

**Report on the 26th Session of the Committee on Copyright and Related Rights
(SCCR) in Geneva, 16 - 20 December 2013)**

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1. Broadcasting organizations

Discussions took place on the basis of the working document SCCR/24/10 Corr. that had been adopted at the 24th Session in July 2012 (later corrected), as well as on the basis of new proposals submitted for this session, namely, a Japanese proposal regarding the object of protection, doc. SCCR/26/6, and several non-papers submitted during the session by the USA and India. In general, developed countries showed a strong interest in reaching consensus on remaining issues of the draft treaty on the protection of broadcasting organizations and mentioned, as did DG Francis Gurry, the goal of holding a diplomatic conference to conclude such a treaty in 2015. Developing countries confirmed their commitment to work towards a treaty, but stressed the need to respect the mandate of the 2007 General Assembly with its limitation to the protection of broadcasting and cablecasting organizations in the traditional sense following a signal-based approach; some also seemed to make a link between this treaty and their aim to develop also further treaties on limitations and exceptions.

Discussions focused on definitions, the object of protection, the beneficiaries of protection and the minimum rights (Articles 5, 6, 7, and 9). In particular, as regards the object of protection (Article 6), there is consensus that traditional broadcasts and cablecasts undertaken by traditional broadcasters and cable casters are to be protected. However, where traditional broadcasters and cable casters transmit signals over the internet, there is still controversy regarding different transmissions over the internet. In particular, India doubted whether any reference to transmissions over the internet, even if done by traditional broadcasters and cable casters, would be covered by the mandate of the 2007 General Assembly. Also other developing countries had such doubts, while

the USA stated that as long as the beneficiaries are broadcasting and cable casting organizations in the traditional sense, protecting them even in respect of their transmissions over the internet is inside this mandate and that at the time, one wanted to exclude only webcasting undertaken by individuals.

Among those countries that did not oppose inclusion of transmissions over the internet as the object of protection, it was clear that at least simultaneous and unchanged transmissions should be an object of protection. Also, most delegates agreed that on-demand transmissions should not be an object covered by the treaty. In respect of webcasting and deferred and unchanged transmissions of programs as an object of protection, opinions remained divided, as they did on the question of whether any such possible inclusion of transmissions over the internet would be optional or mandatory. Japan offered a basis for compromise by its proposal on Article 6^{bis} regarding protection of signals transmitted over computer networks, by using the model of Article 14^{ter}(2) of the Berne Convention on the resale right, which does not require countries to provide this right but allows a country that provides this right voluntarily to apply material reciprocity to any other Union country that does not provide for the resale right. The same principle was integrated in the Japanese proposal in respect of, alternatively, transmission signals excluding on demand-transmission signals, or simultaneous and unchanged transmission signals of their broadcasts over computer networks. It was considered as an interesting and useful proposal.

India in its own proposal on Article 6 seemed to limit even the protection of traditional broadcasting and cable casting organizations by stating that they should enjoy rights only “to the extent of rights acquired or owned by them from the owners of copyrights or related rights” (alternative B(1); similar phrase in its proposed alternative A(1)). It referred to the solution under the TRIPS Agreement; Article 14(3) of the TRIPS Agreement does not oblige Members to provide for a separate right of broadcasting organizations, if they provide copyright protection for copyright owners in the contents of the programs. It seems that this proposal could possibly mean that the treaty would not require any separate protection for broadcasting organizations.

India also proposed amendments to the current Article 7 on beneficiaries of protection and their points of attachment and countries expressed different preferences on the existing alternatives regarding the determination of the place where the transmitter of a satellite signal is understood to be situated. In respect of definitions (Article 5), the need of their careful drafting was stressed and countries expressed preferences for existing alternatives, while India proposed some amendments.

Regarding the minimum rights to be granted to broadcasting organizations (Article 9), India again made a new proposal according to which there was only a right to prohibit (rather than a right to authorize), which was limited to rebroadcasting through traditional broadcasting and cable casting, fixation of the signal for the purpose of rebroadcasting, and causing the broadcast to be seen or heard in public on payment of any charge; furthermore, some protection of pre-broadcast signals is proposed. This proposal met with questions and doubts from different sides. Given the different views on the minimum rights to be included in the planned treaty, the USA made a compromise proposal according to which there would be only one right to authorize the simultaneous or near-simultaneous retransmission of broadcasts or pre-broadcast signals over any medium; “near simultaneous” retransmission would be one that is delayed only to the extent necessary to accommodate time differences or to facilitate the technical transmission of the signal. Those and further issues will again be discussed at the next session of the SCCR.

2. Limitations and exceptions in favor of libraries and archives as well as in favor of educational and research institutions and persons with other disabilities

In general, in this first meeting after the adoption of the Marrakech Treaty, the positions towards these two issues were made quite clear by many member states. While all of them considered these issues as important in the frame work of copyright protection, views were divided on the nature of any possible instrument to be talked about. In particular, the developed countries, the EU and the group of Central European and Baltic States very clearly stated that there was no need for any international treaty or other binding instrument and that they were not willing to engage in discussions that may lead to such an instrument in these fields. They stressed that the Marrakech Treaty

was a unique one and represented an exceptional case. They stated that the existing international framework left sufficient room for providing such exceptions and limitations in national law and that there was a need for safeguarding national policies especially in areas such as public libraries and education, which are closely linked to cultural policies; in particular, it should be left up to the member states to decide whether there would promote culture via education, library lending etc. through exceptions and limitations or rather through licenses. An international treaty would interfere with such national cultural policies without a need. Therefore, these groups of countries supported an exchange of experiences at national level and updating of studies as well as work on principles.

The African group continues to aim for a binding instrument and was followed by some delegations of the other developing country groups.

In more detail, the Committee discussed, for library and archive limitations, the topics of preservation of materials, limitations for the purpose of safeguard copies, legal deposit, and library lending. Delegates exchanged experiences, national law provisions, and, in part, concretely questioned the need for any international regulation of such issues. As regards libraries and archives, the US presented a non-paper on objectives and principles for exceptions and limitations.

The next SCCR will deal with broadcasting organizations for two and a half days, with both sets of limitations for two days and half a day left for conclusions.