

# **Report on the 17th Session of the WIPO Standing Committee of Copyright and Related Rights (SCCR) in Geneva, 3 to 7 November 2008**

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## **I. Information Meeting**

### **1. *Exceptions and limitations***

Before the actual meeting of the SCCR itself, the WIPO had organised informative sessions on limitations and exceptions and on audiovisual performances during two and a half days. On exceptions and limitations in particular, existing and new studies mandated by WIPO were presented by their authors. First, Sam Ricketson presented his study of 2003 on limitations and exceptions of copyright and related rights in the digital environment (WIPO doc. SCCR/9/7), which mainly dealt with this topic under the international treaties. Second, Nick Garnett of Interight presented his study on automated rights management systems and copyright limitations and exceptions of 2005/2006 (WIPO doc. SCCR/14/5). Regarding the past three years not yet covered by the study – a period which is very long in respect of digital technology – he pointed to the fact that technical protection measures have been widely abandoned in the music industry, and that digital rights management only constitutes one of several forms of automated rights management (for example, next to water marking and finger printing). He also presumed that digital rights management would increasingly play a role at least for business applications. While progress has been made in respect of the interoperability of DRM-systems, the relation of technical protection with limitations had not progressed, although trials take place to make DRM more viable. He claimed that a study would be needed to find out what technology or models work best and that best practices should be established.

Furthermore, Judith Sullivan of the United Kingdom presented her study on copyright limitations and exceptions for the visually impaired (WIPO doc. SCCR/15/7). While she admitted that exceptions for the visually impaired could be of some help, they would not be the only or most important solution. In particular, solutions should be searched in the area of licensing or in making available more resources for the necessary equipment, etc. She stated that exceptions for the visually impaired were

provided in laws of less than 50% of WIPO Member States and that most of the developing countries do not provide for such exceptions. She also pointed at the special problem of exports and imports of works in formats accessible to the visually impaired to other countries and favoured solutions under national law and by way of licensing; she was somewhat hesitant towards a solution via a treaty, because such a treaty would also have to be implemented – an act which would not always guarantee the best solution. She also drew the attention of the audience to the fact that exceptions would not allow what the World Blind Union desired to have, namely, the possibility of visually impaired persons to have access to the same book at the same day and under the same conditions as non-impaired persons.

Finally, Kenneth Crews from Columbia University New York presented his voluminous study on copyright limitations and exceptions for libraries and archives (WIPO doc. SCCR/17/2), in which he analysed the laws of 149 Member States of WIPO in respect of library exceptions. While 21 of these countries did not have any library exceptions in their laws and 27 had only general exceptions and limitations (noting that all of these 27 states except one were developing countries), 74 Member States had limitations for research and study purposes, 74 Member States on preservation and 67 on replacement copies, 17 on document delivery, and 26 (exclusively industrialised countries) on exceptions in relation to anticircumvention rules. He analysed in detail many of these exceptions and limitations. Overall, one of the most interesting results of the study for the purposes of the SCCR was the fact that also for libraries, exceptions and limitations are mostly provided for in industrialised countries, while developing countries – the “demandeurs” of discussions on limitations and exceptions within WIPO, and even of a treaty thereon – themselves have no or only general or only a few exceptions and limitations in this area.

## ***2. Audiovisual Performances***

Still in the framework of the information meeting, two speakers reported about seminars held by WIPO in Romania and China; in this context, WIPO had submitted document SCCR/17/3 on the outcome of the national and regional seminars on the protection of audiovisual performances and included a stock taking of positions. Many aspects of audiovisual performers’ protection were dealt with in these

seminars, including in particular the widely recognised problem of the typically weak bargaining position of performers in relation to their producers or other contractual partners, and possible ways of ensuring that the transfer of rights takes place without harming the interests of performers. The document also states that, since December 2000, when the Diplomatic Conference on a possible treaty for the protection of audiovisual performers took place, there was no indication that the positions of the parties having divergent views had evolved.

## **II. SCCR**

### ***General remarks and exceptions and limitations***

The then following meeting of the SCCR started with general statements, which did not reveal any fundamentally new positions regarding any subject matter. On exceptions and limitations, most delegations of industrialised countries, but also some delegations of developing countries, such as Colombia, while being open for an exchange of views and for studies on that topic regarding national laws, clearly or also indirectly objected to any talks on norm setting, given the advantages of flexibility and the need for diversity. The USA even claimed that overall discussions in the SCCR should be balanced, and that, accordingly, other issues, such as exclusive rights of authors, would also have to be discussed if exceptions and limitations were to be discussed. Colombia stated that it was neither appropriate nor fair to fix mandatory exceptions and limitations in detail in a treaty and thereby to take away the existing flexibility granted under the three-step test. Other developing countries either supported or showed sympathy for the proposal by Chile, Brazil, and other countries already tabled in the previous session.

The World Blind Union also had proposed treaty language on exceptions and limitations in favour of the visually impaired; although this proposal was drafted by a non-governmental organisation, many delegates of Member States referred to it, though vaguely, mostly stating that the issue was an important one, while it would not necessarily best be dealt with in a treaty. Also, no governmental delegation tabled it as an official proposal. Finally, regarding exceptions and limitations, the draft conclusions prepared by the chair refer to the different studies and invite Member States to provide supplementary information until February 1, 2009 and announce a further study for the benefit of educational activities. It also stated that the SCCR

acknowledged the special needs of visually impaired persons and stressed the importance of dealing with this topic in particular by way of discussion at national and international levels, and analyses of limitations and exceptions, and the establishment of a stakeholder platform at WIPO, in order to facilitate arrangements to secure access for disabled persons to protected works; finally, it stated that “a number of delegations” referred to the above mentioned paper of the World Blind Union and expressed interest in further analysing it. In addition, the Secretariat will prepare a draft questionnaire on limitations and exceptions to be submitted to the Member States before the next session of the SCCR, in particular regarding educational activities, activities of libraries and archives, provisions for disabled persons, and implications of digital technology in the field of copyright.

## ***2. Audiovisual Performances***

Regarding audiovisual performances, many delegations re-affirmed their interest to work towards international protection, although one of them could not notice any change of position, which would be necessary to see any chances for a treaty. In particular, the USA noted that positions have not narrowed down and remain far apart. Yet, the delegations remained interested in exchanging information and having informal consultations in order to find a way forward on this issue. They also encouraged the Secretariat to continue to organise seminars at the regional and national levels, as in the past years. The matter will remain on the agenda of the next session of the SCCR.

## ***3. Broadcasting Organisations***

In respect of the protection of broadcasting organisations, the Chairman of the SCCR had prepared an informal paper on the recent history of discussions on a possible treaty on the protection of broadcasting organisations, including the main positions and divergences of delegations. In its conclusions, he suggested in particular two options for the way forward, namely, a continuation of the process on the basis of WIPO doc. SCCR/15/2 rev., including the understanding that a new treaty might be established by a clear majority rather than by consensus; and a possible treaty following the model of Articles 2 and 3 of the Geneva Phonograms Conventions, which leave open the way of implementation of the protection, be it by exclusive rights or even only by unfair competition or other laws. If these and possibly other

options would enable the conclusion of a new treaty, the SCCR should make an express decision to end these discussions, combined with a timetable for later reconsideration of the matter (see WIPO doc. SCCR/17/INF/1). While many delegations again were in favour of not only continuing the work on this matter but also working towards a treaty, the main positions have not changed, so that a new endeavour would for the time being hardly be successful. Some delegations even explicitly stated that they saw much too wide divergences among the Member States and do not see any prospects for bridging them (Brazil and USA in particular); the USA in addition insisted on a procedure based on consensus, as did also Iran, so that chances for a treaty will remain minimal. The matter will remain on the agenda of the SCCR.

#### ***4. Future Work***

As regards future work, the European Community had submitted another four topics for discussion in the SCCR; yet, most delegations stressed that their priorities would be the unfinished matters already on the agenda, namely, audiovisual performances, broadcasting organisations, and limitations and exceptions.

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