

**Report on the 25th Session on Copyright and Related Rights (SCCR)
in Geneva, 19 to 23 November 2012, and (under point 3.) on the special session of
the SCCR from 18 to 22 February, 2013 regarding visually impaired persons**

1. Limitations and exceptions in favour of educational, teaching and research institutions and persons with other disabilities, as well as for libraries and archives

On both sets of topics, discussion time was limited. As in the preceding session, the main focus of discussions on both topics concerned the organization of the documents – how to place in the document proposals of a different nature, in particular treaty language proposals versus comments and explanations, both on national law and of a general nature – and the issue of specific versus horizontal as well as overlapping topics. At the next session, work will have to continue on these issues on the basis of the current working documents (SCCR/24/8 prov. and SCCR/23/8). The SCCR agreed to continue this work, including at a three-day-intersessional meeting on limitations and exceptions for libraries and archives in the second half of 2013 in order to submit recommendations on both topics to the general assembly by SCCR/30 and SCCR/28, respectively.

2. Broadcasting organizations

Also the time for discussing the protection of broadcasting organizations was quite limited. In order to advance work on this topic, it was decided to organize a three-day-intersessional meeting in the first half 2013, so as to achieve a text that will be a basis for a decision on whether a diplomatic conference in 2014 on this topic should be convened.

3. Limitations and exceptions for visually impaired persons / persons with print disabilities

Most of the discussion time in November was spent for this topic, which is most advanced and for which in the meantime a diplomatic conference has been scheduled for June 2013. On the one hand, a number of brackets in the current text were cleared, but, on the other hand, new proposals with new brackets were inserted. At the end of the session, it was clear that the text that came out of that session still included too many fundamental issues on which different positions were to be noted and that thus, this text was not a good basis to proceed to a diplomatic conference. Among the main controversies between countries are the questions of how to refer to the three-step-text as an outer margin for exceptions and limitations; how to refer to options for implementation of the exceptions and limitations in national law, and whether it should remain permitted not to introduce a limitation or exception if the accessible format copies are commercially available in the relevant country. Apart from these issues, some fundamental legal issues have not even been discussed, such as the relationship to the existing copyright treaties.

Nevertheless, given the pressure exercised, following the SCCR's recommendation, the WIPO extraordinary session of the General Assembly in December 2012 decided that a special session of SCCR should further advance the text and that the Preparatory Committee following that session in February 2013 should decide whether the text needs more work before the diplomatic conference in 2013.

In the special session of the SCCR in February 2013, the same fundamental differences of positions referred to above were clearly visible and very little progress was possible first, so that towards the middle of the week, some delegates even expressed the opinion that one could not proceed to a diplomatic conference, if no further progress were made.

Finally, a general non-derogation clause was added *ad referendum* – while the African group wanted to leave the title of this provision even more open, suggesting “General clause”. Also, the so-called cluster package (a package of provisions on implementation, the reference to the three-step test, “respect for the visually impaired”, and a “development clause”) was streamlined and a partly vague wording for some provisions, reflecting the compromise character, was provisionally agreed *ad referendum*. In this context, the three-step test was deleted as an obligation for those countries that do not yet have this obligation, so that it is supposed to apply only to those countries that are already bound by it, and to the extent they are bound to it (for example, many countries are not bound to the WCT and thus arguably are not under an obligation to respect the three-step test for the rights of distribution and making available). Other issues, such as whether limitations and exceptions should also be allowed regarding the translation right,

the possibility of a commercial availability clause especially in the cross-border context, and the relation between exceptions/limitations and technical protection measures, were not talked about or only briefly, without any outcome.

At the end of that session, it was decided that more work was necessary before going to a diplomatic conference and that another informal session and a special session of the SCCR, followed by a Preparatory Committee, should take place in April.

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