

## **Report on the 16<sup>th</sup> Session of the WIPO Standing Committee on Copyright and Related Rights (SCCR) in Geneva, 10-12 March 2008**

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After most of the preceding sessions of the SCCR, as well as the so-called Special Sessions in 2007, had mainly dealt with the protection of broadcasting organisations, with a view to envisage the adoption of a treaty on this subject matter, and after the work had not led to the planned next step of a Diplomatic Conference in 2007, the 16<sup>th</sup> session in March 2008 mainly dealt with three different items, namely: audio-visual performances, broadcasting organisations, and limitations and exceptions.

### **Audio-visual performances**

After the Diplomatic Conference 2000 on audiovisual performances had not resulted in a treaty, the matter was put aside. Currently, from a technical point of view, it is still a matter for the General Assembly, so that the SCCR mainly explored the different positions of member countries regarding this item. The WIPO Secretariat in addition reported on its many activities regarding audio-visual performances, including mainly national and regional seminars. While a number of countries were in favour of trying to achieve further progress or even working towards a treaty, others were more hesitant; overall, there does not seem to be any major driving forces in support of a possible treaty. However, delegations were satisfied about the WIPO Secretariat's activities, such as seminars, supported the continuation of such work as well as other informal meetings and requested WIPO to summarize in a document the outcome of these activities and the stocktaking of positions of members of the SCCR regarding further work on audio-visual performances. Delegations also requested the WIPO Secretariat to organise an information meeting thereon at the next session of the

SCCR. It was also decided to maintain the topic on the agenda of the next session of the SCCR.

### **Broadcasting Organisations**

The two Special Sessions of 2007 of the SCCR were meant to prepare consensus on a negotiation text for a diplomatic conference regarding a possible treaty on the protection of broadcasting organisations. However, after these sessions did not result in such a consensus, the matter was referred back to the ordinary sessions of the SCCR. After ten years of discussions on this matter, the question was, whether and how the work should continue, and if so, on what basis. Many of those delegations which took the floor expressed themselves in favour of progressing work towards a treaty on broadcasting organisations, often on the basis of Document 15/2. However, many other delegations pointed at the mandate of the General Assembly which had not yet been fulfilled, namely to achieve a consensus on the objectives, the scope and the object of protection. Again, one could not sense any major push in favour of a treaty, although it was decided in the end to request the Chair to prepare, on the basis of the mandate of the General Assembly, a document on the convergences and divergences of positions, and it is planned to then identify non-resolved issues as a basis for future reflection on this matter, which will be maintained on the agenda of the next session of the SCCR.

### **Exceptions and Limitations**

At the beginning of discussions of this topic, the WIPO Secretariat reminded delegations of several studies and other activities mandated or carried out by WIPO, such as the 2005 Information Meeting in context with the SCCR. Within earlier sessions of the SCCR, Chile already had submitted documents 12/3 and 13/5 regarding exceptions and limitations. In this session, a common proposal on the basis of the preceding ones was submitted by Brazil, Chile, Nicaragua and Uruguay. It essentially proposed to undertake work in the following three areas:

- (1) The identification of national models and practices concerning exceptions and limitations,

- (2) an analysis of the exceptions and limitations needed to promote creation and innovation and dissemination of developments stemming therefrom, and
- (3) the establishment of an agreement on exceptions and limitations for purposes of public interest that must be envisaged as a minimum in all national legislations for the benefit of the community; especially to give access to the most vulnerable or socially prioritised sectors.

The proposal also suggested four phases in which the work should be organised, namely:

- (1) Research and exchange of information in the SCCR with assistance of the WIPO Secretariat on the existing exceptions and limitations in international treaties, as well as
- (2) the same work for member states' national laws, including the interaction with contractual practices and digital rights management;
- (3) the SCCR should discuss and evaluate the justifications and implications for exceptions and limitations within prioritised areas; and
- (4) on the basis of the information obtained, the SCCR should select and delimit exceptions that should form part of a minimum global framework of exceptions and identify models for other exceptions to be considered as best practices; in this context, also the formal recognition of and commitment to creating mandatory minimum exceptions and limitations through appropriate means should be adopted according to this proposal.

Many delegations expressed their opinions only in a preliminary way, given the fact that the proposal had not been distributed before the meeting and not in all languages. Many, but not all developing countries generally supported this proposal or simply stressed the importance of exceptions and limitations, while industrialised countries as well as some developing countries (in particular Columbia and Senegal) expressed hesitation or even strong opposition to the idea of compulsory minimum limitations; they stressed the advantage of the flexibility of the existing system in international law, including in particular the three-step-test. All countries supported the first proposals on the envisaged research and exchange of information on existing national and international law.

For the next meeting, the SCCR is supposed to consider a more detailed work plan, including the organisation of seminars on the regional and national levels. Also, the WIPO Secretariat was requested to organise an informative session on existing and forthcoming studies in this area and to make a new study on exceptions and limitations for the benefit of educational activities, including distance education and the trans-border aspect in it.

### **Final Remarks**

It was astonishing in this session to see that the election of the chair and the two vice-chairs of this Committee session took until 4.30 p.m. on the first day. While in the past, discussions on chair persons and others with certain functions may have taken such a long time at diplomatic conferences, where indeed binding decisions were to be made, this is a new phenomenon for a simple standing committee and may reflect the increasing political character of discussions within WIPO on matters such as copyright and related rights. The relatively high political tensions are also reflected in nowadays' difficulties to agree on conclusions of standing committee meetings; this time, more than half a day was needed to agree on relatively simple and factual conclusions without too much of substance. This general atmosphere shows that any substantive work, not only in form of a treaty but even in form of non-binding recommendations or similar instruments, be it on exceptions and limitations or other issues, seem hardly possible to be achieved at least in the near future.