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STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

**Second Session
Geneva, May 4 to 11, 1999**

REPORT

adopted by the Standing Committee

INTRODUCTION

1. The Standing Committee on Copyright and Related Rights (hereinafter referred to as the Standing Committee) held its second session in Geneva from May 4 to 11, 1999.
2. The following States members of WIPO and/or the Berne Union for the Protection of Literary and Artistic Works were represented at the meeting: Algeria, Argentina, Armenia, Australia, Austria, Bangladesh, Belarus, Belgium, Benin, Brazil, Brunei Darussalam, Bulgaria, Canada, Central African Republic, Chad, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Denmark, Ecuador, Egypt, El Salvador, Finland, France, the Former Yugoslav Republic of Macedonia, Germany, Ghana, Greece, Guatemala, Guinea, Haiti, Honduras, Hungary, India, Indonesia, Italy, Jamaica, Japan, Jordan, Kenya, Lesotho, Lithuania, Luxembourg, Madagascar, Malaysia, Malta, Mexico, Mongolia, Morocco, Namibia, Netherlands, New Zealand, Niger, Norway, Oman, Pakistan, Panama, Paraguay, Philippines, Poland, Portugal, Republic of Korea, Russian Federation, Senegal, Singapore, Slovakia, Slovenia, South Africa, Spain, Sudan, Sri Lanka, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Uganda, Ukraine, United Arab Emirates, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Viet Nam and Zambia.
3. The European Community also participated in the meeting in a member capacity.
4. The following intergovernmental organizations took part in the meeting in an observer capacity: International Labour Organization (ILO), United Nations Educational, Scientific and Cultural Organization (UNESCO), World Meteorological Organization (WMO), World Trade Organization (WTO), Arab States Broadcasting Union (ASBU), League of Arab States (LAS), Central American Integration System (SICA) and the Organisation internationale de la francophonie (OIF).
5. Representatives of the following international non-governmental organizations took part in the meeting as observers: Agence pour la protection des programmes (APP), American Bar Association (ABA), American Federation of Television and Radio Artists (AFTRA), American Film Marketing Association (AFMA), Asia-Pacific Broadcasting Union (ABU), Association for the International Collective Management of Audiovisual Works (AGICOA), Association of Commercial Television in Europe (ACT), Association of European Performers' Organisations (AEPO), Caribbean Broadcasting Union (CBU), Central and Eastern European Copyright Alliance (CEECA), Comité "Actores, Intérpretes" (CSAI), Copyright Research and Information Center (CRIC), Digital Media Association (DiMA), Electronic Industries Association (EIA), Electronic Industries Association of Japan (EIAJ), International Association of Broadcasting (IAB), European Broadcasting Union (EBU), European Federation of Joint Management Societies of Producers for Private Audiovisual Copying (EUROCOPYA), Groupement européen représentant les organismes de gestion collective des droits des artistes interprètes ou exécutants (ARTIS GEIE), Ibero-Latin-American Federation of Performers (FILAIIE), Inter-American Copyright Institute (IIDA), International Association for the Protection of Industrial Property (AIPPI), International Confederation of Societies of Authors and Composers (CISAC), International Council of Scientific Unions (ICSU), International Council on Archives (ICA), International Federation of Actors (FIA), International Federation of Associations of Film Distributors (FIAD), International Federation of Film Producers Associations (FIAPF), International Federation of Library Associations and Institutions (IFLA), International Federation of Musicians (FIM),

International Federation of Journalists (IFJ), International Federation of Reproduction Rights Organizations (IFRRO), International Federation of the Phonographic Industry (IFPI), International Intellectual Property Alliance (IIPA), International Literary and Artistic Association (ALAI), International Publishers Association (IPA), International Video Federation (IVF), Japan Electronic Industry Development Association (JEIDA), Max-Planck-Institute for Foreign and International Patent, Copyright and Competition Law (MPI), Media and Entertainment International (MEI), National Association of Broadcasters (NAB), National Association of Commercial Broadcasters in Japan (NAB-Japan), North American Broadcasters Association (NABA), Performing Arts Employers Associations League Europe (PEARLE), Software Information Center (SOFTIC), Software and Information Industry Association (SIIA), Union of National Radio and Television Organizations of Africa (URTNA) and World Association of Newspapers (WAN), World Federation of Music Schools (WFMS).

6. The list of participants (Annex) is attached to this Report.
7. The session was opened by Mr. Shozo Uemura, Deputy Director General, who welcomed the participants on behalf of Dr. Kamil Idris, Director General of WIPO.

ELECTION OF OFFICERS–RULES OF PROCEDURE

8. The Standing Committee unanimously re-elected Mr. Jukka Liedes (Finland) as Chairman, and Mrs. Hilda Retondo (Argentina) and Mr. Shen Rengan (China) as Vice-Chairpersons. At the same time, it adopted the following Special Rule of Procedure:

“The outgoing Chairman and Vice-Chairmen shall be immediately eligible for re-election to their offices.”

9. Mr. Kurt Kemper acted as Secretary of the Session.

ADOPTION OF THE AGENDA

10. The Standing Committee unanimously adopted the agenda (document SCCR/2/1).

PROTECTION OF AUDIOVISUAL PERFORMANCES

11. The *Chairman* pointed at the conclusions and recommendations made by the Standing Committee, as regards this subject, at its first session in November 1998 and noted the documents containing new submissions (documents SCCR/2/2, SCCR/2/3 and SCCR/2/9), as well as the Comparative Table (document SCCR/2/4), which embodied all new submissions but the proposal by India (SCCR/2/9). He then proposed a short round of general remarks concerning new developments at national level and possible conclusions of the regional consultations held on May 3, 1999, after which he would suggest discussion on such individual items where different opinions appeared in the working documents.

General Remarks

12. The Delegation of *India*, speaking on behalf of the Group of Countries in Asia and the Pacific, informed of the regional consultations in which the group had heard observations from representatives of the European Community and the United States of America. This had helped the group to reach a better understanding of backgrounds of the different proposals.

13. The Delegation, turning to its own proposal (document SCCR/2/9), explained that it was the result of a long consultation process and reflected concerns of the film industry, the performers and the Government. The primary aim of protecting rights of performers better could not be pursued in a vacuum. India's strong interest in its important film industry as well as the practices of relationships between performers and producers had to be considered; these relations were based on mutual trust, not on written documents. It was necessary to maintain the existing balance when granting new rights which should be meaningful. The draft treaty touched upon some of the major elements of discussion in the Standing Committee, namely:

- definition of performer, with certain exclusions;
- moral rights, with the recognition that the audiovisual sector required some exceptions;
- recognition of a right of rental; and
- a clause on transfer of rights, based on current industry practices.

The Delegation said that it was open to suggestions from other participants.

14. The Delegation of *Panama*, speaking on behalf of the Group of Countries of Latin America and the Caribbean, referred to document SCCR/2/2. The revised proposal from the region contained therein constituted an important contribution to the debate. The regional consultation of May 3, 1999, had been useful for the proper understanding of other proposals. The group, in a constructive spirit, recognized the necessity to reach consensus on the protection of audiovisual rights of performers.

15. The Delegation of *Japan* reported that draft legislation in its country had been finalized concerning technological measures of protection and rights management information as well as the right of distribution to the public other than interactive transmission. Once that legislation would be passed, Japan would be prepared to ratify the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) except the provision on moral rights. A subsequent project would deal with performers' rights, as considered in the WPPT and the future Protocol. The Delegation also reiterated that the basic idea of its proposal on audiovisual performances was to provide flexibility and choice for national legislation.

16. The Delegation of the *European Community* explained that its submission was not a new proposal, but it supplemented the proposal in treaty language submitted in January 1998. Two points were now further explained: first, the transfer of rights, and secondly, the rights of broadcasting and communication to the public. The basis of its approach remained the Recommendation adopted at the 1996 Diplomatic Conference and the WPPT, the spirit of which it followed. Solutions should be flexible enough to take into account the different ways of filmmaking. The effort yet to be undertaken should focus on the really relevant points that needed to be addressed.

17. The Delegation of *Uganda*, speaking on behalf of the African Group, said that it accorded importance to the improved protection of performers in the audiovisual field. Africa's position was reflected in document SCCR/2/4. The exchange of views with the Delegations of the European Community and of the United States of America in the regional consultation on May 3, 1999, had been very useful. The Group would in due course pronounce itself on the proposals of these Delegations. It was willing to cooperate and contribute to create a new international instrument acceptable in both developed and developing countries for the protection of audiovisual performances.

18. The Delegation of *Algeria*, speaking on behalf of Arab States, said that the Arab States were thankful to the International Bureau for having arranged a regional consultation helping them to voice their concerns. They felt that a Protocol on Audiovisual Performances was necessary, and rights granted should go beyond the local framework towards international protection.

19. The Delegation of *Singapore*, while associating itself with the statement made by the Delegation of India on behalf of the Group of Countries in Asia and the Pacific, supplemented that statement by explaining that the views developed in the regional consultation held in Shanghai in October 1998 were reflected in the comparative table (document SCCR/2/4). The Group was now confronted with new proposals and looked forward to play a constructive role in further discussions.

20. The Delegation of the *United States of America* said that the administration was committed to working towards a new international agreement that would improve the protection of performers with regard to the exploitation of fixations of their performances in audiovisual works. The proposal of the United States of America was the result of a long process of consultation. Like India, the Delegation believed that a strong film industry was an important part of the economy of its country. The legal protection proposed balanced the interests of both motion picture producers and performers. The proposal represented a tremendous change in position for the United States of America. However, the Delegation was pleased to be able to advocate a strong international protection for performers.

21. The Delegation of *Mexico* stated that on April 8, 1999, the Senate of Mexico had approved ratification of the WPPT and that the deposit of the instrument of ratification was now imminent. It was expected that the Senate would be dealing with the WCT ratification in May 1999. The Delegation stressed that it wished to see the Protocol on Audiovisual Performances adopted in a very near future.

22. The Delegation of *China* informed the Standing Committee of national consultations held after its first session. The result had been that the level of protection provided for performers in the current copyright law needed to be raised, and corresponding amendments were now under preparation. As differences of opinion were still prevailing in that national process, the Delegation felt unable to make proposals in treaty language at the current session. The Delegation wished, however, to reiterate the following principles:

- the new instrument should be a Protocol to the WPPT, and not a separate treaty, which would complicate the issue;
- it should focus on a protection of audiovisual performances equivalent to the protection of sound performances in the WPPT;

- in the field of economic rights, separate protection should be given to live performances on the one side, and fixed performances on the other side;
- the question of contractual arrangements on the transfer of rights should be left to national legislation.

Title and nature of the instrument

23. The *Chairman* suggested that the issues be discussed in the order in which they were presented in the comparative table of the proposals, prepared by the International Bureau (document SCCR/2/4). He stated that the question whether the instrument under preparation should be a protocol to the WPPT or a self-standing instrument was not merely a technical question. It depended on which provisions of the WPPT would be applied to the Protocol or borrowed and on which provisions of other treaties could be borrowed. He recalled that there were many provisions of the WCT that had been borrowed from the Berne Convention. He noted that the proposals of the United States of America and India were in favor of a Treaty while the rest of the proposals were in favor of a Protocol.

24. The Delegation of the *United States of America* strongly supported an independent treaty because, in its view, the motion picture industry represented unique economic and labor conditions that were different in kind from the audio industry. Therefore, the Delegation thought that drafting a separate treaty would make it easier to meet the particular needs of the motion picture industry, which were not necessarily taken care of in an existing agreement for a different industry.

25. The Delegation of *India* stated that a separate treaty would give more flexibility and would be the most appropriate way to deal with the issues. The Delegation felt that the problems of the film industry were different from those of the phonographic industry.

26. The *Chairman* added that the decision on the nature of the instrument could have some impact on which countries could become party to the instrument and on the speed with which governments might decide to adhere to the WPPT. He stressed that that was a political consideration.

27. An observer from the *International Federation of Musicians* (FIM) underlined that the instrument was not devoted solely to the motion picture industry, but should also cover the numerous other audiovisual productions, such as music videos, where contracts, market conditions and practices were different from the film industry. By choosing a protocol, certain matters would follow inexorably the WPPT and be carried on, such as the right of making available, moral rights, the omission of rules on transfer of rights. Still, some new provisions could be included in the protocol, for instance regarding the right of broadcasting and communication to the public.

28. An observer from the *Ibero-Latin-American Federation of Performers* (FILAIIE) supported the views of FIM and stressed the need of consistency with the work that had been done before. He recalled that the 1996 Diplomatic Conference had decided that the new instrument should be a protocol to the WPPT. He pointed out that the protocol should protect the activity of the artists who could now easily move from an audio to an audiovisual environment, and therefore the discussions should not merely focus on the situation in the motion picture industry.

29. The *Chairman* concluded that further discussions on this issue were necessary.

Definitions

30. The *Chairman* noted that no delegations wished to take the floor.

31. An observer from the *Association of Commercial Television in Europe* (ACT) pointed out that the definition of “broadcasting” in Article 2(c) of the proposal of India seemed to be based on the definition in Article 3 (f) of the English text of the Rome Convention which referred to transmission by wireless means “for public reception” rather than “for reception by the public.” He considered that to be a mistranslation of the French text, because it would appear to refer to reception in public places. Referring to the treatment of incidental contributors, or extras, in Article 2(a) of the proposal of India, he recalled Article 22 of the Rome Convention and pointed at the problem that could be generated for signatories to the Rome Convention if the new instrument excluded certain performers from protection. In his view, one should rather question whether extras were properly regarded as performers at all, and he would therefore have preferred if the proposal had referred to them as “contributors,” rather than “performers.” That solution would also ensure that extras would not enjoy moral rights.

32. An observer from the *International Federation of Musicians* (FIM) agreed with the previous observer that there would be a risk of lowering the level of protection, compared to the Rome Convention, and stated that it would be absurd if a protocol lowered the level of protection granted in its underlying treaty.

33. An observer from the *Groupement européen représentant les organismes de gestion collective des droits des artistes interprètes ou exécutants* (ARTIS GEIE) supported the views expressed by the observer from FIM, and stressed that the main danger would be the handling of a subjective criterion, such as a “significant contribution” by a performer. He felt that it would be more logical to maintain the definition of performer given in the WPPT.

34. The *Chairman* concluded that he was convinced that on the basis of the analysis made, it would now be possible to find a solution to the question of extras. In any case, despite minor differences, there was a high level of convergence concerning the definitions.

Beneficiaries of protection

35. The *Chairman* noted that all proposals referred to the performers’ nationality as a basic element. In addition, one of the proposals also included ordinary residents while another proposal was more elaborated and included the criterion of territoriality and the place of fixation.

36. The Delegation of the *United States of America* stated that a broad set of criteria, comparable to the one applicable to authors under the Berne Convention, was more adequate than a limited system, as found in the Rome Convention. This was in line with the complexities of the modern audiovisual business and would ensure that as many performers as possible would enjoy protection, also in the fields outside the motion picture industry.

37. The Delegation of *Singapore* was of the opinion that the criterion of nationality had the advantage of being a more manageable concept than the broader criteria. This was particularly so in the often complicated cases of co-productions. Another sensitive question was that the extension of protection to other than nationals of Contracting Parties could lead to a lower level of accession to the protocol or treaty. One could therefore argue that it would be better to refer to nationality only, and leave the remaining questions to be solved in the contractual relationships.

38. The Delegation of *Colombia* felt there was a need to include the ordinary residence of the performer as a supplementary criterion, as proposed by the group of Latin American and Caribbean countries. The proposal reflected the situation in that region where many performers were permanently visiting other countries in which they were not nationals. If such performers were engaged to work in their country of domicile, they should be protected, and this solution would provide them with a higher degree of legal security.

39. The *Chairman* noted that the construction of the country of origin of the Berne Convention had not been used in any of the proposals. The criteria proposed were nationality or nationality plus territoriality. If the criterion of nationality would be the only one to be taken, the consequence would be that only some of the performers in a given audiovisual fixation would be protected. That situation would have practical consequences but they could probably be managed with computer technology. He noted that all delegations had agreed on the criterion of nationality, and that the question could be left for the time being since there would hardly be big difficulties in reaching a solution.

National treatment

40. The *Chairman* noted that the issue of national treatment had frequently been deferred in earlier deliberations, and during the first session of the Standing Committee there had been a short exchange of views. Almost all proposals contained provisions on national treatment in treaty language, ranging from a restricted national treatment as in the TRIPS Agreement, in respect of performers' rights, to a global national treatment as in the Berne Convention. Other shades were the possibility of reciprocity and of various limitations. Similar approaches had been seen during the discussions before the adoption of the WPPT, which resulted in a compromise. He noted that no delegations asked for the floor.

41. An observer from the *International Federation of Actors (FIA)* stressed that the issue of national treatment should not deadlock the instrument. She declared that there were some basic requirements regarding a new instrument: 1) it should protect existing rights, including contractual arrangements where such exist; 2) it should encourage the introduction of audiovisual rights that did not yet exist; and 3) it should give sufficient certainty for all parties involved in the production and distribution of audiovisual works in the global market. She observed that the issue of national treatment was very close to the question of transfer of rights, and those issues therefore had to be discussed together. As the criterion of national treatment was based on political and economic principles, her organization did not have a unanimous opinion in that respect.

42. The *Chairman* stated that further discussions on the issue should take place when the contents of the instrument had been further clarified.

Moral rights of performers

43. The *Chairman* recalled those proposals that contained elements distinctive from Article 5 of the WPPT, in particular the reference to “normal exploitation,” contained in the proposals of the United States of America and India, and the specific wording in the proposal of Latin American and Caribbean Countries.

44. The Delegation of *Japan* explained that the proposal of its Government at this stage contained no provision on moral rights because discussion was still continuing in respect of domestic legislation on this issue. The absence of a provision in its proposal did not mean that its Government was opposed to moral rights, but, for the time being, it wanted to maintain a neutral position.

Right of Rental

45. The *Chairman* said that two types of provisions on this right could be distinguished in the various proposals, namely one type prescribing the rental right to Contracting Parties without exemption, while the other type exempted Contracting Parties from the obligation to introduce a rental right except where the rental had given rise to widespread copying materially impairing the exclusive right of reproduction.

46. The Delegation of *Singapore* said that the new instrument should maintain the solution that had been found in the TRIPS Agreement, that is, exempting Contracting Parties from the introduction of the rental right unless the rental practice in the respective country gave rise to widespread copying materially impairing the reproduction right.

Right of broadcasting and right of communication to the public

47. The *Chairman* noted that important differences of opinion continued to exist in respect of this crucial issue. A landscape of very different proposals had appeared.

48. The Delegation of the *European Community* said that the European Community and its Member States continued to have no specific proposal in treaty language. They were not in principle opposed to granting rights in this area, but due consideration should be given to the fact that marketing mechanisms, contractual relations and payment mechanisms might be different here from the situation in the industry envisaged by the WPPT. A *mutatis mutandis* application of Article 15 of the WPPT seemed not appropriate. Moreover, caution was required in respect of granting exclusive rights. The Delegation further referred to the explanation given by the European Community, as contained in document SCCR/2/3. Asked by the Delegation of *Singapore* to specify that explanation, the Delegation of the *European Community* said that indeed Article 15 of the WPPT made reference to a particular situation, as did Article 12 of the Rome Convention, namely the broadcasting and communication to the public of phonograms published for commercial purposes. In the audiovisual industries, situations were different. When a film was communicated to the public, the carrier would not be a videogram published for commercial purposes. The main thrust of its submission was to explain that, if such a right would prove to be necessary, one possibility would be to give performers the assurance of at least an equitable remuneration. However, that right would have to be adapted to the specificities of the audiovisual sector.

49. The Delegation of *Spain*, supporting the position expressed by the Delegation of the European Community, questioned the possible meaning of the reference to Article 15(3) of the WPPT, contained in the position of certain States of Asia and the Pacific. The Delegation of *Singapore* answered that the position of that group was based on the whole of Article 15, which should be the basis of discussion. Paragraph 3 of that Article had been expressly mentioned, as that paragraph provided for a particular flexibility for contracting parties.

50. The Delegation of *India* explained, why its proposal did not provide anything in respect of the rights in question here. India did not have a practice of remuneration rights, as provided for in Article 15 of the WIPO Performances and Phonograms Treaty (WPPT). Furthermore, the Delegation noted that there was a reservation possibility in respect of Article 15 of the WIPO Performances and Phonograms Treaty (WPPT).

51. The Delegation of *Japan* clarified its position, namely that the right of remuneration provided for in Article 10 of its country's proposal, which had been presented in the Comparative Table prepared by the International Bureau (document SCCR/2/4) under the heading "right of broadcasting and communication to the public," was in fact not limited to that right, but could be extended to any rights to be granted to performers. In case such a right of remuneration was established, national treatment would be applied on a reciprocal basis.

52. The Delegation of the *United States of America* strongly advocated exclusive rights for performers to the same extent as provided for authors in Article 11*bis* of the Berne Convention. Developments since the first submission of the United States of America had confirmed the importance of granting exclusive rights in that area. Exclusive rights were appropriate for these key manners of exploitation. Reducing them to a right of remuneration would not be appropriate. The exclusivity right enabled performers to bargain in the market place. The Delegation considered the exclusive right in this area to be a very important element of a new treaty.

53. The Delegation of *Australia* showed interest in the substance of the proposal made by the United States of America but felt that it should refer to the conditions on the exercise of the right that "are" permissible, rather than "would be" permissible.

54. The Delegation of *Switzerland* said that it shared the majority opinion that the rights in question here were very important rights for performers. Against granting exclusive rights it invoked that in the WPPT only a remuneration right was given in the sound recording field. It would have to be examined what the economic consequences of a change in position would be.

55. The Delegation of *Spain* questioned whether an exclusive right would be the best solution, in particular if linked with a provision presuming the transfer of the right.

56. The Delegation of *Benin* also questioned whether an exclusive right really achieved an improvement for the economic situation of the performers in practice, in the framework of the transferability of the rights to the producers of audiovisual works.

57. The Delegation of *Senegal* said that it did not favor a recognition of exclusive rights of broadcasting and communication to the public as this would mean that performers enjoyed stronger rights than authors. As regards a right of remuneration, the specificity of the audiovisual sector had to be taken into account. An application *mutatis mutandis* of the

provisions of the WPPT might generate extremely complex situations that could make the rights granted in the future instrument inoperative.

58. The Delegation of the *United States of America*, asked by the Delegation of the *United Kingdom* what the words in Article 10 of its proposal meant: “Except where such a performance is already a broadcast performance,” answered that that wording had been taken from the Rome Convention. It might possibly be dropped from the proposal.

59. An observer from the *International Federation of Musicians* (FIM) said that his organization agreed with the first part of the proposal from the United States of America, but not with a clause on transfer of rights. In his understanding the market place should be a free market, without presumptions of transfer. In response to those contributors who had said that it would be difficult to apply Article 15 of the WPPT because of different market situations in the audiovisual field, he noted that there were also similarities: the Swiss law provided for a remuneration right for the broadcasting of music videos, and that there were many occasions where commercial phonograms were integrated with a visual element. He spoke in favor of granting performers exclusive rights in this area, and underlined that Article 12 of the Rome Convention had become inadequate, as the technology and the market had changed from 1961 to 1999. Broadcasting organizations did not any more rely to the same degree on commercial phonograms being at their disposal. Experience showed that exclusive rights were not impracticable. They could be dealt with by full and free bargaining in the market place.

60. An observer from the *International Federation of Actors* (FIA) said that she welcomed the first part of the intervention of the Delegation of the European Community. However, a treaty without rights in this area would seem strange, as this area constituted the most important use of audiovisual performances and therefore was the most important right for performers. She underscored the linkage of the question to national treatment. FIA wanted a higher protection than in the proposal of the European Community.

61. An observer from the *Ibero-Latin-American Federation of Performers* (FILAIIE) underlined the necessity to find a balance between the interests of producers and those of performing artists. In this respect he noted that producers might convert to broadcasters and broadcasters might convert to producers. He also said that he understood the difficulties that the Delegation of the European Community found in applying Article 15 of the WPPT *mutatis mutandis*. The ideal solution would be an exclusive right for performing artists. Where a transfer of the right should occur, the economic interest of the performing artist would have to be properly recognized. An observer from the *Groupement européen représentant les organismes de gestion collective des droits des artistes interprètes ou exécutants* (ARTIS GEIE) said that his organization, although it defended the principle of an exclusive right, could accept a transfer clause if it was coupled with a guarantee of equitable remuneration. An observer from the *Comité “Actores, Intérpretes”* (CSAI) agreed with that statement. In his view the right to an equitable remuneration might be combined in national legislation with compulsory collective administration. An observer from the *Association of European Performers’ Organisations* (AEPO) took the view that there was an enormous lack of balance between producers and performers. He favored an exclusive right for performers if it could be exercised decently by them. What was important, was the economic result for the vast majority of performers who were not star performers.

62. An observer from the *European Broadcasting Union* (EBU) found that another difference that made the application of Article 15 of the WPPT inappropriate in the

audiovisual field was that the broadcasting of commercial phonograms was licensed for mass uses through collecting societies while the audiovisual productions were not licensed for mass uses on a non-exclusive basis for broadcasting and communication to the public. She said that also in radio productions performers were employed by the producers who acted as a one-stop-shop. Article 15 of the WPPT did not apply in that situation. Extending it to the audiovisual field would have the effect of overturning the existing one-stop-shop system and the collective bargaining situation where satisfactory solutions had been found. An observer from the *North American Broadcasters Association* (NABA) said that the relations between broadcasters and performers were dealt with by private contracts and one-stop-shopping. The question of a satisfactory remuneration was an issue between the producers and performers. An observer from the *Association of Commercial Television in Europe* (ACT) found that the issue of whether performers were adequately remunerated was an issue different from the issue of the substance of the rights granted to them in national legislation. An observer from the *International Association of Broadcasting* (IAB) also underlined that broadcasting and communication to the public were primary uses for which the performer was paid through the contract with the producer. The proposal from the United States of America disturbed that balance and gave more rights to performers than were granted to authors.

63. Observers from the *International Federation of Film Producers Associations* (FIAPF), the *International Federation of Associations of Film Distributors* (FIAD) and the *European Federation of Joint Management Societies of Producers for Private Audiovisual Copying* (EUROCOPYA) noted the fundamental difference between sound recordings and audiovisual productions in respect of broadcasting. The economic mechanisms were not the same. Performers were paid by audiovisual producers for such primary uses as broadcasting and communication to the public. The question of rights in this respect could not be tackled without the question of a presumption of transfer of these rights. Otherwise a system of double remuneration would be created.

64. An observer from the *International Confederation of Societies of Authors and Composers* (CISAC) stated that most of the authors in audiovisual productions did not enjoy exclusive rights, as a consequence of legal presumptions on the transfer of their rights. Even if performing artists enjoyed a remuneration right only, they would be better off than authors in audiovisual productions. As a right for performing artists supposed also a corresponding right of authors, he felt that even a remuneration right for artists only was not ripe yet for an international agreement. An observer from the *Interamerican Copyright Institute* (IIDA) noted that some of the proposals went beyond the WPPT and the standard set by the Berne Convention for authors. He questioned what the intention of these proposals was if the rights granted were subsequently transferred to the producer. Was it the intention to improve the performers' or the producers' position?

65. The *Chairman* concluded the debate in stating that it had been a useful stocktaking of positions. It had become clear that further work, analysis and consultations were necessary before entering a final stage of negotiations.

Contractual arrangements–Transfer of rights

66. The *Chairman* recalled that contractual arrangements or transfer of rights had been discussed in detail at the first session of the Standing Committee, and that the discussion had reflected opinions ranging from not including any provision on the issue in the instrument to

mandatory rebuttable presumptions. Within this scope, there were different solutions carrying different elements. After the last meeting, the proposal of India had been received (document SCCR/2/9) and during the present session the International Federation of Actors (FIA) had made available a proposal as a room document. The comparative table (document SCCR/2/4) contained the proposals of Canada, certain countries of Latin America and the Caribbean, Japan and the United States of America, as well as the position of the European Community and its Member States.

67. The Delegation of *Canada* underlined the basic principle of its proposal (document SCCR/1/8) was that in certain circumstances countries would be required to recognize a transfer that had occurred in another country. That was a question of private international law and the intention of the proposal was not to constrain what countries could do with their domestic productions, but to refer only to foreign productions. The proposal contained various alternatives regarding a number of issues of implementation, such as, which performers were covered, which rights were covered and what conditions should apply to such a transfer.

68. The Delegation of the *European Community* stressed that its proposal left it to contracting parties to determine the modalities of transfer of rights according to their own traditions and needs. If the wish was to update and modernize the protection of audiovisual performances, the added value for those performers of a new instrument with a mandatory clause of transfer of rights had to be demonstrated. International co-productions took place already nowadays in the European Community, and they crossed borders without major problems, even though there was no harmonization of the rules of transfer of rights. The Delegation noted that the proposals of Canada and the International Federation of Actors (FIA) pointed in the direction of recognizing transfers in the country of origin, which seemed already to be the general practice. To add limitations in that respect would not facilitate things, and the question should therefore be left for national legislation.

69. The Delegation of *Japan* stressed that the main purpose of the Japanese proposal was to facilitate international harmonization by proposing a framework of flexibility and choice for contracting parties. Article 9(1) of the proposal was the same as Article 19 of the Rome Convention, but the exception from national treatment enabled contracting parties to choose not to apply that provision to performances by their own nationals. That was different from a transfer of rights because it enabled performers to exercise a right of remuneration through a collective management organization. The proposal offered a framework, which the protocol should contain, that gave maximum flexibility for national legislation. Such arrangements should be stipulated clearly in the treaty itself, not in agreed statements.

70. The Delegation of *India* mentioned that Article 11 of its proposed treaty was based on the nature of the film industry and the manner in which films were marketed, which made such a transfer essential. According to the national legislation of its country, once a performer had consented in writing to the incorporation of his performance in a cinematographic film, the transfer took place automatically. The Delegation wondered if a solution might be found in the outcome of the December 1998 meeting of a Group of consultants on the private international law aspects of the protection of works and objects of related rights transmitted through global digital networks.

71. The Delegation of the *United States of America* emphasized that its proposal for a rebuttable presumption of transfer was supported by the performers and producers in its

country because it was believed to be in the best interest of both. The proposal expressed the growing consensus that the issue had to be dealt with in any new instrument on the protection of audiovisual performers' rights, as it had been done in the Berne and Rome Conventions. The Delegation noted that the proposal of India provided a slightly different perspective and the proposal of the International Federation of Actors (FIA) offered interesting ideas about how the issue could be dealt with in the treaty. It also looked forward to discussing in more detail the proposal of Canada.

72. The Delegation of *Australia* suggested that, with the new proposals and clarifications presented, the issue could be taken a step further. Notably, the proposal of Canada had the seeds of a possible resolution. While the proposals of India and Japan seemed to build on the precedent of the Berne Convention, the advantage of the proposal of Canada was that the preference of ownership of rights in the country with which the film was most closely associated would follow the film. Thus countries could maintain their national regulations in respect of ownership, and countries making the foreseen declaration would still have to respect the ownership established in countries not making such a declaration. In respect of which actors should be covered by a transfer, the most appropriate solution might be that all the actors in a film most closely associated with a declaring country should be subject to the transfer, and vice versa. Concerning the criterion for identifying the films subject to a declaration, the Delegation pointed at the precedent in Article 5(3)(c)(i) of the Berne Convention, that is, the location of the headquarters or habitual residence of the maker. The Delegation stressed that its Government had not yet taken a position on the issue.

73. At the invitation of the *Chairman*, an observer from the *International Federation of Actors* (FIA) pointed at her Federation's wish that existing national audiovisual production practices and systems of rights and contracts be respected, and that countries in which there were no rights would introduce such rights to protect their performances. In many countries actors did not have rights and worked for little or no remuneration without written contracts. The proposal of Canada was interesting because it contained no mandatory presumption of transfer, but countries might elect to have a system for transfer of rights. In the view of FIA such systems should fulfill certain minimum standards in order to be recognized in other countries: the presumption had to be rebuttable and the underlying contract should be written; it should specify the right transferred and rights in uses not yet existing should not be covered; remuneration rights and moral rights should not be transferable; and the transfer had to be made in exchange for remuneration. FIA shared the concern of many governments to protect their national audiovisual production industries, including television stations.

74. The Delegation of the *United Kingdom* fully supported the proposal of the European Community and its Member States in document SCCR/2/4 and the statement made by the European Community. Recalling that the discussion was about performers in films and not about the film industry, it asked the Delegations of Canada, Japan and India to clarify how the distribution of audiovisual works was being hampered against the interest of performers by existing national transfer rules. The key issue was the recognition of a transfer in one country by the laws of other countries, and in that respect it asked the Delegation of Canada whether anything presently prevented such a recognition. It also asked the Delegations of India and Japan whether their proposals meant that the performers could not object to the indicated use in other countries, or only in the same country.

75. The Delegation of *Canada* responded that it considered its proposal to a large extent to be a codification of principles in existing private international law, at least as it was applied in

its own country where transfer by operation of law was generally recognized. It added that the question of possible retroactivity of the provision needed further study.

76. The Delegation of *Japan* responded that, under its proposal, once a performer had consented to the making of an audiovisual fixation of his performance, he might not object to its reproduction in any of the contracting parties. A contracting party might, however, maintain an exclusive right reflected in current contracting practices, but only in respect of its own nationals.

77. The Delegation of *Ghana*, speaking on behalf of the African Group, referred to the proposal of certain countries in Africa, adding that the group was still studying its position which would be further discussed during the forthcoming regional meeting at the end of June 1999, in Cotonou, Benin. The group found it difficult to accept that performers' economic rights would be transferred to the producers when the performers had agreed to the fixation since producers were already in an advantaged position. The group felt that the matter of transfer of rights had to be left to the national legislation. The group stressed that folklore was an important aspect of African culture. Expressions of folklore were included in the definition of audiovisual performer. The group also underlined the importance of WIPO activities to research in the protection of folklore and traditional knowledge.

78. The Delegation of *Singapore* felt that trying to accommodate the interests of performers and producers when harmonizing the issue of transfer made a quick solution unlikely. The Standing Committee should consider whether it was necessary to have international rules in the area and, if so, whether international harmonization was necessary. That harmonization, if any, should not be complex to apply, and it should support international co-productions and the legitimate interests of the parties.

79. The Delegation of *Benin* was concerned that the rights unavoidably could flow from the performers, and expressed its support to the position of the African group, particularly concerning expressions of folklore. Presumptions of transfer should not increase the already wide gap between performers and producers. Flexible and realistic rules that took the equitable interests of the artists into account were necessary in this field.

80. An observer from the *International Federation of Film Producers Associations* (FIAPF), welcomed the proposal of FIA, which departed from previous positions regarding a presumption of transfer of rights. He recalled FIAPF's proposal made at the first session and stressed that the instrument needed presumptions of transfer in order to make the different legal traditions compatible. Its opt-out possibility gave a better balance than the opt-in possibility, suggested by FIA. He agreed with FIA that the presumption should refer only to economic and not moral rights. The points of attachment question was technically difficult, but one should, as stated by the Delegation of Australia, aim at the country with which the film was most closely associated.

81. An observer from the *International Federation of Musicians* (FIM) stressed that the protocol should deal with the whole audiovisual field and not just the motion picture industry. He recalled that Article 14*bis* of the Berne Convention was limited to an author's claim under national law to be a co-owner of a cinematographic work and it did not apply to many categories of authors. Therefore, analogies regarding that article could not be established in respect of performers. Article 19 of the Rome Convention did not imply any presumption of transfer, and it did not preclude national legislation from granting more extensive rights. In

his view, Article 9(2) of the proposal of Japan was unnecessary, because a country was free to legislate in respect of its own performances. Even a rebuttable presumption would be pointless because it would only strengthen the one side in an already unequal bargaining relationship. He stated that option A of the proposal of Canada would in effect export national law and create confusion in the importing countries.

82. An observer from the *International Video Federation* (IVF) favored a presumption of transfer of rights to the producer and supported the views of FIAPF, the International Federation of Associations of Film Distributors (FIAD), and the European Federation of Joint Management Societies of Producers for Private Audiovisual Copying (EUROCOPYA). She welcomed the proposal of FIA and noted that presumptions of transfer of rights were necessary in order to ensure legal certainty and facilitate the fight against piracy, not least for distributors buying rights in foreign films.

83. An observer from the *Association of Commercial Television in Europe* (ACT) stated that there were different positions among broadcasters regarding the value of presumptions of transfer of rights. The proposal of the *International Federation of Actors* (FIA) was an important development, but in the countries that had a significant level of audiovisual production and investment, the command over revenue which was the fundamental concern of those that wanted to exploit audiovisual productions flowed from and was secured by contractual transfers. Here, the issue was how foreign courts interpreted contacts made in other countries where, for example, there were restrictions on the transferability of future rights. The criterion of attachment mentioned by the Delegation of Australia, the country with which the film was most closely associated, was not sufficiently clear, and the country of the producer would often be a tax haven. The unifying factor as far as the production of films was concerned would normally be the applicable law that was determined by the contracts.

84. An observer from the *International Literary and Artistic Association* (ALAI) preferred the system proposed by India and Japan, because they were soft and mitigated solutions that should be completed with a right of remuneration for the performer. Another option could be to leave that matter to national legislation. In any event, the final instrument should not degenerate into an instrument for audiovisual producers.

85. An observer from the *Comité "Actores, Intérpretes"* (CSAI) stated that good faith was the general principle of law and supported the statements of those delegations and observers that were trying to build solutions. He believed that some proposals aimed at letting the substantive rights of the performers become dead letters, and supported in general the proposal of the European Community and its Member States.

86. An observer from the *Association Internationale de Radiodiffusion* (AIR) pointed out that a protocol or treaty should not grant economic rights to performances for particular subsequent uses of audiovisual works, but should leave that to individual negotiations. If governments wished to grant economic rights for subsequent uses, it was important to establish flexible clauses that enabled other countries to retain their national rules and systems.

87. An observer from the *Association of European Performers' Organisations* (AEPO) supported the interventions of the European Community, Ghana, Benin and FIM. The most reasonable solution was not to mention anything about transfer of rights and leave the exercise of such rights to contracts or collective management. Presumptions were not in the

interest of performers, notably the large majority who were not stars and who would thereby lose any real advantage from the protocol.

88. An observer from the *National Association of Commercial Broadcasters in Japan* (NAB-Japan) pointed at the drastic changes in the social, cultural and technological environment that had taken place since the adoption of the Rome Convention. It was necessary to keep the balance between protection and use, and assure the highest degree of flexibility, as in the proposals of the European Community and Japan. In particular, he supported Article 9 of the latter proposal.

89. An observer from the *International Federation of Actors* (FIA) clarified that the FIA proposal meant that a transfer according to the law of one contracting party would be recognized in another contracting party if the established conditions were met. If, on the other hand, the conditions were not met, the presumption would not apply in other contracting parties. Regarding the points of attachment, she felt that more discussion was needed.

90. An observer from the *National Association of Broadcasters* (NAB) stated that it would be untenable if a broadcaster had to be worried about broadcasting an audiovisual work not produced in, or including performers not nationals or residents in, his own country. Such a situation would damage sale of foreign productions. He preferred an exclusive broadcasting right for performers with an irrebuttable presumption of assignment to the producer. He commended FIA for its important initiative.

91. The *Chairman* concluded that there were still two main options: either to have no rules on the issue or to have some rules, which could be of various nature, at international level. The debate had not led to convergence, but there was a clear willingness to continue the work. Presumptions of transfer through some legal operation had been proposed as an option, for example, a rebuttable presumption. Other solutions were based on international recognition of national legislation, as in the proposal of Canada, or mandatory rules, as the proposals of the United States of America, India and certain countries in Latin America and the Caribbean. The proposal of Japan was rather an optional arrangement at a national level. Most of the proposals implied a transfer of rights, whereas Article 14*bis* of the Berne Convention did not imply transfer, but another kind of legal operation. His final conclusion was that further work on the issue was necessary.

Duration of economic rights of performers

92. The Delegation of *Canada*, referring to its proposal, said that option B* was the most fundamental part of the proposal. In the WPPT, there was a difference leading to a possibly longer protection of the producer than that of the performer. Such a discrepancy would be prevented by the proposed option B which the Delegation recommended. The Delegation, in addition, noted option B.1. Part II of the proposal, the rule of comparison of terms, was intended to offer a greater flexibility for those Contracting Parties which granted a longer term of protection.

* The option letters in this paragraph refer to the lettering in the Comparative Table (document SCCR/2/4).

Application in time

93. The *Chairman* noted that there were various proposals, the main line of which was parallel to the provision of Article 22 of the WPPT.

94. The Delegation of *Canada* noted, in respect of the existing proposals, that doubts were justified as to whether the retroactive protection proposed was appropriate in a situation where performers so far had not enjoyed a right. Perhaps the Contracting Parties should be entitled to prescribe collective management for such retroactive rights.

PROTECTION OF DATABASES

95. The *Chairman* recalled the recommendations of the first session of the Standing Committee: the matter should be carried on to the next session of the Standing Committee; the International Bureau should commission a study on the economic impact of the protection of databases on developing countries, with a special emphasis on the impact on least developed countries; and the International Bureau should organize regional consultations during the second quarter of 1999. Four out of those six regional consultations would take place in June 1999. He further noted the submission from Ghana (document SCCR/1/INF/2) and the report of the consultation meeting for Central European and Baltic States (document SCCR/2/10). He invited delegations to inform the Standing Committee on developments at national level and to comment on the submitted documents.

96. The Delegation of the *United States of America* informed the Standing Committee of the Collections of Information Anti-piracy Act, proposed to the House of Representatives by Mr. Coble. In a hearing held by the Subcommittee on Courts and Intellectual Property, in March 1999, the Administration, represented by the General Counsel of the Department of Commerce, had indicated its support for some type of legislation supplementing copyright protection for databases with such additional protection that was necessary as a consequence of the "Feist" decision of the Supreme Court (1991), according to which copyright protection required a certain level of "intellectual creation." That restriction had denied copyright protection for many databases, and the Administration believed that additional protection was necessary, either through an additional intellectual property right or through other laws. However, adequate safeguards were needed to protect "fair uses," research activities and transformative uses. The Administration had now taken the view that the best approach for its national law would be rules on misappropriation.

97. The Delegation of *Senegal* recalled its position at the first session of the Standing Committee that two imperative factors should be considered: 1) the need for protection expressed by producers of databases who believed that an appropriate protection would encourage investment in databases; and 2) the specific needs of developing countries in the fields of health, education and research. A process of consultation had been started in its country, in the course of which certain administrations had expressed their concern and advocated the need for exceptions from such a protection. The Government had not yet reached a firm position but expected to submit a document after the regional consultations for Africa.

98. The Delegation of *Ghana* explained its submission which contained information collected from producers of databases as well as users. The majority of opinions might be

that additional protection was necessary but that exceptions should be prescribed for private use, research, government use and education.

99. The Delegation of *Brazil* stated that it maintained its basic position that there was no real need for a *sui generis* system of protection for non-original databases, because unfair competition rules would be sufficient. It informed the meeting that an internal process of consultations was continuing in its country, and the discussion on the issue in WIPO would be followed closely.

100. The Delegation of *India*, speaking on behalf of the group of countries in Asia and the Pacific, stated that the region had not yet held its consultation meeting. Meanwhile, the group thought that the need for additional protection was still to be fully demonstrated. So far, copyright protection seemed to have been sufficient and working well. The group was concerned about the possible effects on the development of science, technology, research and education. The group hoped that the study to be commissioned by the International Bureau would also cover the countries of that region.

101. The Delegation of the *European Community* recalled that the European Community and its Member States had submitted an explanatory paper on the protection of databases in January 1998, which explained why there was a need for protection beyond copyright, and further explanation had also been given during the first session of the Standing Committee. The European Community Directive, dealing with both copyright and *sui generis* protection of databases, had been adopted in March 1996, and nine of the 15 Member States had so far implemented the obligations under this Directive in their national legislation. The six remaining Member States would have concluded this process by the end of the year. The experience with the *sui generis* right had so far been very positive, and the Delegation would continue to share it with all participants.

102. The Delegation of *Benin* indicated that its Government had no firm position yet, but was very concerned about the issue of access to information necessary for the development of technology and science.

103. The Delegation of *Lithuania*, speaking on behalf of the Group of Central European and Baltic States, stated that, as expressed in the report of the regional Roundtable (document SCCR/2/10 Rev.), the group was of the view that there was a need for additional legal protection at the international level for the investments in databases. The Group supported the solution offered by the European Community and its Member States, namely to establish a *sui generis* right in favor of the maker of a database.

104. The Delegation of the *Central African Republic* explained the protection of databases existing in its country. It underlined the economic importance of the protection of databases as well as its impact on education and science.

105. The Delegation of *Singapore* supported the statement of the Delegation of India. In its country, concerns had been expressed by the scientific community and the national meteorological office. A *sui generis* protection of databases might close up something which the world had just started to use, that is, the vast amount of data freely available on the Internet. Electronic commerce was developing, and there were means to ensure that only subscribers had access to on-line services.

106. The Delegation of the *United Kingdom* wished to share its experience with the regulations in force since January 1998 which implemented the Directive of the European Community. A databases market strategy group had been set up and started to review the development of the market. A first conclusion had been that there was little change in terms of the practical operation of the market, although there had been some concern about the complexity of the new regime. At the same time, there had been indications that in certain cases business had remained in or had been drawn to the country, specifically because of the existence of legal protection. It was important to note that *sui generis* protection did not extend to the data as such when taken from the database, that is, there was no kind of monopoly on the data as such.

107. The Delegation of *Belarus*, on behalf of the countries cooperating in the Commonwealth of Independent States, shared the group's position reached at the regional consultations in Minsk: the particular importance of the debate on the issue of *sui generis* protection of databases, considering at the same time that such protection should in no way contradict educational, research, cultural and other interests of society at large; certain clarifications were necessary with regard to the terminology, principle and procedure for calculation of the time limits of the protection granted; the countries of the region were willing to continue the work in this respect in the context of the Global Information Infrastructure and particular interests of the society.

108. The Delegation of *China* mentioned that draft legislation had been prepared to modify the national copyright law of its country, by establishing copyright protection for the compilation of databases which was consistent with Article 5 of the WCT. The Delegation stated that it seemed difficult at present to promise protection for databases without creativity in its copyright law, as the consultations with academic circles and industries had manifested different opinions, including the feeling that no urgent action was required. Therefore, the Delegation could not make any proposal in treaty language for the time being. It suggested that the countries that were asking for a special protection at international level for such type of databases could provide special protection in their domestic law first. The Delegation expressed its support for continuing consultations within the Standing Committee in which the different state of development in economy, culture and education of the Member States would be reflected.

109. The Delegation of *Honduras* stated that it might be possible to accept a *sui generis* protection of databases if linked with a possibility of freely using information to facilitate development of countries which suffered precisely from a lack of information.

110. The Delegation of *Guinea* indicated that the Copyright Law of its country did not contain explicit provisions on protection of databases, but referred implicitly to the protection of original databases. It was envisaged to clarify the protection of databases in conformity with the TRIPS Agreement.

111. The Delegation of *Mexico* mentioned that, since December 1996, in its country original databases had been protected as derivative works, while non-original databases enjoyed *sui generis* protection for a term of five years, with one renewal possible. So far 60 databases had been registered, and the protection had not raised any problems.

112. An observer from the *International Publishers Association* (IPA) recalled the Association's position expressed during the first session of the Standing Committee, and

stressed that an appropriate legal protection of databases was central to the creation of the Global Information Society. The contribution of the private sector producing databases was as important as that of those producing public databases. He associated himself with the explanation given by the Delegation of the European Community at the WIPO Information meeting in September 1997, which had stressed that the main concern was the commercial exploitation of databases. This also clearly appeared in Paragraph 1402 of the bill pending in the Congress of the United States of America. He underlined that there was no locking up of information and no monopoly on data to be worried about. He also pointed at the interests of those who exported databases to countries with a *sui generis* protection.

113. An observer from the *International Council of Scientific Unions* (ICSU) recognized that database producers might need more than copyright protection for their investments, but the balance with the interests of users, as reflected in the Berne Convention, should be carried forward. The approach given in the European Directive was unnecessarily restrictive in a number of ways and could affect the progress of science in Europe. Even though publishers of databases had an important role in the scientific process, the cost of the research that produced the data was often much higher than the cost of putting the data into databases. He stressed the particular impact of protection on developing countries.

114. An observer from the *International Federation of Reproduction Rights Organizations* (IFRRO) noted that in the countries where consultations had taken place, there had been some opening and understanding regarding the need for additional protection of databases, and the need to encourage investment in databases had been duly recognized. Electronic commerce was rapidly increasing and the unique international global network made it possible for all countries to participate in this development. Countries had an interest to attract database producers and their investment activity, and the European Community Directive provided a good model. The long-time experiences in the Scandinavian countries had also been very positive.

115. An observer from the *Software and Information Industry Association* (SIIA) stated that there was growing consensus on the need for additional protection in the United States of America. In Canada, a lack of protection similar to the situation in the United States of America had been caused by the "Teledirect" court decision in 1998.

116. An observer from the *Inter-American Copyright Institute* (IIDA) stressed that when protection was granted only for substantial investments, the criteria of quality and quantity might be considered differently in developing and developed countries. It would be necessary to avoid discrepancies of protection following from such different assessments.

117. An observer from the *World Association of Newspapers* (WAN) said that his organization supported any initiative aiming at an additional protection of databases and would follow carefully any evolution and any legal development in the international community. Legal protection was also needed for the sake of protecting the integrity of the information contained in databases. Certain of the exceptions proposed, such as for judicial procedures, should be examined critically.

118. The *Chairman* concluded that the interventions had provided information on developments at national level and had also given an opportunity to listen to the non-governmental organizations that had a stake in this field. The matter was maturing, and the study on the economic impact of protection of databases to be commissioned by the

International Bureau was under way. Further regional consultations had been scheduled for June 1999.

PROTECTION OF THE RIGHTS OF BROADCASTING ORGANIZATIONS

119. The *Chairman* referred to the recommendations concerning the rights of broadcasting organizations, adopted by the first session of the Standing Committee, regarding the organization of regional consultations and the invitation to the Member States of WIPO and the European Community, as well as intergovernmental and non-governmental organizations, to submit proposals and/or views in treaty language or in other form. Such proposals and/or views had been received and included in documents SCCR/2/5, SCCR/2/6, SCCR/2/7, SCCR/2/8 and SCCR/2/10. He opened a general discussion which could concern both the general question of enhancing the protection and details from the submitted proposals.

120. The Delegation of *Switzerland* explained that it had proposed a protocol to the WPPT, and certain matters had in fact been taken from that Treaty: National treatment, limitations and exceptions, term of protection, obligations concerning technological measures, obligations concerning rights management information, reservations, application in time and provisions on enforcement of rights. It had the same beneficiaries as the Rome Convention, but also referred to the case of satellite broadcasts. The proposal enhanced the rights existing in the Rome Convention and granted rights of retransmission, communication to the public, fixation, reproduction, distribution and making available to the public. Those rights were exclusive rights, and not just rights to prevent, as in the Rome Convention. A new right that had been included was the right of decoding.

121. The Delegation of *Japan* stated that the purpose of its proposal was to facilitate or stimulate further discussions on the issue. After the last session of the Standing Committee, a national working group had discussed possible provisions regarding the definitions of broadcasting and broadcasting organization, protection of signals before broadcasting to the public, possible new rights of broadcasting organizations, obligations concerning technological measures and rights of cable distributors. Currently, its Government was preparing an amendment of the Copyright Act, including issues such as obligations concerning technological measures and rights management information for broadcasts. The Delegation found that the right of decoding in the Swiss proposal should be discussed further; this was a new item, not covered by the WCT or the WPPT.

122. The Delegation of the *European Community*, supported by the Delegation of the *United Kingdom*, referred to its statement at the first session of the Standing Committee, reported in document SCCR/1/9, and its new submission contained in document SCCR/2/5 which outlined the main issues: 1) the legal protection at international level of the rights of broadcasting organizations had to be modernized and improved; 2) the existing international framework under the Rome Convention should be the starting point; 3) it was necessary to focus on the definition of broadcasting by satellite, on cable retransmission rights, on the right of making available and to clarify the reproduction right; and 4) the balance between broadcasters and program providers, between broadcasters and the different categories of owners of copyright and related rights and the overall balance between rights owners and the general public had to be taken into account. The proposals of Japan and Switzerland would be an excellent basis for further discussions.

123. The Delegation of *Senegal* noted the unanimous desire to improve the protection of broadcasting organizations that had been expressed during earlier discussions. Not having had regional consultations on the matter yet, it was too early to present a concrete proposal, but valuable contributions could be given after those consultations. It was important that the protection should leave the rights under copyright unaffected.

124. The Delegation of *Mexico* clarified that its country's submission in document SCCR/2/7 intended to explain the rights of broadcasting organizations in the new Copyright Law of its country. Important elements were the definitions, the rights granted and the term of protection of 25 years.

125. The Delegation of *Hungary* expressed concern about the extent of the rights of fixation and of making available to the public. As the reason for protection was the labor and money invested in the making of the program, the subject matter to be protected should be identifiable parts thereof. Thus, it was difficult to support rights in the fixation of a still photograph of a broadcast and in the making available of such a fixation.

126. The Delegation of *Ghana*, speaking on behalf of the African group and supported by the Delegations of *Guinea*, *Kenya* and the *United Republic of Tanzania*, considered it logical to enhance the protection of broadcasting organizations because the other categories of beneficiaries of the Rome Convention were already protected by WPPT, with the exception of audiovisual performers. It stressed that the rights of authors should be respected and expected to reach a concrete regional position after the regional consultation meeting in Benin in June 1999.

127. The Delegation of the *United States of America* stated that its Government was studying the modernization and updating of the rights of broadcasting organizations at the international level. It pointed to the 1992 legislation of its country which required broadcasting organizations' consent prior to the retransmission of any portion of their signal to multichannel service providers. Even before then, unauthorized retransmission of broadcast signals by other broadcasters had been prohibited. The Delegation looked forward to hearing discussions and proposals on the matter.

128. The Delegation of *Jordan* referred to its recently amended national law, which granted a high level of protection for broadcasting organizations.

129. The Delegation of *India* felt that more time for consideration and reflection was necessary, but the submissions would be useful for the regional consultations. Questions to be considered included the position of webcasters, the balance between broadcasting organizations, authors and performers, between broadcasting organizations and the cable industry and between broadcasting organizations and the users.

130. The Delegation of *China* stated that the Rome Convention did not sufficiently protect broadcasting organizations. The WCT, the WPPT and the possible protocol on audiovisual performances updated the protection of performers and producers of phonograms, and there were good reasons to increase the level of protection for broadcasting organizations. The new instrument should be a protocol to the WPPT, as proposed by the Delegation of Switzerland. The submissions received would be useful in the national consultations that its Government intended to undertake in the near future.

131. The Delegation of *Algeria*, speaking on behalf of Arab countries, considered it important to protect internationally the rights of broadcasting organizations and to grant appropriate rights of rebroadcasting, fixation and reproduction. The Arab countries would develop a definitive position at their consultation meeting in Morocco in June 1999.

132. The Delegation of *Singapore* found that it would be illogical not to update the protection of the rights of broadcasting organizations since this had been done, or was being discussed, for the other categories of beneficiaries of the Rome Convention. The updating should take into account technological developments such as satellite broadcasting and broadcasting on the Internet. The helpful proposals and submissions would be studied at the regional consultation meeting for the countries of Asia and the Pacific.

133. The Delegation of *Australia* referred to national consultations in its country where the various proposals would be considered. Its country was party to the Rome and Satellite Conventions, and bills on issues dealt with in the proposals would soon be introduced. Certain proposals raised questions about the need for definitions and about an exclusive right of decoding an encrypted signal, given that reception of a broadcast by an individual was not subject of copyright. Further discussion was needed on the scope of exceptions to the retransmission right, for example, for certain community aeriels and relays to communities in remote areas, and a possible right of remuneration instead of exclusive rights in respect of certain cable retransmissions. It was also a question whether cable operators should have rights similar to those of broadcasters.

134. The Delegation of *Kenya* supported an international instrument to enhance the protection of the rights of broadcasting organizations. It would report the outcome of national consultations at the regional consultation meeting.

135. The Delegation of the *United Kingdom* stated that the work to modernize and improve the existing protection should concentrate on those areas where broadcasting organizations were vulnerable to piracy as a result of new technologies. The questions of rights to decode encrypted signals and the protection of signals not yet broadcast needed careful consideration.

136. The Delegation of *Norway* found that it was important to start working on an international instrument aimed at modernizing the protection of broadcasting organizations. It referred to the proposal of Switzerland as a constructive and focused basis for discussions, although it found it more logical and balanced to adopt a separate treaty.

137. The Delegation of *Canada* noted that its country had joined the Rome Convention recently, but it recognized that the international protection against signal piracy appeared not to be adequate.

138. The Delegation of *Colombia* sympathized with the improvement of the protection of broadcasting organizations in an independent treaty. It referred to the WIPO international symposia in Manila and Cancun, and underlined that issues such as whether cable retransmission of broadcasts should be exclusive rights or subject to non-voluntary licensing needed discussion. After the regional consultations that would take place in Argentina, the countries of the region could have a possible proposal. The Delegation requested, with support of the Delegation of *Brazil*, information from the International Bureau about the state of the art with respect to national protection of broadcasting organizations, and information

about how broadcasting organizations in countries that were not party to the Rome Convention had dealt with the situation.

139. The Delegation of the *United Republic of Tanzania* stated that the issue was under close study in its country, where private broadcasting organizations had been established. The country intended to hold national consultations the conclusions of which would be communicated to the regional consultations.

140. The Delegation of *Brazil* supported the initiative to review the rights of broadcasting organizations, but it should not extend beyond the necessary technological update of the Rome Convention. The regional consultation meeting in Buenos Aires would be useful for further reflections.

141. The Delegation of *Belarus*, on behalf of the countries cooperating in the Commonwealth of Independent States (CIS), referred to the regional consultations that had taken place in Minsk in April 1999, and recognized the need to consider the protection of broadcasting organizations, taking into account the interests of other right owners. Due to the technological development, broadcasting had extended beyond national borders and therefore new definitions and rights had to be carefully considered. In particular, a new instrument should respect the WCT and the WPPT.

142. The Delegation of *Guinea* noted that regrettably some broadcasting organizations did not want to fully recognize the rights of other right owners.

143. An observer from the *Arab States Broadcasting Union* (ASBU) stated that his organization worked with many governments and organizations on improving the protection of broadcasting organizations. It looked forward to the regional consultation meeting for Arab countries.

144. An observer from the *American Film Marketing Association* (AFMA) noted the broadcasters' willingness to support the interests of the content providers. In the definitions, the protected subject matter should be the works produced or owned by the broadcasters, and the concepts of rebroadcasting and cable retransmission needed clarification. Rights in cable retransmission should not favor broadcasters at the cost of the owners of the content.

145. An observer from the *Copyright Research and Information Center* (CRIC), speaking on behalf of GEIDANKYO, agreed that the legal protection of broadcasting organizations should be modernized. He pointed at the similarities between on-demand services and digital multichannel broadcasting; the on-line exploitation of a phonogram required performers' permission for making the fixed performance available, but the digital multi-channel broadcasting of music did not, as performers' rights were limited to a right to a single equitable remuneration. This had to be taken into consideration when discussing a possible new instrument for the protection of broadcasting organizations, as well as the definitions of "broadcasting" and "broadcasting organization." He also stressed the importance of maintaining the balance between all groups of owners of related rights.

146. An observer from the *European Broadcasting Union* (EBU) stated that the regional broadcasting unions were encouraged by the discussions and notably the proposal of Switzerland. Improving the international protection of broadcasting organizations was the

only way to fight piracy of broadcasts without threatening, but rather enforcing, the protection of other categories right owners.

147. An observer from the *International Federation of Musicians* (FIM) questioned whether intellectual property protection of the broadcast signal, the result of an entrepreneurial activity, was appropriate. Gaps in the protection, such as news and sports programs, should be filled, but broadcast phonograms or audiovisual works should not be given an additional layer of protection. Regarding the definition of fixation in the proposal of Switzerland he questioned whether a photograph included in a broadcast was a fixation. It would be odd if broadcasters had rights in the smallest details when that was not the case for performers who would not necessarily benefit from such stronger protection of the broadcasters.

148. An observer from the *International Federation of Phonographic Industry* (IFPI) pointed at the beneficial effects of improved international protection of broadcasting organizations against piracy for those who contributed the content. Still, it was necessary to respect the difference between broadcasters as users of protected content and as producers, and to ensure clear definitions. A content oriented protection for broadcasters, such as distribution and rental rights, was unnecessary because such protection already existed under copyright and related rights. The protection should respect the balance established in the Rome Convention and not exceed the level granted in the WPPT.

149. An observer from the *International Federation of Actors* (FIA) supported the statement of CRIC regarding digital multichannel broadcasting and the statement of FIM. Due to the technological development, an effective protection against piracy was necessary for all parties involved in production and distribution. She expressed her federation's concern about the ambivalence and hostility from broadcasters to performers' rights of broadcasting and communication to the public. An instrument on the protection of broadcasters would be inconceivable without one on the protection of audiovisual performers.

150. An observer from the *National Association of Commercial Broadcasters in Japan* (NAB-Japan) stated that new technology had increased piracy of broadcasts, and pointed at the need to update the protection and to ensure rights in the content of the broadcast along with the broadcasters' own right. He referred to his association's proposal, which aimed at offering flexibility for national legislation. In particular, three points should be emphasized: 1) the object of protection, including a clarification of the concept of broadcasts; 2) protection of broadcast contents, including satellite or microwave transmissions of programs not yet broadcast; and 3) a broad exclusive right of communication to the public.

151. An observer from the *Digital Media Association* (DiMA) referred to its submission in document SCCR/2/6 and pointed out that there were a very large number of Internet broadcasters who should also be covered by an instrument on the protection of broadcasting organizations. The Internet should be seen in the same way as traditional broadcasting and the distinction between wire and wireless broadcasting should be seen as secondary. An instrument of protection should therefore link the protection to the act of broadcasting rather than the means of transmission.

152. An observer from the *Association of European Performers' Organisations* (AEPO) found that the basis for related rights were either investments or personal contributions. Given that basis, he questioned the definition of broadcasting. Certain types of programs, for example computerized playing of phonograms, required no financial contribution from the

broadcasters and did not justify additional protection, and in many other cases broadcasters would be protected as producers.

153. An observer from the *Asia-Pacific Broadcasting Union* (ABU) stressed the necessity to protect against signal piracy and added that broadcasting organizations should enjoy exclusive rights in cable distribution. Broadcasting was the preeminent means of dissemination of information and entertainment in Asia and the Pacific. Therefore, a rectification of the rights of broadcasting organizations had to be made on the principles of basic equity.

154. An observer from the *National Association of Broadcasters* (NAB) underscored that protection against piracy would benefit also other owners of rights and create a win-win situation. Regarding possible limitations or exceptions to an exclusive retransmission right for broadcasters he pointed to the legislation in the United States of America. The statements of AEPO and FIM were surprising because they did not distinguish between purely entrepreneurial activities and the efforts and technical expertise involved in assembling and distributing a broadcast signal.

155. An observer from the *North American Broadcasters Association* (NABA) stressed that new rights for broadcasters would not diminish other rights, but should leave them intact. She supported the proposals of the Government of Japan and NAB-Japan, which provided the essential new rights.

156. An observer from the *Association of Commercial Television in Europe* (ACT) stated that issues such as definitions of broadcasting organization and broadcasts were essential points in the discussion, as well as the need to differentiate between those concepts. A broadcasting organization was more than simply an entity that broadcast, and a broadcast was more than just something done by a broadcaster.

157. The *Chairman* concluded that the discussion had been a long step forward towards enhancing the protection of the rights of broadcasting organizations. It had reaffirmed the general willingness to participate in an updating of the rights and it had dealt with issues such as the shape, form, scope and possible contents of a new instrument, based on the submitted proposals. Just to mention a few issues: opinions regarding the form had ranged from a self-standing treaty to a protocol to the WPPT; many delegations had discussed the substantial rights of broadcasting organizations, such as whether rights of retransmission should be exclusive rights; and a new right of decoding had been discussed on the basis of the Swiss proposal. Probably the most important point raised concerned the definition of broadcasting. Many delegations had expressed their wish to be informed about the discussions at the upcoming regional consultation meetings. He concluded that the matter should be on the agenda of the next session of the Standing Committee and that governments could continue submitting proposals.

FUTURE WORK

158. The Standing Committee decided to recommend the convening of its third session for November 16 to 19, 1999. Through the Chairman, the Secretariat informed the Standing Committee that it might foresee a prolongation to Saturday, November 20, 1999, for the adoption of the report of the session only.

159. In addition, the Standing Committee drew the following conclusions:

(a) Protection of audiovisual performances:

(i) discussions had demonstrated that there was still progress to be made on a number of crucial issues;

(ii) the International Bureau should convene regional consultation meetings on this issue to take place in Geneva on November 15, 1999;

(iii) the issue would be carried forward to the agenda of the third session of the SCCR, in which only the following three items would be discussed:

- rights of broadcasting and communication to the public,
- national treatment,
- contractual arrangements/transfer of rights.

(iv) Members of the Standing Committee should be invited to submit proposals on these three items by July 31, 1999, to be distributed by the International Bureau before September 15, 1999;

(v) the Standing Committee would assess progress of work in its third session in order to conclude whether it would recommend to the relevant Assemblies of WIPO that a Diplomatic Conference be convened to consider an international instrument on the protection of audiovisual performances, the possible dates and venue for such a conference and the convening of a preparatory committee.

(b) Protection of databases:

(i) the subject matter of the protection of databases will be carried forward to the agenda of the third session of the Standing Committee;

(ii) the International Bureau should convene regional consultation meetings on this issue to take place in Geneva on November 15, 1999.

(c) Protection of the rights of broadcasting organizations:

(i) this issue would also be carried forward to the agenda of the third session of the Standing Committee;

(ii) the International Bureau should convene regional consultation meetings on this issue to take place in Geneva on November 15, 1999;

(iii) Members of the Standing Committee should be invited to submit proposals and/or views by August 16, 1999, to be distributed by the International Bureau by September 15, 1999.

160. The Delegation of *Panama*, speaking on behalf of the Group of Countries of Latin America and the Caribbean, said that the group considered that the nature of the documents of non-governmental and intergovernmental organizations presented to the Standing Committee

had to be clearly identifiable at every moment. The group considered that those documents were informal in that they originated from observers in the work of the Standing Committee. The group was of the opinion that this should be reflected in the format in which the International Bureau would present those documents to the Standing Committee in the future.

161. A representative of the *International Bureau of WIPO* stated that in order to accommodate the request of the Delegations of Colombia and Brazil regarding updated information on national legislation on the protection of the rights of broadcasting organizations, the International Bureau would convey to the Standing Committee any such information, received from governments, possibly in an updated version of document SCCR/1/3. The International Bureau would also appreciate receiving information from the broadcasters' organizations regarding how broadcasting organizations in countries that were not party to the Rome Convention had dealt with the situation.

ADOPTION OF THE REPORT AND CLOSING OF THE MEETING

162. The Standing Committee unanimously adopted this report.

163. The *Chairman* closed the meeting.

[Annex follows]

ANNEXE/ANNEX

LISTE DES PARTICIPANTS/
LIST OF PARTICIPANTS

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(dans l'ordre alphabétique français/
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Yen-Ling LIEW (Ms.), Legal Counsel, International Media, Singapore

SLOVAQUIE/SLOVAKIA

Eva HAVELKOVÁ (Mrs.), Third Secretary, Permanent Mission, Geneva

SLOVÉNIE/SLOVENIA

Andrej PIANO, Legal Counsel, Slovenian Intellectual Property Office (SIPO), Ljubljana

SOUDAN/SUDAN

Abbas ELNOUR, Under-Secretary, Ministry of Information and Culture, Khartoum

SRI LANKA

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SUÈDE/SWEDEN

Henry OLSSON, Special Government Adviser, Ministry of Justice, Stockholm

SUISSE/SWITZERLAND

Carlo GOVONI, chef, Division du droit d'auteur et des droits voisins, Institut fédéral de la propriété intellectuelle, Berne

Catherine METTRAUX (Mme), juriste, Division du droit d'auteur et des droits voisins, Institut fédéral de la propriété intellectuelle, Berne

TCHAD/CHAD

Mayoumbila Kolo DABOULAYE (Mme), ministre de la culture, de la jeunesse et de la promotion des sports, Ndjamena

THAÏLANDE/THAILAND

Chulalak UDOMSAP (Ms.), Legal Officer, Department of Intellectual Property, Legal Affairs and Litigation Division, Ministry of Commerce, Bangkok

TRINITÉ-ET-TOBAGO/TRINIDAD AND TOBAGO

Mazina KADIR (Ms.), Controller, Intellectual Property Office, Port of Spain

TUNISIE/TUNISIA

Mohamed Salah DJEBBI, secrétaire général, Organisme tunisien de la protection des droits d'auteurs (OTPDA), Tunis

UKRAINE

Iryna KRYSHTOPA (Mrs.), Deputy Chairman, State Copyright Agency of Ukraine (SCAU), Kyiv

URUGUAY

Carlos TEYSERA ROUCO, Presidente del Consejo de Derechos de Autor, Ministerio de Educación y Cultura, Montevideo

Gustavo VIGNOLI, Secretario General, Consejo de Derechos de Autor, Ministerio de Educación y Cultura, Montevideo

Pamela VIVAS (Sra.), Consejero, Misión Permanente, Ginebra

VENEZUELA

Magdaly SÁNCHEZ ARANGUREN (Sra.), Directora Nacional del Derecho de Autor, Caracas

David VIVAS EUGUI, Oficial, Misión Permanente, Ginebra

VIET NAM

Do Khac CHIEN, Deputy Director General, Copyright Office of Viet Nam (COV), Hanoi

ZAMBIE/ZAMBIA

Kenneth K. LESOETSA, Registrar, Copyright Administration, Ministry of Information and Broadcasting Services, Lusaka

COMMUNAUTÉ EUROPÉENNE (CE)/EUROPEAN COMMUNITY (EC)

Jörg REINBOTHE, chef d'Unité "Droit d'auteur et droits voisins ainsi que les aspects internationaux", Direction générale "Marché intérieur et services financiers", Bruxelles

Egidio GUERRERI, administrateur, Unité "Droit d'auteur et droits voisins ainsi que les aspects internationaux", Direction générale "Marché intérieur et services financiers", Bruxelles

Roger KAMPF, premier secrétaire, Délégation de la Commission européenne, Genève

Keith MELLOR, administrateur principal, Secrétariat général du Conseil de l'Union européenne, Bruxelles

II. ORGANISATIONS INTERGOUVERNEMENTALES/
INTERGOVERNMENTAL ORGANIZATIONS

ORGANISATION INTERNATIONALE DU TRAVAIL (OIT)/INTERNATIONAL LABOR ORGANIZATION (ILO)

Linda WIRTH-DOMINICÉ (Ms.), Sectoral Specialist for Culture, Media and Graphical, Geneva

ORGANISATION DES NATIONS UNIES POUR L'ÉDUCATION, LA SCIENCE ET LA CULTURE (UNESCO)/UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION (UNESCO)

Annar CASSAM (Mme), directrice, Bureau de liaison, Genève

ORGANISATION MÉTÉOROLOGIQUE MONDIALE (OMM)/WORLD METEOROLOGICAL ORGANIZATION (WMO)

Rodolfo DE GUZMAN, Director, Special Assistant to the Assistant Secretary-General, Geneva

Ion DRAGHICI, Programme Officer, Education and Training Department, Geneva

ORGANISATION MONDIALE DU COMMERCE (OMC)/WORLD TRADE ORGANIZATION (WTO)

Hannu WAGER, Counsellor, Intellectual Property Division, Geneva

UNION DE RADIODIFFUSION DES ÉTATS ARABES (ASBU)/ARAB STATES
BROADCASTING UNION (ASBU)

Khalil Ebrahim Mohammed ALTHAWADI, Chief Executive, Bahrain Radio and Television Corporation, Manāma

SISTEMA DE INTEGRACIÓN CENTROAMERICANA (SICA)/CENTRAL AMERICAN
INTEGRATION SYSTEM (SICA)

Mauricio HERDOCIA, Asesor de Asuntos Políticos y Jurídicos, Dirección de Asuntos Políticos y Jurídicos, Secretaría General, San Salvador

LIGUE DES ÉTATS ARABES (LEA)/LEAGUE OF ARAB STATES (LAS)

Saad ALFARARGI, Ambassador, Permanent Observer, Permanent Delegation, Geneva

Samer SEIF EL-YAZAL, Third Secretary, Permanent Delegation, Geneva

Osman EL HAJJE, Attaché, Permanent Delegation, Geneva

Salah AIED, Attaché, Permanent Delegation, Geneva

ORGANISATION INTERNATIONALE DE LA FRANCOPHONIE (OIF)

Xavier MICHEL, directeur, observateur permanent, Genève

Yolande PASEA (Mme), responsable de projets de coopération, Représentation permanente, Genève

III. ORGANISATIONS NON GOUVERNEMENTALES/
NON-GOVERNMENTAL ORGANIZATIONS

Agence pour la protection des programmes (APP):

Daniel DUTHIL (président), Paris

Cyril FABRE (chargé de mission), Paris

American Bar Association (ABA), Section of Intellectual Property Law:

Ralph OMAN (Chairman, Section's Committee 304 on Authors; Former US Register of Copyrights), Washington, D.C.

American Federation of Television and Radio Artists (AFTRA)
Shelby SCOTT (Ms.) (President), New York

Association américaine de marketing cinématographique (AFMA)/American Film Marketing Association (AFMA):
Lawrence SAFIR (Chairman (AFMA Europe)), London

Association de gestion internationale collective des oeuvres audiovisuelles (AGICOA)/ Association for the International Collective Management of Audiovisual Works (AGICOA):
Florence BERG (Mme) (juriste), Genève

Association des organisations européennes d'artistes interprètes (AEPO)/Association of European Performers' Organisations (AEPO):
Xavier BLANC (secrétaire général), Bruxelles

Association des télévisions commerciales européennes (ACT)/Association of Commercial Television in Europe (ACT):
Tom RIVERS (External Legal Adviser), London

Association internationale de radiodiffusion (AIR)/International Association of Broadcasting (IAB):
Andrés LERENA (Presidente, Comité Permanente de Derecho de Autor), Montevideo

Association internationale pour la protection de la propriété industrielle (AIPPI)/International Association for the Protection of Industrial Property (AIPPI):
Gunnar W.G. KARNELL (membre, Comité exécutif, Stockholm School of Economics),
Stockholm

Association littéraire et artistique internationale (ALAI)/International Literary and Artistic Association (ALAI):
Herman COHEN JEHORAM (vice-président), Amsterdam

Association mondiale des journaux (AMJ)/World Association of Newspapers (WAN):
Michel GODMER (président, Comité du droit d'auteur, Le Figaro), Paris

Central and Eastern European Copyright Alliance (CEECA):
Mihály FICSOR (Chairman), Budapest
Jerzy Andrzej BADOWSKI (Member, Executive Board), Warsaw

Comité “Actores, Intérpretes” (CSAI):

Abel MARTÍN VILLAREJO (Abogado, Professor), Madrid

Confédération internationale des sociétés d’auteurs et compositeurs (CISAC)/International Confederation of Societies of Authors and Composers (CISAC):

Antonio DELGADO (président, Commission juridique et de législation), Madrid

Stéphanie FAULKNER (Ms.) (General Counsel), St. Leonards

Ralph OMAN (BMI), Washington, D.C.

Débora ABRAMOWICZ (Mlle) (coordinateur juridique et de la communication), Paris

Conseil international des archives (CIA)/International Council on Archives (ICA):

Catherine SANTSCHI (Mlle) (archiviste d’État), Genève

Conseil international des unions scientifiques (CIUS)/International Council of Scientific Unions (ICSU):

Roger ELLIOTT (Chair, CDSI, Theoretical Physics, University of Oxford), Oxford

Copyright Research and Information Center (CRIC):

Shinji MATSUMOTO (Executive Director), Tokyo

Masashi TANANO (Managing Director (GEIDANKYO)), Tokyo

Samuel Shu MASUYAMA (Adviser, P.R. and Planning Department (GEIDANKYO)),
Tokyo

Takashi KAMIDE (Advisor, The Federation of Music Producers of Japan), Tokyo

Yukifusa OYAMA (Member of the International Committee; Professor, Teikyo Kagaku
University), Tokyo

Kotau FURUKAWA (General Secretary, Japan Actors’ Union (JAU)), Tokyo

Digital Media Association (DiMA):

Seth GREENSTEIN (Counsel), Washington, D.C.

Electronic Industries Association, USA (EIA):

Seth GREENSTEIN (Counsel), Washington, D.C.

Electronic Industries Association of Japan (EIAJ):

Yasumasa NODA (Advisor of President), Tokyo

Fédération européenne des sociétés de gestion collective des producteurs pour la copie privée audiovisuelle (EUROCOPYA)/European Federation of Joint Management Societies of Producers for Private Audiovisual Copying (EUROCOPYA):

Alexander BIRNSTIEL (Attorney, Nörr, Stiefenhofer & Lutz (NSL)), Munich

Fédération ibéro-latino-américaine des artistes interprètes ou exécutants (FILAIÉ)/Ibero-Latin-American Federation of Performers (FILAIÉ):

Luis COBOS PAVON (Presidente), Madrid
Miguel PÉREZ SOLÍS (Asesor Jurídico), Madrid

Fédération internationale de l'industrie phonographique (IFPI)/International Federation of the Phonographic Industry (IFPI):

Brigitte LINDNER (Ms.) (Legal Adviser), London
Darrell PANETHIERE (Legal Adviser), London

Fédération internationale de la vidéo (IVF)/International Video Federation (IVF):

Charlotte LUND THOMSEN (Ms.) (Director General), Brussels
Ted SHAPIRO (Legal Adviser), Brussels

Fédération internationale des acteurs (FIA)/International Federation of Actors (FIA):

Katherine SAND (Ms.) (General Secretary), London
Kendall ORSATTI (Vice-President, National Executive Director of Screen Actors' Guild (SAG)), New York
John McGUIRE (Associate National Executive Director, Screen Actors' Guild (SAG)), New York
Sallie WEAVER (Ms.) (Director, Production Development, Performers' Rights, Screen Actors' Guild (SAG)), New York
Liv BJØRGUM (Ms.) (Vice-President, Norsk Ballettforbund (NBF)), Oslo
Bjørn HØBERG-PETERSEN (Legal Counsel, Dansk Skuespillerforbund (DSF)), Copenhagen
Mikael WALDORFF (General Secretary, Dansk Skuespillerforbund (DSF)), Copenhagen
Henrik PETERSEN (President, Dansk Skuespillerforbund (DSF)), Frederiksberg
Stephen WADDELL (National Executive Director, Alliance of Canadian Cinema, Television and Radio Artists (ACTRA)), Toronto
Garry NEIL (Policy Advisor, Alliance of Canadian Cinema, Television and Radio Artists (ACTRA)), Toronto
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Lucie BEAUCHEMIN (Mme) (consultante, affaires publiques, Union des Artistes (UDA)), Montréal
Ashok Venu Gopal ANEICAL (President, Film Workers' Association), India
Giulla Palli NARAYAN RAO (Movie Artists' Association (MAA)), India
Ulf MARTENS (Legal Adviser (STF)), Stockholm

Fédération internationale des associations de bibliothécaires et des bibliothèques (FIAB)/International Federation of Library Associations and Institutions (IFLA):

Harald HIELMCRONE (Librarian, Statsbibliotheket), Aarhus

Fédération internationale des associations de distributeurs de films (FIAD)/International Federation of Associations of Film Distributors (FIAD):
Gilbert GRÉGOIRE (président), Paris

Fédération internationale des associations de producteurs de films (FIAPF)/International Federation of Film Producers Associations (FIAPF):
André CHAUBEAU (directeur général), Paris
Alessandra SILVESTRO (Mme) (vice-présidente, affaires juridiques, Time Warner Europe),
Bruxelles

Fédération internationale des journalistes (FIJ)/International Federation of Journalists (IFJ):
Olle WILÖF (Legal Adviser, Swedish Union of Journalists), Stockholm

Fédération internationale des musiciens (FIM)/International Federation of Musicians (FIM):
John MORTON (President), Longfield
Raïmo VIKSTRÖM (Vice-President), Helsinki

Fédération internationale des organismes gérant les droits de reproduction (IFRRO)/International Federation of Reproduction Rights Organizations (IFRRO):
Tarja KOSKINEN-OLSSON (Mrs.) (Chair), Helsinki
Daniel GERVAIS (Chairman, New Technologies Committee), Danvers

Fédération mondiale des écoles de musique (FMEM)/World Federation of Music Schools (WFMS):
Bernard GILLER (président), Genève
Nicole GUY (Mme) (secrétaire général), Genève

Groupement européen représentant les organismes de gestion collective des droits des artistes interprètes ou exécutants (ARTIS GEIE):
François PARROT (secrétaire général), Bruxelles
Francesca GRECO (Mme) (représentante permanente), Bruxelles
Anne-Claire VIALA (Mlle) (juriste), Bruxelles

Institut interaméricain de droit d'auteur (IIDA)/Interamerican Copyright Institute (IIDA):
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María OCHOA (Sra.) (miembro del Instituto), Caracas

Institut Max-Planck de droit étranger et international en matière de brevets, de droit d'auteur et de la concurrence (MPI)/Max-Planck-Institute for Foreign and International Patent, Copyright and Competition Law (MPI):
Silke VON LEWINSKI (Ms.) (Head of Department, International Law), Munich

Internationale des médias et du spectacle (MEI)/Media and Entertainment International (MEI)
Jim WILSON (General Secretary), Brussels

International Intellectual Property Alliance (IIPA):

Eric SMITH (President), Washington, D.C.

Fritz ATTAWAY (Director), Washington, D.C.

Japan Electronic Industry Development Association (JEIDA):

Morihiro OKAMOTO (Member, Database Committee), Tokyo

National Association of Broadcasters (NAB):

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National Association of Commercial Broadcasters in Japan (NAB-Japan):

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Hidetoshi KATO (Television Tokyo (TV TOKYO)), Tokyo

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Shinichi UEHARA (Director, Copyright Division, Asahi Broadcasting Corporation (ABC)), Osaka

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Yuko MATSUOKA (Consultant Interpreter), Tokyo

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Erica REDLER (Ms.) (Chairman, Legal Committee; Senior Legal Counsel, Canadian Broadcasting Corporation), Ottawa

Tony SCAPILLATI (Executive Director, Canadian Broadcasters Rights Agency), Ottawa

Performing Arts Employers Associations League Europe (PEARLE):

Anne-Marie BALET (Mme) (membre), Lausanne

Software Information Center (SOFTIC):

Koki MORITANI (General Manager, Research and Investigation Department), Tokyo

Software and Information Industry Association (SIIA):

Daniel C. DUNCAN (Vice-President, Government Affairs), Washington, D.C.

Union de radiodiffusion Asie-Pacifique (ABU)/Asia-Pacific Broadcasting Union (ABU):

James Benjamin THOMSON (Office Solicitor), Auckland

Yuichi AKATSU (Vice-Chairman, Copyright Working Party; Deputy Director, NHK),
Tokyo

Yoshinori NAITO (Copyright & Contract Division, NHK), Tokyo

Union des radiodiffusions des Caraïbes (CBU)/Caribbean Broadcasting Union (CBU):

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Union des radiodiffusions et télévisions nationales d'Afrique (URTNA)/Union of National
Radio and Television Organizations of Africa (URTNA):

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Union européenne de radio-télévision (UER)/European Broadcasting Union (EBU):

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Britta KÜMMEL (Mrs.) (Head, Copyright Office), Søborg

David McCULLOCH (Director Broadcast Policy, Federation of Australian Commercial
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Union internationale des éditeurs (UIE)/International Publishers Association (IPA):

Joseph Alexis KOUTCHOUMOW (Secretary General), Geneva

Charles CLARK (Copyright Adviser), London

Benoît D. MÜLLER (Legal Counsel), Geneva

IV. BUREAU/OFFICERS

Président/Chairman: Jukka LIEDES (Finlande/Finland)

Vice-présidents/Vice-Chairmen: Hilda RETONDO (Mme) (Argentine/Argentina)
SHEN Rengan (Chine/China)

Secrétaire/Secretary: Kurt KEMPER (OMPI/WIPO)

V. BUREAU INTERNATIONAL DE L'ORGANISATION MONDIALE DE LA
PROPRIÉTÉ INTELLECTUELLE (OMPI)/INTERNATIONAL BUREAU OF THE
WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Kamil IDRIS, directeur général/Director General

Shozo UEMURA, vice-directeur général/Deputy Director General

Kurt KEMPER, directeur conseiller/Director-Advisor

Jørgen BLOMQVIST, directeur, Division du droit d'auteur/Head, Copyright Law Division

Joëlle ROGÉ (Mme), directeur-conseiller, Secteur du développement progressif du droit international de propriété intellectuelle/Director-Advisor, Sector for Progressive Development of International Intellectual Property Law

Moncef KATEB, conseiller principal, Division du droit d'auteur/Senior Counsellor, Copyright Law Division

Geidy LUNG (Mlle), consultante, Division du droit d'auteur/Consultant, Copyright Law Division

Boris KOKIN, juriste principal, Division de la coopération avec certains pays d'Europe et d'Asie/Senior Legal Officer, Division for Cooperation with Certain Countries in Europe and Asia

Saule TLEVLESSOVA (Mme), consultante, Division de la coopération avec certains pays d'Europe et d'Asie/Consultant, Division for Cooperation with Certain Countries in Europe and Asia

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