

Report on the Fifteenth Session of the WIPO Standing Committee on Copyright and Related Rights (SCCR) in Geneva, September 11 to 13, 2006

Dr. Silke von Lewinski

Following the decision of the Standing Committee at its 14th Session in May 2006 to convene an additional meeting before the General Assemblies would have to decide, in fall 2006, on the possible convening of a Diplomatic Conference on a Treaty for the Protection of Broadcasting Organisations, this meeting took place in order to try to agree on and finalize a basic proposal for such a treaty and to enable the General Assembly to recommend the convening of such a Diplomatic Conference in 2007. Also according to the decision at the May session, the basis for discussions was now a revised draft basic proposal which followed the principle of inclusiveness, which means that it combined the earlier document SCCR/14/2 together with all alternative proposals that had been presented in a separate working paper at the preceding session (SCCR/14/3), as well as any new proposals received separately. Also, the most controversial part, the Appendix on the protection in relation to webcasting, was no longer included as subject of discussion in the meeting of September.

The Chairman, after clarifying a number of controversial issues and misunderstandings, such as the argument that the right of retransmission over computer networks would reiterate webcasting through the back door, opened the floor only in respect of the following main substantive questions: rights to be granted, exceptions, and technical measures. Delegations reiterated a number of issues that had been mentioned in earlier sessions but not been reflected in the latest text, such as the remaining unclear situation regarding the object of protection which is designed at one place as the signals, and at other places as the broadcast. As before, the need to secure the rights of right owners in the contents of broadcasts and to limit the protection of broadcasting organisations to signal protection was stressed. It was restated that any uses of a broadcast after its fixation would no longer concern the investment for which the broadcaster is protected, and that there would not be any direct connection to the signal were uses *post* fixation are made. Regarding exceptions, opinions continued to be split with regard to the option of an

explicit list of exceptions, as proposed by Brazil, or the model of the WPPT with a reference to existing limitations in copyright, supplemented by the three-step-test. In respect of technical measures, in particular Indonesia and Brazil were strongly against legal sanctions, while their legal protection was critically important for the USA. On the whole, a limited number of delegations took the floor, with no surprising results. To some extent, informal discussions were held on the proposal by the Chairman, in order to facilitate agreement on remaining issues, in particular on the possible recommendation to the General Assembly to convene a Diplomatic Conference.

The Chairman proposed a rather long text of draft conclusions which, after discussions, had to be narrowed down to the essential points. On the whole, many delegations expressed their opinion that the time is ripe for proceeding to a Diplomatic Conference in 2007, while in particular India, Argentina, Brazil, Indonesia, Chile and others were hesitant with a view to such a recommendation or even rejected it. In the end, the Chairman proposed as draft conclusions four points, namely that (1) a Diplomatic Conference on the protection of broadcasting organisations be convened on July 7 through August 1, 2007, in Geneva with the aim to conclude a WIPO Treaty on the Protection of Broadcasting Organisations, including Cable Casting Organisations in the traditional sense. (2) The revised document SCCR/15/2 Rev. would constitute the basic proposal for the Diplomatic Conference with the understanding that all delegations may make their own proposals at the Diplomatic Conference. (3) A preparatory committee would be convened for January 2007 to prepare the necessary modalities of the Diplomatic Conference and to consider the draft rules of procedure, the list of states, IGOs and NGOs to be invited, and other organisational measures. (4) The Secretariat of WIPO would organise, in cooperation with the Member States concerned, and at their request, consultations and information meetings on the matters of the Diplomatic Conference. The Chairman invited the Committee to agree to this proposal, while he did not give the floor anymore to any delegation. Even if some may have had doubts whether this procedure resulted in the adoption of the conclusions, this does not matter any more, since the General Assembly in October took the decision to convene a Diplomatic Conference from November 19 to December 7, 2007, however subject to the outcome (an envisaged agreement on a revised basic proposal) of another two sessions of the SCCR in January and June 2007. It seems that the

overall political problems continue to exist, so that the possible outcome of the plan of a treaty on broadcasters remains quite unclear to date.

[end of report]