness to proceed on the basis of consensus. The Delegation stood ready to work with other delegations to find constructive ways forward on pending projects within the Committee.

86. The Delegation of Algeria, speaking on behalf of the African Group, expressed its appreciation to the Secretariat and the Chair of the CDIP on the work of the Committee, and stated its satisfaction that a representative of Africa was chairing that very important committee. The African Group expressed appreciation to the Director General and the staff for the effective mainstreaming of the WIPO DA as an integral part of all WIPO activities and bodies to ensure a development orientation and to ensure that IP benefited developing countries. The African Group welcomed the efforts by the WIPO Secretariat in mainstreaming the DA recommendations. Despite all efforts and despite the fact that DA recommendations had been mainstreamed in the Program and Budget for 2011/2013, the fact remained that the General Assembly's 2009 decision on the coordination mechanism was not yet implemented when it came to the PBC and the CWS. The African Group noted inconsistency between, on the one hand, what all WIPO Member States had agreed at the General Assembly to mainstream the DA, and on the other hand, strong opposition to it. The African Group was ready to engage positively in consultation on mainstreaming of the WIPO DA and the coordination mechanism. Another decision that still awaited implementation by the CDIP was the 2007 General Assembly decision which established the CDIP itself and defined its mandate to include "discuss IP and development related issues as agreed by the Committee". It was unfortunate that the CDIP had not agreed in 2010, on adopting the proposed agenda. The African Group looked forward to the

adoption of the agenda item as soon as possible so as to facilitate focused discussions on important issues related to IP. Furthermore, in implementing the second DA recommendation, the Group looked forward to the allocation of more resources to Africa in the Program and Budget for 2014/2015. In that regard, cost efficiency measures should not jeopardize infrastructure supplies or quality assistance to Africa. In regard to south-south cooperation, the African Group welcomed progress made to date in implementing that important activity which had been proposed by the African Group. The Group also welcomed delivery of WIPO technical assistance for development in accordance with the DA recommendation. However, they still needed to be implemented, evaluated and rolled out. In addition to agreeing to implement the other relevant recommendations, the African Group had jointly proposed with the DAG a proposal on implementing recommendations made in the External Review Report. It was noted that the mainstreaming of the WIPO DA had come a long way since its adoption in 2007. There was a need to enforce this direction and carefully measure its results. There had been success in establishing results based management, and additional work was perhaps required to be able to describe results based WIPO DA mainstreaming. The African Group would spare no efforts in that regard in reaching out to partners and working with the Secretariat to achieve a shared vision for the development of an IP regime that promoted creativity and innovation for all and exceptions and limitations to serve public policy objectives.

87. The Delegation of Thailand expressed appreciation for the Report of the CDIP and the Review of the Implementation of the DA. The Delegation was pleased to learn of the progress in mainstreaming the DA into WIPO's activities and welcomed the fact that all relevant WIPO bodies included a description and contribution to the implementations of the respective DA recommendations in their annual reports to the Assemblies. The Delegation congratulated WIPO on the first annual conference on South-South Cooperation on IP and Development a week before the Assemblies. The evaluations of the work undertaken in the framework of the first interregional meeting on south-south cooperation were positive in developing a least developed country (LDC) platform to exchange views and share experiences. The Delegation looked forward to participating in the second regional meeting on Patents and Enforcement in Egypt in 2013. Discussion of issues of IP and development should not be limited to interdisciplinary subjects or among developing countries and LDCs only. It should also cover emerging relevant issues such as the pharmaceutical industry, climate change and technology transfer, and engage a wider range of individual participants. Reference was made to the third pillar of the mandate of the CDIP, and it was stated that establishing a permanent agenda item would enable discussion of the issue of IP and development in the near future. As one of the three pilot countries involved in the project on branding, the Delegation was pleased to inform the Assembly of the past year's development of all three selected products; Bang Chao Cha wicker products, Lamphun brocade silk, and Mae Chaem woven cotton textiles. In March 2012, the first capacity workshops on the branding concept were completed and WIPO's international consultant presented the IP and branding strategies for all three selected projects. In June 2012, the Secretariat visited Thailand in order to meet with the relevant authorities and agencies to discuss the implementation of projects as well as meet potential partners to support projects in the future. The Delegation affirmed its commitment to conclude these projects and it was its hope that the project could produce more locally branded products and contribute to sustainable community development in the long run. Once the project was completed, the Delegation was determined to share its experiences and best practices with other countries interested in taking part in the project. Finally, Thailand recognized that apart from the WIPO Secretariat, it was the responsibility of the Member States, major stakeholders and the entire Secretariat of WIPO to take action as well as implement DA recommendations. Thailand also stressed the importance of evaluation of the project. It was necessary for Member States, and particularly those who took part as pilot countries, to be constructive on how activities could be improved in the future.

88. The Delegation of Costa Rica recognized the progress that had been made with the DA. It was extremely important to continue to make maximum efforts so that the WIPO DA became a cross-cutting issue in all areas of the Organization. The Delegation recognized that efforts were continuing to be made on the DA and expressed hope that they would continue for various

aspects of IP. The south-south cooperation project between developing and least developed nations was also noted as extremely important, and it was hoped that further action would be taken in the framework of the project. The Delegation hoped to contribute to that project through its own experience. It also flagged the importance for developing countries of having efficient computer systems for the administration of IP systems and registries, and for processing information and documents from IP Offices. It was informed that Costa Rica had relatively successfully adapted the IPAS system provided by WIPO, which provided a good and functional system. Concerns remained, however, that the tools necessary to provide technical support and maintenance were missing. The Delegation requested more support by WIPO in order for IP Offices to work properly for the benefit of users, and in order to guarantee that the tools would be maintained and remain available to those who needed them. Appreciation was expressed to the Director General and to his team for their efforts and interest in finding a solution to the requests made by Costa Rica under the IPAS system.

89. The Delegation of Japan expressed appreciation for the hard work of the Secretariat in managing the CDIP sessions in an effective and efficient way, and for the great efforts by Member States to engage in productive discussions through mutual understanding. It was noted that with such energy, the Committee's work programs had been implemented bearing in mind the importance of the role of the DA in the IP field. It was hoped that all the Member States and the Secretariat would constructively bring together their wisdom with a view to pursuing more effective and efficient means to advance discussions in the future CDIP session.

90. The Delegation of Oman attached particular importance to, and expressed interest in, development and IP issues and what was being done in the CDIP. Bilateral and regional cooperation was also very important. Oman was beginning to apply an overall IP protection strategy and policy. WIPO's assistance was sought to introduce IP and related issues into the various levels of their education system, so as to prepare their young people for the future. The Gulf Cooperation Council (GCC) had proposed a project along those lines, in which all the Member States of the Gulf Cooperation Council would be happy to participate; that is, for the establishment of an academy designed to help build capacity and disseminate information on IP more broadly in society. The request was made for WIPO's cooperation and support for the creation of such an academy.

91. The Delegation of Chile expressed pleasure in seeing the work accomplished to-date in implementing the recommendations of the DA. The projects and studies which were being carried out within and under the auspices of the Committee played a very important role, also in respect of the balance needed when developing IP systems. The example was given of the very positive work being carried out by the Chief Economist of the Economics and Statistics Division in the Organization on economic and social development and IP. Chile was an active participant in that work. Given the importance for developing countries of those issues, such projects should continue. It was essential that the Organization continued with the positive work already ongoing so as to further implement the DA recommendations.

92. The Delegation of Pakistan welcomed the documents presented under Agenda Item 25, including the Report of the CDIP and the Director General's Reports on the Implementation of the DA. Support was expressed for the development of a balanced international IP system, a system which had flexibility in meeting the needs of States at different levels of development. Such a system should generally promote innovation and access to knowledge. More importantly, the global IP system should evolve in a balanced way to support the development objectives of developing countries and LDCs, and so that it entailed a strong development-related infrastructure and work at WIPO. In that context, the Delegation welcomed the work being carried out in the Organization and the progress made to-date in the CDIP towards implementing the DA recommendations and mainstreaming of the DA across WIPO. Appreciation was expressed for the role and commitment of the Director General and the Secretariat. A lot of work was being carried out in the CDIP following the project-based approach and the Delegation expressed satisfaction with the outcome to-date. However, it was

noted that there was always room for improvement, and more needed to be done. The coordination mechanism was identified as one area where there was a need to ensure and show the commitment of the Organization and the Member States towards the implementation of the DA. The CDIP was performing the key role in the Organization, and that must continue. The funds available to the Committee should continue to be provided for that purpose and must be adequately utilized. With reference to the future work of the Committee, the Delegation expressed support for the upcoming Conference on IP and Development and looked forward to the preparatory process, believing that it would give a good opportunity to Member States to discuss and analyze the state of play of the development activities in the Organization.

93. The Delegation of Colombia stated that the CDIP was of particular importance because it studied issues which had a great impact on its country in terms of achieving economic and social progress. The Delegation referred to a few of the main topics before the Committee. First, the issue of flexibilities and the IP system. It was noted that Colombia had its own national law as part of a fully balanced system that promoted the patent system as an incentive for further creativity. In the multilateral setting, there were declarations which recognized the relevance of commitments made to ensure the protection of public health and access to drugs and medicines, and that created a balance between the rights of patent rightholders and other social rights, demonstrating the usefulness of such flexibilities. The Delegation was happy to see that the documents referring to patents and health included issues and problems related to the use of flexibilities, including the Delegation's main concerns on the issue, in particular, the issue of compulsory licensing. The Organization was urged to take into account the fact that flexibilities should not just be limited to legal aspects, but should be extended to institutional aspects as well. It would be beneficial to other countries if successful cases were included so as to enable examination of the impact that they had had in various areas. Furthermore, the Delegation hoped that the Organization could consider cases relating to the various regimes for data protection, exclusivity and non-exclusivity. The Organization was urged to carry out comparative studies which would look at the situation among countries and perhaps in national patent offices after the application of the respective flexibility clauses. As Colombia had the necessary basis for applying such flexibilities, it sought the support of the Organization as it looked at the best way of applying them together with the implementation of its agreements. On the issue of national IP academies, the Delegation acknowledged the support which the Organization had given to its academy. Such support had resulted in a tangible resource and demonstrated that having an academy and using it properly did help the Member State to provide proper protection. The Delegation hoped to continue to count on support in that respect. The Delegation considered the issue of institutional and technical infrastructure for industrial property in support of creators and inventors as an issue of vital importance. It thanked the Organization for its participation in the preparation of the industrial property system in Colombia up to 2020. The Delegation welcomed the involvement of other offices and supported the development of that important initiative. WIPO had provided consultants and experts on more than one occasion to review and revise policies but there seemed to be a lack of Spanish translation. While the Organization was working under an austerity budget, the Delegation requested if something could be done in that regard. Referring to the issue of technology transfer, the Delegation found it essential to look at various initiatives which would encourage research and development in sectors which were sensitive to countries like Colombia and include other mechanisms to compare to the patent system, such as funds which could reward the most innovative research proposals.

94. The Delegation of Burkina Faso endorsed the statement made by the African Group and welcomed the fact that the CDIP unanimously adopted the project entitled Strengthening and Development of the Audiovisual Sector in Burkina Faso and in some African Countries. The aim of the project was to provide a sustainable framework for the audiovisual sector on the basis of provisional market structures and an appropriately regulated environment. It also aimed at improving comprehension and strategic use of the IP system as a driving force behind production, marketing and distribution in the African audiovisual sector. The project was a pilot project, including Senegal and Kenya at this time, and its implementation would start in 2013.



Appreciation was expressed to those Member States who had acknowledged the project's relevance and supported it.

95. The Delegation of Cuba noted that the WIPO DA was one of the fundamental pillars of the Organization. The results that had been achieved in implementing some of the DA recommendations and projects had been encouraging. However, the coordination mechanism and oversight mechanisms on evaluation and reporting should be more effectively implemented in all of the committees and working groups. There was a recognized need for Member States to engage in a dialogue on IP and development within the CDIP, and it was hoped that would continue in the regular budget of the Organization in order to implement the recommendations of the DA. The Delegation noted that implementing the automated IPAS system in Cuba had been very important in improving the management of the Industrial Property Office and for developing technological infrastructure. As part of the development of the IPAS system, one of the policies within Cuba's IP strategy recognized the need to continue to implement that system and have electronic document management to enable the more effective management of those industrial property documents. Finally, the Delegation emphasized the importance that Cuba attached to the DA projects focusing on south-south cooperation, and endorsed the statement made by the Delegation of Brazil on behalf of the DAG.

96. The Delegation of South Africa aligned itself with the statement made by the Delegation of Algeria on behalf of the African Group. It welcomed the Report presented by the Director General, and commended the Secretariat for its commitment to mainstreaming of the DA in the year end review. It was noted that two projects from the African Group were adopted; one on south-south cooperation and the other on audiovisual performances. It was hoped that those projects would further contribute to the strengthening of the DA in the next financial year. The Delegation noted with concern that the 2010 decision by the General Assembly on the coordination mechanism had not yet been fully implemented. The Delegation commended the committees that had submitted reports to the General Assembly and appealed to Member States to find a solution that would allow the PBC and CWS to report to the General Assembly on their contribution to the implementation of the DA recommendations. Those two bodies were not only relevant but important to the implementation of the DA. An appeal was made to the Committee to find common ground in the forthcoming tenth session to allow the Committee to discuss the third pillar of its mandate, namely the interface between IP and development. The Delegation looked forward to having a conference on IP and development to provide Member States with a platform to meaningfully engage on issues related to IP and development.

97. The Delegation of Brazil supported the statement of the DAG, and added a few remarks in its national capacity. Implementation of the DA had resulted in good progress, and it was noted that the DA recommendations were becoming an integral part of WIPO as activities, not just in terms of content but also with regard to related budgetary commitments. The Delegation believed that the CDIP played a key role in such achievements. However, in spite of progress made, the implementation of the DA still faced a challenge. It was a continuous process that depended on Member States' commitments but also on a change within the Organization. While the process of cultural change had already begun, further work remained to be done. The Delegation was confident that WIPO would be able to fully integrate the development dimension into all its activities and reflect the broader objectives and principles of the UN system. The Delegation was pleased by the meetings held under the south-south cooperation project, and expressed pleasure at having hosted the first interregional meeting in August 2012. Appreciation was expressed to all the experts that participated in the Brazil meeting, to WIPO for the organization of the meeting, and especially to the staff of the WIPO Brazil Office. The Delegation shared the view already expressed by other Member States that WIPO should engage in the promotion of south-south cooperation and had expertise and an extensive network that contributed to such a model. The Delegation had signed a Cooperation Agreement with WIPO on south-south cooperation in August 2012. The initiative would be implemented by the Government of Brazil in close cooperation with the WIPO Brazil Office. The Government of

Brazil would invest more than one million dollars for the development of trilateral south-south cooperation activities under the project in the next four years, and it was hoped that the agreement would benefit developing countries and LDCs.

98. The Delegation of Cyprus speaking on behalf of the European Union and its member states, stated that development was one of the most important challenges facing the international community and played an important role in that context, facilitating innovation, growth and jobs. The European Union and its member states continued to be committed to further progress in that field in order to implement the recommendations of the DA in an appropriate and consensus-driven manner. Appreciation was expressed to the WIPO Secretariat for its valuable contribution to the work of the Committee. The CDIP faced an overloaded agenda and proceeded in an *ad hoc* fashion at the same time and on the same basis as WIPO's technical assistance activities were criticized. Member States had concerns at the fair number of technical assistance and other projects currently being undertaken in the CDIP. However, it was noted that quantity does not equal quality. Future meetings of the CDIP should have a period of collective reflection and evaluation of the existing situation with the aim of ensuring that WIPO's development activities were conducted on the basis of transparency, good governance and best practices. That work should be carried out in a positive and constructive manner.

99. The Representative of the International Intellectual Property Institute (IIP) expressed appreciation for the work that the Member States had accomplished during the previous year. However, it was clear that more needed to be done. As countries developed, their progress was limited by the effectiveness of their institutions. While inventors in those countries were unaccustomed to using their patent systems, patent offices needed to earn their confidence and needed to match the sophistication of their users by improving infrastructure, incorporating modern information technology and providing additional training for their staff members. There should be pride that patent offices were facing such problems, since they were the problems of a world that respected innovation and creativity. However, it must be ensured that all countries were adequately equipped to promote those values. Countries with well-established patent offices were well-equipped to assist developing countries' patent offices to meet their new challenges. While many countries did provide such assistance, the assistance must increase in proportion to expanding need.

100. The Representative of Knowledge Ecology International, Inc. (KEI) commented on technical assistance programs, and stated that WIPO experts could adopt a similar procedure as in the area of medical journals where the World Health Organization (WHO) emphasized asking people if they had competing interest when they published things. In the IP field, a lot of the people who were really experts in things were often people that also acted as consultants for clients. It was considered that technical assistance programs would be stronger if WIPO were a little bit more conscious of the fact that conflicts exist. It was not a bad thing to have people of different points of view to appear on panels and put forward experts as consultants, and it was also good for people to have more information. It was suggested that persons engaged to speak at events should systematically give their resumes and backgrounds and some kind of disclosure of competing interests.

101. The Delegation of Iran (Islamic Republic of) noted with appreciation the progress made in the CDIP during the previous year. The 45 adopted recommendations under the WIPO DA shall be at the heart of all activities of the Organization, specifically norm-setting activities. IP was not an end by itself but a means to sustainable economic and social development. Accordingly, every program and project carried out by WIPO should be development-oriented, aiming at setting up an IP system capable of meeting the needs of Member States, especially developing countries. The CDIP had a central role in mainstreaming development in the works of WIPO. It was mandated to develop a work program for implementation of the adopted recommendations. However, that mandate could not be fully implemented without developing a proactive mechanism for translating the findings and outcomes of the conducted projects and

studies into the norm-setting activities of the Organization. The findings and outcomes should also be used in identifying the areas of challenge and the needs of the Member States for technical assistance. The Delegation observed with satisfaction that the decision of the General Assembly in 2010, on the implementation of the monitoring and reporting mechanism of the WIPO DA recommendations, had to date been helpful in mainstreaming development in the works of the Organization. The mechanism should be even further strengthened.

The Delegation observed with regret that the issue of providing technical assistance for IP Offices of Member States by the specialized Organization had recently been tainted by a political approach to the issue. Attempts had been made to link UN resolutions and the technical assistance of the Organization, while it was crystal clear that the technical assistance activities of the Organization did not fall within the realm of the UN resolutions. In so doing, disregard had been shown towards the principles enshrined in the Convention establishing the Organization, recommendations of the DA of the Organization, and the strategic goal of coordination and development of the global IP infrastructures. The Delegation observed that Article 4, paragraph 5, of the Convention explicitly stated that the Organization shall offer its cooperation to States requesting technical assistance in the field of IP. Further, the Convention also highlighted that States must respect the international character of the Organization. It was reiterated that the technical assistance of the Organization to the IP Offices of Members fell within the heart of its functions. The activities of the Organization for fulfilling that function must not be politicized. The international character of the Organization and its technical nature and environment must be respected by all Members. Finally, it was observed that the Organization is a Member-driven Organization and the rule of collective decision-making must be abided by all Members.

102. The Chair thanked all delegations for their statements, and sought any objections to the decision paragraphs contained in the relevant documents. First, with respect to document WO/GA/41/12, the General Assembly was invited to take note of the information contained in the document and its Annex. Second, with respect to document WO/GA/41/13 Rev., the General Assembly was invited to take note of the information contained in the document and to forward the reports to the CDIP.

103. The WIPO General Assembly:

- (i) took note of the information contained in document WO/GA/41/12 and its Annex; and
- (ii) took note of the information contained in document WO/GA/41/13 Rev. and to forward the reports to the CDIP.

## ITEM 26 OF THE CONSOLIDATED AGENDA

### REPORT ON THE WORK OF THE STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS (SCCR)

104. Discussions were based on document WO/GA/41/14.

105. The Chair opened Agenda Item 26, titled Report on the Work of the Standing Committee on Copyright and Related Rights (SCCR).

106. The Secretariat said that the report from the SCCR reflected the progressive engagement of Member States in the work on an instrument to improve access to copyright protected works for the visually impaired persons, the blind and persons with print disabilities. During its 24<sup>th</sup> session significant progress was made in the Committee on the text. The Committee had therefore agreed to recommend to the General Assembly its plan to work towards the possibility of convening a diplomatic conference in the year 2013. The first step in the plan, if approved by

the General Assembly, would be to hold informal consultations from October 17 to 19, 2012. The second step would be the SCCR meeting in its 25<sup>th</sup> session from November 19 to 23, 2012, to discuss the work done in the informal consultations and to advance the negotiations on the text with the objective of concluding or substantially advancing the text-based work. As the third step, the General Assembly was asked to convene an Extraordinary Session of the General Assembly meeting in December 2012 that could decide whether to convene a diplomatic conference during 2013. In addition to the excellent work on that agenda item, the SCCR had also made significant progress on two other agenda items regarding limitations and exceptions: First, on limitations and exceptions for libraries and archives and second, on limitations and exceptions for education, teaching, and research institutions and persons with other disabilities. In that respect, the SCCR had recommended continuing discussions to make progress consistent with the schedule it had set to make recommendations to the General Assembly at future meetings. Finally, the Secretariat indicated that the Committee recommended that the General Assembly encourage the continuation of the work on the subject of signal-based protection of broadcasting organizations in the traditional sense, consistent with the mandate of the General Assembly. The SCCR had addressed that subject with renewed energy in its previous few meetings. At SCCR 24 a single text was adopted by the Committee, which was going to be an important tool for the SCCR to work towards the objective of reaching a decision on the possible convening of a diplomatic conference on the protection of broadcasting organizations in 2014. The Secretariat also drew attention to the Committee's contribution to the implementation of the DA recommendations.

107. The Delegation of the United States of America, speaking on behalf of Group B, noted that substantial progress was made in the SCCR over the previous year and was extremely pleased with the outcome of the Beijing Diplomatic Conference. It also noted the progress made in the area of enhancing access to copyrighted works for the visually impaired and print disabled persons, including facilitating the cross-border transfer of accessible format copies of such works. Significant progress had been achieved, but more work was clearly needed. Group B fully supported the SCCR's recommendation that the General Assembly convene an Extraordinary Session in December 2012 to evaluate the text of the draft legal instrument aimed at enhancing access to copyrighted works for persons with visual impairments and print disabilities and it welcomed intersessional meetings in October 2012. It also hoped to make similar progress for broadcasting organizations over the course of 2013.

108. The Delegation of Hungary, speaking on behalf of the CEBS, thanked the Chairman and the WIPO Secretariat for their efforts to move forward the issues on the agenda of the SCCR. The Group considered that ensuring adequate protection at the international level for broadcasting organizations was highly needed. For that reason it welcomed the important progress made at the last session of the SCCR. The CEBS Group asked for a positive engagement of all delegations to intensify discussions towards a possible treaty in that field. The successful outcome of the Beijing Diplomatic Conference on the Protection of Audiovisual Performances was a good example that establishing harmonized levels of protection at the international level was still achievable. The Group also attached great importance to the discussions on enhanced accessibility of copyright protected works for visually impaired persons. Maintaining the balance between the protection of rightsholders and the needs of that specific user group was of utmost importance. The Group was encouraged by the progress made and believed that Member States were on their way to conclude negotiations on the issue. It remained committed to reach consensus, find solutions for questions that were still open and work towards the conclusion of an international instrument which would be acceptable to all and which could be easily implemented at the national level. With regard to exceptions and limitations in favor of libraries, archives, educational and research institutions, the current international copyright framework already provided the appropriate means for those institutions to fulfill their roles both in the analog and digital world. However, it remained open to further beneficial exchange of views on national experiences and was ready to engage in discussions to better understand the concerns raised by some delegations.

109. The Delegation of Peru, speaking on behalf of GRULAC, said that the Group typically maintained a firm and constructive line of work, given that it represented millions of citizens who expected concrete results. In that regard, the Delegation recognized the major progress made within certain committees, especially the SCCR, in particular with regard to the instrument in favor of persons with visual impairments, for which reason an Extraordinary Session of the General Assembly was already planned in December 2012, and it was hoped that that would result in the convening of a diplomatic conference in 2013. Moving ahead with that roadmap was an urgent obligation for Member States. The Delegation said that GRULAC supported the progress and agreements adopted within the SCCR, in relation among other things to broadcasting organizations and limitations and exceptions for libraries and archives, and it therefore hoped that the Assembly would welcome the recommendations made within that framework.

110. The Delegation of Mexico was very pleased with the progress made by WIPO in a number of areas and in particular with the extraordinary agreements reached by the SCCR. The Delegation reiterated that the step forward made in Beijing on copyright and related rights was clear proof of the commitment of Member States. Mexico also reiterated its promise to continue with the negotiations towards an agreement on exceptions and limitations. That was the way to ensure appropriate balance and fair access for persons with visual impairments and print disabilities to libraries and also archives. Regarding the protection of broadcasting organizations, there was a pressing need to have an international instrument that would avoid signal piracy and the proposal made by Mexico and South Africa was a good way forward. The Delegation fully supported the recommendations made by the SCCR, which appeared in paragraphs 9, 14, 19 and 23 of document WO/GA/41/14. It expressed its belief that the work done by the SCCR had been exemplary and it was therefore certain that the tasks which the Member States had set themselves on the subjects under consideration in that important forum could be satisfactorily completed. It was time to meet the objectives established in relation to the protection of broadcasting organizations against signal piracy, thereby enabling the General Assembly to take a decision on convening a diplomatic conference in 2014. The Delegation also highlighted its support for the idea of concluding a text on limitations and exceptions for persons with visual impairments and those with print disabilities so that at the Extraordinary Session of the General Assembly, due to take place in December 2012 a decision could be taken on convening a diplomatic conference in 2013. The possible adoption of an international instrument on limitations and exceptions for persons with visual impairments and those with print disabilities would have a major impact on the 285 million men, women and children who lived with serious visual impairments, according to the figures provided by the World Blind Union (WBU). The adoption of such an instrument would also enable Member States comply with the general principles enshrined in the United Nations Convention on the Rights of Persons with Disabilities. The Delegation also expressed its readiness to do further work on exceptions and limitations applicable to libraries and archives, and educational and research institutions, in order to make recommendations on those subjects to the General Assembly in future years. It reiterated its commitment to continue participating actively and constructively in the work of the SCCR.

111. The Delegation of Thailand was pleased by the accomplishment of the Beijing Diplomatic Conference on the Protection of Audiovisual Performances. Further work on the remaining issues on the SCCR Agenda had to move forward in the interest and to the benefit of both developed and developing countries. The Delegation supported the effort to expedite the development of the legal framework on limitations and exceptions for visually impaired persons and persons with disabilities for libraries and archives, and educational and research institutions. Taking into account the interest of libraries and archives, it took note that the elements of document SCCR/24/8 still needed further discussion. With regard to the protection of broadcasting organizations, it appreciated the work done by the SCCR, particularly on working document SCCR/24/10. In addition, the Delegation highlighted that the norm-setting activities in WIPO should not be limited to protecting IPRs but should also reflect a broader

social and development context. In that connection, it supported the future work of the Committee and looked forward to participating constructively in the discussion.

112. The Delegation of Colombia reiterated its support for the general statement made by GRULAC with respect to the work of the SCCR. The Delegation expressed its wish to conclude the text-based discussions for persons with visual impairments to enable Member States to convene a diplomatic conference for 2013. In that context it thanked the SCCR and the Chairman for having convened the Intersessional meeting in October 2012 and for proposing to convene an Extraordinary Session of the General Assembly in December 2012. That discussion was sufficiently mature and it was an important commitment on the part of governments to give full rights to everyone to have access to information and education. The Delegation was ready and willing to continue to be an active participant in the Committee. It also wished to seek continuation of the discussions on exceptions and limitations for libraries and archives and on an appropriate international instrument on the protection of broadcasting organizations.

113. The Delegation of Brazil, on behalf of the DAG, expressed satisfaction with the outcomes of the previous session of SCCR, in particular with the progress achieved on the work program on exceptions and limitations. The SCCR agreed to expedite the work on limitations and exceptions and to that end it adopted a very clear calendar taking into account all the areas under discussion. The DAG expected the General Assembly to fully endorse the recommendations of the SCCR so that a diplomatic conference could be convened in 2013 for the adoption of a treaty in favor of visually impaired persons and specific targets could be established for the future on limitations and exceptions for libraries and archives, educational and research institutions, and persons with other disabilities. The DAG reaffirmed the importance of moving forward taking a global approach taking into account the equal importance of all work program areas. The whole WIPO membership would benefit from that work. Persons with disabilities as well as professionals and users of libraries, archives and educational institutions were expecting concrete solutions from the SCCR. Finally, the DAG was confident that the SCCR had taken the DA recommendations into account in its work.

114. The Delegation of Cyprus passed the floor to the Representative of the European Union.

115. The Representative of the European Union, speaking on behalf of the European Union and its member states thanked the Chair and the WIPO Secretariat for their efforts over the past year in trying to move forward all the issues being dealt with in the SCCR. The issues on the agenda of the upcoming series of meetings were going to be important to the European Union and its member states and they looked forward to making progress on all of them. They had been actively involved in the discussions on a possible international instrument on exceptions and limitations for the visually impaired persons during the past two sessions of SCCR and in the intersessional work that took place during the first part of 2012. They believed considerable progress was made and remained committed to successfully concluding the negotiations on this matter. The objective was clear: they wanted to ensure that visually impaired persons anywhere in the world were going to have significantly improved access to books. They believed this goal is common for all WIPO Member States. In order to attain it all Member States would have to stay on course and target the specific problems they had set themselves to address. In that respect, it would be regrettable if terms to widen the scope of the current discussions were to endanger the swift and successful achievement of the common objective: a meaningful, effective and balanced instrument that can be endorsed by and implemented in all WIPO Member States. Concerning limitations and exceptions in favor of libraries, archives, educational institutions, and research institutions, the Representative believed that the current international copyright framework enabled the Member States of WIPO to grant institutions sufficient legal space to fulfill their roles both in the analog and the digital world. Therefore the European Union and its member states were ready to work with all WIPO Member States so that limitations and exceptions functioned in the best possible way in the framework of existing international treaties and conventions. They had been actively involved in the discussions on

the possible treaty for the protection of broadcasting organizations. As this treaty remained a high priority they welcomed the progress made at the SCCR held in July 2012, and looked forward to continuing the discussions on the possible treaty in future Standing Committee meetings. They were committed to working towards a treaty that would update the international protection granted to broadcasting organizations and at the same time would respect the rights of rightsholders in works and other protected subject matter carried by broadcast signals. They remained committed to contributing to the work of the SCCR in a constructive manner.

116. The Delegation of Brazil aligned itself with the statement of the DAG. Brazil congratulated WIPO and its Member States for a truly cooperative and positive spirit at the SCCR that allowed Member States to make significant progress on the whole agenda of the Committee since the last General Assembly. The Delegation attached great importance to the results achieved in the negotiations on copyright limitations and exceptions. In accordance with the work program adopted by the 21<sup>st</sup> session of the SCCR, Member States had made good progress in all the areas of limitations and exceptions agenda. The General Assembly had the opportunity to take an important step. It was up to Member States to approve the recommendations of the SCCR regarding their work program on limitations and exceptions, especially those related to the negotiations on an instrument for the benefit of persons with print disabilities. The SCCR was very close to concluding an agreement for the benefit of visually impaired persons, and the holding of an intersessional meeting before the Extraordinary Session of the General Assembly proposed for December 2012 would be a necessary and important step towards the convening of a diplomatic conference in 2013. The Delegation remained convinced that WIPO should contribute with nothing less than a treaty to help address the book famine that deprives persons with disabilities of access. A treaty would provide them legal certainty to benefit from the limitations and exceptions that were being designed for them. They did not agree with a second class solution to address the access of the reading disabled to copyright-protected works. If rightsholders were provided with binding instruments then persons with disabilities should be provided with the same legal certainty. This was a unique opportunity for WIPO to demonstrate its commitment to the major objectives of the UN and to help Member States to implement Article 30 of United Nations on the Convention of the Rights of Persons with Disabilities. The Delegation fully supported the adoption of the recommendations of the SCCR on the other areas of the work program on copyright limitations and exceptions, and urged Member States to keep their commitment to text-based work in accordance with the terms of reference of the work program. It was important that Member States consider the concrete demands that were being presented by the beneficiaries of the work program, including representatives of libraries and archives and education and research institutions, and use their knowledge about what was happening on the ground. The Delegation sought to contribute to the progress of the negotiations on the protection of broadcasting organizations in accordance with the mandate of the General Assembly. They supported the recommendations made by the last SCCR in this area.

117. The Delegation of Japan supported the statement made by the Delegation of the United States of America on behalf of Group B, and appreciated the meaningful discussion during the SCCR sessions in November 2011 and July 2012. As everyone had noted, the Delegation realized that the Beijing Treaty on Audiovisual Performances was a necessary update required for this digital era. Now, the next essential step was to provide an equivalent update for the protection of broadcasting organizations, which had also been discussed for a long time. Fortunately, a single text of draft treaty had been agreed upon in the last SCCR. Therefore the Member States were encouraged to continue the discussion on substantial issues in order to reach a consensus consistent with the 2007 General Assembly mandate and make it possible to convene a diplomatic conference in 2014, as mentioned in paragraph 9 of document WO/GA/41/14. The Delegation was very keen to contribute to further substantial progress towards this important treaty. Regarding the issue of limitations and exceptions, it was essential to ensure in general, proper balance between the protection granted to rightsholders and the interests of users. Otherwise, incentive would be lost, which would consequently affect the interest of users with respect to possible works to be created in the future. As the

delegations knew, the three-step test had worked very well as a properly balanced standard and some Member States had already provided appropriate limitations and exceptions in their national laws in accordance with the three-step test. Therefore, the Delegation believed that any international instrument should provide sufficient flexibility to allow implementation on the premise that the three-step test would not be exceeded. The Delegation wanted to contribute to the proper solution to improve the access of visually impaired persons and persons with print disabilities to copyrighted works.

118. The Delegation of Iran (Islamic Republic of) observed with satisfaction the progress the SCCR had made on all its agenda items as these were all important issues for Member States, especially developing countries, and were now of sufficient maturity to be formulated into binding instruments. On the question of limitations and exceptions, the Delegation supported conclusion of a treaty based on the deliberations of the Committee as well as on the WIPO DA. All issues before the Committee were issues of equal importance, although the Delegation acknowledged that they enjoyed different levels of maturity. This should not lead to different treatment in the Committee. The Delegation stated that apart from facilitating the exercise of existing limitations and exceptions by educational and research institutes and persons with disabilities under other international treaties, a new treaty should also provide additional rights to access copyrighted works for educational and research purposes. The SCCR should be encouraged to continue its text-based work with an aim to prepare a document in treaty language. A similar treaty should also be developed on the question of limitations and exceptions for libraries and archives, which are institutions with public mission. Unfortunately, digitization of copyrighted works had adversely affected libraries and archives in their mission to provide public access. This had also subsequently affected the availability of works to the general public. Libraries needed to make reproductions, cross-border analysis, and interlibrary loans. The new treaty on the issue should ensure such rights for them. The SCCR commendably had made substantial progress on the provisions of a draft legal instrument on appropriate exceptions and limitations for persons with visual and/or print disabilities. The text seemed to be mature in the form of an international treaty to be discussed in a diplomatic conference. As proposed by the Standing Committee, the convening of that conference could be discussed in an Extraordinary Session of the General Assembly the following December. The Delegation also welcomed the Committee's reaffirmation of commitment to continue its work on a signal-based approach towards developing an international treaty to update the protection of broadcasting organizations in the traditional sense. The Delegation was of the view that the Committee should speed up its work towards the text that would enable the convening of a diplomatic conference in 2014 to adopt a treaty. The new treaty should provide appropriate and effective protection for broadcasting organizations against any form of signal piracy on all distribution platforms which they use for their signal transmission to the public.

119. The Delegation of India congratulated the Director General and his staff for their great work. The Delegation hoped that the spirit of the Beijing Treaty would continue to drive Member States toward positive outcomes. The Delegation was pleased to see the progress made on the draft treaty on limitations and exceptions for making copyrighted works accessible to visually impaired persons, and supported the recommendation of the Standing Committee for an intersessional meeting in October to further refine the draft treaty. The Delegation hoped that a legally binding treaty would be adopted at a diplomatic conference convened in 2013. As regards the protection of broadcasting organizations, the Delegation reiterated its commitment to comply with signal-based approach towards developing an international treaty to update the protection of broadcasting and cable casting organizations in the traditional sense consistent with the 2007 General Assembly mandate. The Delegation reiterated its opposition to the inclusion of any element of webcasting under the framework of the broadcasting treaty. The Delegation opposed any attempt to update the earlier mandate for retransmission over any other platforms because these activities were not broadcasting in the traditional sense. The Delegation hoped that the working document for a treaty on the protection of broadcasting organizations finalized at the 24<sup>th</sup> SCCR, which included India's legal textual proposal as one of the alternatives in the relevant articles in the working document, would be the basis for



negotiations in the 25<sup>th</sup> SCCR. The Delegation informed the Assembly that it had recently amended its copyright act to allow for protection of works in the digital environment. The legislation included substantial copyright exceptions for the visually impaired persons.

120. The Delegation of Trinidad and Tobago congratulated WIPO on the continuing efforts of the SCCR as it carried out its mandate in 2011 to 2012. A tremendous amount of progress was made especially with regards to the substantive provisions of a draft legal instrument on appropriate exceptions and limitations for persons with visual impairment and/or print disabilities. The Delegation hoped that the spirit that prevailed at Beijing in June would resonate with delegations and result in an eventual diplomatic conference in 2013 related to persons with visual impairment and/or print disabilities. The Delegation reported that Trinidad and Tobago was actively considering amending its existing copyright legislation to provide a limited exception for visually impaired persons to utilize Braille. This recommendation was contained in a ministerial committee report submitted to the Minister for Legal Affairs earlier in 2012. Another recommendation under active consideration was for a specific task force to be established with a mandate to make access to copyrighted material such as audio books available to visually impaired persons. On the protection of broadcasting organizations, the Delegation fully supported the process that had culminated at SCCR 24 in a single working text which provided the basis for further negotiations at the upcoming SCCR meeting in November. The Delegation was fully committed to the existing mandate for broadcasting, including working on a signal-based approach and towards developing an international treaty. On the issue of limitations and exceptions for libraries and archives, the Delegation fully supported the ongoing process of working towards submitting appropriate recommendations by 2014. The Delegation supported the call for convening an Extraordinary Session of the General Assembly meeting in December 2012 to consider convening a diplomatic conference for visually impaired persons in 2013. The Delegation continued to strongly support the existing work of the SCCR and was of the view that tremendous progress on several critical issues engaging the SCCR would be made before the next Assemblies.

121. The Delegation of Nigeria, speaking on behalf of the African Group, welcomed the report contained in document WO/GA/41/14, detailing current work in the SCCR. Ongoing discussions within the SCCR formed part of the areas of immense importance to the African Group. The SCCR 2013 and 2014 work plan and the call on WIPO Member States to continue their collective efforts towards concluding deliberations on the protection of broadcasting organizations and limitations and exceptions were most welcome. Having developed substantive working documents on which to conclude text-based negotiations on the subject, the Group looked forward to the conclusion of a treaty for the signal-based protection of broadcasting organizations in the traditional sense in 2014. The forthcoming inter-sessional meeting was welcome and the Assembly was encouraged to convene an Extraordinary Session of the General Assembly in December 2012 to convene a diplomatic conference for visually impaired persons in 2013. The Group would also like a treaty on libraries and archives in 2014, which would need to be recommended by the SCCR 28 to the 2013 General Assembly. In the same way, a treaty for education and research institutions and persons with other disabilities would be expected for 2015 and would need to be recommended by the SCCR 30 to the 2014 General Assembly. It was also desirable for the African Group that WIPO arrange Chair-led intersessional consultations on those important subjects with participation from key experts and negotiating partners. The driving theme was that all members could acknowledge that those exceptions and limitations would provide vital gateways to innovation and creativity which was access to knowledge. The General Assembly was a time for stock taking and critical reflection on the shared considerations that acted directly on the goals and objectives of the Organization. A critical task before the Assembly was to assess the extent to which progress had been made towards ensuring the realization of the stated objectives of its various Unions and Committees including the SCCR and to deliberate on what direction might better show all Member States the positive improvements that could be achieved. It was important that the success of the Beijing Treaty did not become an exception but a rule. The Group urged WIPO and its Member States to continue on the path of meaningful progress in discussions and negotiations that were vital to

the developing countries and LDCs. There was concern that despite progress at the last SCCR in July 2012, and explicit political consensus about the importance and need for the treaty, the expectations remained fragile for a treaty to provide access to copyrighted works for the visually impaired persons. Conversations on whether there should be a treaty or otherwise continued to threaten the stability of the key substantive terms that must be incorporated to ensure that any resultant treaty was useful to address the challenges for the visually impaired persons. Any unbalanced outcome should not be acceptable. It was important also to note that of the reported 235 million members of the blind community, more than 90 per cent were in Africa. And the African Group was also interested in quality. The terms of access must be such that the most vulnerable in the community must have every opportunity to enjoy the educational, cultural, technological and political life that is facilitated by access to science and to artistic works. After all, the explicit moral and policy justification that underwrote the copyright system was to make it possible for all persons to benefit from knowledge. Similarly, the African Group was strongly committed to having the same treatment outlined for the visually impaired persons limitations and exceptions be accorded to the exceptions and limitations for libraries and archives and educational and research institutions and persons with other disabilities. The interest of future generations was increasingly dependent on public knowledge goods. On the other side of the coin, empirical studies showed that access to knowledge was a prerequisite to innovation and economic growth. The policy orientation presented within WIPO's work program should fully reflect the historical force and benefits enjoyed by Member States that have used access to knowledge and open systems of knowledge as a key development tool. For the African Group it was an important aspect of development planning and not a blatant effort to free ride on the investment of developed countries. Rather, it was a clear understanding of the fact that just as access to knowledge had been part of the industrial infrastructure of the developed countries, developing and LDCs could not expect or be expected to continue thriving under inappropriate systems that weighed heavily on the human and economic streams. The 50<sup>th</sup> Assemblies of WIPO Member States should be an opportunity to look closely at how better to align the reality of the fact that important global structural questions must be confronted with courage, honesty and transparency. In light with those general comments, the African Group called on WIPO and its Member States to demonstrate credible commitment to fair and balanced norm-setting.

122. The Delegation of the United States of America strongly supported the adoption of an international instrument that would enhance access to copyrighted works for visually impaired persons and print disabled persons and also supported all recommendations of the SCCR 24 session. With a view towards making a positive contribution to the upcoming meetings on the visually impaired persons' issue, the United States of America was undertaking extensive consultations on the draft instrument both within the Government and with stakeholders in the private sector. With regard to other copyright exceptions and limitations, the United States of America had had an extremely positive national experience with exceptions and limitations including the well-known U.S. doctrine of fair use. Against that background the Delegation supported the work in the SCCR aimed at deepening the understanding of Member States on copyright limitations and exceptions with respect to educational and research institutions and persons with other disabilities, as well as with respect to libraries and archives. Finally, with respect to protection of broadcasting organizations, the United States of America supported updating the protection for broadcasting organizations under the terms of the 2007 General Assembly mandate which called for work on a signal-based approach to provide protection for the activities of broadcasting organizations in the traditional sense. Consistent with that mandate the United States of America believed that such protection should be narrow in scope aiming at the unauthorized retransmission of broadcast signals to the public over platforms such as free over-the-air broadcasts as well as over the Internet. Within that framework the United States of America was actively preparing for the November session of the SCCR in order to make a positive contribution to advance the development of a text that was consistent with the terms of the General Assembly mandate.

123. The Delegation of Barbados attached significant importance to the work of the SCCR. The Delegation welcomed the progress made in SCCR 24, particularly with respect to the issue of improving access to copyright protected works for persons with print disabilities. The Delegation would continue to participate constructively in the ongoing discussions. It urged Member States to continue to do the same. Barbados supported the convening of an Extraordinary Session of the General Assembly in December 2012 to evaluate the text from SCCR 25 and to take a decision on whether to convene a diplomatic conference in 2013.

124. The Delegation of South Africa commended the SCCR for the considerable progress achieved so far, particularly in regard to the protection of broadcasting organizations and limitations and exceptions for visually impaired persons. The Delegation reiterated its support for the African Group's statement delivered by the Delegation of Nigeria. On the issue of protection of broadcasting organizations as contained in document WO/GA/41/14, the Delegation hoped that a single text adopted as a working document of the Committee would accelerate text-based discussions on a matter that had been on the agenda for far too long. The Delegation supported the recommendation contained in paragraph 9 of document WO/GA/41/14, including the convening of a diplomatic conference in 2014. In view of the looming 2014 and further taking into account the need to reach agreement on all outstanding issues, the Delegation urged all WIPO Member States to work together in the spirit of Beijing to ensure that the date of 2014 was met. With respect to limitations and exceptions for visually impaired persons and persons with print disabilities, South Africa welcomed the recommendation made in paragraph 14 of the document. The Delegation confirmed its full participation in the activities outlined in paragraph 14. New technologies had led to a rise in international requests for information, especially among libraries serving researchers where collaboration was interdisciplinary and global. Therefore a global approach for a legal framework was needed to address the realities of the digital environment and to fulfill the promise of the digital age. It was on that basis that the Delegation supported the recommendations contained in paragraphs 19 and 23 of the document.

125. The Delegation of the Russian Federation expressed interest in the most rapid progress possible on the issue of exceptions and limitations in the interest of people who were visually impaired or had print disabilities. The Delegation was prepared for constructive cooperation in order to reach the necessary consensus. It was also important to make progress on limitations and exceptions for research institutions, educational institutions and libraries. An active continuation of work on a text for an international treaty on broadcasting was welcomed, with a view to convening a diplomatic conference in 2014.

126. The Delegation of Paraguay welcomed the significant headway made in the course of the work of the SCCR. The recommendations of the SCCR sought to consolidate an international agreement to assist visually impaired persons and persons with print disabilities, which should be achieved without any further delay. It was also hoped that at the intersessional meeting the text would make sufficient progress in order to reach consensus on the entirety of the document. The diplomatic conference should and could be convened as soon as possible as all Member States had a great debt towards people with print disabilities.

127. The Delegation of Kenya associated itself with the statement of the Delegation of Nigeria on behalf of the African Group and appreciated the work that had been done by the SCCR especially in the area of exceptions and limitations, where there was considerable progress. There was a need to make maximum use of the time available during the SCCR and the inter-sessional meeting, for which a strategic approach to the issues at hand was needed. The outstanding issues on exceptions and limitations for the visually impaired persons required an objective and sober approach which should be settled during the upcoming intersessional meeting in October 2012. There was a need to ensure that the discussions were done within the framework of the SCCR and achieved an optimal utilization of time. It was time to embrace technology and use the various tools available to have virtual meetings. As progress was made towards an instrument on exceptions and limitations for the visually impaired persons the other

exceptions and limitations should also be kept in sight, especially as they related to libraries and archives as well as education and research institutions. Negotiations should take into account the various studies that had been carried out by WIPO and other organizations in developing countries, as well as the DA. On the issue of the protection of broadcasting organizations it was necessary to take into account the mandate from the General Assembly, as well as to maintain the momentum and continue with the negotiations with the aim of convening a diplomatic conference in 2014. The Delegation commended the work that had been done by the various delegations during the SCCR, especially South Africa and Mexico, towards achieving that goal.

128. The Delegation of Pakistan expressed its satisfaction for the outcome of the last SCCR, in particular the work program on exceptions and limitations as set out in paragraphs 14, 19 and 23 of the report of the SCCR to the General Assembly. It was hoped that a diplomatic conference could be convened in the first half of 2013 for the adoption of a treaty in favor of visually impaired persons. The Delegation urged that work be expedited in other categories of beneficiaries of limitations and exceptions to copyright, especially with regard to granting access to educational and scientific material. The work being carried out in the SCCR was extremely important as visually impaired persons, persons with print disabilities, and professionals and users of libraries and archives and educational institutions were expecting concrete solutions.

129. The Delegation of Morocco hoped that this positive spirit which had reigned over the previous conference would enable Member States to do justice to the many performers who had waited for so long. It supported the work to be done by the SCCR and all the efforts that had been made in the area of the different items that were on the agenda. With regard to the protection of broadcasting organizations, it expressed its feeling that that matter had since 1998 been before the SCCR and that the Committee should take into consideration all the new technologies and developments, all the work done by broadcasting organizations and the signal-based approach that was pointed out in the meeting in 2007. It indicated that the matter of the diplomatic conference being convened was very important for establishing an up-to-date, modern instrument on broadcasting and it urged everyone to speed up the work in order to achieve a solution. As for limitations and exceptions, it supported an Extraordinary Session of the General Assembly for the review of a text for the benefit of the visually impaired persons to enable them to have access to protected works. The Delegation expressed to the Assembly that if there is to be a diplomatic conference, Morocco would like to be considered as a host for the conference, as was stated by the Delegation at the outset of the conference.

130. The Delegation of Ecuador welcomed the report of the SCCR and the progress made during its previous sessions. It hoped that the report would be adopted so that the Assembly would agree to the Extraordinary Session of the General Assembly to be held in December 2012 and a diplomatic conference in 2013, so as to conclude an agreement on limitations and exceptions for libraries and archives and for the persons with visual impairments. It expressed its desire to see the international norms that would give due access to these persons and to have a legally binding agreement as a tool for development of IP in their countries. It supported the statement made by the Delegation of Peru on behalf of GRULAC as well as the Delegation of Brazil's statements, both in its capacity as coordinator for the DAG and in its national capacity.

131. The Delegation of Algeria took note of the report on the work of the SCCR and welcomed the efforts of the Secretariat and the Member States to pursue discussions on important matters such as limitations and exceptions for copyright as well as protection of broadcasting organizations. It supported the statements made by the Delegation of Nigeria on behalf of the African Group and the Delegation of Brazil on behalf of the DAG, as well as the statements of the Delegation of Nigeria and the Delegation of Brazil in their national capacities. It reaffirmed its position on the importance of limitations and exceptions to copyright and related rights as well as for broadcasting in its country. It supported the decisions taken by the Committee at its last session. However, it noted that the work program could not be concluded without a serious commitment of all Member States to an instrument on limitations and exceptions for the visually

impaired persons. It supported the adoption of such an instrument that would give access to knowledge and would establish rights as was proposed. The Delegation also indicated that it favored limitations and exceptions for libraries, archives, and educational and research institutions. It hoped that the flexibility and constructive attitudes that had been seen in terms of limitations and exceptions for the visually impaired persons would have a positive effect on the limitations and exceptions for libraries and archives, educational, teaching and research institutions. Regarding the subject of broadcasting organizations, it indicated its wish that the Committee continue its work on the text adopted at the last session of SCCR in order to convene a diplomatic conference in 2014. It highlighted that the work being done in the SCCR clearly showed the importance of this work for Member States and particularly for developing countries. It welcomed the opportunity that was provided to them during the Committee meetings to consider how those recommendations could be integrated in to the DA.

132. The Delegation of El Salvador welcomed the work that the SCCR had been doing on copyright and related rights. It reaffirmed its full support for the recommendations of the work plan agreed to by all Members as a constructive step. It emphasized in this respect the progress made on limitations and exceptions for copyright which had given the SCCR the opportunity to have discussions of interest to all Members of WIPO. It expressed its commitment to the goals that had been set out by the Members to move forward with the work program on the appropriate exceptions and limitations for persons with visual impairments, print disabilities, and other disabilities for reading, and the series of meetings that were included in the work program, in order to enable the Committee to achieve consensus on those items under discussion and to convene a diplomatic conference for the year 2013. Likewise, with respect to limitations and exceptions for libraries, archives, and educational, teaching and research institutions, it supported the proposal to continue to work on the basis of the recommended work program, which included the preparation of recommendations on this item for the General Assembly. It concluded by noting the continued progress that was being made in the Committee with respect to discussions on the protection for broadcasting organizations. It supported the recommendations submitted to the General Assembly so that that matter would continue to be included in the work of the SCCR, in order to convene a diplomatic conference once the necessary conditions that had been recommended to the General Assembly had been achieved.

133. The Delegation of Nepal noted the progress made on all major areas of works of the SCCR, including the issue of limitations and exceptions aimed to ensure access to copyrighted works for visually impaired persons, libraries and archives, and educational and research institutions. It noted that the norm-setting work of SCCR and the discussions related to the public domain, had been taking into account the DA recommendations. It noted that the importance of the DA had been recognized in the Beijing Treaty. The Delegation indicated that norm-setting and exceptions and limitations could be an important statement in striking the balance between the goal of protecting IPRs and development. It indicated that this would also allow Member States, including the LDCs, to exercise the necessary flexibility in developing domestic legislation. It noted the need for a balanced IP system that ensured the protection of IPRs and did not adversely limit access to knowledge, especially for people with disabilities and for educational and research purposes. Finally, it observed that to advance the work of the SCCR, informal consultations had been important and it stressed that such consultations should be inclusive and transparent and that they should be Member-driven.

134. The Delegation of Cuba indicated that the work that was being done in the SCCR, which was designed to provide access for persons with visual impairments and print disabilities, was a work of high impact for their society and that they would be seeking specific results as quickly as possible. It expressed its support to the proposals on limitations and exceptions for persons with visual impairment. It also hoped that there would be a similar result with respect to limitations and exceptions for libraries and archives, educational, teaching and research institutions, and persons with other disabilities. It concluded by supporting the statement made by the Delegation of Brazil on behalf of the DAG and that of the Delegation of Peru on behalf of GRULAC.

135. The Delegation of China noted that since the previous year's General Assembly of WIPO, the SCCR's work had made much progress. It hoped that WIPO's work in copyright and related rights would continue to find common ground and to solve differences, in order to move forward with the work of exceptions and limitations for the visually impaired and print disabled persons, reaching an international instrument, so that a diplomatic conference could be held as soon as possible. The Delegation observed that the purpose was truly to ensure the rights of visually impaired persons to have access to copyrighted works. It concluded by indicating that it would continue to join efforts with other Member States in order to ensure that the work could be carried out smoothly.

136. The Delegation of Venezuela (Bolivarian Republic of) indicated that it continued to feel that it was a mistake to try to provide rights to organizations such as the broadcasting organizations, after observing paragraph 27 of the Universal Declaration of Human Rights. It noted that the discussions on that subject could move forward with the inclusion of provisions establishing the possibility for Member States to add reservations in accordance to the realities of each of their countries. With respect to individuals who are visually impaired, it, as other GRULAC countries, had always supported the need for an international treaty that could assist millions of people throughout the world by giving them access to printed materials, thus ensuring human rights in connection with the development of individuals' personalities and cultures. It concluded by stressing that WIPO should not stand aside from the rest of the UN system.

137. The Delegation of Belgium reminded the General Assembly that it had been actively involved in the discussions within the SCCR on a possible international instrument on exceptions and limitations for the visually impaired persons and was of the opinion that substantial progress had been made. It was committed to making further significant progress as a matter of priority. Negotiations within WIPO should result in significantly improved access to books and other printed material for visually impaired persons anywhere in the world, and the Delegation was in favor of a meaningful, effective and balanced instrument that would prove to be sustainable. Regarding limitations and exceptions for the benefit of libraries, archives, and educational and research institutions, it continued to engage constructively in the discussions on other limitations and exceptions, with the objective of fostering an exchange of ideas and principles that all WIPO Member States could take into account when implementing limitations and exceptions in their national legislation. It had also been actively involved in the discussions on a possible treaty for the protection of broadcasting organizations since 1999 and had since then attached great importance to the issue. It welcomed the recent progress at the July session of the SCCR and looked forward to continuing discussions towards a treaty that would update the international protection granted to broadcasting organizations, and which would respect the rights of rightholders in works and other protected subject matter carried by broadcast signals.

138. The Delegation of Chile stated that the agreement reached at the 24<sup>th</sup> session of the SCCR reflected the considerable progress that the Committee had made in its work on the various items on its agenda, especially limitations and exceptions for the visually impaired and other print-disabled persons. It was very satisfied with the progress made, but was aware of the significant challenges that remained. In the coming months, WIPO Members would have to

reach agreement on the “Working document on an international instrument on limitations and exceptions for visually impaired persons/persons with print disabilities” (document SCCR/23/7). Likewise, during the Extraordinary Session of the General Assembly that would take place at the end of 2012, the Members would have to agree to convene a diplomatic conference in 2013, to draft an international treaty for the visually impaired and other print-disabled persons. Such an agreement would be a milestone as regards efforts to develop a balanced and inclusive multilateral IP system, and would enable real progress in WIPO’s norm-setting activities.

139. The Delegation of Argentina expressed satisfaction at the progress made concerning the various topics on the agenda at the SCCR’s last session, especially with regard to copyright exceptions and limitations. The SCCR was coming to the end of a program of work which had been established at the 21<sup>st</sup> session and which reflected a desire to incorporate the DA recommendations in particular in norm-setting activities. The Delegation recognized the importance of copyright for creativity and the cultural development of countries while emphasizing the need to strike a balance between protection of IPRs of individuals and the social, economic and cultural development of its citizens. It was particularly interested in the SCCR’s work on exceptions and limitations, as that was closely related to the general principles of the DA. It appreciated the work done by the Committee and the considerable progress made in relation to the proposed international instrument on limitations and exceptions for persons with print disabilities, as that would ensure a substantive solution to the problem of reading access for that group and would put its beneficiaries on an equal footing with everyone else. However, despite the progress made in that regard, no tangible and effective results had been achieved as yet, for want of the necessary political will of all Members and a greater commitment to the General Assembly’s mandate to adopt one or more appropriate international legal instruments. The Delegation was particularly interested in the process underway of developing limitations and exceptions for libraries, archives and educational institutions. It would continue to participate constructively with a view to reaching a consensus that would allow substantive progress on those issues. In that connection, it would pursue various internal consultations so as to contribute to the ongoing negotiating process. It was essential to take up the proposals on exceptions and limitations. The Delegation urged the Committee to continue to do more comprehensive work on the topic so that, through concrete and effective action, it could establish minimum foundations for exceptions that would improve access for sectors of society that had difficulty benefitting from scientific and literary works and other intellectual productions. The Delegation called for the SCCR to continue its work and discussions on the harmonization of copyright exceptions and limitations, and hoped that that would take place with due diligence. It reiterated its desire to contribute to the debates, and was confident that all Members would participate constructively.

140. The Delegation of Peru said that in an international context fraught with difficulties and challenges, Peru continued to opt for modernization and a development model characterized by economic and commercial openness, in which investment in education, research and development, and, in general, the promotion of innovation and IP must play an essential role. The policies implemented and, above all, the continuity and consistency thereof, had enabled Peru to grow over the past 10 years at an uninterrupted annual rate of more than five percent of GDP and to achieve significant results in relation to poverty reduction. The country’s aims were clear: to guarantee appropriate integration for Peru at the international level; attract investments and technologies in order to modernize the production structure; reduce the technological divide and modernize the physical infrastructure which would allow Peru’s competitiveness to be enhanced and socially inclusive sustainable development to be promoted. Peru was therefore aware that the effective use of the tools provided by the IP system was a key factor in continuing on the path of growth and development, since that would promote the rise of innovative technology and would increase the competitiveness of firms and thereby enhance the wellbeing of the population. Peru had participated actively in the discussions concerning the conclusion of an instrument in favor of visually impaired persons and therefore, given the developed nature of that instrument, the Delegation was sure that the

Member States of WIPO would decide, at the Extraordinary Assembly in December, to convene a diplomatic conference in 2013. That was a priority for Peru and was consistent with the socially inclusive development policy promoted by the Government of Peru.

141. The Representative of the World Blind Union (WBU) started by correcting an inaccurate statistic quoted with the WBU as its source, made by the Delegation of Mexico in its intervention. He indicated that the world would indeed be a very happy place if it only had 280,000 blind people, but that in the WBU's briefing to all Member States it was quite clear that there were 280 million visually impaired people who would benefit from the treaty initiative. The WBU was cautiously encouraged by the report of the SCCR including the route map for the treaty initiative. It was also cautiously encouraged by the many statements made by Member States that morning saying that it really was time to proceed to develop the treaty and have a diplomatic conference the following year. It noted with much interest that the preamble of the Beijing Treaty recognized the need for balance between the interests of the rightsholders and the wider public interest. It reminded Member States, as the Delegation of Nigeria speaking on behalf of the African Group had eloquently done, that the treaty should be fit for purpose. The Representative stressed that WBU was not there to develop a treaty just for the few hundreds of visually impaired Ph.D.s and the few thousands of visually impaired Masters coming out of the universities in the northern belt and other capital cities. The WBU was there to develop a treaty whose provisions needed to serve the interests of visually impaired and print disabled people throughout the world. It was there to serve the needs of visually impaired and print disabled people who lived 50 miles beyond the end of the tarmac track. The Representative had spent over a dozen years working in one country that was coming out of civil war whose national blind organization had lost all of its branch structure and whose individual visually impaired members were mostly turned into internally displaced persons. He had worked and sat in their headquarters, a small room, holding discussions with their leaders without the comfort of air conditioning and with the sound from the other side of the room of an old-fashioned typewriter still using a carbon ribbon, that being the extent of their technology. He stressed that WBU was not only talking about the modern, well-resourced blind organizations in the industrialized countries of Group B. The treaty provisions should not be strangled with technological protection limitations because the goal was not only a digital solution, but a solution for most of the developing country Member States, many of which had a blind and visually impaired constituency who would not be needing digital downloads but would be needing hard copies, physical, paper-based Braille or CDs, which would be exchanged through cross-border sharing with neighboring countries using the same language. The Representative concluded by indicating that he was cautiously encouraged because a few days before WIPO had released its report on the south-south cooperation meeting held in Brazil in August. One of the presentations made there was done by WIPO's former Deputy Director General, Mr. Mihály Ficsor, who indicated in his presentation that the visually impaired issue had first arrived on the WIPO agenda in 1982. Subsequently WIPO and the United Nations Educational, Scientific and Cultural Organization (UNESCO) jointly commissioned the Canadian barrister Wanda Knoll to prepare a report on this issue. In 1985, the report was presented and accepted by the Berne Executive. He recommended using binding international law to allow the production and global distribution of accessible formats for blind people. The Representative requested that WIPO Member States help it to turn that expectation into a reality in 2013 and protect it from another experience with shattered expectations like the one it had in 1985.

142. The Representative of the Computer and Communication Industry Association (CCIA) stated that with respect to the visually impaired persons issue which it considered the most pressing item on the SCCR's agenda, it had been asked why as a trade association it had been advocating for an effective solution of that issue. The reason was that if international copyright could not ensure that such a problem was addressed then the entire system's credibility would be damaged. CCIA's members were some of the most innovative companies in the world to whom a credible and effective copyright system was of great importance. In addition, the association had a long history of taking stands such as its commitment to free expression. It had been said that a binding result on the visually impaired persons issue could create some



kind of slippery slope or precedent which could lead to more international limitations on rights, which was not a credible argument. It had also been said that soft law could be as effective as binding norms, which lacked logical coherence. The present state of the text had become very complicated and with ever-increasing edits it was becoming more so. The visually impaired persons did not need to be told what they needed. As they were participating in the discussions themselves, they could express their needs and they deserved to be listened to. The entire exercise was meant to solve their problems and they would not be engaged if the normal exploitation of works ensured the same access to accessible versions as to ordinary ones. On the question of broadcasting, the Representative did not believe that the issue should be taking up time on the SCCR's agenda while the visually impaired persons discussion was heading to a conclusion. It called on broadcasters to ask Member States to take the time dedicated to that issue and devote it to the visually impaired persons question until that issue was concluded. As to the substance, rights were for creativity whereas signals were not creative as they were electronically produced carrier waves. Signals were transient and therefore a term of protection was not appropriate. Signals could not exist in fixed forms. Any protection related to fixation or post-fixation activities was protecting something that did not exist. What was fixed was the program which was already owned by someone else. Any protection of fictional fixed signals was giving rights to broadcasters in someone else's content.

143. The Representative of the Internet Society said it was critical to take into account in the discussions on the visually impaired persons new economic and social technological developments such as the Internet revolution. On the issue of limitations and exceptions for libraries and archives, it urged WIPO and its Member States to take all appropriate steps to convene a diplomatic conference which would promote full access in the digital world. In relation to the issue of limitations and exceptions for visually impaired persons and persons with print disabilities, all people should be in the position to have full access to content on the Internet and offline. The Internet Society had produced a paper which was available outside the room. Governments and policymakers had an important obligation to use existing legislative and regulatory tools to address Internet accessibility for persons with disabilities and needed to make the issue of disability a priority. WIPO had to urgently call for a diplomatic conference for persons with print disabilities which would lead to a much-needed treaty. It recognized the work that both WIPO and Member States had put into the issue of protecting broadcasting organizations and supporting international initiatives on ways to prohibit signal piracy and it understood that some concerns had been expressed about the potential impact the new rights could have upon creativity and new business models by increasing costs for Internet users. Digital technologies and the Internet provided the tools for artistic expression through various forms. The sharing and circulation of video and audio had become the norm on the Internet and it had allowed new platforms to emerge. Any treaty which related to issues pertaining to the Internet either directly or indirectly should respect the Internet's open nature as well as its underlying architecture and had to be addressed through a multi-stakeholder environment as established by paragraph 68 of the Declaration of the World Summit on the Information Society held in Tunis.

144. The Representative of KEI stated that the organization had been dismayed to hear so many governments calling for a new treaty for the protection of broadcasting organizations, even though the SCCR had yet to receive an explanation of the problem the treaty was expected to solve or how it would work. It had asked the Government of the United States of America to explain what piracy problems the broadcaster treaty was expected to solve which could not be resolved through enforcing existing copyright laws and related rights laws and was waiting for an answer. Some versions of the treaty would create a new layer of rights on top of copyright that would harm both consumers and copyright holders. In relation to negotiations on access to knowledge for education, research and other topics, it noted that the new texts were ambitious in trying to solve the issue of how countries dealt with pressures to ramp up copyright enforcement while ensuring there was a lawful path to access to knowledge. It urged delegations to look back at what went wrong in 1967 and 1971 with the revisions to the Berne

Convention. In relation to exceptions for the visually impaired persons, it was unfortunate that the United States of America and the European Union had yet to agree that the new instrument would be a treaty, while they had not shown any difficulty in calling for a broadcasting treaty. The visually impaired persons treaty needed to be inclusive as regards beneficiaries and built upon the most robust and effective national exceptions in practice with a mandate to allow for the sharing of files between countries when uses were lawful in both countries. KEI expected a diplomatic conference to be held on that topic in 2013.

145. The Representative of the International Publishers Association (IPA) said that the organization supported the work plan proposed by WIPO SCCR to the Assemblies regarding an instrument for the benefit of persons with print disabilities and looked forward to measured, constructive and balanced debates in the months ahead. It supported the request of the international representatives of writers, actors, musicians, producers and their collecting societies, publishers and distributors to adapt the current instrument in six important ways. The international publishing community had never objected to the international exchange of physical copies of non-digital works and was looking forward to engaging with WBU to jointly propose ways of including that important aspect in the instrument. The instrument and the process ahead required collaboration and flexibility. Equal access for persons with print disabilities was not an empty wish but a realistic goal. A range of successful collaborative projects in countries such as Austria, Brazil, Germany, Netherlands, Switzerland and the United States of America and many other countries could be mentioned as examples of initiatives which were based on different shapes and tools, some of them relying on exceptions and limitations while others did not. Equal access and providing access at the same time at the same convenience would require close collaboration between rightholders and print disabilities organizations and their libraries. Proposing changes to enable more Member States to sign and for good local practices to continue had to be seen as a constructive contribution to making the instrument work, and it looked forward to working with Member States and the WBU to ensure a successful outcome of WIPO SCCR 25 and other meetings ahead with a view to achieving an effective and balanced instrument.

146. The Representative of the International Federation of Film Producers (FIAPF) stated that copyright was an extremely effective and efficient incentive to individual creativity and to economic risk taking. Copyright and development stood shoulder to shoulder. FIAPF paid tribute to the success achieved in adopting the Beijing Treaty which was a result of a considerable effort. It expressed hope that Member States could equally come to agreement on the protection of broadcasting signals as broadcasters were partners for the creation and dissemination of works. It acknowledged the vital importance of achieving a balance between the rights of producers and the public interest when it came to access to works for people with physical or mental disability. However, there was concern that the current emphasis placed in the SCCR on a considerable volume of possible exceptions and limitations was taking place without a corresponding discussion on the importance of the rights to which the exceptions and limitations would correspond. A number of exceptions and limitations would water down the application of copyright which would undermine both creativity and financial input in the creative industries. It urged the delegations to look at practical and pragmatic solutions to this question of access rather than run the risk of complicating life even further for those involved in creative industries. The new instrument needed to focus on written material and be compliant with the three-step test.

147. The WIPO General Assembly:

- (i) took note of the information contained in document WO/GA/41/14;
- (ii) encouraged the SCCR to continue its work regarding the issues reported on in this document; and

- (iii) approved the recommendations of the SCCR as set out in paragraphs, 9, 14, 19 and 23 of document WO/GA/41/14 regarding broadcasting organizations and limitations and exceptions.

## ITEM 27 OF THE CONSOLIDATED AGENDA

### MATTERS CONCERNING THE INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE (IGC)

148. Discussions were based on document WO/GA/41/15.

149. The Chair of the General Assembly opened the item and referred to informal consultations that had taken place on this item. The Chair of the General Assembly invited the Chair of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the IGC), His Excellency Ambassador Wayne McCook of Jamaica, to report on the outcome of those consultations.

150. His Excellency Ambassador Wayne McCook, in his capacity as Chair of the IGC, recalled that the Chair of the General Assembly had requested him to conduct informal consultations on this agenda item, and stated that he was grateful for the trust that had been placed in him. The Chair of the IGC confirmed that, under the mandate of the IGC for the 2012-2013 biennium, the present session of the General Assembly was specifically invited to decide on convening a diplomatic conference and consider the need for additional meetings, taking account the budgetary process. Under the mandate provided to him by the Chair of the General Assembly, he had convened two informal consultations, on Wednesday, October 3, 2012, and Thursday, October 4, 2012. To these consultations, he had invited Regional Coordinators plus three, and, with the consent of the Regional Coordinators, it had also been permitted that other interested delegations sit in on the consultations as observers. The consultations had been intense and lengthy, and the Chair of the IGC thanked the Regional Coordinators, as well as the delegates who had assisted them, for their dedication and flexibility, and for the collaboration between them that had enabled progress to be made. He also thanked the IGC's Vice-Chairs for their assistance. The IGC Chair was pleased to report that the delegates had been able to reach an agreement, but he would leave it to them to present their views and make such other interventions as they might wish after the adoption of the proposal. Once again, the IGC Chair thanked the Chair of the General Assembly for the confidence that he had placed in him. The IGC Chair sought the guidance of the Chair of the General Assembly as to how to introduce to the plenary the draft proposal for a work plan which had been agreed upon in the informal consultations.

151. The Chair of the General Assembly requested the IGC Chair to read the proposal out.

152. The IGC Chair read out the proposal for the workplan as follows:

In accordance with the mandate of the IGC for 2012/2013, the Assemblies of the Member States of WIPO agree to continue intensive negotiations and engagement in good faith, with appropriate representation, towards concluding the text(s) of an international legal instrument(s) which will ensure effective protection of GRs, TK and TCEs, and decide:

- (a) The work of the Committee will be carried out through three thematic IGC sessions as set out in the table below.
- (b) The work will build on the existing texts submitted by the IGC to the General Assembly (Annex A, Annex B, and Annex C of document WO/GA/41/15).

- (c) The Committee is requested to submit to the 2013 General Assembly the text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs. The General Assembly in 2013 will take stock of and consider the text(s), progress made, and decide on convening a diplomatic conference.
- (d) The work of the IGC shall follow the program set out below:

<b>Provisional Date</b>	<b>Activity</b>
February 2013	IGG 23 - Genetic Resources (5 days)
April/May 2013	IGC 24 – Traditional Knowledge. With a focus on, but not limited to, 4 key Articles <i>viz</i> Subject Matter of Protection, Beneficiaries, Scope of Protection and Limitations and Exceptions (5 days)
July 2013	IGC 25 – Traditional cultural expressions. With a focus on, but not limited to, 4 key Articles <i>viz</i> Subject Matter of Protection, Beneficiaries, Scope of Protection and Limitations and Exceptions (5 days)  Review and take stock of the text(s) of the International legal instrument(s) ensuring the effective protection of TCEs, TK, and GRs and make a recommendation to the General Assembly (3 days)
October 2013	WIPO General Assembly  Decide on convening a diplomatic conference

153. The Chair of the General Assembly congratulated the IGC Chair and all those who had been involved in the informal consultations for having reached this agreement, requested the Secretariat to circulate hard copies of what had been read out and opened the floor for statements regarding this item.

154. The Delegation of Peru, on behalf of GRULAC, expressed appreciation for the work done by the IGC in order to achieve a legal text that would ensure effective protection for genetic resources (GRs), traditional knowledge (TK) and traditional cultural expressions (TCEs), pursuant to the mandate of the General Assembly given in 2011 and the intense work that had been done this year. There was a clear need to have three additional thematic sessions during 2013 prior to the General Assembly which would enable the IGC to conclude the negotiations as quickly as possible. GRULAC believed that for the last of these sessions, there should be at least three days in order to review the progress made in the negotiation text(s) and to formulate recommendations regarding calling a diplomatic conference on the basis of the progress made on the text(s). Finally, GRULAC considered it important for the Chair of the IGC to have the flexibility in order to undertake informal consultations as necessary, in order to expedite the process.

155. The Delegation of Hungary, on behalf of the CEBs, recognized that there was a wide range of needs concerning intellectual property and GRs, TK and TCEs. The CEBs had engaged in constructive consultations and highly appreciated the facilitators through which the number of options had been considerably reduced and key policy issues had been identified. The CEBs wished to reiterate their opinion that both draft objectives and principles and draft provisions needed further elaboration and refinement before a decision could be reached on the

creation of such an instrument or instruments. The task at the General Assembly had been to take stock of the progress and to define the future work program of the IGC for the remaining part of the biennium. The Chair of the IGC was thanked for having conducted informal consultations which had helped delegations arrive at a common agreement. The IGC Chair's stewardship had been an essential element in finding a compromise.

156. The Delegation of Sri Lanka, on behalf of the Asian Group, recognized that much work had been accomplished by the IGC in developing consolidated texts on TK, GRs and TCEs. However, the Asian Group was in agreement that there still remained work to be done. The Group recognized that, in order to address this matter and move the work forward in an expeditious fashion, a new calendar of sessions was required for the coming year. The Asian Group believed that, through continued constructive engagement and deliberations, the IGC could move towards a positive outcome. In order to achieve this, the importance of good faith and mutual respect for the legitimate objectives of all parties were emphasized. The Group appreciated the efforts of the Chair of the IGC, Ambassador McCook, both during deliberations at the IGC and during the informal consultations at the Assemblies. The Asian Group was confident that his able leadership would steer the IGC in the right direction, and looked forward to the convening of further informal sessions, in an inclusive and transparent manner, during the IGC and interim period, as means of expediting the work. Taking into account that there was work which remained to be done on the IGC text(s) and the commitment by all WIPO Member States toward a fruitful outcome in the IGC, the Asian Group recommended the endorsement of the convening of three thematic IGC sessions, the third of which would include an extended session of three days. The Asian Group remained committed to the deliberations within the IGC and looked forward to a successful outcome.

157. The Delegation of Egypt, on behalf of the African Group, thanked the WIPO Secretariat for the organization of the various sessions of the IGC, as well as the IGC Chair, Ambassador McCook of Jamaica, for his efforts and commitment during the sessions. The African Group attached great importance to the work of the IGC. The African continent, with its rich biological diversity, its well-known TK as well as its TCEs, believed that the conclusion of the work of the IGC would lead to an increase in the development and wealth of its populations. The Group expressed its appreciation for the contributions that had been made to the WIPO Voluntary Fund for representatives of accredited indigenous and local communities. During its current mandate, the IGC was to expedite text-based negotiations with the objective of concluding an appropriate international legal instrument or instruments for the protection of TK, TCEs and GRs. Through the three meetings organized so far, the African Group believed that the IGC had been able to make progress on texts relating to TK and TCEs. Contentious issues were related to only four articles (subject matter of protection, beneficiaries, scope of protection and limitations and exceptions). With goodwill and strong commitment and engagement from WIPO Member States, agreements could easily be reached on them. The Group also believed that more progress was needed on GRs. It was clear that in order to protect and preserve TCEs, TK and GRs, there was a need for a *sui generis* instrument or instruments. The process within the IGC should be also in line with the DA Recommendation 18. It was the view of the African Group that the WIPO General Assembly should send a strong message to the international community regarding the commitment of the WIPO Member States to conclude the work of the IGC. The spirit and success of Beijing should also prevail in the IGC. For the way forward, the African Group welcomed the proposal for the IGC's workplan. This proposal, reached after a long and sometimes challenging process of consultation, affirmed the agreement of WIPO Member States to intensify the IGC's negotiations, in good faith, with appropriate representation, towards concluding the text or texts of an international legal instrument or instruments which would ensure effective protection of GRs, TK and TCEs. To achieve this agreement, there would be three thematic IGC sessions, and these would build on the existing legal texts submitted by the IGC to the General Assembly and captured in document WO/GA/41/15. The last IGC session would be extended, and the African Group supported that it would be extended by three days, to review and take stock of the international legal instruments and make a recommendation to the General Assembly in 2013 so as to decide on

convening a diplomatic conference, which the African Group strongly supported would be held in 2014. The Group wished to request the IGC Chair to conduct informal consultations to build convergence on the key issues in the negotiations. The roadmap for the IGC to reach its desired destination was clearly set. With strong collective will and close engagement, the African Group was hopeful that agreement could be reached.

158. The Delegation of the United States of America, speaking on behalf of Group B, expressed its willingness to show flexibility and agree to extend IGC 25 on TCEs to three days. It expressed its sincere appreciation to the Chair of the IGC, Ambassador McCook, and his Vice-Chairs, for facilitating the informal consultations over the course of the week, as well as the sessions in the past year. It appreciated the progress that had been made by the IGC in exploring national practices, defining subject matter and clarifying differences in positions. Nevertheless, it had observed that divergent, and sometimes conflicting, objectives and principles persisted among Members States on this challenging subject matter. However, it was willing to continue the work of the IGC to find common ground on objectives and principles, and support the proposed IGC workplan in that regard.

159. The Delegation of China thanked the Secretariat for its positive work. It also thanked the Chair of the IGC for his efforts to promote the work. The Delegation would continue to support the Chair and hoped that the Assemblies of the Member States of WIPO would provide a mandate for the Chair to hold all kinds of informal consultations during and in-between sessions. It had noted that IGCs 20, 21 and 22 had conducted careful discussions and had three texts reflecting the opinions of all countries. It was pleased to see that text-based negotiations had been very fruitful and the IGC had achieved substantial progress. However, it had also noted that differences still remained on some important issues which would need further consultations. In order to have enough time for sufficient discussions, the Delegation supported having three thematic IGC sessions in 2013, and to have three more days for IGC 25. The Delegation called upon all countries to have constructive and open attitudes in order to reach consensus on the pending issues. That would lay a good basis for a diplomatic conference. It hoped that WIPO could provide more support to the IGC, including increasing the budget for the IGC, so that the IGC could reach satisfactory results after the long discussions.

160. The Delegation of Cyprus passed the floor to the Representative of the European Union.

161. The Representative of the European Union, speaking on behalf of the European Union and its member states, recognized the importance of the work carried out by the IGC. It welcomed the steps made by the IGC along the path to completing the mandate adopted by the 2011 Assemblies of the Member States of WIPO. It extended words of gratitude and recognition to the facilitators through whose efforts the number of options and objectives had been reduced. The IGC had made good progress on TCEs, TK and GRs. The European Union and its member states looked forward to completing the mandate set by the Assemblies of the Member States in 2011. However, such an international instrument(s) should be flexible, sufficiently clear and non-binding. In that respect, it wished to remind Member States that no decision had been reached on the nature of the instruments to be adopted. Once the IGC achieved solid, clear and consolidated texts, and only then, would it have to decide on the nature of the contemplated instruments. As the work undertaken by the IGC was far from being mature, it was regretted that no discussion on future work had been held in advance of the 2012 Assemblies of the Member States of WIPO. The Representative thanked the IGC Chair for efficiently conducting informal consultations on the margin of the meeting to allow the elaboration of a work program for 2013, in the framework of the current IGC mandate. The European Union and its member states could go along with the proposed work program. For obvious financial reasons and also bearing in mind the necessity to manage WIPO meetings more efficiently, in future they would prefer to avoid agreeing to extended sessions of work. As a compromise, and also in view of having sufficient time to take stock of the substantive discussions of the IGC and to discuss future work, an extension of three days for the session planned in July 2013 could be agreed to. It was the understanding of the

European Union and its member states that there would be a general endeavor to wrap up in two days and that at least one day should be dedicated to discuss future work. The European Union and its member states remained committed to contributing constructively to the work of the IGC, in order to reach the goals set under its mandate.

162. The Delegation of Indonesia, speaking on behalf of the Like-Minded Countries (LMCs), recalled that the protection of TK, TCEs and GRs was important to both developed and developing countries. The LMCs had taken the initiative. The third meeting of the LMCs on TK, TCEs and GRs had taken place in Bali, on June 27 and 28, 2012. The objective was to further advance the negotiation process on TK, TCEs and GRs. Indeed, the IGC had done much work and achieved significant progress. The IGC had successfully produced a single text for each respective issue. It was confident that, in a not too distant future, by having intensive, constructive and continuous dialogue among Member States, a final conclusion could be reached. In achieving that conclusion, it was crucial that Member States had ample opportunity to negotiate within the IGC. On that basis, the Bali meeting had also adopted a joint recommendation on how to advance the work of WIPO to establish an international legal instrument(s) on TK, TCEs and GRs. The LMCs underscored the importance of convening a diplomatic conference to conclude a *sui generis* international legal framework to ensure the effective protection of GRs, TK and TCEs. The absence of the international legally binding regime to protect those valuable resources would perpetuate the current imbalances of a global IP system that served the interest of some, while ignoring the legitimate rights and interests of others. Hence, there was an urgent need for the IGC to expedite its work. It believed that the work program of the IGC as referred to in its current mandate needed to be revisited. With a view to convening the diplomatic conference in 2014, some more sessions would be required in 2013 in addition to the one session in its current mandate. Such additional negotiations should be held for the purpose of continuing current deliberation on some outstanding issues and achieving possible points of convergence towards concluding the text(s) of an international legal instrument(s) which would ensure effective protection of GRs, TK and TCEs. Therefore, the LMCs recommended that the Assemblies of the Member States of WIPO endorse the proposal for the IGC work plan resulting from the informal consultations among the regional coordinators led by the Chair of the IGC. Regarding the time allocation of the extended IGC session, it believed that three days should provide sufficient time for the IGC to deliberate on the cross-cutting issues. With the objective of expediting the work of the IGC, it believed that the Chair of the IGC should have the flexibility to conduct and participate in informal consultations as appropriate. All results of those consultations should be presented to the IGC plenary for consideration.

163. The Delegation of Thailand strongly supported the work of the IGC to develop an international binding instrument(s) to ensure effective protection of GRs, TK and TCEs. It was pleased with the considerable progress that had been made so far in the text-based negotiations in all three areas. It thanked the Chair of the IGC, Ambassador McCook, and the facilitators for their hard work and able stewardship. However, much work remained to be done. There was a need to expedite the work of the IGC to pave the way towards the convening of a diplomatic conference in the near future. The workplan of the IGC in 2013 should provide sufficient time to address GRs, TK and TCEs separately, as well as to review them in tandem to ensure necessary alignment and compatibility across different areas. Therefore, it was strongly in favor of the proposal to hold three thematic sessions plus one for stocktaking of all three issues. There should be more flexibility in the format. For example, in line with the principle of inclusivity and transparency, more informal consultations could be convened during and in-between sessions, the results of which should be reported to the plenary for further action or decision. The IGC Chair should be mandated to convene those informal consultations as appropriate. Besides the legally binding instrument(s), the protection of GRs, TK and TCEs against misappropriation also required supporting the infrastructure and appropriate measures at national level and beyond. That included compilations of database on GRs, TK and TCEs, as well as the establishment of the appropriate mechanisms to comply with obligations on prior

informed consent and access and benefit-sharing. It encouraged WIPO to provide more technical assistance and promote the sharing of experiences and best practices in those areas.

164. The Delegation of Argentina thanked the Chair of the IGC, Ambassador McCook, for his efforts made over the past year and during the 2012 Assemblies of the Member States of WIPO, which could possibly lead to the adoption of the program of future work in line with Recommendations 15 and 18 of the DA. The IGC had carried out a lot of work under its mandate. The Delegation expressed its satisfaction with the constructive participation of Member States in the IGC. It was pleased to see a consolidated text which reflected the priorities and the interests of all Member States and even the views of the NGOs. The Delegation believed that it was necessary to discuss a legal framework ensuring the effective protection of GRs, TK and TCEs. The Delegation hoped that the process would be consistent with the objectives of the Convention on Biological Diversity (the CBD) and the Nagoya Protocol.

165. The Delegation of Australia stated that the work of the IGC related to fundamental policy issues relevant to Australia, in particular, how it protected and supported its unique and vibrant indigenous people and culture and how it protected and gained economic benefits for all Australians as a mega-diverse continent. Those policy interests touched on both moral and economic issues. As such, the Delegation sought tangible outcomes of the work of the IGC which met its policy interests, but were flexible enough to address the interests of all Member States. It asked all Member States to reflect on the diversity of the national environments that those complex issues would need to operate in, for example, how indigenous communities or peoples were recognized and were represented in individual nations. Clearly, one size could not fit all. Instruments should provide a framework which supported flexible domestic implementation. Instruments should not be overly prescriptive based on individual national circumstances, as those could be addressed during the development of domestic regimes without burdening other nations with provisions that were not relevant to their national circumstances. Balanced instruments would be important if the IGC addressed two fundamental policy issues: (1) protection and respect for unique indigenous cultures and protection of unique GRs; and (2) maintaining accessibility of those resources and knowledge to support creativity, innovation and social good. There were two key policy issues with respect to those intersecting issues: (1) ensuring certainty within the IP system, without which economic benefit would not flow; (2) ensuring, where appropriate and with prior informed consent, access to knowledge and resources. In relation to the status of the current negotiations and future work, the Delegation believed that, until recently, the IGC had not been negotiating. It had been simply restating the particular policy positions of Member States and refining text. That had still been productive as it had enabled all policy issues across the three areas to be put on the table. However, if the IGC was to make real progress, it needed to start gaining a shared understanding of the different positions and start to negotiate those, in particular, key policy divergences and approaches. In recent meetings, the IGC had started to do that, reflected in the productive progress that had been made within the experts group at the last IGC. The Delegation particularly thanked the Chair of the IGC for his efforts in that area. In addition, the Delegation had seen countries with different views starting to reach out to each other bilaterally and through recent opportunities such as the LMCs' consultations with a number of countries outside of the LMCs. The Delegation felt that sufficient time and space was required to complete those negotiations. That would ensure that the negotiations had the best chance of success, which could only be achieved when there was a real political commitment across all Member States, otherwise any outcome was likely to be elusive. With that in mind, the Delegation asked that Member States continue to reach out to each other to discuss their differences. In the end, it would be that type of activity which would ultimately bring the negotiations to a conclusion. The Delegation remained flexible on the options for future work and supported the proposed work program. It remained committed to engaging in good faith with all Member States on the important substantive issues under consideration in the IGC, with the objective of negotiating an effective international legal instrument(s) to protect GRs, TK and TCEs.



166. The Delegation of Colombia supported the statements made by the Delegation of Peru on behalf of GRULAC and the Delegation of Indonesia on behalf of the LMCs and stressed the efforts made to put in place legal texts that would ensure IP protection for GRs, TK, and TCEs. It acknowledged that the IGC needed an appropriate number of additional sessions in order to ensure that the General Assembly be in a position to consider a diplomatic conference. The Delegation therefore supported the proposed workplan for 2013, as it would include three thematic meetings of five days each on GRs, TK and TCEs respectively, with the addition of a cross-cutting meeting of three days in order to, on the one hand, review and assess the text of an international legal instrument or instruments which would provide for the appropriate protection of the GRs, TK and TCEs and, on the other hand, formulate a recommendation to the General Assembly. The Delegation reaffirmed as well that the convening of informal consultations was within the prerogative of the Chair of the IGC, should he consider it as necessary in order to ensure progress in the negotiations. It thanked also the Chair of the IGC for the objective and skillful way in which he had carried out his functions.

167. The Delegation of Brazil, speaking on behalf of the DAG, thanked the Chair of the IGC for his excellent stewardship and for leading the most recent informal consultations. The DAG attached great importance to the work of the IGC and was entirely committed to contributing actively to achieving a robust legally binding instrument or instruments. Significant progress had been made in the three thematic sessions held in 2012 and the DAG noted that the IGC had developed a single draft legal text in each area of negotiation. With the aim of speeding up the pace of negotiations, it supported an ambitious update of the IGC work program approved by the 2011 General Assembly, in order to conclude the negotiations on TK, TCEs and GRs. This was why it supported the scheduling of three thematic sessions, plus additional time to review, take stock and make recommendations to the General Assembly. In addition to an adequate number of meetings, the DAG also believed that informal consultations could play a key role in expediting the work of the IGC on the three texts, as they could provide further impetus by allowing for more dynamic exchanges of views in order to foster convergence. It requested that the results of those consultations should, as usual, be reported back to the plenary of the IGC, as the IGC was the only legitimate forum to make recommendations to the General Assembly. The DAG encouraged the Chair to engage in this consultation exercise. Regarding the extensive consultations that had been organized on the 2013 IGC work program, the DAG was deeply disappointed that it had taken so long to reach agreement on the number of days for the last IGC session scheduled for 2013. The DAG was convinced that three additional days were the very minimum necessary to review and take stock of the progresses made on three different texts over 15 days of formal meetings. Putting the issue in perspective, it reminded that the African Group, the LMCs and the DAG had proposed to have four IGC sessions in 2013. Those groups had shown flexibility in order to achieve consensus. It wondered how delegations could be engaged in achieving results and, at the same time, limit the space for reviewing, taking stock and making recommendations. Comparing the progress made so far in the three texts, it observed that the text on GRs needed to be further developed in order to be brought to the same level of maturity that had been reached for the texts on TK and TCEs. It was essential to advance the negotiations on GRs and the inclusion of a mandatory disclosure requirement was crucial. The DAG looked forward to helping develop the legal text on GRs and expressed the hope that all three texts reached an equal and high level of maturity before its presentation to the 2013 General Assembly. Political commitment from Member States was necessary in order to streamline and conclude the three texts. With sufficient energy and commitment, a diplomatic conference to finalize negotiations on the three areas could be convened in 2014.

168. The Delegation of Trinidad and Tobago aligned itself with the statement made by the Delegation of Peru on behalf of GRULAC and thanked the Chair of the IGC for steering the IGC in the right direction. It congratulated WIPO on the continuing efforts of the IGC as it carried out its mandate leading up to the 2012 General Assembly. The Delegation believed that a tremendous amount of progress had been made at the IGC. Progress up to the twentieth IGC session regarding GRs had been slow as there were a number of diametrically opposed

proposals contained in several documents, which presented a formidable challenge to forming consensus on a text or texts as per the mandate of the IGC. Due to the efforts of the Chair of the IGC, the twentieth session resulted in what looked very much like a working text with all issues reflected in a flowing and organized format that would make future work easier. The Delegation noted, though, that there remained a challenging and tremendously ambitious task ahead of the IGC. While a lot of work had gone into the draft articles regarding TCEs and TK, the Delegation noted that the text on GRs was just starting to take shape. The Delegation welcomed the intense negotiations which lay ahead and said that it anticipated that this would lead to proposals for the development of a binding international legal instrument for discussions. Not only should indigenous groups continue to be actively heard, but Member States should continue to openly engage them in proactive dialogue and, where applicable, support feasible proposals. Without the support of Member States, their views and proposals would not form part of the legal framework which the IGC was attempting to create. The Delegation reminded that it had several proposals under consideration regarding TCEs, most important of which was its support for the inclusion of the term 'works of mas' in the TCEs text. The Delegation noted that it had gained more support during this year for the inclusion of 'works of mas' as a TCE and thanked the supportive delegations. The Delegation supported the proposed work program as submitted by the Chair of the IGC, including three further thematic sessions of the IGC in 2013. It remained confident that the work and efforts of the IGC undergone thus far and to be foreseen in 2013 would enable the General Assembly to move ahead in the convening of a diplomatic conference in 2014.

169. The Delegation of Ethiopia endorsed the statement made by the Delegation of Egypt on behalf of the African Group. Innovation and creativity, when combined with an abundance of natural resources and strong cultural identity, could be a key driver for culture-based economic prosperity. The Delegation reminded that its country had a rich biodiversity and cultural heritage, including traditional arts and handcrafts. Such heritage constituted a bridge linking the country's past, present and future and provided a source of wealth creation. Given that fact, the protection of GRs, TK and folklore was a matter of crucial importance for Ethiopia. The Delegation, therefore, reiterated its support for the establishment of an internationally legally-binding instrument for the protection of GRs, TK and folklore. It recalled that the IGC's work towards a legally binding treaty or treaties was a priority for LDCs like Ethiopia, as its success would provide innovative means for developing their rich and diverse GR, TK and TCEs. Good progress had been made in the work of the IGC in 2012. The Delegation believed that political will was of particular importance to expedite the negotiation process and convene a diplomatic conference in 2014. The process should continue on the basis of the existing documents. The Delegation of Ethiopia was also of the view that a conclusion of the negotiations on the international legal instruments would end the current imbalances in the global IP protection system. It was its fervent hope that further progress by additional IGC sessions would result in a decision by the next General Assembly on convening a diplomatic conference in 2014. The time was ripe to intensify the negotiations and fulfil the extended mandate of the IGC as decided by the Member States at the 2011 General Assembly.

170. The Delegation of the United States of America stated that it had actively participated in the IGC process since its inception. The Delegation reminded that, in this process, it had shared national experiences, exchanged views on objectives and principles, and participated in the discussions on texts. It appreciated the progress that had been made by the IGC in exploring all of these. However, it had observed a wide divergence of views with regard to the texts, as noted in the statement that it had made on behalf of Group B. The Delegation greatly appreciated the strenuous efforts of the Chair of the IGC. While it could support the work program that had been proposed for 2013, it reminded of its general objection to extended sessions of WIPO meetings.

171. The Delegation of Sri Lanka aligned itself with the statements made respectively by the Delegation of Brazil on behalf of the DAG and by the Delegation of Indonesia on behalf of the LMCs, and with the statement it had made on behalf of the Asian Group. It said that one would only have to take a quick glimpse at Sri Lankan history to know the crucial role that TK, TCEs and GRs had played. This was why it attached the utmost importance to the deliberations that were taking place within the IGC. The Delegation took note of document WO/GA/41/15 and welcomed the significant progress the IGC had made in developing consolidated texts on TK, GR and TCEs. It recognized, however, that there was still more work that required to be done, which was why it agreed that a new calendar of meetings for the coming year needed to be elaborated upon, addressing all three areas of the IGC work. It also expressed its appreciation toward the Chair of the IGC for his able guidance in steering discussions within the IGC. It was appreciative of the informal consultations the Chair of the IGC had agreed to convene on the matter and was confident that the proposed work program would move the process forward. It commended the work of the LMCs under the leadership of Indonesia, and the initiatives taken at the Bali meeting in June 2012. The Delegation of Sri Lanka expressed support for the proposal made by the Chair of the IGC as a result of the informal consultations and agreed that the extended segment within the July 2013 IGC session should include three days for stocktaking. It remained committed to the IGC's deliberations and looked forward to a successful outcome.

172. The Delegation of Jamaica aligned itself with the statement made by the Delegation of Peru on behalf of GRULAC. It commended the Chair of the IGC and the Secretariat for the significant work that had been done in the IGC and for the additional sessions that were now agreed on for continued deliberations by the IGC throughout 2013. It recognized that it was often very challenging to reach consensus in all areas. Given the decades of hard work on this subject matter by the IGC, Jamaica very much wished to see successful advancement in achieving consensus in the fundamental outstanding issues within the IGC in a timely manner. It assured delegations of its continued constructive contribution in working towards a successful resolution of the unresolved issues, towards an international legal instrument and the convening of a diplomatic conference in the near future. A successful outcome would ultimately inure to the benefit of the rights holders and stakeholders of GRs, TK and TCEs worldwide.

173. The Delegation of the Russian Federation pointed out that, at the negotiations held by the IGC during 2012, significant progress had been made. However, to fulfill the mandate, further substantive work needed to be done on the texts concerned. The recommendations of the DA had to be taken into account, in particular Recommendation 18. It supported the call made in the recommendation "to accelerate the process on the protection of genetic resources, traditional knowledge and folklore". The Delegation considered appropriate to work on individual texts for the documents in relation to each subject matter of protection. It should be borne in mind that each document should be flexible, sufficiently clear, and not be binding in nature. It thanked the Chairman of the IGC for the intensive work which had led to a clear work program, allowing appropriate attention to be devoted to all the issues under consideration.

174. The Delegation of South Africa supported the statements of the African Group and of the DAG. It also supported the current proposal for the future work on the IGC. It expressed its appreciation for the work of the Secretariat. It wished to place on record its appreciation of the role of Ambassador McCook as Chairman of the IGC, noting his commitment and insightful leadership. It took note of the WIPO Director General's positive report of how the last 12 months had been a good year for the Organization. However, the Delegation noted that the last 12 months had not witnessed such overwhelming positive results in the IGC. Progress could only be reported on the development of one single document for GRs. There had been limited progress on the TK and TCEs documents, as the IGC had become a battleground for intense competition between parties that wanted to see a rules based international system and those opposed to seeing the norm-setting process culminate in the mandated outcome of an international legal instrument or instruments which would ensure the effective protection of GRs, TK and TCEs. While celebrating the Beijing Treaty, the Beijing spirit had been absent from the

IGC process. The IGC had been characterized by brinkmanship culminating in the lengthy documents on TK and TCEs. It agreed with the Director General of WIPO when he stated that an international instrument on IP and GRs, TK and TCEs was a major priority for the Organization. The Delegation noted that the failure to reach the aspiration set out in the 2011 General Assembly' mandate (which was within the reach of the IGC) was due to the lack of political will and commitment to a shared idea of norm-setting for a win/win situation. In order to avoid another failure at such a high price, South Africa called for a radical mindshift and a great deal of commitment towards a balanced and purposeful engagement on the norm-setting agenda of the IGC on the part of all delegations. It was possible to build on the excellent "spirit of Beijing" to take forward the work of the Organization in other key areas, including the IGC. It acknowledged that the issues were often complex and multifaceted. In approaching those issues, Member States had invariably failed to find a necessary compromise and consensus to enable them to move forward on substantive issues. South Africa had and would continue to engage, sometimes robustly, in a frank discussion of the many items on the agenda, but, in so doing, it would remain committed to making progress on them with a view to serving the common cause of the entire constituency of the Assemblies. The Delegation was committed to cooperating with other Member States in the shared pursuit of promoting and securing the full enjoyment of the rights of all citizens of South Africa. Regarding matters of the IGC, it noted the broad consensus amongst developing countries towards a diplomatic conference. While it fully supported a diplomatic conference, it stood ready to constructively engage with all interested parties, in a spirit of open-mindedness and cooperation, on that important issue. It was of the view that a diplomatic conference would provide a unique opportunity for WIPO Member States to demonstrate their commitment to and respect for the TK and TCEs of indigenous peoples and local communities that harked back from 2000. The Delegation had worked under the leadership of Egypt, on behalf of the African Group, to arrive at the current agreed-upon proposal. The agreement had been arrived at in a spirit of give and take. It hoped that the spirit reminiscent of Beijing would permeate future negotiations in the coming year to allow for the General Assembly in 2013 to take stock and decide on a diplomatic conference in 2014. International legal instrument(s) presented a win/win situation that would create certainty in the exploitation of IP on GRs, TK and TCEs for the benefit of humankind. It reiterated its support of the entire proposal agreed upon by all parties, stressing the need for three thematic sessions plus one session to review and finalize documents for the 2013 General Assembly. It had shown flexibility in agreeing to three meetings instead of four, provided the third meeting was an extended IGC focusing on both the third theme and a session that would review and finalize text(s) of an international legal instruments (s) which would ensure the effective protection of GRs, TK and TCEs. It was also in total support for a clear work programme of work prioritizing the focus on but not limited to the outstanding policy issues.

175. The Delegation of Paraguay supported the statement made by the Delegation of Peru on behalf of GRULAC. It attached great importance to the work of the IGC. It wished, along with other countries, to have a legally binding instrument in the coming months. The work should be intensified in order to make the best use of the negotiations and to take an important decision at the 2013 General Assembly. The documents were not yet sufficiently mature but if Member States had the will to make progress, they would be able to achieve an international consensually-agreed instrument. It was time to accelerate the negotiations and to come together. It hoped to achieve a productive result in the coming year.

176. The Delegation of Zambia fully supported the statement made by the Delegation of Egypt on behalf of the African Group. It was pleased with the work being undertaken in the IGC sessions and the IGC itself. Zambia had just completed the drafting of a bill for the protection of TK, GRs and TCEs on the model of the Swakopmund Protocol under ARIPO. When that bill was enacted by the Parliament, it would set guidelines for the protection of TK, GRs and TCEs. It trusted that when the international legal text was completed under the IGC, Zambia would use some of the provisions to enhance the protection of those resources. Over the years, it had experienced rampant exploitation of its natural resources by unscrupulous people and organizations who had taken advantage of the absence of an effective law to protect TK and

other resources, thereby greatly disadvantaging the local communities who should otherwise have been the principal beneficiaries of those natural endowments. It was gratifying to note that Member States had agreed to continue intensified negotiations and engagement in good faith with appropriate representation. It was hopeful that when work on the legal texts was completed, Zambia would provide adequate protection of those resources. Its country had abundant natural resources in the form of TK, GRs and TCEs which were not adequately protected to date. It had various traditional ceremonies which attracted large numbers of tourists to Zambia. As tourism was one of the major economic sectors of Zambia, TCEs played a very important role in attracting tourists and providing the much needed foreign exchange for national development. TK played a very important role in the provision of medicine. It had been estimated that about half of its population in the country resorted to traditional medicine before seeking western medicine. It was easy to see that the absence of adequate protection of those resources would subsequently lead to Zambia losing out on the benefits. The Delegation was confident that the work of the IGC would yield positive results in due course. It looked forward to the rapid and effective completion of the international legal texts which would ensure the effective protection of GRs, TK and TCEs. It looked forward to the convening of a diplomatic conference in the shortest possible time.

177. The Delegation of Nigeria associated itself with the statement of the Delegation of Egypt on behalf of the African Group. It thanked the Chair of the IGC and all Member States involved in the informal consultations for their hard work and commitment to reaching agreement on the workplan. It encouraged the Assembly to accept the workplan as proposed, as it was balanced and gave adequate and equal time for the IGC to continue its work based on the texts contained in the annexes of document WO/GA/41/15 submitted to the Assembly by the IGC. It looked forward to the conclusion of the work of the IGC with an effective legal instrument for the better protection of GRs, TK and TCEs. The Delegation expected to have a binding legal instrument. It called on the General Assembly to extend the workplan of the IGC for the 2013/2014 biennium with a view to convening a diplomatic conference in 2014 to negotiate an international binding legal instrument on the protection of GRs, TK and TCEs. The Delegation underlined the fact that important global structural questions of fairness and opportunities had to be confronted with courage, honesty and transparency. It strongly believed in the good that could be achieved through clear goals and commitment to uniform rights. It encouraged other delegations to demonstrate the flexibility and political will that would be instrumental to reaching an equitable, binding legal instrument on GRs, TK and TCEs. Those goals could be achieved if all Member States were willing.

178. The Delegation of Norway appreciated the agreement on the workplan for the IGC and associated itself with the statement of Group B. It wished to achieve concrete results in the process, bearing in mind the need of indigenous peoples and local communities for respect and recognition of their TK and TCEs. It underlined the importance of the rules which regulated disclosure regarding GRs and TK in patent and plant variety applications. With respect to TK and TCEs, the Delegation was supportive of a legally binding instrument or instruments, provided that the delimitations of rights were clear and that they secured a robust public domain and also secured reasonable exceptions and limitations. It also expressed its appreciation for the opportunity to be involved with the Group of LMCs as observers in the June 2012 meeting in Bali, Indonesia.

179. The Delegation of Nepal associated itself with the statements made by the Delegation of Sri Lanka, on behalf of the Asian Group, and the Delegation of Indonesia, on behalf of the LMCs. It underlined the importance of a binding international treaty or treaties to effectively protect GRs, TK and TCEs against biopiracy and misappropriation. Such a treaty (or treaties) was critical to ensure the sustainable use of those resources, as well as the fair and equitable sharing of benefits. Effective preservation and appropriate use of GRs, TK and TCEs could greatly contribute to enhance competitiveness of economies in developing countries and LDCs. More broadly, conclusion of a new treaty would contribute towards promoting a balanced IP system and would signify that all countries' interests were taken on board in the global IP

system irrespective of their developmental level and level of technological strength. It was necessary to be guided by Recommendation 18 of the WIPO DA. It took positive note of the progress made so far in developing the legal text(s). The Delegation stressed the need to accelerate the pace of negotiations. Work should focus on finding agreement in an expeditious manner on the substance of the text to reach a meaningful outcome. For over 10 years, the IGC had been engaged in the task and it should not delay in giving maturity to the texts. It endorsed the agreement reached through informal consultations on the proposed workplan for 2013. It commended the excellent efforts of the IGC Chair in steering the work of the Committee, as well as in reaching the compromise agreement on the Committee's workplan for the year ahead.

180. The Delegation of Algeria thanked the Secretariat for the excellent organization of the IGC meetings. It supported the statements made by the Delegation of Egypt, on behalf of the African Group, and of the Delegation of Brazil, on behalf of the DAG. It saw the IGC as a symbol of WIPO's balanced approach. The IGC characterized the development-friendly approach that Member States had wanted to give to WIPO's activities, notably through the adoption of the DA. It stated that the IGC had been set up on a request by the African Group, and since then, the African Group had continued to provide proposals to the IGC as a basis for its work. The Delegation had been active in those efforts and would continue to do so. It welcomed the work accomplished during the last meetings of the IGC, which had contributed to developing legal instruments to protect TK and TCEs. The Delegation was nevertheless concerned about GRs, and hoped that the coming meetings would help move forward on that issue. It appreciated the workplan and hoped that the negotiations would be successful in order to adopt one or more legally-binding instruments in order to protect GRs, TK and TCEs against misuse and misappropriation. The Delegation, therefore, supported the adoption of the work program which emphasized the continuation of negotiations in good faith by all delegations. That would enable the IGC to continue its text-based negotiations in order to have specific results for the protection of GRs, TK and TCEs. It thanked the Delegation of Indonesia, as coordinator of the LMCs, for the regional meetings that had allowed negotiations to move forward. It particularly thanked Ambassador McCook for his unstinting efforts and his commitment to the work of the IGC. The Delegation was certain that, through the informal consultations the Chair might call, the IGC would move in the right direction. It concluded with a solemn appeal to all Member States to show genuine political commitment, and not just through statements of intention, in coming to the IGC to negotiate in good faith in order to achieve effective protection of GRs, TK and TCEs. It stated that the SCCR was advancing, so was the SCT, and that only the IGC was not. It was time to correct that anomaly and ensure that all the progress made in the other committees inspired Member States to do the same within the IGC.

181. The Delegation of Canada thanked Ambassador McCook for the time he had devoted to Member States in engaging in consultations in order to determine the IGC's work program. It also thanked him for his dedication as Chair of the IGC. The Delegation welcomed the progress achieved by the IGC since the last session of the General Assembly on the three negotiating texts. It was clear, however, that there were many differences that still separated Member States, in particular on fundamental issues such as the scope and nature of the texts, as well as their relationship with existing international instruments. The Delegation was pleased that for the remainder of the 2012-2013 biennium, the IGC would continue to improve the three texts in the hope of achieving an agreement that would be of good quality. One should not lose sight of the fact that the assessment of the advancement of the texts should be done on the basis of their content. It was counterproductive to hurry a process whose content was not yet mature. The Delegation was fully committed to the IGC process, and was pleased to continue to work with all Member States in order to achieve a mutually acceptable and excellent result.

182. The Delegation of Brazil fully supported the statements delivered by the DAG, the LMCs and GRULAC. The IGC had reached a crucial moment in its negotiations. It needed a demonstration of commitment of Member States to the conclusion of robust international instrument(s) in this area. At the 2009 and 2011 General Assemblies, Member States had agreed on ambitious mandates to allow for the conclusion of negotiations on the three themes of discussion, namely, GRs, TK and TCEs. Those ambitious mandates had not been wasted: the IGC had one single text for each area of negotiation. In order to accelerate the pace of negotiations, the Delegation approved the intensive workplan, which was in accordance with the spirit of the IGC's mandate. It thanked Ambassador McCook for his excellent chairing of the IGC, as well as for his tireless efforts in reaching an agreement during the consultations. The African Group, the LMCs and the DAG had presented a joint proposal that included four IGC meetings before the following General Assembly, with a view to convening a diplomatic conference in 2014. The Delegation had shown flexibility to accommodate the needs of other delegations, and it was glad that the proposal had achieved consensus. It called for Member States to show commitment to the proposed workplan and the conclusion of the negotiations. The IGC could not continue to have extensive discussions over formal matters. It urged Member States to engage with strong will and good faith in substantive negotiations that could lead to the conclusion of the three texts. In that view, it encouraged the IGC Chair to hold informal consultations on the main issues. That process could help participants commit on solutions that could lead to a robust international instrument or instruments.

183. The Delegation of Zimbabwe paid tribute to Ambassador McCook for his dedicated services to the work of the IGC and also appreciated the efforts exerted by Member States and the Secretariat. It called for the IGC's work to be expedited in order to reach finality. The work program had been supported by consensus. Some delegations had stated that substance determined the outcome and had made reference to the maturity of the text. It was the IGC that drove the text to maturity, and if it continued with the posturing, politicking and feet dragging, the text would not develop to maturity. It hoped that the statements showing commitment would translate into action. It said that the spirit of Beijing had withered away during the informal consultations. The protection of GRs, TK and TCEs which had been misappropriated for centuries, could not be guaranteed by soft law. WIPO did not administer recommendations. WIPO administered treaties, legally-binding treaties. Those who did not like the treaty could opt not to sign it. The Delegation called for a legally-binding international instrument. The Delegation was a demandeur and was one of the most affected. It did not see progress: the text had gone from a few pages to many pages. Progress was not to be judged by the text's number of pages.

184. The Delegation of Bangladesh aligned itself with the statements made by the Delegation of Sri Lanka on behalf of the Asian Group, and the Delegation of Egypt on behalf of the African Group. It thanked the Chair of the IGC for his excellent contribution and stewardship to reach a consensus. The Delegation was happy to have three IGC sessions in 2013. With every session of the IGC, one came closer to reaching an understanding. It thanked all the Member States for showing a spirit of compromise. The issues were important for all countries, developed or developing. The idea of discussing the three issues together and the option of having even a single text implied that the three issues had to be considered collectively. A chain was only as strong as its weakest link, and it did not want any of those issues to be the weakest link. It wished to resolve all three issues equally as part of a single package without creating a hierarchy or order among them. Otherwise, it would create uncertainty for the users. So whatever time and opportunity it had, the IGC had to spend it judiciously in line with clearly-defined work program. The IGC's efforts would be based on the existing texts. However, extending the number of IGC sessions was only passing the first barrier. The main challenge was to further develop the available texts in a manner agreeable to all. That would require continued and concerted efforts through constructive discussion. The less time spent on argument, the more time was left for dialogue. It hoped to have a diplomatic conference in 2014. It preferred to have binding treaties. It hoped that Member States would display a spirit of compromise.

185. The Delegation of El Salvador expressed its support for the statement made by the Delegation of Peru, on behalf of GRULAC. In respect of the IGC's work, taking as a basis the technical work that had been done, and the documents to date, the Delegation felt that it had not reached a sufficient level of maturity. It recalled that it was important for the General Assembly to give guidelines for the IGC's work, including a workplan of meetings, so that the IGC could finish the technical work and proceed to the convening of the diplomatic conference so as to achieve those objectives. It congratulated the IGC Chair for his work. It supported the workplan, which represented an agreement among the regional groups. It hoped that the IGC Chair could continue to direct the work so as to achieve results, and be able to hold informal consultations when necessary. Finally, it assured Ambassador McCook that he could count on the Delegation's support.

186. The Delegation of Switzerland thanked the IGC Chair for his unfailing commitment and great patience in directing the work and consultations of the IGC. The Delegation supported the work of the IGC, and stressed that, in the last few years, the IGC had been able to make more substantial progress on GR, TK and TCEs thanks to constructive work and a spirit of dialogue. However, the IGC's work was not over and that important subjects were still to be dealt with. The Delegation welcomed the commitment made in the workplan for 2013 and highlighted that working on the substance should be and remain at the heart of the process. The Delegation hoped for the possibility of convening a diplomatic conference during next General Assembly. It highlighted the importance of continuing to respect the principles of inclusivity and transparency, whether during the IGC or during consultations. It also stressed that the principle of multilateralism should be respected in the IGC and that the IGC should remain the forum for discussions and decisions. Moreover, the Delegation stated that the texts in Annexes A, B, and C of document WO/GA/41/15 would be useful to focus the IGC's work, but other useful documents and proposals containing the past work of the IGC shouldn't be forgotten. The Delegation then highlighted the great importance of the participation of indigenous representatives at all the meetings where their rights and interests were concerned, adding that their participation in the future work of the IGC would be crucial in order to find appropriate and practical solutions for the problems affecting GRs, TK and TCEs. Finally, the Delegation observed that the Voluntary Fund had no longer the necessary financial means to fund the participation of indigenous representatives and, therefore, called on all State Members, as well as on other possible donors, to contribute to the Fund to ensure the effective participation of indigenous representatives.

187. The Delegation of Cuba highlighted the work done by the IGC, which was extremely important for the achievement of an international instrument for the effective protection of TK, GRs and TCEs, considering the links with the CBO and the Nagoya Protocol. The Delegation enhanced the importance of convening a diplomatic conference as soon as possible. Finally, it supported the statements made by the Delegation of Brazil, on behalf of the DAG, and the Delegation of Peru, on behalf of GRULAC.

188. The Delegation of Iran (Islamic Republic of) highlighted the importance of the work of the IGC, which had progressed considerably. At this stage, the work needed to be accelerated and geared towards concluding international binding instrument(s). Therefore, the Delegation supported the workplan for 2013, which reflected the flexibility of all regional groups. Moreover, the Delegation hoped that the constructive engagement and good faith that had helped prolong the work of the IGC would pay off in the coming year and that IGC members would meet their commitment in concluding the work of the IGC.

189. The Delegation of Japan highly appreciated the strong leadership of the IGC Chair and assistance of the Secretariat, as well as the efforts made by Member States which had enabled the IGC to conduct vigorous discussions on the difficult issues, increasing mutual understanding and respect for each other. However, discussions had not been mature enough for the IGC to determine the future direction regarding this complicated issue. The Delegation associated itself with the statement made by the Delegation of the United States of America, on behalf of



Group B. It strongly believed the importance of keeping advancing discussions on the three issues (TK, TCEs and GRs) on an equal footing, patiently and steadily, step-by-step in accordance with the current mandate, as these issues had been addressed tenaciously. Therefore, the Delegation fully supported the workplan for 2013.

190. The Delegation of India aligned itself with the statements made by the Delegation of Brazil, on behalf of the DAG, and the Delegation of Sri Lanka, on behalf of the Asian Group. It appreciated the considerable efforts of the IGC Chair in steering the work of IGC and the guidance provided by him during the informal consultations. The Delegation was pleased with the considerable progress made in the IGC, on GR, TK and TCEs, as well as with the contribution of the LMCs in the development of the texts. The Delegation assigned great importance to the work of the IGC in developing legally binding instrument(s) for providing effective protection to TK, GR and TCEs. At the national level, India had taken a number of steps which included creation of a legislative framework that protected TK. Laws such as the Biological Diversity Act, the Patents Act, the Plant Varieties Protection and Farmers' Rights Act, the Indian Forest Act, and the Forest Dwellers Rights Act, incorporated provisions that aimed at protecting TK. Moreover, the Traditional Knowledge Digital Library (TKDL), a pioneering initiative by the Government of India, had proved to be extremely effective in preventing misappropriation of India's TK. Since 2009, TKDL had led to the cancellation and withdrawal of patent applications in 110 cases across the various International Patent Offices that had access to it. While India continued to further strengthen and expand the TKDL, it was a fact that new patents misappropriating TK continued to be filed. Therefore, the Delegation highlighted the urgent need to have a legally binding international instrument on GRs, TK and TCEs. It added that the spirit of collaboration and consensus shown by all delegations in arriving at a consensus on the workplan for 2013 was sincerely appreciated. The Delegation believed that, in addition to formal meetings, informal consultations could also prove to be an extremely productive and efficient way to provide momentum to the work of the IGC. Therefore, the Delegation of India encouraged the IGC Chair to conduct informal consultations as appropriate and stated that all results of such consultations should be presented to the IGC plenary for consideration. The Delegation expressed its high commitment to contributing to the work of the IGC.

191. The Delegation of Morocco supported the statement made by the Delegation of Egypt, on behalf of the African Group. The Delegation attached great importance to the work of the IGC and hoped that the work would be intensified so as to achieve effective legal instruments for the protection of GR, TK and TCEs. Finally, it supported the workplan for 2013.

192. The Delegation of Costa Rica expressed its support to the statement made by the Delegation of Peru, on behalf of GRULAC, and supported the workplan for 2013 in order to speed up the process for the negotiation of an international instrument. It expressed its gratitude for the enormous effort made by the IGC Chair and congratulated him on his great work.

193. The Delegation of Yemen thanked the Secretariat and the IGC for the great efforts undertaken and supported the statements made by the Delegation of Egypt, on behalf of the African Group, and the Delegation of Indonesia, on behalf of the LMCs. It wished that the IGC would have the necessary time and resources to achieve an international text that would be binding for all and supported the workplan proposed for 2013.

194. The Representative of the International Intellectual Property Institute (IIPi) pointed out that intellectual property rights (IPRs) were usually associated with modern industries; however, they had relevance for all creators. Many traditional artists, even those who had practiced their craft for hundreds of years, were finding the need to familiarize themselves with copyright, trademarks and other forms of IPRs. The Representative indicated that it had partnered with the United States Patent and Trademark Office (USPTO) to hold a series of regional workshops dedicated to training traditional artists on how to use IPRs to protect and promote their work.

He was pleasantly surprised by the participants' enthusiasm to learn. Traditional artists from Mexico to Peru to Cambodia had reported that they faced the same issues, as artists practicing their crafts in the developing world, including, unfortunately, that of infringement. It was important to ensure that all artists and creators were knowledgeable about, and able to exercise, their IPRs. The Representative welcomed the program of intensive consultations for the effective protection of GRs, TK and TCEs and indicated that he would be pleased to participate as an NGO in those intensive consultations.

195. The Representative of the International Committee for the Indigenous Peoples of the Americas (INCOMINDIOS), consistent with the unified statements made by the indigenous peoples' caucus at the 18<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup> and 22<sup>nd</sup> sessions of the IGC, called for the General Assembly to adopt modalities that would ensure the full, equal and direct participation of indigenous peoples in all IGC processes, including for the equal participation in the Voluntary Fund Advisory Board and to serve as co-chairs of the IGC and of any working and drafting groups. This would include the creation of a new category of participation for indigenous peoples that included the right to submit proposals, amendments, motions and the right to vote. Currently, the draft texts and proposals in the IGC did not provide for the protection of the rights of indigenous peoples to their TK, GRs and TCEs in accordance with internationally accepted principles and standards. Based on the report by the Chair of the IGC, Ambassador McCook, it was evident that indigenous peoples would not be allowed the needed equal participation to advocate for the protection of their TK, GRs and TCEs. Without their participation, there would be no checks and balances against the will of States and multinational corporations to develop an instrument or instruments to protect them against exploitation. It was especially important to transmit to the General Assembly that indigenous peoples reserved all of their rights to every aspect of their cultural heritage, including their knowledge, cultural expressions and genetic and biological materials. The Representative called on the General Assembly to adopt a position that would allow for the equal participation of indigenous peoples as outlined in the caucus statements dating back to the 18<sup>th</sup> session of the IGC.

196. The WIPO General Assembly took note of the information contained in document WO/GA/41/15, and agreed as follows:

In accordance with the mandate of the IGC for 2012/2013, the Assemblies of the Member States of WIPO agree to continue intensive negotiations and engagement in good faith, with appropriate representation, towards concluding the text(s) of an international legal instrument(s) which will ensure effective protection of GRs, TK and TCEs, and decide:

- (a) The work of the Committee will be carried out through three thematic IGC sessions as set out in the table below.
- (b) The work will build on the existing texts submitted by the IGC to the General Assembly (Annex A, Annex B, and Annex C of document WO/GA/41/15).
- (c) The Committee is requested to submit to the 2013 General Assembly the text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs. The General Assembly in 2013 will take stock of and consider the text(s), progress made and decide on convening a diplomatic conference.

(d) The work of the IGC shall follow the program set out below:

<b>Provisional Date</b>	<b>Activity</b>
February 2013	IGG 23 - Genetic Resources (5 days)
April/May 2013	IGC 24 – Traditional Knowledge. With a focus on, but not limited to, 4 key Articles <i>viz</i> Subject Matter of Protection, Beneficiaries, Scope of Protection and Limitations and Exceptions (5 days)
July 2013	IGC 25 – Traditional cultural expressions. With a focus on, but not limited to, 4 key Articles <i>viz</i> Subject Matter of Protection, Beneficiaries, Scope of Protection and Limitations and Exceptions (5 days)  Review and take stock of the text(s) of the International legal instrument(s) ensuring the effective protection of TCEs, TK, and GRs and make a recommendation to the General Assembly (3 days)
October 2013	WIPO General Assembly  Decide on convening a diplomatic conference

197. The Delegation of the United States of America, speaking on behalf of Group B, wished to express its understanding that the extended TCE session would allow time to discuss the issue of future work.

198. Ambassador Wayne McCook, in his capacity as IGC Chair, thanked all the delegations for their constructive engagement in the fashioning of the workplan. He appealed to all delegations, having agreed to the workplan, to be prepared to engage constructively in serious deliberations over the period ahead. He thanked the delegates for their constructive spirit, in recognition that the issues were difficult, but that the degree of difficulty set a demand for a degree of deliberate engagement. He thanked the Chair of the General Assembly for his leadership in the deliberations on this item.

#### ITEM 28 OF THE CONSOLIDATED AGENDA

#### REPORTS ON OTHER WIPO COMMITTEES

#### ITEM 28(i) OF THE CONSOLIDATED AGENDA

#### STANDING COMMITTEE ON THE LAW OF PATENTS (SCP)

199. Discussions were based on document WO/GA/41/16, “Reports on Other Committees”, in particular, on item 28(i): “Standing Committee on the Law of Patents (SCP)”.

200. The Secretariat explained that the above document addressed two main issues: (i) a report on the recent work of the SCP; and (ii) the statements made by a number of delegations on the implementation of the respective DA recommendations. With respect to the work of the SCP, the Secretariat noted that, during the period under consideration, the

Committee had held two sessions, i.e., the seventeenth session in December 2011 and the eighteenth session in May 2012. It stated that the Committee had continued discussions on the five issues it had agreed upon in 2010, namely, exceptions and limitations to patent rights, quality of patents, including opposition systems, patents and health, client-patent advisor privilege and transfer of technology. The SCP had further adopted an amendment to the Rules of Procedure in accordance with the WIPO language policy, which entered into force on January 1, 2012. Concerning its future work, the Secretariat explained that the Committee had agreed to carry on discussions at its next session on the basis of the agenda of its eighteenth session, in the absence of agreement otherwise and that, in the meantime, consultations had been initiated with the regional groups about the dates of the next session of the SCP, and that the Secretariat would hold further consultations with Member States before the next session.

201. The Delegation of Hungary, speaking on behalf of the CEBS Group, expressed its appreciation to the Chair of the SCP, the Secretariat and the members of the SCP for their tremendous efforts to conclude the eighteenth session with a positive, consensus-based outcome. The Delegation, however, expressed its deep regret that its strong commitment, hard work and flexibility had not proved to be sufficient to agree on the future work of the SCP. The Delegation noted that the SCP had been addressing five highly complex and pertinent issues chosen from the non-exhaustive list. It expressed its belief that the outcome of those discussions should serve as a substantial contribution to achieving the Committee's main goal, which was to strengthen and improve the functioning of the international patent system. The Delegation expressed its gratitude to those delegations which had submitted various proposals concerning the topics on the agenda of the SCP. The Delegation stated that it attached particular importance to the work on quality of patents, and expressed its commitment to continuing discussions on the basis of the proposals put forward. Being a strong proponent of the issue of confidentiality of communications between clients and their patent advisors, the Delegation expressed its belief that that topic needed further examination, and supported continuation of the work on that issue. In its opinion, as a first step, the adoption of non-binding principles could be a way forward. The Delegation further stated that it equally stood ready to continue discussions on exceptions and limitations to patent rights, on the complex and important question of patents and public health and on transfer of technology. The Delegation reiterated the importance it attached to those negotiations. The Delegation nevertheless emphasized that all the discussions should take place in a balanced manner, and that the Committee should not lose sight of the core principles of its mandate. As a general principle, the Delegation considered it essential to establish and maintain a balanced work program for the Committee, and urged all members of the SCP to work towards that common goal in a constructive spirit. The Delegation reiterated that discussions on technical issues of patent law would lead to an outcome that would be beneficial to all members of WIPO, and reaffirmed its commitment to working towards the international harmonization of substantive patent law.

202. The Delegation of the United States of America, speaking on behalf of Group B, expressed its appreciation to the Secretariat for preparing the two sessions of the SCP during the period under consideration, and noted that the documents for those meetings had been well prepared and helpful for the work of the Committee. The Delegation stated that it had entered the last session of the SCP with the willingness to engage in a positive dialogue on issues that comprised a balanced work plan, i.e., exceptions and limitations to patent rights, quality of patents, including opposition systems, patents and health, confidentiality of communications between clients and their patent advisors and transfer of technology. The Delegation noted that it remained convinced that work on those topics could lead to a more thorough understanding of the specific issues impacting the international patent system. It stated that the technical exchange of information on laws, practices and policies should be the benchmark in measuring progress in the SCP, and should feed into the broader considerations of public policy issues at WIPO. The Delegation expressed its continued hope that such a balanced exchange was possible in the SCP. In its opinion, only then would the Committee be able to move in the direction of a more efficient, effective and successful international patent system and eventually to substantive patent law harmonization. The Delegation stated that the mandate of the SCP

was to serve as a forum to discuss issues, facilitate coordination and provide guidance concerning the progressive international development of patent law, including the harmonization of national laws and procedures. In conclusion, the Delegation reaffirmed its constructive spirit and support of the Delegations of Group B, as the work of the SCP continued.

203. The Delegation of China expressed its appreciation for the work of the SCP over the past year, and agreed with the report on the work of the SCP.

204. The Delegation of Egypt, speaking on behalf of the African Group, expressed its appreciation to the Secretariat for organizing the meetings of the Committee. The Delegation emphasized the need to continue to have a balanced agenda for the Committee. The Delegation expressed its hope for achieving good results and good progress on the proposal presented by the African Group regarding patents and health. Further, the Delegation stressed the importance of the issue of transfer of technology, as well as the need to address that issue in its entirety and to discuss it further in order to achieve a specific recommendation that would guide the Organization's work in the future.

205. The Delegation of Cyprus, speaking on behalf of the European Union and its member states, expressed its disappointment with the result of the eighteenth session of the SCP. The Delegation noted that, during that session, the European Union and its member states had shown great commitment and had participated actively in discussions of the topics established within the balanced work program, namely, quality of patents, client-patent attorney privilege, exceptions and limitations to patent rights, transfer of technology and patents and health. The Delegation further stated that the European Union and its member states had also participated actively not only in the substance of the discussions, but also in consultations on future work, and had tried hard, showing flexibility, to move forward with a balanced work program. The Delegation therefore noted that the failure of the SCP to agree on its future work was disappointing to the European Union and its member states. In its view, unfortunately, it was not clear that the nineteenth session of the SCP, which was planned to be held in November 2012, would end with a different result than that of the eighteenth session. Therefore, with considerable regret, the Delegation suggested that the nineteenth session of the SCP be postponed until the first half of 2013 to allow informal discussions to establish a way forward. The Delegation expressed its hope that that would prove successful, and affirmed its commitment to continuing harmonization of patent laws through the work of the SCP.

206. The Delegation of Brazil, speaking on behalf of the DAG, stated that the work of the SCP had shown that it had been in great need of a frank discussion and assessment of present day realities of the patent system. The Delegation welcomed the debates that had taken place in the last few sessions of the Committee. In its view, the approval of a more balanced agenda had reflected the interests of all Member States in accordance with the recommendations of the DA, having contributed to a more complete understanding of the international patent system. Highlighting the proposal on patents and health presented by the African Group, the Delegation called for a positive and constructive discussion on the subject. The Delegation considered that that proposal offered a great opportunity to promote a fruitful debate on whether higher levels of patentability were always desirable and on the adaptation of the patent protection framework for different social and economic realities. Furthermore, the Delegation stressed the importance of discussions on the exceptions and limitations to patent rights as an important contribution to the implementation of the DA. The Delegation noted that exceptions and limitations to patent rights were relevant to create a balanced system, and Member States had developed different approaches in that regard. The Delegation expressed the view that a flexible policy space was necessary in order to allow Member States to develop and adapt a set of exceptions and limitations responding more adequately to their realities. Referring to the work program submitted by the Delegation of Brazil on that issue, the Delegation considered that the time was ripe for formal adoption of that work program by the Committee. Highlighting the contribution of

more than 70 Member States to a questionnaire on exceptions and limitations, the Delegation was of the opinion that initial work on that field had already been done, and that it was time to move to a new phase in order to better understand how exceptions and limitations could address development needs.

207. The Delegation of India stated that it attached great importance to the SCP, and noted that the patent system was a very critical aspect of the IP framework that impacted directly on national socio-economic development and welfare. The Delegation observed that there was a growing acknowledgment that the current international IP system focused heavily on ensuring IP rights to rightholders. In its view, for the system to thrive and encourage innovation and growth, there was need for a commitment to improving the system, where needed. The Delegation considered that discussions and assessment of present day realities were the first step towards that end. The Delegation therefore welcomed the analytical discussions that had taken place in the seventeenth and eighteenth sessions of the SCP. It stated that the discussions on issues such as exceptions and limitations to patent rights, technology transfer and patents and health during the last two sessions of the Committee had contributed to a more balanced and holistic understanding of many complex aspects of the international patent system. In its opinion, more tangible discussions were needed in the SCP on how patents could contribute to better addressing the current key challenges in areas such as food and energy security, the environment, disaster management, climate change and education. The Delegation expressed its hope that, in the days ahead, there would be an open and constructive engagement on those important issues. The Delegation welcomed the fact that the SCP had started an important and necessary discussion on various development-related aspects of the patent system, which had not been addressed previously. The Delegation considered this to be a positive step, and expressed its hope that the work continued along the present lines.

208. The Delegation of Trinidad and Tobago stated that the SCP had worked progressively so far, given the complexity of the issues. It commended the Committee for taking the initiative to try to achieve consensus on all issues, and expressed its support on the elaboration of the working documents and of the proposals for future work. The Delegation expressed its willingness to further study the topic of “quality of patents” to clarify the lack of common understanding on that issue. Furthermore, the Delegation expressed its hope that further work would be undertaken with regard to public health and further studies on transfer of technology and opposition systems. In its view, those aspects had proven to be useful in daily operations of intellectual property offices worldwide. The Delegation expressed its full support to the consideration of, among others, the implications of patents on public policy. It expressed the hope that the end result of the deliberations would be the genesis of an enabling environment, which would seek to foster and encourage investors to use the patent system with increased confidence. The Delegation stated that it would continue to be a keen supporter of the work of the Committee.

209. The Delegation of Costa Rica expressed its appreciation for the valuable work that had been carried out in the Committee. In particular, it highlighted the importance and usefulness of the issue of exceptions and limitation to patent rights and the questionnaire drawn up by the Secretariat on that subject. The Delegation noted that the proposals made in the Committee contributed to an in-depth discussion and a better understanding of the international patent system. In relation to the issue of transfer of technology, the Delegation expressed the view that the work of the Committee should be continued, focusing specifically on the pragmatic aspects and case studies.

210. The Delegation of Algeria stated that the questions on the agenda of the SCP had given the members of the SCP the possibility to have a useful exchange of views on patent-related issues. Noting that the law of patents had a major impact on the economic and social development of countries, the Delegation stated that the activities of the Committee should facilitate the dissemination and transfer of technology and ensure that the patent system

contributed effectively to promoting innovation. The Delegation further stated that it attached great importance to the issue of exceptions and limitations to patent rights, which provided flexibilities in the area of patent rights. The Delegation expressed support for the development of a handbook on exceptions and limitations to such rights, as had been proposed by the Delegation of Brazil. With respect to the issue on quality of patents, the Delegation expressed its concern in relation to the lack of a precise definition of the concept of “quality of patents”. Therefore, in its opinion, the work on that issue in the Committee should start by agreeing on a common definition of that term to be used by the SCP. With regard to the issue of patents and health, given the importance of that subject, the Delegation stated that WIPO should strengthen its involvement and commitment on that issue. Furthermore, the Delegation reaffirmed its support for the proposal submitted by the African Group and the DAG on that subject. As WIPO was a specialized agency of the UN, the Delegation considered that the SCP was the most appropriate organ to take on that work.

211. The Delegation of Chile expressed its appreciation for the efforts of the Secretariat in helping to find an agreement in respect of the agenda of the SCP. However, it expressed its concern in relation to the lack of agreement and progress in the Committee. It noted that the analysis and the study of the operation of the patent system, including exceptions and limitations to the rights, was one of the inherent tasks of WIPO. The Delegation observed that, after a period of suspension, the SCP had been able to start working again a few years ago with a balanced agenda, which included areas of interest to the various regional groups of WIPO. In its opinion, the key was the flexibility that had been shown by all delegations. Referring to the outcome of the last session of the SCP, the Delegation noted that, unfortunately, some delegations had returned to rigid positions. For that reason, the Delegation urged the members of the SCP to return to better communication, negotiation, and flexibility. In its view, to exclude WIPO from discussions on key patent issues, such as the impact of patents on public health or quality of patents, was a situation that did not benefit any Member State.

212. The Delegation of Japan stated that the work of the Secretariat and the Member States' constructive participation in the SCP sessions had advanced productive discussions and, to a certain extent, produced tangible results. The Delegation, however, expressed its regret that there had been no agreement regarding future work in the last session of the SCP. The Delegation expressed the strong belief that the SCP should keep on discussing global patent issues with a view to move towards international patent harmonization. Noting its commitment to continuing its constructive contribution to important patent issues, the Delegation emphasized, in particular, that the issues addressed in the SCP would contribute to the WIPO DA recommendations. Specifically, the Delegation stated that the work program on quality of patents proposed by the Delegations of Canada and the United Kingdom fully supported DA Recommendations 10 and 11. In conclusion, the Delegation stated that the SCP should continue considering critical issues in an efficient and appropriate manner, avoiding duplication of work among WIPO bodies.

213. The Delegation of Iran (Islamic Republic of) stated that it was commonly agreed that patent law should strike a balance between the rights of the patent owners and the interests of society. However, in its opinion, given the inadequacy of the disclosed information, the so-called “incentive – disclosure framework” did not contribute to that balance. The Delegation urged the Committee to constructively collaborate to find a workable solution to that problem. On the question of quality of patents, the Delegation expressed the view that no clear common understanding of the Committee had emerged on the scope of that issue yet. The Delegation stated that it appeared necessary for the Committee to first collaborate with the aim of finding such an understanding, especially about its added value. The other important item for the Delegation was the issue of patents and public health. In that regard, in its view, the Committee could benefit from the experiences of other specialized organizations, such as the WHO. The Delegation considered that more coordination and cooperation with those organizations would help finding an expedited solution with the current deliberations of the Committee. The Delegation reiterated that putting a fair and balanced international patent system in place

was not possible without paying due attention to limitations, exceptions and other flexibilities. The Delegation expressed the belief that WIPO played an important role in assisting Member States in putting in place limitations and exceptions in their patent systems. In that regard, the Delegation considered that the SCP was a proper forum for discussing ways to improve the international patent system. Further, the Delegation noted that transfer of technology had always been a major concern for developing countries. Despite the fact that the Committee had considered the issue for a few years, in its opinion, the pace of progress was not satisfactory. Noting that the SCP was expected to critically analyze the actual international patent system and its impact on transfer of technology, the Delegation stated that the SCP should start that work by reviewing how the issue of transfer of technology was reflected in its own work. In conclusion, the Delegation reiterated that that item was at the heart of the IP system, as it was of utmost importance to the social and economic development of countries. Therefore, the Delegation expressed the opinion that the SCP should perform its central role in norm-setting in respect of that agenda item.

214. The Delegation of the United States of America expressed its deep regrets that the SCP had been unable to agree on its future work at the last session. It further stated that in view of the lack of progress in the last sessions of the SCP, it was beginning to question the utility of the format of the Committee. The Delegation stated that it did not support continuing work in the SCP that was heavily tilted towards the erosion of patent rights focusing solely on limitations and exceptions, without also having a work program on substantive aspects of patent rights, such as patent quality. The Delegation expressed its support for the proposal made by the Delegation of Cyprus on behalf of the European Union and its member states to postpone the next session of the SCP. In its opinion, without an agreed work program, which was balanced and acceptable to all Member States, the SCP should be suspended until such a work program was established. Referring to the statement made by the Delegation of Chile, the Delegation agreed that, in the past, an agreement had been achieved following the suspension of the Committee. The Delegation suggested that the Chair of the SCP should conduct informal consultations and attempt to establish an agreed work program prior to convening the next session of the SCP, even if that would take some time.

215. The Representative of *Médecins Sans Frontières* (MSF) stated that its organization was a medical humanitarian organization that worked in more than 65 countries around the world. MSF was involved in developing IP and public health, because in its operations, it was increasingly confronted with problems of access to medicines and diagnostics. The Representative noted that IP and, specifically patents, affected prices and the availability of desperately needed medical tools. In that regard, while fully supporting the proposals of the African Group and the DAG on patents and health, the Representative expressed his disappointment with the progress made in the Committee on that issue. In relation to the proposal made by the Delegation of the United States of America on the same subject at the seventeenth session of the SCP, the Representative was of the view that that proposal was a step backward, and that it undermined the consensus that had previously been achieved on patents and public health which was reflected in several international instruments, notably, the Doha Declaration on the TRIPS Agreement and Public Health. According to his experience in providing medical care in many developing countries, access to affordable quality drugs could be restricted due to patents, for example, in the treatment of HIV. In his view, that problem would increase with the full implementation of the TRIPS Agreement in countries with existing or prospective generic production capability. The Representative stated that it was important for WIPO Member States to fully consider the public health implications of patent regimes. The Representative expressed the hope that WIPO Member States would make substantial progress on the African Group's proposal in the forthcoming meeting of the SCP, and would explore in depth the complete impact of patents on public health, including where the patents did not act as an incentive for innovation to meet public health needs, building on the work already done by other organizations such as the WHO. The Representative suggested two further areas of work that could be undertaken in the SCP. First, he noted that the issue of transparency and access to patent-related information was critical for his organization as well as



other treatment providers to make decisions about treatment options and procurement. He suggested that WIPO, building on the work it had already done with the Medicines Patent Pool and patent offices in developing a database for certain HIV medicines, consider the development of a database for all medicines and offer, on demand, assistance for procurers of medicines to identify with relevant patent office all the patents in the country related to a specific medicine. Second, the Representative noted that there was little information on the way in which developing countries could implement feasible and functional examination systems suitable for their domestic needs and public health priorities. The Representative expressed the opinion that it would be useful for a study to be undertaken on the different cost and structure of the examination systems in developing countries. Finally, the Representative highlighted the importance of the ongoing SCP deliberations on exceptions and limitations to the rights. The Representative specifically urged developing countries to ensure that the full scope of flexibilities in the TRIPS Agreement was implemented in the respective laws. In his view, flexibilities such as strict patentability criteria, patent opposition systems and a functioning compulsory licensing regime were crucial in ensuring that a balance was found between promoting innovation and protecting public health. The Representative further stated that MSF had launched a patent opposition database containing a searchable listing of 45 patent oppositions relating to key medicines and over 200 other supporting documents that would aid in building a future patent opposition. The Representative explained that that database provided successful examples of patent oppositions in countries such as India, Brazil and Thailand, which could be adapted by other countries that faced similar challenges of weak and unwarranted patents. That was only possible, however, if the legal system allowed for patent oppositions. The Representative concluded by stating that If patents were to act as a stimulus, it was of the utmost importance that only real innovation was rewarded and that no frivolous patents were granted.

216. The Representative of KEI stated that his organization would like the SCP to continue work on access to medicines and on patents and health. He stated that KEI supported the work program on patents and health put forward by the African Group and rejected the proposal put forward by the Delegation of the United States of America. The Representative stated that KEI had had meetings with a number of public health and development groups, and with the USPTO, to go through the objections his organization had to the proposal by the United States of America. The Representative expressed the hope that the United States of America would revise its proposal. Further, the Representative noted an additional area where the SCP could undertake work. He stated that it would indeed be useful to have a better understanding of the cost of litigating weak patent claims and the capacity of persons in various countries to undertake such litigation or reexamination. The Representative considered that the SCP could draft a narrow treaty or model law to make it easier to revoke patents in one country when the same patent claims had been rejected in another jurisdiction. He expressed the opinion that that would create greater incentives and benefits to public health programs, including the UN agencies and the Global Fund, because the success in one jurisdiction could potentially be leveraged to revoke patents in other countries. Furthermore, the Representative stated that another area related to the patent work was the growing number of *sui generis* IP regimes, such as test data exclusivity, orphan drug exclusivity, and other *sui generis* regimes often without offering the possibility of a compulsory license. He suggested that the SCP collect the practices of Member States regarding compulsory licensing for the *sui generis* regimes in cases of abuse or public government use. Finally, with respect to exceptions and limitations, the Representative stated that it was not possible for companies of mobile phone devices to manufacture and distribute their devices without infringing patents of other rightholders. The Representative considered that the solution to that problem had to involve, in some cases, a set of limitations and exceptions.

217. The WIPO General Assembly took note of the contents of document WO/GA/41/16.

## ITEM 28(ii) OF THE CONSOLIDATED AGENDA

## STANDING COMMITTEE ON THE LAW OF TRADEMARKS, INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS (SCT)

218. Discussions were based on documents WO/GA/41/16 and WO/GA/41/16 Add.

219. The Chair opened the meeting and asked the Secretariat to introduce the documents.

220. The Secretariat drew attention to documents WO/GA/41/16 and WO/GA/41/16 Add., which contain the relevant reports of the twenty-sixth and twenty-seventh sessions of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) that had been held during the period under consideration. The Secretariat, recalling that the SCT dealt with issues relating to trademarks and industrial designs, said that as regards trademarks, the SCT had mandated the organization of an Information Meeting on the Role and Responsibilities Concerning Internet Intermediaries in the Field of Trademarks that had taken place on September 17, 2012, and agreed on work concerning the protection of country names based on proposals submitted by the Delegations of Barbados and Jamaica. Concerning the work on industrial designs, the Secretariat informed that the SCT had considered a set of draft Rules and Articles on industrial designs and considered a study prepared by the SCT Secretariat and the WIPO Chief Economist on the impact of the proposed draft provisions on Industrial Designs Law and Practice. The Secretariat indicated that the Summary by the Chair of the twenty-seventh session of the SCT was contained in document SCT/27/10 and referred to in document WO/GA/41/16 Add.

221. The Delegation of Hungary, speaking on behalf of the CEBS, reaffirming its strong support for the normative work of the SCT, stated that it wished to address the issue of industrial designs, which was of particular importance to the Group. The Delegation said that the fundamental objectives of Industrial Designs protection, namely encouraging creativity, returning value to creators, promoting fair competition and trade practices, could only be achieved if creators and enterprises had easy access to design protection systems. Divergences and differences in interpretation of rules could hinder those endeavors. The Delegation was therefore of the view that it was the common responsibility of Member States to work towards commonly acceptable convergence of design formalities for the benefit of all users. The Delegation, pointing out that the Study on the Potential Impact of the Work of the SCT had been prepared in a very thorough manner and was completely in line with the terms of reference, stated that the said Study had effectively contributed to a better understanding of the role and prospective benefits of convergence in the area of industrial design formalities, and had delivered a more than positive opinion on the potential impact of the work of the SCT. The Delegation declared that it took the view that the work on the harmonization of industrial design law in the SCT had entered into its final phase. Although there were still some outstanding issues to be resolved, significant improvement on the draft Articles and Rules had been achieved. The level of maturity of the text was considerable. The Delegation said that it believed that the remaining differences could be settled in a timely manner. The Delegation declared that, for these reasons and in order to preserve and reward the efforts made, the CEBS Group wished to put forward the following proposal to convene a diplomatic conference. The Group wished to invite the General Assembly to recommend to the Director General to convene a diplomatic conference for the adoption of a design law treaty in the fourth quarter of 2013. As to the steps to be taken in preparation for that conference, the Group suggested that the SCT should hold two more sessions, one in December 2012 and one in May 2013, and that a Preparatory Meeting should take place in conjunction with the SCT session in May 2013. At those sessions, the SCT should finalize the basic proposal for the design law treaty and give appropriate consideration to the needs of developing countries in technical assistance and capacity building for the implementation of the future treaty.

The Delegation declared that the Group counted on the flexibility and constructive spirit of all delegations and sincerely hoped that the Group's proposal would find the necessary support in the Assembly during this session.

222. The Delegation of Georgia, speaking on behalf of the Regional Group of Caucasian, Central Asian and Eastern European Countries, thanked the SCT for the substantial work it had carried out. The Delegation, stressing the activities on the harmonization and simplification of the formalities and procedures undertaken by the SCT, stated that it believed that this work was a matter of the highest importance, which would certainly amplify the motivation of interested parties use of industrial designs. The Delegation expressed its support for the proposal to convene a diplomatic conference and its willingness to participate in such conference in order to adopt a new document in the area of industrial designs, as soon as the text of the treaty would be mature for adoption by Member States. Furthermore, the Delegation agreed with the statement by the Delegation of Hungary, on behalf of the Subgroup of CEBS, that due consideration should be given to providing technical assistance for developing countries and LDCs, for the purpose of implementing the proposed treaty.

223. The Delegation of the United States of America, speaking on behalf of Group B, declared that it supported accelerating the work on an industrial design law treaty towards the convening of a diplomatic conference.

224. The Delegation of Egypt, speaking on behalf of the African Group, extended its appreciation to the Secretariat for organizing the work of the SCT and declared that the Group was pleased to see the SCT contribution to the implementation of the Development Agenda Recommendations. The Delegation, stating that the African Group attached importance to the area of industrial design law and practice, expressed the aspirations of the Group to develop its national capacities so as to be able to benefit from that area and to increase the number of design applications. The Delegation said that the Group wished to reemphasize that no delegation expressed its opposition to the work on industrial designs law and practice and to the possible outcome in the form of an international instrument. However, the Group wished to stress the need for balance between costs and benefits, especially in light of the Impact Study conducted by WIPO which had concluded that in low income countries there was a need for support in IP administration, legal expertise and training, while there was a much lower need for support in high-income countries. Thus, it was clear that offices from high income countries were better placed to implement the changes with the least impact on existing capabilities, expertise and resources. The Delegation further said that the statistics indicated that 40 per cent of applications in developing countries came from non-residents and that there was a huge gap between developed and developing countries in terms of industrial design registrations. The Delegation pointed out that this imbalance was also reflected and consistent with the beneficiaries of the Hague system, where 88 per cent of all international registrations belonged to France, Germany, Switzerland and the European Community. The Delegation further expressed the view that a balance could be achieved through strong legal provisions in the proposed instrument providing for technical assistance to develop the capacities, similar to Article 51 of the Patent Cooperation Treaty (PCT). The Delegation further stated that some remarks and concerns regarding the Study and its terms of reference had been made at the twenty-seventh session of the SCT, which had been captured in the report of that session. The Group recalled that at its twenty-seventh session, the SCT had requested the Secretariat to prepare a revised working document for consideration by the SCT at its twenty-eighth session, which should reflect all comments and highlight the different proposals put forward by delegations by using brackets, footnotes and underlining, as appropriate. In light of this conclusion by the SCT less than two weeks ago, the Delegation expressed the surprise of the Group with respect to a proposal calling for a diplomatic conference in the middle of 2013. The Group wondered how a diplomatic conference could be convened when the text was not yet mature. The Group considered that, given that more time and further work was needed, any recommendation of holding a diplomatic conference by this General Assembly would be premature. The Delegation declared that the Group would engage actively and constructively in

the SCT to move forward on this important work and prepare the legal provisions on technical assistance and capacity building for developing countries and LDCs.

225. The Delegation of Sri Lanka, speaking on behalf of the Asian Group, expressed the view that more time was needed to discuss this issue.

226. The Delegation of Cyprus passed the floor to the Representative of the European Union.

227. The Representative of the European Union, speaking on behalf of the European Union and its member states, reaffirmed its strong commitment to the work of the SCT and reiterated that it recognized and stressed the great importance and added value of harmonizing and simplifying design registration formalities and procedures. The European Union and its member states appreciated the substantial and valuable work of the Committee in addressing these issues, as well as the recent WIPO Study, which suggested that the work of the SCT on industrial designs would be of benefit to offices and applicants in Member States, spanning the whole spectrum of development. The Delegation said that it would be a further accomplishment of this Committee to build on the promising work of the last six years and add another achievement to its record. The Representative believed that it was feasible and desirable to convene a diplomatic conference for the adoption of a design law treaty in the 2012-2013 biennium. The Representative acknowledged the link to requests from developing countries and LDCs for technical assistance and capacity building to enable its implementation and said that it looked forward to receiving specific proposals so as to enable a constructive dialogue in that respect. The Representative further supported the proposal inviting the General Assembly to recommend to the Director General the convening of a diplomatic conference for the adoption of an industrial design treaty in the fourth quarter of 2013, as well as the steps to be taken in preparation for that conference.

228. The Delegation of China expressed its support for the work of the SCT related to trademarks as well as its hope that the SCT, together with all the Member States, would further study trademark-related questions. Furthermore, concerning industrial designs, the Delegation underlined their importance and great potential for development and asked the international community to pay attention to the system of industrial designs, as well as to its development and refinement. The Delegation noted the efforts made by the SCT in this area and thanked the Member States and WIPO Secretariat for their hard work. The Delegation stated that it would continue to actively participate in related areas, so as to contribute to the improvement of the system. Finally, the Delegation declared that, based on a sufficient consideration of the need of developing countries, consideration to the convening of a diplomatic conference should be given at the appropriate time.

229. The Delegation of Brazil, speaking on behalf of the DAG recalled that, during the twenty-seventh session of the SCT, Member States reviewed draft articles and draft regulations regarding industrial design law and practice. The Delegation stated that the DAG acknowledged the progress that had been made so far in this respect, but that it believed that further work was needed, so as to address relevant issues raised by Member States during the last session of the SCT. The Delegation further stated that the DAG welcomed the Study on the Potential Impact of the Work of the SCT on Industrial Design Law and Practice, which had been presented by the Secretariat, at the request of the Committee, during the last session of the SCT. Noting that the Study constituted a good example of the way to integrate the DA recommendations in the process, the Delegation observed that it offered views that could help Member States to navigate into the complex issues involved. The Delegation recalled that, during the last session of the SCT, members of the DAG had made comments in view to improve the Study. The Delegation pointed out that, according to the findings of the Study, benefits seemed to be more focused on easing registration procedures and allowing for international registration, which benefited mostly IP right holders. The Delegation underlined that it appeared that the costs of harmonizing rules for processes were higher in developing countries offices. Stressing the need for balancing costs and benefits for capacity building and

ensuring regulatory space for international policies, the Delegation stated that the DAG was committed to this subject. Finally, recalling the outcome of the twenty-seventh session of the SCT, the Delegation pointed out that “the SCT was not in agreement on a recommendation to the WIPO General Assembly concerning the convening of a diplomatic conference”. Thanking the proponents of a proposal to convene a diplomatic conference, the Delegation declared that it was not in a position to comment on this proposal for the time being, as it had to receive instructions from its capital.

230. The Chair stated that there was a need for informal consultations before further discussion of this item.

231. Following the informal consultations, the Chair announced that delegations had reached agreement on the following text:

“The WIPO General Assembly notes the Summary by the Chair of the 27<sup>th</sup> session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), and the progress made by the SCT on industrial design law and practice - draft Articles and Regulations.

“Recognizing the importance for all member States of a Design Law Treaty, the General Assembly urges the SCT to expedite in a committed manner work with a view to advance substantially the basic proposals for a Design Law Treaty (draft Articles and Regulations contained in revised Annexes of documents SCT/27/2 and SCT/27/3).

“In its work, consideration will be given to include appropriate provisions regarding technical assistance and capacity building for developing countries and LDCs in the implementation of the future Design Law Treaty.

“The General Assembly in 2013 will take stock of and consider the text, progress made, and decide on convening a diplomatic conference”.

232. The WIPO General Assembly adopted the text as contained in paragraph 231.

#### ITEM 28(iii) OF THE CONSOLIDATED AGENDA

#### COMMITTEE ON WIPO STANDARDS (CWS)

233. Discussions were based on document WO/GA/41/16.

234. The Secretariat explained the document and recalled that the CWS was created in 2009 to continue technical work on WIPO Standards previously performed by working groups for the last 30 years. It was also recalled that, last year, the General Assembly clarified the mandate of the CWS. With this mandate, technical discussions for developing WIPO standards made good progress by means of electronic correspondence and a web-based electronic forum open to all CWS members. The Committee considered six existing WIPO Standards for revision, updating and follow-up implementation. One new standard was adopted. This marked a significant achievement of five years extensive discussions by experts and finally became an international technical standard which recommended the most up-to-date format and structure of all types of industrial property data. It was expected to promote on-line data exchange by machine-to-machine transmission and search/examination file sharing projects among IP offices and WIPO. Concerning organizational and procedural matters of the Committee, at the second session in April-May this year, the Committee did not reach an agreement on special rules of procedure. The Committee agreed that the Chair of the WIPO General Assembly should conduct informal consultations on these remaining issues after the second session of the CWS in order to reach agreement. Since then, several informal consultations were conducted. Further sessions were foreseen in the forthcoming weeks with the hope that the issues will be

resolved before the end of this year and in good time before convening the next session of the CWS. The Assemblies was invited to take note of the context of the Report.

235. The Delegation of Egypt, speaking on behalf of the African Group, referred to the fact that many consultations had been undertaken following the last meeting of the CWS in order to reach a settlement on how the Committee could continue its work with regard to the DA, especially through working with the Chair of the General Assembly. The Delegation stated that during these consultations, it was discussed how the CWS could implement the decision of the Assemblies taken in 2009 with regard to the coordination mechanism. The Delegation noted that, unfortunately, no settlement had been achieved. The African Group welcomed continued consultations with the Chair of the General Assembly to find an acceptable solution. The Delegation reaffirmed its confidence that the work of the CWS would need to have a direct relationship with the DA, especially with regard to the first group of the DA recommendations on technical assistance and capacity building, and with regard to the second part of the recommendations concerning norm-setting. The Delegation indicated that WIPO and its Member States had accepted in the budget for 2012 and 2013 to set down these standards which should fall within the DA. Finally, the Delegation welcomed the continuation of sufficient consultations within a time frame in order to reach an agreement on the Committee's work based on the DA recommendations so as to guarantee that there is a benefit for the Member States to achieve developmental goals for the developing countries.

236. The Delegation of China appreciated the work of the CWS over the last year. The Delegation indicated that it would continue to actively take part in the work of CWS as well as in its standard revision work.

237. The Delegation of Brazil, speaking on behalf of the DAG, commended the efforts of the Chair to promote the informal consultations on the coordination mechanism, the mainstreaming of the DA recommendations and their expression in the special rules of procedure. The DAG actively participated in those consultations. The DAG recalled that the General Assembly had adopted, in 2010, a clear mandate related to the coordination mechanism and the implementation of the DA recommendations that should be followed by all relevant bodies. The DA should form an integral part of the work of the CWS. The Delegation stated that the CWS's activities had an impact on capacity building and thus, the CWS should be considered as a relevant body and report on its contribution to the effective implementation of the DA. The DAG further stated that it had had a constructive approach in these helpful consultations, even though the Member States were not able to reach a conclusion. The DAG supported the continuation of the informal consultations and encouraged Member States to engage in this process in order to agree on an effective and a simple mechanism that would allow the CWS to develop its technical work in full compliance with the DA recommendations.

238. The Delegation of the United States of America, speaking on behalf of Group B, appreciated the efforts of the Chair of the General Assembly in conducting informal consultation for the last few months, and stated that Group B was still unconvinced that the CWS fell within the coordination mechanism of the DA. The Delegation stated that Group B did not want to see the work of the CWS sided tracked. The Delegation further stated that Group B would participate in future consultations to allow the experts of the CWS to do their important work.

239. The Representative of the European Union, speaking on behalf of the European Union and its member states, endorsed the statement made by the Delegation of the United States of America on behalf of Group B.

240. The Delegation of Japan supported the statement made by the Delegation of the United States of America on behalf of Group B. The Delegation appreciated the efforts of the Chair of the General Assembly in conducting informal consultations. The Delegation hoped that the efforts should result in a mutual agreement on pending issues and stressed the importance of WIPO Standards as technical matters which are essential to the basic infrastructure of IP for

IP offices and users of the IP system. The Delegation stated that the CWS should be allowed to focus on technical work and to advance it.

241. The Delegation of South Africa supported statements made by the Delegation of Egypt, on behalf of the African Group, and the Delegation of Brazil, on behalf of the DAG. The Delegation regretted that the CWS could not reach agreement on special rules of procedure because the proposed rules did not integrate the DA coordination mechanism. The Delegation expressed its hope that Member States could reach an agreement before the next session of the CWS.

242. The Delegation of Algeria endorsed statements made by the Delegation of Egypt, on behalf of the African Group, and the Delegation of Brazil, on behalf of the DAG. The Delegation stated that the CWS should not be an exception to the DA coordination mechanism. The Delegation would continue participating in informal consultations with the Chair, hoping to reach a solution before the next session of the CWS.

243. The Delegation of Switzerland agreed with the statement made by the Delegation of the United States of America, on behalf of Group B. The Delegation stated that it had been surprised that discussions during the last session of the CWS continued on the mandate and the rules of procedure after the decision of the General Assembly last year. The Delegation did not understand why the CWS should be a relevant body of the DA coordination mechanism. The Delegation reaffirmed its commitment to take part in the discussions that the Chair would convene, in order to find a solution to this problem and to allow the CWS to finally work in an optimal manner.

244. The Delegation of Monaco expressed its thanks for the consultations that the Chair had held, where Monaco had actively participated. The Delegation agreed with the statement made by the Delegation of the United States of America, on behalf of Group B, and further stated that it was not yet convinced that the CWS was a relevant body of the coordination mechanism for the DA.

245. In conclusion, the Chair indicated that he would continue to consult with Member States on the subject matter, hoping to find an appropriate solution before the next meeting of the CWS.

246. The WIPO General Assembly took note of the contents of document WO/GA/41/16.

#### ITEM 28(iv) OF THE CONSOLIDATED AGENDA

##### ADVISORY COMMITTEE ON ENFORCEMENT (ACE)

247. Discussions were based on document WO/GA/41/16.

248. The Secretariat explained that the information report in document WO/GA/41/16, paragraphs 33 to 40, summarized the work undertaken by the ACE at its seventh session, held from November 30 to December 1, 2011. The Committee continued addressing the work program, agreed at its sixth session, as set out in paragraph 35 of document WO/GA/41/16, on the basis of presentations which were made to the Committee by experts. The subjects covered by these presentations are set out in paragraph 36 of document WO/GA/41/16. For its eighth session, which is scheduled to take place on December 19 and 20, 2012, the Committee will continue its work on the basis of the current work program. The agenda will also include an item on future work of the Committee, and the Secretariat encouraged all Member States to engage constructively in the discussion with a view to reaching an agreement on the Committee's future work program. The Secretariat explained that paragraph 39 of document WO/GA/41/16 contains the views which Member States expressed at the seventh session on the contribution of the ACE to the implementation of the WIPO DA.

249. The Delegation of the United States of America, speaking on behalf of Group B, noted Group B's appreciation for WIPO's efforts in coordinating and enhancing the enforcement aspects of its technical assistance work. Group B indicated its full support for WIPO's work in reinforcing cooperation among enforcement authorities and relevant organizations in this field. Group B noted that ACE provides a valuable forum in which to exchange information and best practices concerning the enforcement of IPRs. The experiences of individual countries shared in prior ACE meetings have been informative and useful in providing Member States with information on developing awareness raising, training, and education programs in the field of IP enforcement. Group B expressed that it would like to see the work undertaken in ACE remain focused on its mandate as a forum to discuss best practices in IPR enforcement.

250. The Delegation of Brazil, speaking on behalf of the DAG, was pleased to see that the discussions on IPR infringements in the seventh session of the ACE presented a holistic view of the complex issue of building respect for IP and tried to address various aspects of this multidimensional problem. The DAG thanked the Secretariat for the studies prepared for the ACE which provided valuable insights on key issues related to IP enforcement. The studies carried on within the ACE represent an opportunity for qualitative change in the treatment of enforcement of rights in WIPO. The DAG noted that such a debate reinforces a more comprehensive and pragmatic understanding of the various aspects of IPR infringements rather than a conventional and simplistic approach based on the limited perspective of repressive enforcement, which has proved to be inadequate so far in dealing effectively with the challenge. The DAG was convinced that in order to face IPR infringements, a comprehensive policy is necessary, combining in a balanced way repressive measures with educational efforts and public policies to foster the creation of formal jobs. The DAG stated that it should be remembered that IPR infringement is a global phenomenon which affects all countries, developed and also developing ones. Each country requires specific solutions. The risks associated with a superficial approach are, among others, the abuse of IPRs, the rise of obstacles to legitimate commerce, which has already led to serious consequences in the area of public health, disregard of the due process of law, and disrespect for civil rights. Effective solutions must favor social and economic welfare in balancing rights and obligations of rights owners and of the public in general. The desired result of the ACE should contribute to the objectives of the IP system, which are the promotion of innovation and technology transfer for the benefit of both producers and users of technological knowledge, as stated in Recommendation 45 of the DA. The DAG noted its firm commitment to engage constructively in these discussions.

251. The Delegation of Cyprus passed the floor to the Representative of the European Union.

252. The Representative of the European Union, speaking on behalf of the European Union and its member states, thanked the WIPO Secretariat for preparing and producing various documents for the eighth session of the ACE and for its extensive activities of technical and legal assistance over the past year. Sustained creativity, inventiveness, creation and innovation are of crucial importance for the economic well-being of every country. IPRs are key business assets, for companies in developed and developing countries alike. They help to ensure that innovators and creators everywhere are incentivized to invest and create, and as such it is important that effective measures are in place to protect these rights. In that context, the Regulation entrusting the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) with certain tasks related to the protection of IPRs, including the assembling of public and private sector representatives as a European Observatory on IPR infringements was adopted in April 2012. In the EU, this Observatory would serve as a platform to exchange experiences and information and to share best practices on enforcement. The Representative stated that it was widely recognized that organized infringements of IPRs, in particular counterfeiting and piracy, had become a serious threat to many business sectors, to consumers and to governments all over the world and was now a global phenomenon. Making use of legitimate developments in communication, technology, and transportation, counterfeiters and pirates used intricate supply chains to manufacture, distribute, and sell fake and counterfeited



goods throughout the world. In doing so, they deprived creators of their appropriate rewards, undermined competitiveness, threatened the health and safety of consumers, destroyed jobs and blocked much needed revenue to public finances. The urgent need to support the enforcement of IPRs through better statistics and exchange of information about the scope, scale, and impact of counterfeiting and piracy was emphasized. Furthermore, there was a need to improve cooperation through more effective cross-border exchanges of information, best practices in enforcement and capacity building, where strengthening of mechanisms would be needed, and to raise public awareness about the growing risks to health and safety. The EU and its member states placed great value on the work of the ACE and, therefore, urged the Committee to intensify its efforts to build a shared understanding of the effects and impact of IPR infringements, so that effective prevention and enforcement strategies could be adopted.

253. The WIPO General Assembly took note of the contents of document WO/GA/41/16.

#### ITEM 33 OF THE CONSOLIDATED AGENDA

##### WIPO ARBITRATION AND MEDIATION CENTER, INCLUDING DOMAIN NAMES

254. Discussions were based on document WO/GA/41/17 Rev.2.

255. The Chair raised Agenda Item 33 on the WIPO Arbitration and Mediation Center (Center), including Domain Names. The Secretariat noted that the document for the General Assembly provides an overview of the work of the Center over the last year, in three parts. The first part, paragraphs 3 to 7, reports on the activities of the Center in the area of alternatives to court litigation, specifically arbitration and mediation. The Secretariat highlighted the activities reported in paragraph 4 concerning the Center's cooperation with Intellectual Property Offices in establishing alternative dispute resolution (ADR) procedures for opposition and other disputes before these Offices.

256. The second part of the document, paragraphs 8 to 19, reports on the Center's domain name case administration. The Secretariat noted that the demand for this WIPO service continues to grow, with almost 2,800 cases filed with the Center under the Uniform Domain Name Dispute Resolution Policy (UDRP), representing an increase of 2.5 per cent over the previous year's filings.

257. The Secretariat further noted that paragraphs 20 to 46 of the document address policy developments in the Domain Name System, most notably with regard to the introduction of new generic Top Level Domains (gTLDs) by the Internet Corporation for Assigned Names and Numbers (ICANN), the authority which is charged with overseeing the Domain Name System. The expected introduction beginning in the course of next year of more than 1,300 new gTLDs raises intellectual property concerns. The Secretariat noted that the document provides an overview of the mechanisms that rightsholders will have at their disposal to address these concerns. In this regard, the Center has been providing observations to ICANN, and will continue monitoring developments. The Secretariat noted that it will report on these developments to the General Assembly next year, and that the SCT has placed this item on its agenda.

258. The Delegation of Venezuela (Bolivarian Republic of) expressed the view that changes should take place that would ensure direct participation by Governments in the elaboration and implementation of international public policy on Internet governance. The Delegation noted that this issue concerns national sovereignty.

259. The WIPO General Assembly took note of the contents of document WO/GA/41/17 Rev.2.

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