

Taking Stock of the WIPO Broadcast Treaty, the June meeting Submitted by [davidt](#) on Tuesday, June 15, 2004 - 05:00 [Broadcasting](#)

From June 7-9, WIPO delegates from 90 member states debated whether to extend the powers granted to broadcasters. The treaty as drafted would give broadcasters unprecedented control over material that is in the public domain, cannot be copyrighted, or is available under copyleft-type licences. [Our position](#) is that the treaty should be rejected.

The debate took place in the Standing Committee on Copyright and Related Rights, and the main question was whether there was enough consensus to pass the broadcast treaty on to the General Assembly for a "Diplomatic Conference." From our point of view there wasn't enough agreement to move forward, and India, Brazil and the African bloc (led by Egypt) held strong on this position.

[See below](#) for a full impressionistic transcript of the June 7-9 meeting, written in collaboration with [EFF](#). Elsewhere we have [more information about the treaty](#), including recent coverage, and some short running commentary for Days [1](#), [2](#), and [3](#).

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The Union for the Public Domain delegation was at the WIPO meeting with the [Civil Society Coalition](#), [EFF](#), [IP Justice](#), [Public Knowledge](#), [EDRI](#), [FIPR](#) and [EFFi](#), to speak up for the public domain. We formed an unusual coalition with the rights-holders (e.g., the music managers) who fear the treaty would give broadcasters powers that overlap with artists rights.

Impressionistic transcript by [Cory Doctorow](#) and [Wendy Seltzer](#), of [EFF](#), and [David Tannebaum](#), [UPD](#).

These notes were written quickly, in the heat of the session, and there may well be some errors and omissions. They are by no means verbatim, but on the whole they are a comprehensive record of the meeting.

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Meeting notes for the 11th meeting of the WIPO Standing Committee  
on Copyright and Related Rights, 7 June 2004

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[ed. The session began at 3pm, and the first 40 minutes were  
taken up with discussion on giving more control to non-original  
database owners.]

Database copyright

\* Previously, we agreed to keep non-original database protection  
on the agenda, but not consider it at every meeting. We had a  
meeting without revisiting the question, now's the opportunity to  
consider any developments in this field

\* US: There've been minor developments on database protection in  
the US: two bills in the House

\* DB And Collections of Info Misapprop Act: Protects databases  
from  
misappropriation, with a private cause of action for entities  
that create  
databases

\* Consumer Access To DBs: Only FTC can bring suit. Establishes a  
misappropriation regime as opposed to property.

Both are in committee. Both are controversial. No legislation  
has  
been introduced term in the Senate. No database bill will pass  
into  
law in this term.

\* EC: Old issue, since 1996 the (c) people have been trying to  
get a proposal to the dip conf, but time was too short.  
Non-original dbs have protection in many countries on  
sweat-of-the-brow. EU has harmonized IP protections for DBs.  
We've stated many times that the EU resolution has been an  
important incentive or the Euro database sector. A balanced  
protection encourages production. It is beneficial for investors  
and users alike. This has gone through court many times, four  
cases are pending now before the ECJ. We want a db treaty ASAP.

\* Brazil: We've been at this for ages. No real and substantive  
discussions have taken place. There's no clear understanding of  
the potential economic and social impact of database protection.  
A study that was commissioned by WIPO on database copying in Latin  
America indicated from the Latin American perspective that  
regulation is premature. It's detrimental to innovation, science,  
education, access, etc., particularly in developing countries.

In the light of this we want to question the usefulness and convenience of maintaining this on the agenda. This isn't unfinished business, the lacklustre engagement of the committee tells us that this is business we don't want to engage in, and this gets in the way of other business we might choose to address. We ask to have this permanently deleted from the agenda.

\* Jamie Love (Civil Society Coalition): This is a bad idea. In 1996, there was tons of opposition to this, because it was a new topic and there wasn't enough experience to ascertain the impact on innovation. It was the beginning of the explosive Internet tech growth. It is important now to take full stock of the importance of the free flow of info in light of the success of the internet in informing people and enhancing their political power. The medicine and agribusiness database protection ideas have been in a lot of bilaterals.

\* Intl pubs assoc: The need for info will become ever more pressing. The problems we have persists even in the absence of db protection. Regarding database protection at WIPO, lots of countries have adopted this, Mexico, Australia, South Korea, South Africa, Canada, etc. It won't go away through nondiscussion. We need a more in-depth understanding of the real issues.

\* ALA: The database protection issue in US Congress is significantly controversial, highly unlikely to pass in this Congress. Agree with Brazil, let's take this off the table here. Congress called this a "Solution in search of a problem" -- there's more databases than ever, why do we need this. We don't see a consensus or a need for protection.

\* Ecuador: On behalf of Latin American and Caribbean group, I would like to make a general statement. We don't think that this should be on the agenda now.

\* India: Should everyone who produces work by sweat of the brow come here for protection? This isn't creative labour. There's no allegation of widespread copying of non-original databases. Even if there were, the question relevant for this organization is whether this body should be considering nonoriginal databases. Where there's no creativity, databases are assets; that's the appropriate concern to address by misappropriation, but not intellectual property. Perhaps some other rubric, some other forum is appropriate. Many entities need protection of sweat of brow assets but we shouldn't have all of them approaching WIPO for a remedy.

If EU wants to protect nonoriginal databases, EU can. It's important to leave industry space to develop. at this stage, we need a more careful learning process, not laws that inhibit industry rather than facilitate. Database protection is premature now. Even in long term, it may not be appropriate for WIPO. We recommend the issue be deleted from the Standing Committee's agenda.

\* Russian federation: We're legislating this at home -- it seems to us that this might be good later in WIPO, but we're not ready to discuss it here in any substance.

\* US delegation: We think that this should remain on the agenda. We need to exchange more information about what this is and how it works where it's been adopted.

\* China: We are not enthusiastic about discussing this. I appreciate the Indian and Russian remarks. Some issues need to be clarified. Should IP be used to protect non-original databases? WIPO is here for IP and innovation. Non-original databases aren't creative and are already in the public domain. We need to ask whether it is contradictory to WIPO's objectives. In past discussions and in the new treaties such as WCT and WTO treaties on IP that are outside of WIPO, in all these treaties, only creative or innovative works are afforded protection. Most countries have accepted this. The principle for database protection is to protect the labor of creators and the profit of operators, which should happen, because without investment, we get no innovation. Granting protection to them lets them get return on investment. But should this be in WIPO? Some countries have laws to resolve this problem. I think we should do this with copyright, I think we should do this unfair competition law. This doesn't need to be resolved immediately. Broadcasting is more important than databases. Folklore protection is more important than databases.

\* Union for Public Domain/David Tannenbaum: The stated justification for protecting databases comes from the idea that proprietary rights are the best way to foster innovation. But there is a contrary view that openness is the best way to foster innovation. The opponents of a database treaty, including Union for the Public Domain, believe that follow-on inventions that come from open databases are more valuable than protecting databases.

The decision of six major nations to publicly release the human genome into the public domain shows that some do believe that openness is beneficial to civil society.

This comes down to an empirical question which requires objective study. We would like to suggest that WIPO hold an information session on open source and collaborative models of innovation so we can evaluate what the best path to innovation really is.

Chair: Let's table this until the end of the meeting.

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[ed. The proposed Broadcast Treaty took up the remainder of the discussion.]

Broadcast Treaty  
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\* We decided in November to create the consolidated text

\* The scope has been unclear until now, so we have clarified the scope in a new article

\* I've been asked, "What is the standing of explanatory notes?" They are a reading device for helping with articles. The articles themselves are where the attention should be focussed.

\* At the end of this meeting we will have an assessment of the progress of the work and in the light of this assessment there will be a decision made about whether to recommend a diplomatic conference to the secretariat

\* Next step: a preparatory committee to set out rules of procedures and invitees for conf

\* If we don't have progress, we'll need different next steps

\* Want to hear more from Singapore

\* General remarks:

\* Two main branches of discussion

\* Scope of protection

\* Substance of protection

\* Obligation of national treatment, points of attachment, etc

\* Ecuador: Statement on behalf of Latin American and Carib countries. (GRELAC?)

1. Webcasting: technically and legally complex, recent tech. Not yet sufficiently developed to be regulated. Leave it off. However, simulcasting of broadcasts over the Internet are a part of broadcasting.

2. Cablecasting: need to look at this in more depth, need more analysis of the impact. With this type of study we could favor the option of including it.

3. TM's: Concern wrt impact, and how implemented. Must consider limits and exceptions, and obstacles, impediments to public domain.

4. WRT audiovisual performances: Huh? This falls within the agenda of the general assembly. In Nov 2003, there was some interest in resolving this, we should have more consultations. Let's deal with this ASAP without prejudice in respect of other topics.

\* Egypt: Statement on behalf of African group.

\* Used "possible future treaty" in contrast to others, who have said "future treaty" (wants more technical info)

\* Member states need more time.

\* African group endorses protection of signals

\* Exclude Webcasting -- too complex with tech and legal problems requiring further study

\* Treaty should consider development dimension and promote access to knowledge and dissemination of info -- of paramount importance in digital environment

\* Wants to revisit performance treaty (audible groan)

(Chairman notes that African and Latin American groups have both intervened -- both were opposed to webcasting and wanted more time)

\* Russia

\* Thanks WIPO for their help organizing seminar on broadcasting in Moscow region.

\* "Future treaty": we could propose that existing document be adopted at diplomatic conference; recommend this document and any alternatives it proposes be considered

\* Emphasize how important and timely this treaty is in protecting broadcasters. Broadcasters themselves are saying this.

\* EC

\* Protection of broadcasters through IP rights is established practice in EC, and it works well.

\* Rome is a good starting point for negotiations

\* Let's update Rome and not go below it

\* We will be constructive, but have several issues. Relation to Rome; treatment of webcasters; definitions; exclusive rights [i.e. rights to authorize] versus rights to prohibit; linkage to membership in WCT and WPPT.

\* Target a diplomatic conference in the not-too-distant future.

\* Mexico

\* Our objectives include preparing the convening of the diplomatic conference, once we have the greatest possible consensus.

\* USA

\* Numerous proposals have been submitted, including one by US. Look forward to discussing areas of disagreement in not-too-distant future.

\* Norway

\* Update protections for all three groups affected by technological progress. Don't let broadcasters suffer for AV performers' failure.

\* Don't let what happened to performers happen here

\* We hope this session will close with a recommendation for a diplomatic conference.

\* Keep this close to the WPPT incorporate alternatives j, m, p, and r.

\* Leave webcasters out, so we can focus on needs of traditional broadcasters. Maybe webcasters will need yet another treaty, after we've had time to analyze it.

\* Japan

\* We hope to adopt this in the near future

\* Morocco

\* Concerned about scope of provisions.

\* Cut Webcasting -- we've said it before and we say it again.

\* Study economics of webcasting in several countries including ours

\* WIPO must give us more info so we can examine the consequences in depth

\* Diplomatic Conference: We like it. Keep the meeting short, so we can all participate and be assured of a "good outcome."

\* Mexico

\* Many of provisions are in line w/our legislation. Such as protecting broadcasts, increasing length of protection to 50 years.

\* Protect broadcasters, like others, with TPMs

\* We currently protect our broadcasters under Rome.

\* Webcasting should be in separate text.

\* Don't prejudice rights of other rightsholders.

\* Singapore

\* Thanks.

\* Kenya

\* We hope this results in a diplomatic conference in the near future.

Chairman:

\* This is the end of the beginning.

\* Let's hear more about the scope from governmental delegations that haven't taken the floor, but don't repeat yourself

\* Scope = what to protect, whose rights, what acts

- \* 4 candidates for protection:
  - i. transmissions initiated by broadcasting organizations,
  - ii. transmissions by cablecasters,
  - iii. transmissions by webcasting orgs,
  - iv. pre-broadcast signals (found in later article) by those persons/entities who have protection for broadcasts

China: Sorry to hear you're ready to move on, I was out of the room and missed my chance, and would like to make a general comment, and so would Hong Kong

- \* Balance is key. Looking not only at broadcasters' interests, but also rights of authors, performers, phonogram producers.

- \* Change preamble to reflect this.

- \* Also include the public's access to education, tech and info

- \* Someone at the Max Planck Institute told me that entertainment is like a shared pie

- \* Can we grow the pie? I think so

- \* A big pie provides more for everyone.

- \* But big pies are also bad, because they cause consumers to pay too much for their pie

- \* How big should pies be?

- \* We organized meetings in China with rightsholder orgs to ask them how they liked the Chairman's Draft

- \* Everyone liked this about the consolidated text, but three concerns(?)

- i. Influence of new tech on rights of broadcasting orgs
- ii. Protection of "webcasting rightsholders"
- iii. Protecting performers

- \* This treaty should focus on the impact of new tech on the rights of broadcasting orgs

- \* Treaty of Rome is good, but we have to consider new tech. eg, Protection could be broadened to cablecasting, and we have solved this problem in China.

- \* Webcasting: we could grant equal or similar rights to authors, performers, phonograph producers. Difference between websites and broadcasting organisations and Internet simulcasting--we haven't reached a point yet where we could grant rights to webcasters that could be similar to broadcast rights.



We must avoid creating new imbalances in the system. Before we look to Webcasting protection, we should protect performers who work online (?).

\* This is not a text for a diplomatic conference. This is a discussion text. We believe protection of broadcasters is based on Rome, and if something has worked well for decades, let's keep it as it stands.

\* We should keep some of Rome. Rather than exclusive rights, we should continue to muse the right to forbid. (e.g. Our copyright law says broadcasters can prohibit various acts.)

-- end of day one session --

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Notes from Day 2 of WIPO Meetings on the Draft Broadcasting Treaty

June 08, 2004

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Note: At least nine of the developing world delegations are not in the room for the morning session.

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Work package 1: scope: objects of protection and rightsholders  
Work package 2: rights, limitations, framework/treatment  
beneficiaries, national treatment; relation to other treaties and  
elegibility; TPM clauses (added after intervention by Brazil)

\* Brazil: Wants clarification of work program. When will we be discussing TPMs?

Chair: I thought about this; follow the model of pre-existing treaties closely; there has been no specific controversy; those were adopted after extensive debate. All proposals contain these clauses in almost-identical form. So leave as-is for next stage;

Brazil: my delegation believes Art 16 is controversial and we think it should be debated in this committee in this session.

Chair: no problem adding those articles to the list for Work Package No. 2 because they're modalities of protection.

\* Kazakhstan

CIS countries have agreed-upon position: As to objects of protection, agreement should protect traditional broadcasting and cablecasting organizations; Protecting internet broadcasting important, helpful to express in a different document at the next meeting. [Leave webcasters out of this document.]

Subjects of protection. (?)Webcasting, broadcasting, satellite broadcasting, broadcasting organizations that simultaneously transmit their own broadcasts. This concerns point 3(e) found in

the consolidated text.

Terminology in this draft text shouldn't contradict terminology currently used in Rome, WIPO Convention on Performances and Phonograms (WPPT).

Participants who could accede should be any WIPO member, not necessarily members of WCT and WPPT.

We support the position of Brazil, regarding the protection of signal regarding webcasting, the encoding and decoding of signals. We're not speaking here of copyright or related rights, but technical elements. So what is stipulated in Art. 16 (article on TPM's):

16(1) and (2). Regarding technological protections against decryption of encrypted signals, participation in manufacture/sale/making available of devices -- we support these measures and the language in the draft.

\* India

While preparing the text, secretariat has presumed consensus to grant additional rights to broadcasters. Ignored concerns that have been raised by many delegations, including this one.

- Concerned that rights of copyright holders are being eroded by strengthening neighboring rights. There's still no conceptual clarity regarding the proposed treaty.

- Copyright is delicate balance of copyright and neighboring rights with the rights of society to access information.

- Proposed treaty may tip this balance too much in favor of broadcasters. Regarding scope. This proposed treaty regulates new tech, extending to cablecast and webcast. Many countries haven't reach western levels of development; may not be able to get there if new technologies are preemptively regulated. Scope should be limited to broadcasters. Will have more to say later on substantive issues.

\* USA

- US prepared its proposal to deal with important 21st century tech development, webcasting among them. Rome was a pioneering convention, before many states had adopted neighboring rights. Do the same here: protect broadcast, cablecast, webcast. Value added by deliverer of contents should be protected because it can be pirated regardless of its means of delivery.

- We addressed concerns in last meeting by limiting definition of webcasting to that done by legal entities. Limited to streaming, for orgs that engage in same types of activities as casting orgs.

- We should not ignore technological progress.

- We should level the playing field between traditional broadcasters and webcasters and give webcasters the same rights as broadcasters

[ed - the economics of broadcasting and webcasting are completely

different -- webcasting is unicast and asynchronous; broadcasting is multicast and synchronous. Why should we believe that the protections for broadcasters will help webcasters? Movie theatres use the same content as broadcasters, too -- we exclude them from the treaty because broadcast protection has nothing to do with movie theatre protection -- neither does webcasting -cd]

- As Alternative E reflects, EU has proposed that only webcasting performed by a casting org that consists of a simultaneous transmission should be covered. US proposal also covers this. The EU proposal however provides that only a broadcasting org could avail themselves of this protection. Another organization engaging in the same webcasting activity, subject to the same threat of signal piracy would not receive protection b/c it has transmitted only through the Internet. We see no justification for including one kind of webcasting and not another. The Eu proposal would provide an economic advantage to traditional broadcasters. We oppose Alternative E unless all webcasters are protected.

- Protection of prebroadcast signals in Article 13 should be included. Prebroadcast signals are very subject to piracy when transmitted from one region to another. This is a very important part of the treaty.

[Chair: don't repeat yourselves; time constraints.]

\* EC

- I will refrain from giving explicit reasoning on my points, due to the time constraints.

- We agree with India that we should provide for protection that is needed and at the same time avoid tipping the balance between the interests concerned.

- Scope: Should cover wireless, wire, acts of simulcasting. It should not cover webcasting (Internet originated transmissions), interactive transmissions ("transmission over computer networks"). Should protect pre-broadcast signals.

- Articles: 2a, broadcasting, based on 2f of WPPT, why split definition of broadcasting by wireless and by wire? Why use term "cablecasting", new to international instrument?

- 2b: broadcasting organizations: no international definition. Does it add value? We are concerned that this definition will lead to "Rome minus." There is no precedent for this definition and leaves open some questions, such as who is responsible for the transmission of sporting events? The broadcaster or someone else?

[ed - yesterday, the issue of sporting events was raised privately by the Canadian delegation in conversation; the Canadians claimed that in some nations, retransmission of sporting events is not covered by copyright and so when people across the border retransmit without permission no remedies are available. He didn't seem to be interested in the argument that those "works" excluded from copyright are deliberately thus: we have decided as a society to exclude them from copyright for policy reasons, and putting them \*back\* into copyright through a

broadcast right seems like a bad way to deliberate the appropriate scope of copyright -cd]

[ed - This morning I thought about this more and realized that even if you buy his argument, it's still pretty weird: why should the guy who \*aims a camera\* get the copyright monopoly? Why not teams? Venues? Players? -cd]

- 2d: retransmission: compare to Rome 2g

- 2g: Alt. C, webcasting. We do not favor including webcasting.

- Article 3, Scope of App: Need for para 1 or para 2? To say that treaty shall apply to rights of casting orgs in respect of their broadcast goes w/o saying. Is there added value? Besides, text speaks of rights of casting orgs in Art. 3(2) and we wonder whether it should make reference to protection rather than rights.

- Alternative E - Acts of simulcasting [ed. note that a simulcast can be unfixed, hence unprotected by copyright -ws]. However, para 3 refers to webcasting, but we have not defined webcasting. Perhaps we could find a more neutral term.

- Alternative F - We're opposed, because we're not in favor of covering webcasting in this treaty.

- Article 3, Para 4 - "Mere retransmission." We're unclear, b/c defined in Article 2(d). Is the def in 2(d) too narrow?

- Article 13, Signals prior to broadcasting - Do appreciate such protection.

\* Russia:

- 2 points: preamble and Article 2.

\* Preamble uses "piracy." That's a loaded word, not a legal term. Perhaps refer to the illegal use of rights. [ed - yay! I mean, "arrrr!" ++]

\* Definitions: broadcasting organizations:

\* Need to cover the situation when cablecasters ignore creators and related rightholders -- they say that they're not "broadcasters" -- just "signal transmitters." They won't pay a copyright or royalty.

\* It's important to be able to respect the balance between broadcasters, creators and owners of related rights

\* Egypt:

- Speaking as national delegation. Thanks for secretariat's work. Egypt submitted proposals reflecting interest protecting broadcasting orgs. Open to proposals from other countries and other ideas. Join general agreement with respect to these matters (?).

- However, we stand firm on:

\* Scope: We want this to cover webcasting.

[ed: Egypt later qualified this and said that they had been mistranslated and believe that Webcasting should be excluded from the treaty -cd]

\* Art 13, pre-broadcast signals; Article 24, eligibility should be open to any member of WIPO, not necessarily other treaties, not only those who have acceded to WCT and WPPT.

\* Brazil:

- We don't understand that you want us to take stock without discussing.

- Art. 3: reserve our position re wording of paragraph (2), cablecasting. We don't necessarily oppose, but our government is still examining. Not sure same rights of broadcasters should apply to cablecasters. Might need to reexamine definitions in Art. 2.

- Webcasting: completely unacceptable that it be included. Note high level of overwhelming opposition in previous meetings in this committee. Resolve this quickly, because we won't go into a draft treaty that includes webcasting.

\* Argentina:

- Keep webcasting out of this treaty (delete Alternative F)

- Simulcasting: That's a broadcast activity and entitled to inclusion

- We like paras a, b and c in definitions

- Para d -- retransmission -- want the Spanish translation changed from "redifusion" to "retransmicion"

- Art 13: pre-broadcast signals, no objection.

\* Australia

- Supports application to broadcasting and cablecasting. Support inclusion of def of broadcasting organization, subject to understanding of the wording. There may be many who participate in transmission.

- Do not support extension to webcasting in this treaty.

\* Yes, this should be forward looking and webcasting may be important in the future

\* but the design of appropriate protection for webcasting needs more study

\* i.e. what should be protected? In the definition of "webcasting" proposed in 2G, it seems to be "making available online" and in the second sentence as a "transmission" -- this reflects ongoing uncertainty about what activity constitutes "webcasting"

\* How does definition of broadcasting organization apply to webcasters, especially as webcasting is unregulated?

- Prebroadcast signals - We're prepared to consider that program-carrying signal intended for transmission to public should be protected.

- Echoing a previous delegation re: exclusion of "mere retransmissions" in Article 3(4). If retransmission as used there is as defined in 2(d), that refers to simultaneous transmission. So is deferred mere retransmissions included in Article 3(4)(i)?

\* Iran

- Scope: Broadcasting and cablecasting. No webcasting at this stage, it needs more work.

- Art 1 should be transferred to final provisions of treaty.

- 2a and 2c should go elsewhere

- Define broadcasting organization as legal entity

- Article 24: any member of WIPO

\* Chile

- IP is supposed to promote creation for the social good

- Basic pillars: public domain and exceptions and limitations to copyright.

- Inclusion of new rights holders of IP, such as cablecasters or webcasters could pose a serious risk to the basic pillars, and a risk to rightsholders who are at the heart of the IP system. This is the main risk has not been looked at properly from point of view of developing countries.

- Before we include new categories of rightsholders, we should perfect rights of current actors in the system (broadcasting orgs), and clarify the rights of users. The work on future agreements should be limited in the case of the treaty we're looking at to the case of broadcasting orgs of a traditional nature only.

[ed - great to hear about the public's rights and expectations -ws]

\* Egypt

- Some delegations have told us this is a misunderstanding, perhaps a translations problem. We meant that we \*oppose\* the fact that webcasting would be introduced into this treaty. We said that this is one of the topics to which we attach great importance.

- We agree with Brazil: in light of general opposition to webcasting, we should stop discussing this matter if we truly want to make progress.

\* Singapore

- We presented an alternate draft:
- We don't want Webcasting either
- We premise this on the protection of program-carrying signals
- Cablecasting: We define this as broadcasting by wire, excluding transmission over computer networks and interactive transmissions
- We want to limit this to rights control piracy of signals
- Pre-broadcast signals: Our article 10 was incorporated as article 13 in the consolidated text, but this doesn't do it justice. Our article 10 doesn't relate to exclusivity in pre-broadcast signals, only piracy of same.
- We based our work on Brussels convention with slight modification

[ed. This is the approach taken by many of the NGOs: focusing on preventing signal theft rather than granting new rights that would let broadcasters control content. -dt]

\* Morocco

- Preamble: We want to keep in the strong term "piracy" [ed - ARRRRRR! -cd] given how important it is to this text
- Art 3: Scope should be narrow, limited to protecting broadcasting orgs in a classic way: time to renew and update the classic protections for broadcasters
- We need to strike a balance and provide rights to all who deserve them -- both in the AV area and other fields [ed - this is more stuff about performers' rights -cd]
- Article 13: Redraft this to be more precise. "Effective and adequate" isn't precise enough.
- Article 24: ?? should take place without reservation

\* Benin

- Broadcasting is the locomotive of economic, social and cultural development in my country. We support all the work done here today and all future work for a future treaty.
- But deal only with traditional broadcasting.

\* Togo

- We applaud the work on the summary document, proving the importance of adopting a new instrument. Protect the rights of rightsholders, creators, performers, performing artists whose work is an object of broadcasting.
- New instrument should protect only traditional broadcasting, and cable.
- Exclude webcasting, at least for now. Also include

pre-broadcast signal.

\* Chairman: short remarks can be helpful. Tell us in written submissions what you don't want to see in the document (otherwise it may look as though pieces have more support than they do, because that's all the drafting committee tends to see.)

\* India

- Request for clarification: When are we going to discuss substantive issues of protection beyond scope?

\* Chairman: We're still on scope. More after lunch. Now we're moving onto substance:

1) Rights: Arts 6, 7, 8, 9, 10, 11, 12, 13

2) Limitations: Art. 14

3) Treatment clauses: Arts. 4, 5 (beneficiaries and national treatment)

4) Eligibility in relation to other treaties: Arts 24, 1

5) Technological protection measures [ed this is anti-circumvention in the DMCA/EUCD sense, along with tech mandates in the broadcast flag sense -cd], rights management: Art 16, 17

\* Barbados

- Regarding article 24: speaks to the heart of our future participation. We like the entire treaty except for Article 24. We can't participate if WCT and WPPT are mandated.

- In the developing world we have other legislative imperatives to take care of in our march toward development. We will eventually accede to these treaties. But we don't believe it is right that we should be excluded from this treaty because we haven't acceded to the others.

- This document lends itself to our national development in providing a model for our legislation. But this benefit would be undermined if Art. 24 is adopted.

[ed: importers of IP have no incentive to join in strong IP treaties: that's why the US was a pirate nation for the first century of its existence, while it was merrily and enthusiastically pirating UK IP -cd]

\* EC

- Art 7., Right of Communication to the Public: We can support Alternative L, but we have problems w/Alternative M because it leaves a lot to domestic law. (Art. 7, Para 2&3)

[ed. The US currently has a case against it in the WTO for playing music in bars and other public places without compensation. -dt]

- Art. 9, right of reproduction. Alt. 0 does not give exclusive right of authorizing, but right to prohibit. Does not speak of



direct or indirect, as has been done in other international treaties. We oppose Alt. O. Why was exclusive right from Rome downgraded to right to prohibit?]

- Art. 10, Alt. Q. Right to prohibit rather than right to authorize. Same objections.

- Art. 12: Ditto.

- Art. 13, pre-broadcast signals. Flexible formula, "adequate and effective legal protection." Flexibility needed in new territory.

- Art. 14, limitations: paras 1 & 2 equivalent to previous treaties. Alt. T, however, is a grandfathering clause. How would this affect our ability to harmonize?

[ed. This is a crucial clause. Without it there is hardly any scope for exceptions. Even with it the scope is narrow. The Public Knowledge report has a good section on this issue. -dt]

- Art. 4., It's not clear what nationality a broadcasting org has, so it's a fiction. Why do we need a reference to nationals? Should we choose a more straightforward approach? This comes from Art 3 WPPT, but WPPT covers protection of performing artists, but they are natural persons.

- Art. 5, One of my favorite articles. National treatment is something we can only consider at the very end of the negotiations. Once we know what the content of the treaty is. We are in favor of Alternative J, which draws upon the formula we have agreed upon in other contexts, with respect to neighboring rights.

[ed. The US wants national treatment (foreigners get the same rights as nationals) to protect its content owners. The EU isn't as enthusiastic, and has won on this issue in the past. -dt]

- Eligibility. Art. 24, 2 alternatives. AA: conditioned on WCT and WPPT accession. Unconvinced that this is necessary in self-standing treaty. 7 or 8 EU members have ratified one or the other, more will be doing so, but it still shouldn't be a condition. Art. 26 CC is also unconvincing.

[ed. If WCT and WPPT are requirements for this treaty, then DRM anti-circumvention like that in the DMCA and EUCD will become an obligation of all the signatories -- EFF and lots of other NGOs don't want this. -cd]

- Article 1. Eligibility. need non-prejudice clause concerning Rome. Less convinced re other treaties.

- Article 16, comment. While para 1 mirrors WPPT, Alt V does not. V seems to give self-standing protection for certain forms of decryption (? should be encryption?). Not a technological measure as understood from previous treaties.

- Because previous negotiations were painful, stick to previously agreed-upon language.

[ed. Ed Felten has pointed out that if Alternative V goes

through, (iii) would ban computers, which are "capable of decrypting or helping to decrypt an encrypted program-carrying signal." -dt]

USA:

- Article 7: Option M based on WPPT. If we don't take M, we'll upset the balance struck in the WPPT, so we should include paras 2 and 3 and alternative L.

[ed. Again, this refers to the issue raised in the WTO case against the US: playing music in bars and other public places without compensating the rightsholders. In the EU this is illegal. -dt]

- WRT the two-tiered rights: Scope of rights needs to be crafted to protect broadcasters without conflicting with the public interests or copyright holders. This is the balance we're shooting for. We want a right to prohibit to contain signal theft. Don't expand proprietary rights and you won't trammel the rights of copyright holders.

- Article 24: We don't want to exclude countries by proposing membership in the WCT and the WPPT. But we believe that you should join the others before joining this, because they put into place the essential legal infrastructure necessary to protect content in the digital age -- the protection of content and signals should work together.

- Article 1: We like alternative B -- the broadest possible statement about noninterference about the rights in this treaty and any other copyright or neighboring rights treaty.

- Art. 16: agree with EU that 1st paragraph is all that we need. Not necessarily for same reasons as EU, but it provides the necessary protection.

[ed - Article 16(1) is the general statement of "technological measures"; Alternative V's 16(2) is some particularly extreme implementations against decryptors, use of decrypted signal, and manufacture of general-purpose or specific decryption devices. -ws]

Chair: To the EU's query -- you're right that this issue of broadcasters being identified as a national comes from TRIPS. We chose this model because we talk about nationals in the articles about national treatment. So without this legal fiction, the subsequent article would be funny. We could change this and use the model in Rome.

\* Russian federation

- Art. 1, Russian delegation supports Alt. B because the contracting parties could be linked with existing obligations under other treaties.

- Art. 4, Support Alternative H, because this alternative is in line with Art. 2(6) of the Rome Convention.

- Art. 5, on national treatment, regarding signals we support Alternative G.

- Art 6, 8, 11, 13, 15, 16, 18, 20, 23, 25, 27, 31 -- We support the proposed drafting.

- Art. 7 - Alternative M is the most appropriate in line with Art. 13 of Rome.

- Regarding exceptional rights on banning third parties (?), Arts, 9, 10, 12 should be in line with these provisions.

- Also join other countries that spoke about acceding to the treaty. We should not place reservations and force contracting parties to accede to WPPT and WCT.

- Art. 16, TPMs, we support the EC position. We have found a good mechanism, in WPPT, and we should follow this model.

\* Iran:

- Art. 6, support rider for authorizing retransmission for broadcast and cablecast.

- 7, Alt. M; Art. 8 support; Art. 9 Alt. O; Art. 10 Alt P; Art. 24, previously mentioned; Art. 1, Alt. B

\* China

- Use convention of Rome wording for scope of rights, i.e. have the right to prohibit, not an exclusive right

- Article 24: Alternative Z is best. I.e., any member state can join without WCT/WPPT membership

- Article 1 - Alternative A.

\* India

- Article 6-12, 13, and 15: These give exclusive rights to broadcasters for retransmission, communication, etc. In our opinion, this goes far beyond WCT and WPPT and far beyond those of performers. Many of us haven't ratified WCT and WPPT -- this is a WPPT-plus agenda to many developing countries. This further restricts technology development in the developing world

- Much further than Berne, too. We have adopted provisions in TRIPS, but many countries are facing implementation problems. Imposing new obligations will simply harm the copyright industry whose protection is main objective of WIPO.

- Exclusive rights in 6-12: Giving rights to broadcasters in works of creators and performers.

- Article 13 gives rights to broadcasters for pre-broadcast signals without defining them. Notes that this is related to Brussels: this therefore isn't a copyright matter, but a Brussels Convention matter

- This isn't the right forum to protect the investment of broadcasters

- Art. 15, term of 50 years. Much longer than mandates in TRIPS,

WPPT, WCT. Takes away rights of performers and artists. In our opinion, this is a TRIPS plus agenda for developing countries. Term unreasonably long. Reduce to 10-15 and not beyond.

- Other provisions. We keep our position open and revert back after discussion with our government.

\* Brazil

- Article 5: National Treatment. We favor alternative J, irrespective of whether we agree on some kind of redefinition of the term "national." We reserve the right to come back -- possible at a future meeting -- to the issue of the rights conferred to the beneficiaries under the treaty.

[ed: note Brazilian implication that this business shouldn't be concluded at this session]

- Concentrate on Article 16, TPMs. Brazil is concerned with proposed inclusion of TPMs in proposed new treaty. Aware that similar provisions are in WCT and WPPT, but it's important to recall that those treaties were negotiated and adopted when there was little awareness regarding potential implications of use of TPMs. Since then, some years have gone by, and there's a growing widespread awareness that use of such measures can be quite detrimental to rights of consumers and public at large. Significant concern that anticircumvention has significant negative for exercise of rights exceptions and limitations in national laws. Important obstacle to access of public to public domain materia.

Inconsistent with necessary free flow of info so important to encourage innovation and creativity in the digital environment. All of Art 16 counters stated objectives of new treaty as referred to in preamble. Para recognizes need to maintain balance between rights of broadcasters and larger public interest.

This entire article should believe this entire article should be deleted from the text. Other delegates argue that e fact that we have these provisions in WCT and WPPT mean that we should include them in this treaty. We disagree. Not pertinent to rights of broadcasting organizations.

[ed. Brazil is very courageous. -dt]

[ed. See EFF's Unintended Consequences report for some of the specific harms to which Brazil alludes that result from adopting anticircumvention. Brazil recognizes that previous treaties offer opportunity to learn from mistakes, not just blindly follow existing language. -ws]

[ed This is the best statement I've ever heard at a WIPO session. -cd]

Eligibility. Our delegations strongly supports alternative Z. We think it would be entirely inappropriate to condition the possibility of joining this treaty on the ratification of the other WIPO internet treaties. We do not think this it is very helpful at all to have alternative AA.

- We have a reservation with respect to Alternative CC in Art. 26. We would prefer Alt. BB.

- Art. 19 on reservations, we would like to reserve our position on this at this time. Both of the alternatives are somewhat restrictive.

[ed. Allowing reservations could allow countries to exclude certain provisions from their national legislation, eg. TPMs, webcasting, etc. -dt]

Chairman: Access to information is near to my heart as well. This is not intended to cover DRM that locks up public domain material. If an industry or entity does this, then TPM protection shouldn't be available and circumvention should be lawful.

[ed. Since broadcasting isn't copyright, though, there's a wide range of new material locked up by new rights for broadcasters. Otherwise, there's no need for a treaty at all, since copyright and licensing of copyrights can cover the field. -ws]

[ed. It's a nice theory, but the DMCA enthusiastically covers the uncopyrightable, the public domain, and things that really shouldn't be thought of as copyright, like the way that garage door owners work or the secret of refilling a printer cart -cd]

Mexico:

- Must not prejudice other rightsholders, the owners of the content of broadcasts. We support Alternative B of Article 1.

- We feel we have the right contained in Art 8, fixation

- Art 7 - Alternative L is the most suitable

- Art 10(?) - Alternative B is the best since it's in line with our national legislation.

\* Chile:

- For now, Article 16: Add Chile's voice to Brazil. Dangerous effects from exaggerated effects of protecting TPMs. If we include TPMs, be sure to take account of legitimate interests of users and those entitled to exceptions.

- Art. 14, limitations and exceptions, it's important that as a minimum, we include the 3-step process from previous treaties [TK]. Specifically include Rome exceptions: Private use, information, use for educational and scientific purposes.

\* Australia:

- Where we don't express a preference for an alternative we're reserving our position at this stage.

- Article 6: This refers to "retransmission by any means" -- does this double-up? [ed: Australia is probably afraid this broad language covers webcasting. -dt]

- Article 7 - Right of communication to the public, we support Alternative M as in Rome.

- Article 9 - support alternative N
- Article 10 - support alternative P
- Article 11 - is "by any means" missing in this clause? If not, then why is it in Article 6 in such abundance?
- Article 12 - support alternative R
- Article 14 - Suggest modification or addition to para (1). Although based on 16 of WPPT, it might be best to add reference to "and related rights." Share reservations on Alt. T. [ed. "grandfathering" clause] Therefore Alt. U is preferable.
- Article 15 - Why "broadcasting" rather than broadcast?
- Article 16 - if Alt V were to be adopted, on which we reserve, not consistent reference to requirement that activity be without authorization [ed. i.e., you could be tripped up even if you were authorized.] Art. 16 (2)i : Confusion re: "or are prohibited" ? or "not permitted by law"
- Art 19 X/y [missed this]
- Articles 24, 26: reserve
- \* Argentina
- Art. 6 - The translation right of retransmission is problematic in the Spanish version.
- Article 7 - We prefer Alternative M
- Article 9 - We prefer Alternative O
- Article 10 - We prefer Alternative Q
- Article 11 - Exclusive rights banning transmission of broadcasts based on fixation of such broadcasts -- a translation problem and not a substantial change
- Article 12 - Rights of making available should be up to owners of content. This is why we propose that Article 12 be struck, rather augment Article 9 with a declaration based on article 7, 9 and 11 of the WPPT
- Article 14 - Maintain alternative U -- add nothing, unless in the future we conclude that the alternative in comments 14.0.5 on P54 of the English version (Argentina's cablecasting proposal)
- Article 4 - Prefer Alternative H
- Article 5 - Prefer J
- Art 14, AA. Balance between rights holder and related rights.
- Art 16, on TPMs, pt. 2, Argentina prefers Art. V, but reserves right to come back. [ed. Alt. V was Argentina's wording, I wonder why. -ws]

\* Benin

- Article 5: support alternative K

- Articles 6-13, we think it is crucial to strike a balance among the three regarding the protection of broadcasting and the need to raise awareness, teach communities at the grassroots. And this is why while we support the 3 articles, we think these rights could be stipulated provided these rights are implemented for business reasons.

- Article 24 - We do not understand the justification for Alternative AA, delete it.

\* Morocco

- Article 1 - support Alt. B wrt other treaties.

- Article 3 - support pts 1 and 2 on scope of application

- Article 4 - Beneficiaries. "Ressortisant" is not people, but organizations. National treatment, alt J, reserve, because national treatment closely linked to application scope.

- Article 6 - Comment. Retransmission by what means? "Any means" is too broad.

[ed: One wonders if using WiFi to send a signal from your TV receiver to your laptop is covered in "by any means" -cd]

- Article 16 - TPMs. Support para (1) because it gives states many options for dealing with the issue.

[ed - but not the option not to endorse TPMs at all, as some states clearly wish to do to further development, creativity, etc. -ws]

- Article. 24 - Eligibility for acceding to the treaty, we of course support Alternative Z. There should be no conditions to becoming party to this treaty.

- Provisionally conclude. stocktaking of NGOs.

IGOs; African Intellectual Property Organization

Arab States broadcasting union

NGOs:

ARTIS. problems giving broadcasters more rights than artists.

CSAI.

FILAIE:

\* performers' rights should come first. It's as if we were trying to repair a wheel when the engine has broken down.

Electronic Frontier Foundations: (Cory Doctorow)

We believe that the technological measures in Articles 16 and 17 are not required for the protection of broadcasters' signals and thus should not be incorporated in the proposed Treaty. EFF is a co-signer to the NGO statement of principles on the proposed treaty and has submitted a Floor Statement to the Secretariat detailing its views, and will briefly outline its concerns here.

1. Article 16 opens the door to an unprecedented range of technology mandates which will constrain technology development

Article 16 requires Member Countries to adopt extensive mandates over everyday technologies like televisions, and radios. It envisions broadcasters "marking" broadcasts, cable transmissions and webcasts with something like the American "broadcast flag". All signal-receiving devices -- even personal computers -- will be required to detect and respond to the flag.

Imposing this kind of sweeping government mandate over emerging broadcast technology is bad for innovation and it's bad for competition policy. In the US context, these measures restrict private, non-commercial uses of broadcast programming that today are reserved to the public, under our existing national laws.

A technology mandate here is premature: there is simply no evidence that non-commercial uses harm broadcasters.

2. Article 16 is not a good way to protect broadcasters rights and will harm the public domain

Technological measures have failed to protect IP. However, technological measures \*have\* imposed punishing collateral costs on the public interest. In those countries which have implemented the similar provisions in the WCT and WPPT there has been significant harm to competition, technological innovation, scientific research and freedom of expression.

Article 16 gives broadcasters greater rights than creators over the content of broadcasts. Under the proposed Treaty, broadcasters can restrict the distribution of material that is not copyrightable, is in the public domain or is made freely available by its creator. Indeed, in national implementations of the WCT, technical measures have done all these things.

Despite the best intentions of treaty-drafting committees, national implementations of technological measures undermine or eliminate altogether the public's access under existing copyright laws.

There is no reason to grant legal protection for a further and broader layer of technological measures for broadcast signals, cable transmissions and webcasts.

3. Broadcaster Technological Measures are Unnecessary

Article 16(1) is based on similar provisions for rightsholder technological measures in the WCT and WPPT. At the time, rightsholders argued that they would have no incentive to release their works digitally absent a strong legal ban on circumvention.

The same is not true for broadcasters. There has been no credible evidence that broadcasters under-invest in technology.



Broadcasters broadcast, notwithstanding the possibility for signal theft.

The stated objective for the proposed Treaty is to protect broadcast signals, not content. Rightsholders and holders of related rights can already use technological measures to protect their content in broadcast signals as a result of the 1996 Internet Treaties.

Alternative V - Article 16(2)

Finally, Alternative V of the proposed Treaty poses a grave threat to consumers, scientific research and technological innovation.

Article 16(2) bans general-purpose computers, creates a strict liability offence for the public and imposes a technology mandate for encrypted signal receiving devices.

For these reasons EFF strongly supports Alternative W in Article 16, which would not require adoption of Article 16(2), if Article 16 is retained at all.

Thank you for your consideration of our views.

\* IP Justice. (Robin Gross)

- Art 16 and 17, in DMCA, chill freedom of expression. Chill scientific debate, technological innovation. Delete Art 16.
- Fix fixation. The discussion of fixation defies physics.
- Broad scope of "by any means" has unforeseeable implications.
- Refers to top 10 list of reasons not to adopt broadcast protection.

Civil Society Coalition (Jamie Love):

- Oppose movement toward diplomatic conference. No demonstrated evidence of need for a treaty. Broadcasts are protected by existing law.
- Not about protecting against piracy, but a grab by broadcasters.
- Treaty doesn't distinguish between public domain and protected. If it wanted to leave public domain freely accessible, it could say that.
- Aligned with EFF and IP Justice.
- Address real problems, not claimed harms.

\* Union for the Public Domain (Tatyana Nikiforova in Russian++)

- We need to balance social and creative needs and the needs of broadcasters
- The proposed treaty could limit access to public domain materials

- We need to ensure that there be access to official documents and other public materials
- Broadcasting isn't creative and the protection is granted only on the basis of investment. But even the EC's controversial protection of investment in databases lasts only for 15 years.
- Copyright already covers the nominal purpose of the treaty
- The treaty appears to be limitless, since it adds a new 50 year period after each broadcast.
- The prohibition against formalities makes it nearly impossible for the public to discern the boundaries of the public domain.
- This treaty is against the interests of society -- even a compromise can't solve these problems
- Keep this away from the diplomatic conference

International Federation of Actors:

- Understand need for traditional broadcasters to fight signal piracy.
- Regrettable omission to clearly define object of protection. Define what a broadcast actually is. Such definition is necessary to define scope of treaty.
- Much of what's in here is about protection of content, not signal. Granting broadcasters rights to exploit content, rather than to protect content-carrying signals harms other rightsholders. Irrevocably compromise already imbalanced rights.
- WIPO must address protection of A/V performers before agreement can be reached here.

\* FIAPF:

- Assoc of cinematographic and television film producers. Signed common doc available outside, position of most NGO rightsholders here.
- As India said, this is about Piracy -- broadcasters say so too
- Our only objective here should be preventing non-authorized transmission of signals
- This treaty shouldn't be a way to take rights from rightsholders
- Today, A/V producers recoup their investments by selling to different economic partners, casters, video-on-demand.
- In future we hope that beneficiaries of the new treaties be clearly defined and perhaps closed off to avoid destabilization of business models
- The justification for protecting broadcaster (investment) seems

to be exceeded. Specifically looking at Article 10 which deals with distribution of DVDs, VHS. We wonder about such an exclusive right being granted to broadcasters. Either the broadcaster has not purchased this right of distribution, in which case we don't understand what prejudice or injury he could have in terms of piracy. Or the broadcaster has acquired the right of distribution of a VHS, say a football match, which I know nothing about, and they would have the right to distribute the match on VHS.

- This problem of going beyond signal protection can be found in the right of making available.

- Piracy is the primary objective.

\* FIJ International Federation of Journalists

- Protection should be given to public service broadcasters and full service broadcasters only. Not webcasters.

- Signal only. Broadcasters should be given only rights necessary to fight piracy. Authors and performers should get similar rights. Broadcasters should have to acknowledge others' rights.

- Contracting parties should first join WPPT, WCT (Article 24 AA)

- A/V protection should remain a priority

\* International Federation of Musicians

- IFM concerned about several terms.

- We are cosigner to a rightsholder statement on the treaty.

- It has been expressed almost unanimously that extending protection to broadcasters is premature. We should delete the references in Article 3 to webcasting.

- Some confusion about terminology, or absence thereof. For example, it's amazing that "broadcasting" is itself not defined.

- The signal and the content may be physically distinct.

- The objective of the protection is to combat piracy without inhibiting exercise rights of rightsholders does not require Article 10 or 12.

- Article 9 should be limited to creating unauthorized fixation.

- Article 11 should be deleted.

- Article 6 as it stands would have harmful impact on exercise of rights by rightsholders.

- Implementation of new level of protection for broadcasting orgs without ensuring that we update rights of rightsholders of content would create a harmful situation. That's why we feel Article 24 could be maintained only in alternative AA. WPPT and WCT should be a condition of accession.

- Thank you to government delegations who supported returning to the A/V treaty discussion. That continues to be our priority;

don't defer A/V treaty with a diplomatic conference on this.

\* IAWG. International Affiliation of Writers' Guilds

- We support principle of defeating piracy. But broadcasting organizations don't need to be protected against authors and creators or against society at large.

- Should not include right of distribution, making available, and retransmission, because these are connected with commercial exploitation and not with preventing privacy.

[ed: this is a really good, concise statement of the difference between an anti-signal-theft treaty and a treaty that gives a windfall to casters -cd]

- Danger that we will give rights to broadcasting organizations while creators are still waiting for their rights to be granted.  
[24 AA]

- There are significant differences between broadcasters and webcasters. Another measure is needed for webcasters.

\* IFPI. International Federation of Phonogram Industry

- The chairman's draft is more like a basis for debate than a summary of the consensus to date

- Lots of people think that we need something like Brussels

- Rights to Broadcasters shouldn't overlap with or overreach the rights of creators. Agree with China, India, GRELAC, and African region delegates.

- This text is not comprehensive in context of the state of the debate

- This is at odds with the preamble and article 1 -- to not prejudice other rights holders. You can't do this with general statements. You have to do this with specific drafting -- broadcasters shouldn't be able to design and shape business models related to the content rather than the signal, especially when we're talking about content whose creators have been expropriated or subject to a compulsory.

- Substantial redrafting of Article 6.

- Note substantial lack of consensus everywhere.

- We support the "right to reproduction and distribution" approach

- Article 24 AA should be included -- countries haven't ratified the WTC and WPPT and they don't give enough rights to holders of rights in the content. This is to the benefit of broadcasters, who don't care about WCT and WPPT adoption.

- To create a Broadcast Treaty without a WCT/WPPT obligation would b0rk rightsholders

- We're co-signers of the rights-holders' paper that you can get

outside

\* IMMF

- We believe in a signal-protection-based instrument, not a rights-based instrument. [cf. the NGO alternative treaty]
- Rights-based path: Which rights, for whom? How broad? Based on Rome, Berne, etc? How long a term?
- Signal-protection based approach much simpler to achieve for much greater protection, on basis more likely to endure.
- Parties to this treaty may be party to other instruments that cover broadcasting with different definitions, different breadth and scope. To transliterate the rights of this instrument were it to be rights-based they would have to reconcile their obligations under many instruments. Whereas if we use the provisions of the Satellite Convention in Article 2, it's much easier.
- A number of us have taken the consolidated text and reworked it on the basis of the Satellite Convention, article 2
- Some have said that Rome obligations mandate greater rights (Rome Article 2). We submit that signal protection does provide that greater protection Rome requires.
- The signal approach avoids embarking on the slippery slope where one has to reconcile the agreement that there should be no prejudice the rightsholders over material in the broadcast, with the need to protect the signal.
- What's a fixed signal? What's its reproduction? Even if there is one it's not clear it has value. The value is the material it carries.

\* GIART

- This is a telecoms issue -- move this out of WIPO, it has nothing to do with copyright
- Protection for broadcasters should exclude webcasters except for simulcasters
- The impact on rightsholders here is negative
- We need to balance the protection of rights-holders with the protection of broadcasters
- Art 6 shouldn't go past the Rome Convention
- This should be based on prohibition, not exclusive rights, which would come at the detriment of rightsholders
- Making people join WPPT and WCT is OK, but we should also force them to sign onto the Rome Convention. Protection of the signal is not more important than protection of the content.

\* FIAD: International Federation of Cinema Distributors

- 13 NGOs have drawn up a text that has been distributed today --

we fully endorse it, bringing it up to 14.

- While it's vital to give broadcasters means to fight piracy, make it signal piracy, without impinging on copyright holders' rights. We are concerned about Art 6, 9, 10, 11, 12, 24 but there isn't enough time to elaborate.

\* NAB-Japan

- REgarding scope, webcasting is very important for broadcasters and webcasters. But we can deal with the issue at a later stage. This should not be an obstacle to going on with the next stage.

- Time is ripe for diplomatic conference. NAB has been stressing need for instrument for over 6 years. Need to fight against newly arising infringements in this digital environment. Else our role as a fundamental medium of communication will be severely tarnished. A tragedy not only for broadcasters, but also for the public. P2P is killing us.

[ed. I can't quite believe that this is the first time we've heard mention of filesharing and its demons. -ws]

- We can imagine at this very moment filesharing is surely spreading like a wildfire. We must act now, before it gets too late. Whether we can go on to a diplomatic conference or not can make or break our effort. Now is the time.

[ed: The sky is falling! The sky is falling! -cd]

\* DIMA

- As the representative of internet webcasters, it may seem counterintuitive that I thank delegates for their attention to webcasting. Keep your minds open to the possibility of including webcasting.

- Last June presentation at informational session. Technology and business of webcasting. Major webcasters make substantial investments of time, money, etc. in making webcasts available. Contra radio stations with shrinking playlists, webcasters expose alternative playlists and genres.

- Whereas radio stations could not support niche formats to a local audience, internet webcasting finds affinities nationwide and internationally to a very hungry audience for music. Sitting in my office in Washington, DC or in my hotel here in Geneva I can listen to music from Nigeria, Jamaica, Cambodia, Germany.

> From websites that originate in your countries.

[ed: only if he's staying in a fuller-featured hotel than we -ws]

[ed: Le Fleabag Du Geneve doesn't have WiFi yet -cd]

- Far from being the instrument of the digital divide, webcasting is a means of bringing the world closer. if you are concerned with spreading your culture and helping to commercialize your music and your artists, webcasting brings authentic culture to the rest of the world. It is the first truly international

broadcasting medium.

- But it is also the easiest medium to pirate. Webcasts arrive at your computer and are very easy to transmit by pirates. The Yahoo rep explained that this company spends a lot of time and money trying to thwart internet piracy of Yahoo's signals. And technology alone was not enough. As we said in WCT and WPPT, technological means need to be supported by legal methods of enforcement.

[Ed: This line vastly overstates the complexity of digitizing an analog radio signal and the ease of retransmitting a digital signal -- is it harder to plug your radio into your PC than it is to break DRM? And how about the person who receives either a digitized or a cracked signal? Does she have a harder time putting a digitized file in her Kazaa cache than the person who receives a DRM-cracked version? -cd]

- This is represented in the proposal to protect simulcasts. If there's no threat of internet piracy, then why do you need protection? But if you acknowledge that if webcasting in any form requires protection from piracy, there is no principled basis on which you can say that the largest radio station on earth should deserve protection, but the largest webcaster should not.

[ed: Sure there's a basis. If protecting over the air broadcasts doesn't break computers, but protecting webcasts requires trusted computing and pervasive DRM, that's good reason to distinguish between them and to stop short of protecting webcasts. -ws]

- An important principle is that copyright owners deserved to be paid. And members of my organization pay tens of thousands of dollars annually. They deserve compensation. But if our signals are pirated, there is no compensation going back to the artists and the creators. If you want to support a legitimate alternative to piracy on the internet then you have to give the consumer a lawful place to go to obtain content in a way that ensures payment to the creators. One of those ways is by supporting webcasting.

- Webcasting is here and has been here for many years. The time to protect webcasting is not later, but now.

- If you have questions about how the definition of webcasting should be written, the US has some good ideas on that.

- If you don't do this, you'll have a treaty that could have been written 20 years ago.

- In principle the US has it exactly right. There is no basis to distinguish between technology if the acts are the same, if the investment is the same, if the threat of piracy is the same.

[ed: but of course, they're not the same. They're wildly different -- that's why different orgs are involved in webcasting than in traditional broadcast. Different technology, bizmodels, costs, and barriers to entry. Why should we expect measures designed for sat signals, cable, or broadcast TV to be appropriate for something as different as the asynchronous, unicast Internet? -cd]

\* EDRI

- Signatory to NGO draft. A number of concerns regarding consolidated text.

- Treaty should be signal-centric. Support African group, against a new layer of rights that may conflict with copyright.

- Broadcast rights should not restrict the public domain. Works currently unprotected could be removed from user access. Made worse by Article 16's TPM protection.

- Respectfully disagree with Chair that public domain materials are not protected by such measures. Support Brazil that Article 16 should be removed.

- No rationale for 50-year term of protection. Insufficient evidence that 20 years under TRIPs isn't enough. Support India that the terms should be much shorter.

- Webcasting should be out. No consensus. If necessary, separately tailored instrument.

\* AFMA - representing content owners

- Protect signal, not broadcast content.

- Rightsholders exist long before the broadcast.

- Support FIAPF, FIAD, coalition of rightsholders draft.

- WIPO consolidated draft showed wide misinterpretation of several key terms.

- As Argentina pointed out in Nov. broadcasting is usually wireless. Cablecasts are not necessarily by the same operator. Retransmitter should not get rights. Many countries have mandated collective rights for retransmission.

- Missing emphasis on primary broadcasters. Only their rights should be covered by this instrument.

- Brazil opposes protection of cablecasters as though they were broadcasters - they're right but don't go far enough

- Cable isn't the issue, but a proper definition of simultaneous transmission

- On TPMs, limited rights to content may be encrypted. Several references to public domain, information that should be available to consumer without conditional access. Such info would rarely be encrypted. But there's still a right of access control.

[ed Here we hear both the sweat of the brow argument; on top of it an utterly unfounded supposition that public domain material is not encrypted. It's a neat tautology: no one encrypts public domain work unless it's been infused with so much sweat of the brow that it shouldn't be public domain -- IOW, if it's encrypted, it's not public domain -cd]

- Signatories should be required, per Article 24 AA, to have



adhered to WPPT, WCT, protecting copyright and related rights.

- Don't ignore commercial imperatives to encourage production of information and ensure continued and expanding supplies of content.

[ed. Where's the evidence?? If it's a business model that depends on harming the public more than benefiting that public, maybe it's a business we shouldn't support with legal buttresses. Where are the basic economics? -ws]

\* AIR

- The 1961 Rome Convention (1961) set out rights for three holders: musical, phonogram, broadcasters. We reject the fact that Rome set separate classes of related rights holders. All of us are protected under this umbrella.

- When we started coming to WIPO in 1992, the group of experts was discussing the updating of the Berne for authors and for the protection offered to phonogram producers and performers because of the need to bring protection into line with all of the changes that had occurred in technology, particularly digital technology.

- We were told broadcast protection was a bad idea because it could lead to difficulties with other draft treaties, so we decided to wait.

- 1996, the internet treaty was decided upon. We updated protection of other holders of neighboring rights (performers, producers of phonograms). It was decided that broadcasters would get an update.

[ed. They always talk about "updating." It's a much more innocuous way of saying "extending our powers." But who can challenge the benefits of "updating"? -dt]

- Everybody likes the treaty, except for webcasting, so let's take out webcasting and get this treaty passed.

- Don't link broadcasting to A/V treaty. That'll just delay things, and there's no consensus there, nor any connection between them. At least he wasn't thanked for his "concise contribution"

\* ACT -- Association of Commercial Television in Europe

- D-Day was really significant

- This is what broadcasting can do: unite viewers and let them participate together in a great public event

- There was skill, effort and resource necessary to make that happen

[ed to say nothing of the millions of war dead, possibly they should be in the treaty? -cd]

- First, the event itself, or the incidents from different locations which the broadcasters brought together are not capable of copyright protection.

- Nonetheless, the coverage gives a narrative shape to the event.
- Since the event was being transmitted live, there is no question of the coverage being protected as in the case of a film or sound recording.
- Even if there was a fixation, some jurisdictions wouldn't consider it a copyrightable, creative work.
- I suppose there would be wide perhaps almost universal consensus in this room that the signals that transmitted that coverage on Sunday should be protected against unauthorized fixation.

[ed. I would suggest just the opposite, that it's the public (including that earlier public many of whom gave their lives in the war) who made this event significant to broadcasters -ws]

- Those who seek to limit this to anti-piracy have to explain why the skill of a broadcaster should be less worthy of protection than the skill and investment that a record company puts into a successful session?
- A number of arguments have been advanced. One is that only content providers deserve protection. This airbrushes out the history of the Rome Convention over the last 50 years and ignores the fact that it has never been a condition of protection that broadcasts should have to be original. Those 50 years offer little if any evidence that the broadcast's fixation right (Art. 13 of Rome) has been exercised to the detriment of other rights owners.
- Finally: there is the unworldly view that broadcasters should be above the vulgar consideration of money. I speak for commercial companies with shareholders who sometimes operate pay TV services and who are appalled that the treaty has no protection against unauthorized decryption. It is a general truth that we all have to have a source of income to pay for our services.

- I'm not embarrassed by the fact that my members turn a profit, just like record companies]

[ed. Straw man arguments are convenient. -dt]

- Why should my members not be able to exploit the events of last Sunday's broadcast? Why not call the free-riders my members subsidize "pirates?"

[ed. talk about exploitation -ws]

\* ABU

- Members are in 53 countries in Asia-Pacific region.
- I also own an FM station and low-powered television station in the Philippines.
- Regional broadcasters have been coming here forever, describing a litany of actual experiences where traditional broadcasters'

signals were exploited without consent. Interventions, presentations at regional meetings, distribution of proposals and explanations, etc.

- These were presented in meetings with government groups and local government officials.

- Webcasters and cablecasters are getting a free-ride on all our lobbying

[ed. This should be read as: If we had gotten this treaty when we should have, there would be no VCR, no tape recorder, and certainly no TiVo. -ws]

- Protection should only be granted to traditional broadcasters who have presented their name for protection.

- Broadcasters are only seeking updated rights, and not to the detriment of rightsholders.

- To NGOs: Thank you for recognizing that this is about protection of the signal, so we can continue our mandate of public service, including education and access to information.

- Fidel Ramos: Radio and TV helped restore democracy to the Philippines

- Unlike new forms of broadcasting, traditional broadcasters provide services to the public free of charge.

- After 10 years of work traditional broadcasters believe there is enough consensus to schedule a diplomatic conference next year. We appeal to this body for a fair deal for broadcasters.

\* CISAC and BEAM

- 3 general principles:

- 1) At stake is appropriate means by which broadcast orgs can protect their legitimate interests. We're heartened that many delegates think care should be taken in delineating broadcasters' rights, so as not to prejudice others' rights. Obvious lack of creativity in broadcast should restrict the protection granted by this IP instrument.

- 2) Heartened by para 13 of introductory notes; importance of insuring that broadcasters not be more protected than traditional rightsholders.

- 3) Delegates have consistently, clearly expressed preference for excluding webcasters. We are not aware of important divergences necessitating inclusion of alternatives -- exclude the webcasters.

- 3 specific points:

- 1) preamble suggests benefits to authors, performers, phonogram producers. Don't think members of creative community see those benefits.

- 2) Alternative A to Art 1: why is this limited to intl

conventions protecting performers and phonogram producers?  
Other intl conventions are mentioned only by implication,  
please make it explicit as in alternative B

3) Article 1(2): Like the principle, want clarification: how  
will this not effect underlying rights? We suggest that the  
need for the auth of the underlying rights holder does not  
cease simply because you've got the caster's permission.

[ed: This won't help in the case of copyleft -- you've got the  
artist's permission but you need the caster's]

- Creators don't hate broadcasters, but we should protect their  
signals while respecting over 100 years of IP protection.]

\* NAB. National Association of Broadcasters.

- 1. Continued concern re balance of rights. Nothing is designed  
to affect others' rights. The preamble says so. The analogy b/t  
the content and the signal is not unlike the seed in a kernel of  
corn or a grain of wheat surrounded by the chaff.

If copyright holders want to distribute their material by other  
means they can circumvent the broadcast process and this treaty  
is not applicable to them. But if they decide to be part of the  
broadcast system, we become part of the process and are entitled  
to protection against the exploitation of the signal.

This has nothing to do with the content.

[ed: IOW: if you don't like it, don't broadcast your content.  
We're doing you a favor here. All your base, therefore, are very  
much belong to us. -cd]

[ed. The broadcasters continue to hit a strawman. Few are  
challenging the premise that any powers should be granted. We're  
challenging the extension. -dt]

It's true that some compulsory license schemes don't give  
content-owners control of inclusion in broadcast signal, but  
that's a problem with national law and compulsories, not with  
this treaty.

- 2. Should this be an antipiracy treaty? Should we eliminate  
rights in the name of limiting this to treaty? Why aren't the  
rights to prohibit enough?

I agree with the delegations who say that this should be forward  
looking, a 21st century treaty.

Most broadcasters have one channel and one revenue stream,  
available free over the air. They're in competition with  
multichannel delivery systems that have hundreds of channels and  
multiple revenue streams and are not available to the public  
(i.e. cable systems).

We know that broadcast is good for cultural enrichment, etc.

If you want to continue to receive this kind of service and have  
continued viability in the future given the competition we face,  
broadcasters must have the flexibility for alternative business

models that include the [string of rights] of their broadcasts. Again, this is not at the expense of content owners. If there is going to be exploitation at the backend that includes our signals, then we need, and we are not ashamed, that we may continue to need that kind of compensation at the end of the chain.

[ed. Ah, the old, you'll lose free-to-air content if you don't protect broadcasters. We hear this a lot in the U.S. broadcast flag proceedings. -ws]

As examples, I submit the World Cup, the Superbowl. Very interesting events, but tens of millions of dollars of broadcasting rights submitted to these organizations that make these events at all viable.

If, for instance, in those settings there involved a joint arrangement that there needed to be agreement on the signal and the content, I'm trying to imagine someone who wants to make copies. They obtain rights from the Olympic committee. Then they come to NBC, and they offer to provide a right to prohibit. I suggest the entity that engages in that negotiation will not have a clue what an authorization to prohibit means.

- 3. Why do we need fixation, reproduction rights and distribution rights? If we have the right to fixation but not reproduction, we're screwed if we come across a warehouse full of pirated reproductions. If we catch a street vendor and we don't have the right to distribution, this is no help.

- 4. Removing article 16: There's a measure of fearmongering and conspiracy of obfuscation in some corner of this room. It's claimed that TPMs will affect First Amendment rights, will impede education and libraries.

[ed: yes, that's it, we're just conniving conspirators of obfuscation. Help, we've been uncovered. -ws]

The information is being distributed by the transmission. in almost all jurisdictions, copies are available for timeshifting. In most jurisdictions copies can be made in classrooms and libraries. What we submit is not needed to continue democracy is providing opportunities to make massive numbers of copies.

[ed. then provide a personal use exception -ws]

- 5. Art 24, we oppose Alternative AA. Each treaty should be judged on its merits. There is no similar nexus between the WPT and WCCT.

- 6. This is the eleventh session, 6 years, 10 proposal, regional conferences in Manila and Cancun [which non-commercial NGOs couldn't afford to attend, most likely -ws] Those in the back corners of the room [ed: eg, EFF, etc -cd] should have been at those meetings, they're too late now. Sorry, missed your chance.

\* Public Knowledge

- Thanks for the opportunity to make this \*brief\* intervention

- PK's analysis of the text is available outside this room, and we signed onto the alternative mentioned earlier by IMMF and EDRI
- Will not repeat IMMF's comments on appropriate focus on signal.
- I wish to highlight the comments of Chile and India
- Focused attention on the vital need to ensure that the rights given to broadcasters don't diminish the rights of copyright holders and public access to information
- The current language doesn't respect the pleas of India and Chile, nor does it follow on the preamble
- Treaty needs to respect personal use and access to knowledge
- While we support prevention of signal piracy, this can be done without harming content owners and the public.
- As Brazil noted, the fact that some treaties use certain language does not mean that this body cannot reconsider the use of that language, especially when it will create serious harm and take us a step back.

\* EBU - European Broadcasters Union

- Short discussion this morning indicates governmental consensus on all major points. I have 4 brief points.

1. As was said this morning, [i.e., we lobbied effectively] broadcasters are locomotives of economic social and cultural development. Update existing signal protection under Rome convention. Anyone who imagines that protection for broadcast will restrict the public domain confuses signal and content

2. The right to prohibit (as opposed to the right to authorize) also confuses signal and content

-What if there were only a right to prohibit. A potential licensee has a license to the content, would you as broadcaster prohibit? [ed. sure, why not, if you've said you need the right to authorize, isn't that the same choice to you? -ws]

3. We need to combat piracy, the same way that the 1996 treaties were supposed to

4. Has there ever been such a large number of treaty language proposals before any other diplomatic conference?

\* AIPLA. Association of Intellectual Property Lawyers of America.

- Representing 16,000 IP attorneys. [ed. not this one -ws]

- Want to address article 16 and TPMs

- We've had these in the US for some time. During the past several years, more copyrights and more patents have been obtained than ever before.

- These measures have not directly or indirectly hurt creativity or the protection of content. There has been no stifling on any

large scale at all.

[ed. Define "large scale." -dt] [ed2. It clearly doesn't include the hundreds of EFF members who submitted complaints in the second triennial exemption hearing, or the thousands who have supported HR 107, the Boucher-Doolittle DMCRA. -ws]

- In 2000 and again in 2003, the US Copyright Office held extensive hearings and determined that no further exemptions were necessary

[ed. hmm. Several exemptions were granted, which couldn't even be granted under the treaty's proposed language, which doesn't permit extra exceptions. -ws]

- In our experience public domain and fair use have adequately protected consumers and public at large

\* ASPI - Sao Paulo Association for IP

- We need to enhance protection of broadcasters

- The rights this proposal affords to cablecasters and broadcasters are quite alarming

- Webcasting and cablecasters can't be classified as broadcasters -- they don't have the same social role as broadcasters

- There is a need for a more profound analysis of the issues here

- There is a human-rights interest in balancing the rights

- Thanks to the other delegates for discussing copyrights and not just investment-based concerns.

Chairman: We'll have a very different day tomorrow. Advise the delegates to pick up every document and study them. That makes the process more credible.

The floor is still open for government delegations to return to substantive issues after having heard the IGOs and NGOs.

The next stage will be to enter into discussion on further steps. Tomorrow morning I will make available a draft set of recommendations that should reflect, tentatively, the state of the art in the deliberations. I will try to formulate a description of the progress. We are well advanced but of course there are still many questions to be discussed.

That set of conclusions should include an element that should refer to the general assembly next Sept/Oct. The assembly should be informed and some kind of decision should be sought from the general assembly concerning the continuation of the work.

It appears that further work is still necessary on the level of this committee. Tentatively I will propose that there should be another session in this committee dealing with broadcasters' rights.

A revised consolidated text would be prepared. Some elements perhaps in the light of this discussion could be deleted. We

don't know yet what could be added. I will try to streamline in cases where there could be a single provision and options removed.

The meeting should probably take place before the end of the year, second half of the autumn season

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Notes from the World Intellectual Property Organization's Standing Committee on Copyright and Related Rights meeting, day 3, 9 June 2004.

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[Draft document issued by Secretariat before the session began:

RECOMMENDATIONS

The Standing Committee on Copyright and Related Rights:

considering that the Standing Committee on Copyright and Related Rights at its Tenth Session, from November 3 to 5, 2003, recommended that the present session of the Standing Committee should be convened to examine a consolidated text and to assess progress of work with a view to a possible diplomatic conference which would consider an international instrument on the protection of broadcasting organizations,

considering that the work at the end of the present session of the Standing Committee is well advanced, taking into account the identification and analysis of substantive issues to be addressed in the international instrument, the progress made in these substantive issues during the deliberations in the present and previous sessions of the Standing Committee; and considering that the state of previous sessions of the Standing Committee; and considering that the state of discussions concerning the international instrument allows a diplomatic conference to be prepared and negotiation to take place at that level, having had an exchange of views and information regarding the protection of databases,

unanimously agree on the following recommendations:

A. BROADCASTING ORGANIZATIONS

1. The WIPO General Assembly

the WIPO General Assembly should decide, at its September/October session in 2004, on the convening of a diplomatic conference on the protection of broadcasting organizations at an appropriate time,

2. Twelfth Session of the Standing Committee

the Chair of the present session of the Standing Committee will prepare, for the Twelfth Session of the Committee, a revised



version of the consolidated text in which the possible protection of webcasting organizations and other proposals having received very limited support will be indicated in square brackets. The Twelfth Session of the Committee will take place from November 17 to 19, 2004,

### 3. Basic Proposal

based on the discussion at the Twelfth Session of the Committee, the Chair shall prepare the Basic Proposal for the diplomatic conference,

### 4. Regional Consultations

depending on the decision of the WIPO General Assembly under Point A.1 above, the International Bureau shall organize regional consultation meetings in Africa, the Arab countries, Asia and the Pacific, Latin America and the Caribbean and in certain countries of Eastern and Central Europe, and CIS countries, and consultation meetings at the location of the diplomatic conference immediately before its commencement.

## B. DATABASES

The issue of protection of non-original databases will be included in the Agenda of the Thirteenth Session of the Committee and thereafter at appropriate intervals.]

[ed: the release of this document triggered a series of heavily whipped -- by the committee executive -- hallway caucuses that delayed the start of the session by more than two hours -cd]

=====

Chair: [opening] Circulated a draft in several languages. We have already consumed much of the morning with consultations.

Opened floor to governmental delegations, after NGOs were heard yesterday, for substantive, not procedural discussion. No discussion at this moment on future work and recommendation.

\* India

- We reserve comment on your draft recommendations
- ACT's commercial TV argument regarding D-Day -- sounded compelling, and we reflected on it.
  - Certain events as a matter of deliberate policy have been decreed noncopyrightable by various countries;
  - It may be expensive to broadcast these things
  - we are therefore clearly in an area where we should instead use signal-based protection. If a country has decided not to provide copyright protection, that decision is not a capricious one.
  - D-Day involves a lot of actors, not just TV crews, all

important. A whole lot of them, for sixty years, go back to the time when the event occurred and people laid down their lives in the event that was commemorated last Sunday, the acquiescence of those people would have to be taken before we could give to the broadcaster an IP right over the work that he is seeking to get an IP right over. The TV company plays a minor role in bringing this major event to the viewers around the world. Clearly, they're far too numerous to secure the agreement from, society decides that this isn't a copyrightable event.

- The TV company's contribution isn't IP. The recording and transmission of signals post-Marconi is not innovative -- it's a technical process which is rightly address in the Brussels Convention or in the ITU.
- There is very little in that process qualified as innovative exercise worthy of this org's protection (i.e., WIPO).
- The ACT's example should fall entirely outside WIPO's remit
- Rights outside of signal rights are copyrights, if the work is copyrightable. Even if the event was a program that had IP protection, the act of the broadcaster qua broadcaster (not as a producer -- a producer clearly has existing IP protections) is something clearly technical and though no-doubt the activity involves deployment of considerable assets/investment, we aren't here to protect investment.
- We're here to protect IP, not investment. The Satellite Convention should control her, of if that's inadequate, take it to the ITU. Real IP protection is already covered. It's unclear why WIPO should protect broadcasters' investments, because worthy as they are, they're not IP

[ed: Another excellent intervention from the Indian delegation.  
-ws]

Turkey:

- Just noting our reservations on the proposed treaty.

Egypt:

- If there are no other substantive interventions re: broadcasting, add a substantive remark on behalf of the African group on database protection. African group followed Monday's debate with interest and subsequently reached
- Issue of protection for nonorig databases is not ripe for this committee's consideration in the near future. We need more time and better understanding of the issue, particularly developmental and socioeconomic aspects. As a matter of priority, Committee should focus where progress can be achieved.

Chair: defer question on databases to a later meeting.

- [Broadcasting] Lots of progress has been made. We have previously noted high degree of convergence. 11 written proposals made. Lots of convergence, some divergence.

Consolidated text presents proposals, represents areas where there are different proposals.

- Further progress in this discussion. Useful legal and technical remarks were made. Many, if not all of them, have been very useful. If we take those into account, at next meeting, the basis for consideration will be further refined.

- There have been no comments that some options are missing from the consolidated text, maybe with the exception of Article 16, where something not found in the text was to be considered.

[ed Canada's substantial reworking of the consolidated text, which focused on signal theft, not IP rights, was utterly disregarded in the chairman's draft -cd]

[ed and Singapore's proposed shortened term. -ws]

- The tone and spirit of the discussion have been effective. One or delegates have said they are flexible in their mind and are willing to look at other delegates' proposals. That's most important, because we need to solve things soon.

- As far as areas where there are diverging proposals, delegations have essentially still maintained their positions at this stage. The position that were already manifested and recorded and made known in the proposals. And this is only natural because this is not the negotiating forum. This is a committee of government delegations and observers. This is a place for exchange of information, a place to explain each others positions, to put forward questions and arguments. Of course only in the negotiation stage normally delegations are willing to show their final flexibility in those questions that are most important and most economically important.

[ed Chairman is spinning a justification for a diplomatic conference -- this isn't where we negotiate, we negotiate at a diplomatic conference, out of sight of the NGOs and the public eye -cd]

[ed: (spin) that's right, lack of consensus here is a feature, not a bug. -ws]

- We will continue to try to find common ground. This is a necessity at this stage of the process.

- There is a proposal that a revised version of the consolidated text could be prepared. The most important items shall be considered and the concerns of stakeholders and interested parties.

- How to proceed with webcasting. How to set the level of certain rights, where there are options -- exclusive rights versus rights to prohibit; how to set eligibility (who can become party to the treaty); which model of national treatment shall be taken forward.

[ed. No mention of TPMs, even though Brazil suggested the deletion of Article 16. -dt]

- All 11 proposals from the government delegations are based on

related rights approach, built on well-known elements in existing treaties. Those proposals attach and follow tradition of Rome, WPPT, TRIPs. These rights look like IP rights.

[ed: only because Canada and Singapore's proposals were disregarded holus-bolus -cd]

[ed: i.e. this committee/WIPO doesn't have jurisdiction over signal theft. -ws]

- The basis and background must be that the government delegations understand this kind of model. The many members of the Rome Convention have given protection to broadcasters that of course must be in accordance with the Rome Convention. TRIPs had a requirement to provide protection, and followed the related rights tradition which was once called neighboring rights.

- There is a tradition that protection of related rights protects not only creativity but investment, effort.

- Satellite convention never became instrument for worldwide protection.

- That's why we're in this situation. And of course this is a message to those who are saying other kinds of models should be considered. Yes we should consider this model, but also appreciate this situation.

[ed: go away NGOs. It's clear we like related rights, not signal protection, even after we've tried both. -ws]

- A draft for recommendations was distributed. [cf. document up above] I would like to submit this for your consideration.

\* India

- Before we start on the recommendations, some points:

- There are general consensus on issue of extending protection to broadcasters, but still lots of differences on scope, term, technological protections, etc.

- I wonder where we should proceed from here. There is a need to sort out these differences and consensus needs to be evolved. Especially for Article 15 which talks about term. Article 14 which talks about limitations. The broadcaster's article comes in conflict with WPPT. And there is no need for this article which is already in the Rome Convention.

- Preamble should also recognize need to protect rights of copyright holders and maintain balance between them and broadcasters.

- Similar on Article 16 we support Brazil and feel TPMs can be a harm to society and to the right to information. And these measures can in fact prove to be a big impediment to the development of technology and access to the public domain. Anticircumvention harms scientific and technological development and protection of research. Any tech protection should therefore not impede development and that should come out clearly in the article.

- The text has totally tilted the balance against the copyright holders and there is a need to look at the exclusivity of rights that have been provided and restore some balance. And of course the issues of objective and scope need to be considered before we go on from here.

[ed Note that Indian uses "Rights Holder" and not "Copyright Owner" -- go India! -cd]

Chair: your intervention was out of order, but of course as a government you can speak.

- Singapore got its shorter term in explanatory comments, not as an alternative because it was only a single voice.

[ed. Singapore is not a lone voice. India has pushed for 20 years. India pointed this out a few minutes later. -dt]

\* Canada [speaking for the first time]

- You said that there were no options missing from the text, apart from Art. 16, I believe that we put forward options that were not reflected in the consolidated text

[ed: Canada had a very different take on the text that didn't make it into the Chairman's draft -cd]

Chair: we are now prolonging the meeting on substance [ed: i.e. hurry up, we all want to leave! -ws]

\* Canada

- We're missing Canada's article 11 comments on para 22 regarding transmission following fixation. We made comments in the last meeting concerning the nature of protection in fixations, though we didn't forward any treaty language.

\* Chair: We see no big things missing.

\* India

- We would like to respond to the Chair's statement

- We're a member of WTO and are signatory to TRIPs and believe that we are fully in compliance with TRIPs -- we have no obligation to expand on the rights in the framework of WIPO, pursuant to our TRIPs obligations

- We have not yet acceded to Rome, but we are largely in compliance, and again, we do not see anything obligating us, even if we were a member, to address the issues that are before us with a diplomatic conference.

- In other words, we don't believe that passing over a diplomatic conference might somehow make us remiss in our TRIPs obligations

- You did mention that there was a solitary voice speaking in 20 year terms. It is true that one delegation submitted a written proposal. That has been referred to but not incorporated into the text of the draft before us. but there were many delegations

including us that have spoken in favor of the term of 20 years. So it's not quite correct to say this was a single view.

- 20 years should be included as more than a passing reference in the explanatory notes.

- We do not question prerogative of countries or groups to adopt measures in support of various organizations or activities that have not been addressed in WIPO framework, even if it's an IPR or neighboring right type activity.

- Looking to see whether there's an overwhelming sense of a compelling case for international agreement, that member states can gain more by treaty than by national law.

- It's not clear to a vast number of delegations that there's any value in an international treaty as compared to national laws

- International agreements should only come about to clearly benefit all sides

- Not to say that India is per se opposed to a treaty, but we need to fully understand the benefits and need for such a law and an international convention and we think it's probably a little bit premature to argue that we've assumed obligations in our other agreements and that therefore this is a natural corollary to TRIPs, etc.

Chair: Thank you for your analytic and helpful intervention.

\* Brazil

- Go back to Canadian clarification with regard to omitted options. Confirm that Brazil proposed a new option for Article 16, i.e., the deletion of that article. We expect that deletion to appear as an option in any future version of that text.

\* Chair: I already was planning to include your proposal. Now return to the consideration of the draft recommendation.

[ed: now back to that consensus I was mentioning -ws]

- We're discussing new international instrument. Governments would then have the option whether to accede to it. The overwhelming majority believe there should be additional protection for broadcasters, because in this international place we need bridges between national legislation that harmonize the treatment to a certain degree to those parties who deserve protection. In some parts of the world national protections are not enough and for this we need an international treaty.

\* Nigeria [first intervention]

- Appreciate the draft. In light of the far-reaching conclusions contained in the document, Nigeria would like to submit the following comments:

- 11th session was convened to examine consolidated text and examine progress. Divergent viewpoints have been heard on all major points of the text. Diverse viewpoints have been heard from govts, particularly notes views expressed by NGOs

- Should be compiled and studied before any further action is taken. Not opposed in principle to diplomatic convention, but this should not be done at the expense of further consultation and deliberation. Need regional consultations before any discussion of diplomatic convention. As Egypt said for African delegates, reasonable time is required.

[ed. While some see regional conferences as helpful, others see it as a

chance for broadcasters to divide the regional groups. -dt]

[or maybe it's just delay -ws]

- Although we agree that work of SC is advanced and progress has been made, Nigeria would like to see those areas of progress clearly spelled out in chair's rec or any other doc that comes out of this session.
- Nigeria would like to reiterate our desire for protection of broadcasters, but would also like to see equal progress on A/V performers' protection. Balance is indispensable.

\* Japan

- issues have been extensively discussed since first session in 1998. We need an international instrument to harmonize international treatment. We need to move forward to keep momentum. Support the recommendation. Use square brackets often at next SCCR to prepare for diplomatic conference.

\* Mexico

- Need to work out the balance of broadcasters, performers and authors

- There are still some differences, but we have the consolidated text, includes many concerns. Therefore, we support the Chair's recommendation for a diplomatic conference

- Mexico also supports that the Chair should prep a proposal based on these discussions

- Also support holding of regional consultations.

\* Chair: Thank you Mexico for again another very constructive and considerate intervention.

\* India

- There is no consensus.

- Lots of work needs to be done before we reach the point where this committee can recommend to the assembly the possibility of convening a diplomatic conference

- We've heard various points of view, some considerably deeper in analysis of issues, some less so

- What has emerged is that there is considerable lack of understanding of all the issues involved. Therefore, we need to

understand these implications, in the framework of this committee.

- We're at a loss to understand the chair's conclusion that the work here is "well-advanced"

- To a person who may have not attended this session of the committee, reading this set of recommendations, he would be forgiven for coming to the conclusion that there was near unanimity, or at least a very broad measure of consensus. That is rather different from the conclusions that this delegation has drawn from the deliberations of the last two days.

[ed: I agree -- this isn't consensus, it's not agreement, it's divergence -cd]

- Like Nigeria, it would be useful for us to have a more precise indication of which issues the chair considers to be well advanced either through the deliberations in this session or in earlier sessions. Because it seems that what the chair had engaged in was a collection of views. But since there are clearly many views, including those that have not been included, including those of Singapore concerning the term of protection, there remains a considerable amount of work to be done before we can request the Assembly to consider convening a diplomatic conference.

[ed: that outline would be helpful to us too, as note-takers. We haven't seen lots of points of consensus -ws]

- The second paragraph in the preamble to the proposal this morning [that the work at the end of the present session of the Standing Committee is well advanced] is premature and does not reflect our sense of the past two days' deliberation

- Unanimity is more than a bit of a stretch -- the convening of a diplomatic conference requires a considerable amount of prep and we haven't gotten far enough for that

- Mr. Chair, you did mention earlier that this was not a negotiation forum and it is really the run-up to the diplomatic conference that would be responsible for the negotiations. Formally speaking of course that is probably correct, but in practice it would generally be unwise to approach a diplomatic conference when there is such a measure of divergence in the member states of this organization.

- We therefore think that we need to continue the process until a point is reached where we can broadly say that all that remains are a few technical issues to send to the diplomatic conference for ironing out

- We did have occasion to refer to what we believe would be the right approach - signal-protection based approach. We wonder if it would be useful to the secretariat to prepare a detailed draft of a signal-protection based approach. Given that draft document at a later stage of the committee we can see which concerns that are not clearly IP related or neighboring rights related should be addressed.

[cf. the NGO alternative draft treaty]



- We think that there are many issues where there is no consensus, such as webcasting, which evoked negative reaction from many delegations

- If all we're doing is square bracketing, we're not reaching consensus.

- How can there be square brackets where there has been no negotiation and this body is deemed not to be a negotiating forum? Square brackets would arise only if there has been negotiation and a failure to reach consensus has resulted from those negotiations.

[Ed IN-DEE-AH IN-DEE-AH IN-DEE-AH! -cd]

Chair: Virtually everything you've said is true. There is still much work to be done. You asked about the convergence I was referring to several times. Need of a treaty to be prepared, scope, what rights to include, listing what elements should be taken to the instrument and having delegations consider what elements should be there. Main architecture of an instrument can be seen already.

- Regarding the question on square brackets, the text on which we are now working is not a basic proposal, it's just another presentation of the delegations' proposals. Square brackets just indicate very limited support.

\* Brazil:

- We're Rome Convention members and therefore committed to protecting broadcasters. We like the idea of updating their rights. We support this process.

- We agree with you in your introductory remarks: we've made some progress in recent meetings, with different proposals tabled and an important consolidated text. This is a useful first round of discussions.

- The meeting was perhaps shorter than some of us would have liked, so we couldn't go beyond first round of discussion. Day of intensive discussions yesterday made progress. We were able to gauge the state of play at this point.

- We agree that there's common ground among many delegations regarding some important aspects of this treaty, but the discussion showed, unfortunately, that disagreements do persist with regard to significant provisions of the treat, such as the scope of application and others.

- We think that the best way to make progress and consider a diplomatic conference for a treaty, is to really resolve our differences and iron out problems that persists.

- Support paragraph 2. Now, we should consider a revised version of the consolidated text.

- We agree with India: the consolidated text is a compilation of proposals, not a draft treaty, so we don't need square brackets or to single out proposals, all proposals are equally useful and

legit and should all be considered the same way. This text should just be a compilation, in which case perhaps it would not be necessary to go into this issue of whether to use square brackets.

[ed. Why does the U.S.-only webcaster proposal get in with square brackets, while other proposals don't make it in at all? -ws]

- We agree with the assessments of Nigeria and India: We regret the persistent important disagreements and they should be ironed out. This should be an important, high-priority issue in the committee

- We question the convenience of having the committee recommend the convening of a diplomatic conference. We understand that the convening of such a conference should take place, hopefully in the not too distant future. But currently we do not have agreement on some very important and basic provisions of the text.

- We understand the frustration over that fact, but we don't need to be overanxious. We should take more time to discuss this important matter. Why not consider proposing a diplomatic conference in June of next year?

- To be fair to ourselves, we need to give ourselves time to sort out our differences. If we were not to send a recommendation now, that doesn't mean that the process would not continue. We agree to continue the process, to consider a new version of the consolidated text.

- Thankfully, the protection of non-original databases, which is not a priority for us, will not be on the agenda.

Chair: (1:10) We have to break soon for lunch, then decide when to meet in the pm.

\* Nigeria

- Let me associate myself with the remarks of Brazil, especially in recognizing your able leadership through the turbulent waters of divergent opinions.

- Having paid my encomium to you in advance of the ending of this meeting, I would like to make a clarification. The statement by my delegation would seem to have preempted the statement by the coordinator of the African group. We were under the erroneous impression that the coordinator had spoken on the substance of the treaty. We hope our remarks will not prejudice the submission of the African group.

\* EC

- Recall, it's the mandate of the SCCR to address and discuss all IP matters which are of common interest and concern to the International Community

- Issue of protection of broadcasters is not unknown territory, solid basis in Rome, TRIPs, 1/4 of members of Rome are members of EC.

- We here in the standing committee agreed years ago to prepare a new broadcasting instrument.

- Now in this 11th session we have made good progress. I think this is a fair assessment. Now any decision on our future work must be based on the well reflected assessment of substance. And this assessment has to continue. We certainly would not advocate jumping to conclusions in any respect.

- One delegation has said it is not over--anxious. Neither are we. We are not anxious to put just any instrument together. We have to agree on substance.

- Transparency is needed in decision-making process; with decision if conference should be convened, and with regard to the timeframe for such a conference; and with regard to all of the preparatory steps leading to a conference. Timeframe must be reasonable and appropriate.

[ed. Note that a diplomatic conference is totally non-transparent, with the negotiations taking place behind closed doors -cd]

- Looking at the draft recommendations: they are very fair and balanced [TM Fox Broadcasting]

- They do not prejudge any position. That's equally important.

- There are two key elements in the draft recommendations, referring to the general assembly and the role of the 12th session of the standing committee.

- With regard to the general assembly, it is the appropriate forum to decide on the possibility to hold the diplomatic conference. It must decide on the possibility, because if it doesn't we don't have that possibility. I think it is as easy and simple as this.

[ed. It's our understanding that this isn't a mere procedural matter. A thumbs up from the general assembly would be a significant step towards possible adoption. -dt]

- It is up to the 12th session of the standing committee to assess the progress and it is possibly also up to subsequent sessions of the committee, who knows, if our work is sufficiently advanced.

- The preamble of your draft recommendations say in their second paragraph say that the work is well advanced. I think that is a fair statement, but it doesn't say that work is sufficiently advanced, so as for example to decide whether we need a diplomatic conference. We need more assessment on that very question. We have to decide at some point whether work is sufficiently advanced.

- From our viewpoint, these two key elements are well reflected in the draft recommendations.

Chairman:

- You are right concerning the role of the general assembly. This

committee has already decided that at a given future meeting we would assess the progress of the work. And we have said we will consider whether to recommend a diplomatic conference and its date.

- What's new since last November is the forthcoming series of governing bodies of the WIPO next October; take advantage of those meetings. Have General Assembly make its decision now, so when this committee is ready to proceed with diplomatic conference, it does not need to ask GA again.

- We could suggest recommending to GA to make provision at its next meeting for the possible convening of a diplomatic conf. That would be the softer provision. Leave the executing of the convening to a later date. We could make a document with this revised paragraph available after lunch, probably in only one language.

\* Kazakhstan

- At this meeting, it would be useful to hear the views of all the countries represented here. Constructive two days, despite the fact that the consolidated text is not clear whether it's just a draft or something else. Some proposals have been endorsed by majority of delegates, others have not been the object of wide consensus. To speak about the constructive proposals, CIS general view, in spirit of consolidated text, reflecting balance of views of majority of delegations.

- Better to speak about a \*possible\* convening of a diplomatic conference.

- Re Sept/Oct deadline, we think that would be helpful

- So our general view is that these recommendations are in line with the spirit of the discussions we have conducted over the last 2.5 days. We support them and ask others to support them.

\* Iran

- There have been positive achievements here -- diverse views and concerns raised in compressed time.

- This was the first reading of the consolidated text, we expected a revised text

- Ambiguity remains in certain articles

- Final provisions of this treaty have not been fully addressed

- We think a comprehensive treaty is more important than a rushed and unexamined one in short time

- Holding a diplomatic conference is inevitable for this treaty. Regarding the timing, we believe there is a rush in this regard.

- On subject matter: many delegations suggested removing webcasting in order to reach conclusion. On other matters, there was no consensus. The 12th SCCR meeting could be appropriate time to evaluate progress.

\* Chile

- Many areas remain lacking consensus.

Chair: We'll have another draft of our recommendation after lunch. No dip conf convened until we're ready to recommend one.

[lunch break]

[Rev 1 of draft document issued by Secretariat after lunch break:

#### RECOMMENDATIONS

The Standing Committee on Copyright and Related Rights:

considering that the Standing Committee on Copyright and Related Rights at its Tenth Session, from November 3 to 5, 2003, recommended that the present session of the Standing Committee should be convened to examine a consolidated text and to assess progress of work with a view to a possible diplomatic conference which would consider an international instrument on the protection of broadcasting organizations,

considering that the work at the end of the present session of the Standing Committee is well advanced, taking into account the identification and analysis of substantive issues to be addressed in the international instrument, the progress made in these substantive issues during the deliberations in the present and previous sessions of the Standing Committee; and considering that the state of previous sessions of the Standing Committee; and considering that the state of discussions concerning the international instrument allows a diplomatic conference to be prepared and negotiation to take place at that level,

having had an exchange of views and information regarding the protection of databases,

unanimously agree on the following recommendations:

#### A. BROADCASTING ORGANIZATIONS

##### 1. The WIPO General Assembly

the WIPO General Assembly IS RECOMMENDED TO MAKE PROVISION, at its September/October session in 2004, FOR THE POSSIBLE convening, AT AN APPROPRIATE TIME, of a diplomatic conference on the protection of broadcasting organizations;

##### 2. Twelfth Session of the Standing Committee

the Chair of the present session of the Standing Committee will prepare, for the Twelfth Session of the Committee, a revised version of the consolidated text in which the possible protection of webcasting organizations and other proposals having received very limited support will be indicated in square brackets. The Twelfth Session of the Committee will take place from November 17 to 19, 2004,

##### 3. ASSESSMENT OF THE PROGRESS OF THE WORK

AT ITS TWELFTH SESSION THE DISCUSSIONS OF THE STANDING COMMITTEE WOULD BE BASED ON THE REVISED CONSOLIDATED TEXT AND THE COMMITTEE WOULD ASSESS THE PROGRESS OF THE WORK. IN THE LIGHT OF THOSE DISCUSSIONS AND THAT ASSESSMENT, THE COMMITTEE WOULD DECIDE WHETHER TO DETERMINE THE DATES, AND THE NECESSARY PREPARATORY STEPS FOR A DIPLOMATIC CONFERENCE

#### 4. Basic Proposal

based on the discussion AND RECOMMENDATIONS at the Twelfth Session of the Committee, the Chair shall prepare the Basic Proposal for the diplomatic conference,

#### 5. Regional Consultations

depending on the decision of the WIPO General Assembly under Point A.1 above, the International Bureau shall organize regional consultation meetings in Africa, the Arab countries, Asia and the Pacific, Latin America and the Caribbean and in certain countries of Eastern and Central Europe, and CIS countries, and consultation meetings at the location of the diplomatic conference immediately before its commencement.

#### B. DATABASES

The issue of protection of non-original databases will be included in the Agenda of the Thirteenth Session of the Committee and thereafter at appropriate intervals.]

[ed. Two major questions:

1) What is meant by "to make provision" in A.1? One possibility is that this refers to a budgetary allocation for a diplomatic conference. We've heard there is already such an allocation, in which case this would be redundant. Another possibility is that the General Assembly would give clearance to the SCCR for a Diplomatic Conference at a time of SCCR's choosing. The EU suggested this mechanism in the morning.

2) Section A.4 still says "the Chair \*shall\* prepare the Basic Proposal for the diplomatic conference." While this proposal will be "based on the discussion and recommendations of the Committee," it is not conditional on them. -dt]

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[4:30pmish]

Chair: I have distributed a new version of my recommendations, Revision 1, for your consideration. I will prepare a revised version of the consolidated text to present at the November meeting.

The outcome of this meeting will be reported to the GA. The GA is asked to make provision for a diplomatic conference at the appropriate time, to make convenient the actual holding of diplomatic conference. No date can be recommended to relevant bodies now. Regional conferences. These are the steps proposed.

Up to the committee whether you would be able to approve these recommendations.

\* Egypt

- I tried to speak before lunch but you didn't see my flag
- This is a considerable improvement over the earlier draft
- I am speaking on behalf of African delegations
- I wish that before you submitted this that we'd had a discussion about what the assessment should entail
- We don't know how to assess our progress here
- The last sentence in the second paragraph of the preamble is redundant
- Also felt that word "unanimous" is unnecessary. It doesn't add anything.
- Instead of "for the possible convening," "for the possibility of convening" -- clearer language.
- Replace "is recommended to make provision" with something clearer, the translations are really ambiguous, so it appears that we don't know what this means
- Re paragraph 3: you don't need a separate paragraph 4; it should be added to the end of paragraph 3.
- "preparations for a diplomatic conference including preparing the Basic Proposal..."
- Regional consultations are valuable

\* Russia:

- There has been considerable progress when compared to preceding sessions
- We have achieved main goal, vast majority of delegations have no doubts about the possibility of achieving the approval of a treaty at a diplomatic conference at the appropriate time
- The difference is on which provisions should be in the treaty
- At the November session, we should prep a more acceptable decision regarding this draft treaty
- Regional consultations will also offer the possibility to achieve agreement regarding the treaty
- So we can envisage the future adoption of this treaty.
- The document we've been given after lunch is fully acceptable and we fully support it, and we would urge our colleagues to accept the excellent proposals.

\* Brazil

- We're unconvinced that it would be appropriate for the General Assembly to decide at the next session to convene a diplomatic conference
- We realize you have made a valuable effort to over some compromise language that might bring us closer to a positive outcome.
- We'd like to support Egypt's recommendations with respect to paragraphs 2 and 4. Support deletion of last phrase of paragraph 2, and delete "unanimously" at the fourth preambular paragraph. We would add "non-original" before databases.
- We're confused about "to make provision for" -- to clarify, we'd suggest, "The WIPO General Assembly keep under consideration beginning at the Sept-Oct session in 2004 the possibility of convening at an appropriate time, a diplomatic conference"
- With respect to Para 3 and 4, we can go along with Egypt's suggested changes, and add the term "possible" before "diplomatic conferences", so the phrase would read, "and the necessary preparatory steps for a possible diplomatic conference."
- WRT paragraph 5 on regional consultations. While we understand that at times they can be useful, it is up to the states to decide whether such conferences are appropriate. Was not discussed at great enough length to decide in GRELAC.
- "Depending on the decision of the WIPO GA under point 1. a) above and the recommendations off the SCCR, the international bureau shall organize where appropriate and at the request of the relevant regional groups regional consultation meetings."

\* EC

- We welcome your revised version of the recommendations.

1. Re Brazilian recommendations: the situation with regard to Europe may not be accurate, since May 1, the Baltic States are member states in the EU. So it would not be appropriate to refer to the baltic states in the summing up of regions. It might be more appropriate to refer to regional consultations without going into detail as to where.

2. I think one suggestion would get us consistency in the text. In paragraph 3, last paragraph, we suggest replacing "decide whether to determine" with "recommends," as in paragraphs 4 and 5.

[ed. This would appear to take power away from the committee, since they would only be recommending not deciding. -dt]

- In all we are very pleased with this text, and subject to revisions I made we can go along with this paper.

\* India:

- Thank you for incorporating some changes and ideas from previous session. That's a good start for what could be an eventual compromise.



- Like the Egyptian and Brazilian delegation, last phrase of 2d paragraph should be deleted "and considering the state of discussions, etc"

- Third preambular paragraph insert "non original" before "databases"

- Don't labor "unanimity" -- delete "unanimous"

- Regarding the first operative paragraph, we are slightly at a loss contextually speaking what the word "provision" brings to this paragraph. Is it budgetary? In which case we recall that budgetary provisions are made in the context of budgetary work and approved by the general assembly in a usual fashion. We don't think there is a precedent for the committee enabling a budgetary provision. The paragraph should be modified as suggested by Brazil. That way we leave the option to the Assembly, beginning at its session this September and thereafter if it chooses not to take a decision at this assembly. Leave open the \*possibility\* of a Diplomatic Conference.

- Regarding paragraph 3, we agree with the EC that it would be better to change "determine" to "recommend," and add "\*possible\* Diplomatic Conference", so as not to preempt any decision of the Assembly.

- Support Brazil on paragraph 4: Include "a possible" before diplomatic conference.

- We also would support Brazil in the deletion of the last part of paragraph 5. Such deletion would sidestep problem with the incorporation of the Baltic states into the European Union.

\* Serbia & Montenegro

- Well-balanced recommendation. We might even strengthen it a bit, not weaken it. In name of general consensus, 2 brief comments:

- Re: paragraph 5, regional consultation, agree with Brazil

- Paragraph 2 of preamble, considering that the work is well advanced -- this sentence should be kept.

\* Iran

- In para 3, 4, 5, it seems like in the 12th session we will have proposals and then regional consultations. But this language is not what the delegation wanted this morning.

- We also have a reservation on unanimity, especially regarding paragraph 2.

\* Brazil

- We support EC proposal to replace "determine" in paragraph three with "recommend"

\* Chair: I am convinced that we will find some motions concerning each of these proposals.

- Let's start with the technical proposals made by Egypt, that have minor importance to the substance but are possibly important in clarifying the decisions.

- Last sentence of second paragraph, 2.5 lines: delete it at Egypt's suggestion and seconded by India and Brazil and opposed by Serbia Montenegro. I don't know whether this sentence would have such value that it should be absolutely kept if there are delegations that want it deleted. I say we delete it. What do you say?

\* Serbia/Montenegro

- We said we thought this was good, but in the interest of consensus, we agree to cut it

\* Chair:

- Adding "non-original" -- it's agreed

- The last part of the chapeau of the preamble to delete "unanimous" -- we delete it

- Leave A1 on the table for the moment

- Paragraph 3: EC suggested "decide whether to determine" to replace with "decide whether to recommend," which India and Brazil supported. Can we change this? Yes.

- Brazil and India suggested that "possible" be inserted before "diplomatic conference" -- it's added

- Egypt suggested deleting 4, simplifying it and adding it to the end of paragraph 3. It's done.

- Paragraph 5: EC delegation pointed out that some regions have changed status, and Brazil suggested that the middle part of the paragraph which refers to the names of the groups and regions be replaced by "...where appropriate and at the request of the relevant regional groups."

- Paragraph A1: Egypt suggested that "for the possible" be replaced by "the possibility of" convening.

- Egypt, Brazil and India questioned what "make provision" means. Does it mean budgetary? We should find a formula that accounts for the reservations in the remainder of the document, namely a strict criteria for further work and assessment -- that we need real time and work.

- Can we replace "for the possible" with "possibility of"? It's a softening -- it leaves to the decisionmakers in the General Assembly the space to consider in an even more open way. Is that OK?

\* India

- We accept Egypt's change, speaking on behalf of Africa.

There is another phrase to be replaced -- "to make provision."

\* Chairman

- For now let's provisionally say we'll change it to "possibility of," and then move on to the provision question.

\* Uruguay

- Spanish translation already followed Egypt's "possibility of convening" suggestion

Chair:

- Then it's carried -- it was in the air [giddy laughter]

- What is "making provision"?

- I tentatively suggest, at the behest of the legal experts in the house, that we consider replacing "is recommended to make provision" with "consider"

\* Brazil

- Thank you for this new suggestion, but first consider the suggestions that have already been made, including Brazil's: "WIPO GA is recommended to keep under consideration, beginning with the session in Sept/Oct in 2004 the possibility of convening at an appropriate time, of a diplomatic conference."

\* Chair: I thought "consider" was simpler, and delegations could agree.

\* China

- All interested parties have expressed their views on the Chair's proposal and on the major items, we've come to a kind of consensus. All parties have made concessions in the discussions and this is a very good thing.

- I like replacing "is recommended to make provision" with "consider"

- The formula gives flexibility so it is easier for all parties to accept. Thank you.

\* Chair

- Would the 3 delegations supporting the longer version be able to consider the simple word "consider"?

\* Kazakhstan

- As China said, we recommend replacing "is recommended to make provision" with "consider"

- We want to make progress and there might be commas and words that are important and we want to produce a literate doc and that's why we make our proposals.

- But if other delegations have changes, let's talk about them.

\* India

- Chapeau of the operative part has the word "recommendations" and we wonder if it serves any useful purpose to repeat this in the first paragraph

- We recommend "may wish to keep under consideration beginning at its Sep/Oct conference 2004, etc..."

- This takes up Brazil's suggestion that "recommendation" not be repeated

\* Chairman

- These suggested formulations tend to make the paragraph softer and softer and softer, but there is a limit.

- We should make it possible for the Director General who normally prepares the documents for the Assembly to be able to prepare meaningful reporting and meaningful proposal. If one proposes that the body would wish to keep under consideration, then of course there is no clear suggestion what to do [laughter]. The word "consider" without any qualification would serve as a concrete proposal from the DG of this organization to the body of representatives of the members states and ensure that the member states has ample room to maneuver when consider. Can you consider "consider"?

[ed. The chair doesn't want to let go and keeps pushing his language, despite the expressed opposition. -dt]

\* Brazil

- In a constructive spirit, we're willing to consider simplification

- The reason we're insisting on our proposal is that when we made it there didn't seem to be any objection by the delegations. But if you are concerned as chairman that we have simpler language then perhaps we can work along those lines.

[ed: There are other, better ways to make this less wordy. -ws]

- We suggest as a compromise "The WIPO General Assembly may wish to consider, beginning at its September/October Session in 2004"

[laughter, murmurs, perhaps some hisses]

\* Chair

- This line of discussion might make us late

- Nevertheless, I'll stop for a moment to consider India's suggestion: "might wish to keep under consideration" -- this

would lead to a very open initial proposal on what to consider and whether to consider at all

- It would be advisable to make provision for a proposal to the General Assembly to consider in proper terms, \*something\* -- can we adopt language that will make it possible to suggest to the General Assembly that it consider what is being proposed by the Director General?

\* India

- We had pointed out why we thought "recommended" should be deleted. We would like to hear from delegations that use English in their daily course of business whether the term "may wish to" is appropriate here.

- When a subordinate body like the SCCR submits to the superior body like the General Assembly, it's implicit that the subordinate is requesting of the superior body and seeking its indulgence to consider matters -- whether we have that or not in the process is a very gentle submission on the part of the subordinate body that the superior body may do certain things; it's up to the superior body to decide what to do

- We do not in any way take away from the force of these delegations strongly in favor of the diplomatic conference by adding what seems to us a polite way of requesting the assembly to do or consider certain things. We think it's appropriate to keep "may wish to consider."

\* Brazil

- We think it would be very useful if you would ask the opinions of other delegations as well. But if you are concerned that "may wish to" would weaken the text, then we could go back to "is recommend to consider beginning at the September/October session in 2004."

\* Chair

- Brazil, are you suggesting "is recommended to consider beginning i.."

- That would be very near to the narrowest opening to this situation.

[The chair appears to have adapted Brazil's suggestion.]

\* Egypt

- The issues of databases is still important; the African group says that the last paragraph doesn't change this much. We're not looking for a long discussion here, but as a matter of procedure if delegations want to share info or exchange views, there's nothing that prevents a delegation from raising it under "any other business" or request to have it added to the agenda.

[i.e. Delegations don't need to keep "non-original databases" on the agenda in order to share information about it. -ws]

- If there's still interest in a year or two or whatever, we can revisit it.

- We think the last paragraph is redundant, other delegations can bring this forward whenever they want to

\* Chairman

- It's been suggested to cut the database item because it's redundant, it can be raised later if necessary. Can we consider how to conclude this item?

- We always have on the agenda "items for review," "other matters". There is always the possibility for delegations to raise before a meeting the possibility of adding other items to the agenda.

\* EC

- My delegation would like to keep B as proposed in your draft.

[ed: quelle surprise -ws]

- The concerns of my Egyptian friend were taken into account in this text which were a consequence of the discussion we had on Monday regarding this issue.

\* Chairman:

- What does Egypt say? Can we keep this as-is? Revisit it in one year?

\* Egypt

- I won't insist very much, this is a principled position. I think there's the possibility of taking this into consideration in your paragraph.

- Here's a minor drafting change: at the end of the paragraph, add "and therefore at appropriate intervals, at the request of interested delegations."

\* Chairman

- Would this be acceptable to the EC? Yes.

\* Brazil

- If the EC has agreed to this formulation we would prefer not to interject. Thank you.

\* Chair: I suggested this in our drafting session [gavel]

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OTHER ITEMS FOR REVIEW

\* Secretariat

- A new WIPO publication, "A Guide to Licensing on Copyright and Related Rights" will be published very soon in English.

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OTHER MATTERS

\* None

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CLOSING OF THE SESSION

\* Chairman:

- Special procedure to adopt the report

\* Secretariat: We'll send out a draft report to all attendees and observers inviting corrections to their reports, deadlines in two months,

- When we get all responses, we'll send out the final report.

\* Chairman

- Pleasant obligation: warmest thanks to deputy directory general on my right hand side and to her international team for all their knowledge, skill which make all this much more feasible and possible.

- We see how sensitive these things may be in political, legal, and technical sense.

Thank you to all those in the room. Yesterday was a day of record efficiency.

Everyone was disciplined in sticking to time limits.

- Thanks also to the interpreters who had stressful moments when someone was speaking very rapidly.

\* Australia.

- Thanks.

+++++

Final Text of Recommendations Showing FIRST ROUND and +[SECOND ROUND]+ changes.

Changes in ALL CAPS were made by Chair and circulated after lunch; +[bracketed]+ -[changes]- were made during afternoon session.

The Standing Committee on Copyright and Related Rights:

considering that the Standing Committee on Copyright and Related Rights at its

Tenth Session, from November 3 to 5, 2003, recommended that the present session

of the Standing Committee should be convened to examine a consolidated text and

to assess progress of work with a view to a possible diplomatic conference which would consider an international instrument on the protection of broadcasting organizations,

considering that the work at the end of the present session of the Standing Committee is well advanced, taking into account the identification and analysis of substantive issues to be addressed in the international instrument, the progress made in these substantive issues during the deliberations in the present and previous sessions of the Standing Committee; -[and considering that the state of previous sessions of the Standing Committee; and considering that the state of discussions concerning the international instrument allows a diplomatic conference to be prepared and negotiation to take place at that level]-,

having had an exchange of views and information regarding the protection of +NONORIGINAL+ databases,

-[unanimously]- agree on the following recommendations:

#### A. BROADCASTING ORGANIZATIONS

##### 1. The WIPO General Assembly

the WIPO General Assembly IS RECOMMENDED +TO CONSIDER BEGINNING+ -[TO MAKE PROVISION, at]- its September/October session in 2004, FOR THE - [POSSIBLE]- +POSSIBILITY OF+ convening, AT AN APPROPRIATE TIME, of a diplomatic conference on the protection of broadcasting organizations;

##### 2. Twelfth Session of the Standing Committee

the Chair of the present session of the Standing Committee will prepare, for the Twelfth Session of the Committee, a revised version of the consolidated text in which the possible protection of webcasting organizations and other proposals having received very limited support will be indicated in square brackets. The Twelfth Session of the Committee will take place from November 17 to 19, 2004,

##### 3. ASSESSMENT OF THE PROGRESS OF THE WORK

AT ITS TWELFTH SESSION THE DISCUSSIONS OF THE STANDING COMMITTEE WOULD BE BASED ON THE REVISED CONSOLIDATED TEXT AND THE COMMITTEE WOULD ASSESS THE PROGRESS OF



THE WORK. IN THE LIGHT OF THOSE DISCUSSIONS AND THAT ASSESSMENT, THE COMMITTEE WOULD ~~-[DECIDE WHETHER TO DETERMINE]-~~ +RECOMMEND+ THE DATES, AND THE NECESSARY PREPARATORY STEPS FOR A DIPLOMATIC CONFERENCE, +including the possibility that the Chair prepares a Basic Proposal for this diplomatic conference.+

#### ~~4. Basic Proposal~~

based on the discussion AND RECOMMENDATIONS at the Twelfth Session of the Committee, the Chair shall prepare the Basic Proposal for the POSSIBLE diplomatic conference,]-

#### 5. Regional Consultations

depending on the decision of the WIPO General Assembly under Point A.1 above, the International Bureau shall organize regional consultation meetings +WHERE APPROPRIATE AND AT THE REQUEST OF THE RELEVANT REGIONAL GROUPS+ ~~-[in Africa, the Arab countries, Asia and the Pacific, Latin America and the Caribbean and in certain countries of Eastern and Central Europe, and CIS countries]-~~, and consultation meetings at the location of the diplomatic conference immediately before its commencement.

#### B. DATABASES

The issue of protection of non-original databases will be included in the Agenda of the Thirteenth Session of the Committee and thereafter at appropriate intervals, +[AT THE REQUEST OF INTERESTED DELEGATIONS]+.