

世界知的所有権機関 (WIPO) 等における最近の動向について

1. IGC 関係

第 19 回 遺伝資源等政府間委員会 (2011 年 7 月 18 日～7 月 22 日)

● T C E s (伝統的文化表現・フォークロア) について

○前回会合での議論を踏まえて議長が作成した重要課題についての文書が配布されるとともに、逐条別に全体会合で議論を行うこととされた。

○全体会合の冒頭議長から、現在検討中のブラケットの多数存在する文書については、2011 年 9 月に開催される総会への報告のためにも、文書のオプションの数を減らすことにより、全体としての複雑性を減らすことが必要である旨指摘があった。そのため、NZ のキム氏をファシリテーターに任命し、文書の複雑性を減らす作業、及び関心のある関係国との議論を通じた文書のドラフティング作業を行い、総会へ報告するよう求めた。

○会合中、議論を行うにあたり、もっとも重要なのは、第 1 条「保護の内容」、第 2 条「受益者」、第 3 条「保護の範囲」、第 5 条「制限と例外」であるとの指摘があり、これらの条項を中心に議論が行われた。

○全体会合後、ファシリテーターが全体会合の議論を踏まえた形で、逐条毎のオプションを簡潔にまとめた文書を配布し、各国からコメントを求めた。ファシリテーターが各国からのコメントを踏まえた形で全体会合へそのテキストを提出した。本文書は、これまで議論されていた文書 (WIPO/GRTKF/IC/19/4) と併せ、次回会合以降の検討テキストとされた。

○今次会合の結論として、次の 2 年間 (2012/2013) の中で、現在行われているそれぞれのテキストベースの交渉を一層促進させることとされ、現在議論されている国際法的文書 (International Legal Instrument) を、2012 年の総会 (9 月予定) に提出すべく、分野ごと (GR (遺伝資源)、TK (伝統的知識)、T C E s (伝統的文化表現・フォークロア)) に、次回以降 3 回分の I G C 中で議論されることとなり、T C E s については第 22 回 I G C (2012 年 7 月) において上記 4 ケ条の内容を中心に議論が行われることとなった。(GR は第 20 回 : 2012 年 2 月、TK は第 21 回 : 2012 年 5 月)

○上記、国際法的文書 (international Legal Instrument) について、法的拘束性を持たせるべきかどうかについては、参加国の間で意見が割れているところ。

2. 視聴覚的実演の保護に関する条約関係

第 49 回 WIPO 加盟国総会 (2011 年 9 月 26 日～10 月 5 日)

第 22 回著作権等常設委員会 (SCCR) において合意されたように、①視聴覚的実演の保護に関する外交会議を 2012 年の 6 月又は 7 月の日程で開催すること、②条約テキスト (別紙 1) は、2000 年の外交会議において暫定合意された 19 箇条及び合意声明、第 22 回 SCCR にて暫定合意された第 12 条、第 1、2、15 条の合意声明、前文に

ついて採択する点、が承認された。我が国からは特に、我が国著作権法は、視聴覚的実演の保護に関する条約案と整合的であると理解している旨の発言を行い、他国から特段の異議表明もなく、総会の議事録へ記録された。

視聴覚的実演の保護に関する外交会議の準備委員会 (2011年11月30日～12月1日)

○外交会議の招致を表明していたメキシコ・中国間の非公式協議が続けられた末、中国が開催国に正式に立候補し、承認された。本年6月20日以降で1週間程度の日程で開催される見込み。

○最終条項や管理条項、外交会議の手続の原案について議論がなされ、先例であるWPPTを踏襲する修正等を行った上で、それぞれの案が採択された。

●視聴覚的実演の保護に関する外交会議の準備委員会 結果概要

<会議の手続と規則>

○外交会議の再開催であるという位置づけを協調させるため、“reconvene”という用語を用いること、文書のタイトルに“revised”という用語を追加することが提案され、合意された。

○副議長の数、事務局の提案どおり7名、Drafting committeeの委員の数は、各言語に2名で12名とすることで合意された。

<管理規定及び最終規定の原案>

○外交会議にかけられる管理規定及び最終規定について、事務局は、WPPTと同様の規定に加え、一部の条項に、シンガポール条約と同様の規定を追加することを提案したものの、各国の理解は得られず、最終的には、ほぼWPPTと同様の規定とされた形で原案となることが了承された。

○発効国数について、早期発効の観点から、事務局の提案どおり10ヶ国が望ましいとする国もあったものの、最終的には、WPPTと同じ30ヶ国とされた。

<外交会議の開催地>

○開催地として、中国が立候補し、承認された。本年6月20日以降の、1週間程度の日程で開催される見込み。

3.SCCR 関係

第21回著作権等常設委員会 (SCCR21) (2011年11月21日～12月2日)

(「放送機関の保護に関する非公式協議」(11月26日)もあわせて開催)

①図書館及びアーカイブに関する権利の制限と例外 (新規議題)

○会合前までに提出されたアフリカ提案 (SCCR/22/12) に加え、会合中に、ブラジルによって発表された背景文書 (SCCR/23/3)、ブラジル・エクアドル・ウルグアイによる共同提案 (SCCR/23/5) と米国提案 (SCCR/23/4、条文テキストではなく、目的と原則に関するペーパー) が提出された。

○まずは各国の法制や経験を共有し、目的と原理を議論すべきとする先進国側と、第21回SCCRにおける合意 (別紙2) に基づいて、テキストベースでの議論を進めるべきとする途上国側との間で意見が対立した。

○各国からは、11の個別のトピック毎 (①保存、②複製権と複製の保護条項、③法

定寄託、④図書館間貸借、⑤並行輸入、⑥国境を越えた使用、⑦孤児作品、⑧図書館及びアーカイブの責任の制限、⑨技術的保護手段、⑩契約、⑪翻訳権)に、提案に対する質疑応答や、自国の法制の紹介がなされた。

- トピック毎に、本年2月29日までに、各国はコメントを事務局に提出することとし、今回提出されたコメントと合わせ、仮の作業文書とし、各提案及び仮作業文書に基づいて、議論を継続することとなった。

②視覚障害者等に関する権利の制限と例外（継続議題）

- 米国、EU、中南米グループ提案を統一テキストにした、議長提案文書（SCCR/22/16）を基礎として、参加国から逐条毎に提案及びコメントがなされた。当該議長提案文書と各国の提案及びコメントを編集し、作業文書（SCCR/23/7:別紙3）として採択された。法的拘束力の有無については、今会合では議論されなかった。
- 次回SCCRでは、それらの提案及びコメントについて検討・議論し、合意と最終化を目指す。

③放送機関の保護（継続議題）

[「放送機関の保護に関する非公式協議」(11月26日)]

- 昨年11月26日に、放送機関の保護に関する非公式協議が開催され、非公式会合の議長（スイスのアレクサンドラ氏）が用意したペーパー（別紙4）に基づいて、主要論点（I.目的、II.保護の目的（定義）、III.適用の範囲、IV.保護の範囲、V.制限と例外、VI.その他）について議論を行った。非公式協議においては、新条約と他の条約との関係、シグナルベースでのアプローチの有用性、「放送」の定義、排他的許諾権と禁止権のどちらにすべきか、技術的保護手段の必要性等について議論を行った。この協議の結果は、報告（SCCR/23/9）としてまとめられる予定。

[SCCR 本会合]

- 南アフリカとメキシコの共同提案（SCCR/23/6:別紙5、6）がなされ、各国から予備的なコメントや質問がなされた。
- 今回の結論文書のとりまとめの際に、上記共同提案のみを今後の議論のベースとすべきとする意見も出たものの、最終的には、これまでの提案（日本が志向するSCCR/15/2や、日本提案SCCR/22/7等）も含めて、次回会合において議論することとなった。
- 次回会合において、既存の提案をもとに統合へ合意に達することを目的として、2007年WIPO総会のマンデートに基づくシグナルベースのアプローチで、議論を継続することとされた。次回のSCCRで、放送条約については2日間割り当てられる予定である。
- 上記南アフリカとメキシコの共同提案に対し、本年2月29日までに、各国はコメントを事務局に提出することとされた。

④次回SCCRの日程

- 第24回SCCRは、本年7月に開催されることとされた。

●結論の概要

<権利の制限と例外:図書館及びアーカイブ>

○今会合及び 2012 年 2 月 29 日までに WIPO 事務局に送られた、11 のトピックに関するコメントは、SCCR/23/8prov とし、第 24 回の SCCR において、将来の作業の基礎を構成する。

<権利の制限と例外:視覚障害者>

○議長提案文書(SCCR/22/16)及び各国からのコメントや提案を編集し、「視覚障害者に関する権利の制限と例外の国際文書に関する作業文書」(SCCR/23/7)が採択された。この文書は、第 24 回の SCCR において、文書の合意を目指すための将来の作業の基礎を構成する。

○委員会は、ステークホルダーに、ステークホルダー・プラットフォームの作業を継続するよう促した。

<放送機関の保護>

○昨年 11 月 26 日にジュネーブで開催された、放送機関の保護に関する非公式協議の結果は、第 23 回 SCCR において報告され、協議の報告書は、SCCR/23/9 とされる。

○委員会は、2007 年一般総会のマンデートと一貫している、シグナルベースのアプローチで、伝統的な意味での放送機関及び有線放送機関の保護をアップデートする国際条約の進展に向けて作業を継続することを再確認した。

○委員会は、このコンクルージョンの Annex に記されているワークプランを承認した。

Annex: 放送機関の保護: ワークプラン

○各国は、2012 年の 2 月 29 日までに、南アフリカ及びメキシコによる提案(SCCR/23/6)に対するコメントを事務局に送ることができる。南アフリカ及びメキシコは、受け取ったコメントに基づいて提案を改訂する。

○第 24 回 SCCR のうち、2 日間を放送機関の保護に充てられる。

○以下の WIPO 文書が、議論の基礎として用いられる。

①南アフリカ及びメキシコの共同提案(SCCR/23/6)、②2011 年 11 月 26 日に開催された非公式協議の報告書(SCCR/23/9)、③2011 年 4 月に開催された非公式協議の議長によって用意された要素(SCCR/22/11)、④日本提案(SCCR/22/7)、⑤カナダ提案(SCCR/22/6)、⑥改訂基礎提案(SCCR/15/2)、⑦EU 提案(SCCR/6/2 及び SCCR/9/12)、⑧その他のテキスト文書

<次回 SCCR>

第 24 回の SCCR は、視聴覚的実演に関する外交会議の後の、2012 年 7 月に開催される。

視聴覚的実演の保護に関する条約案

<Preamble>

Text	仮訳
<p>The Contracting Parties,</p> <p>Desiring to develop and maintain the protection of the rights of performers in their audiovisual performances in a manner as effective and uniform as possible,</p> <p>Recognizing the need to introduce new international rules in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,</p> <p>Recognizing the profound impact of the development and convergence of information and communication technologies on the production and use of audiovisual performances,</p> <p>Recognizing the need to maintain a balance between the rights of performers in their audiovisual performances and the larger public interest, particularly education, research and access to information,</p> <p>Recognizing that the WIPO Performances and Phonograms Treaty done in Geneva, December 20, 1996, does not extend protection to performers in respect of their performances, fixed in audiovisual fixations,</p> <p>Referring to the Resolution concerning Audiovisual Performances adopted by the Diplomatic Conference on Certain Copyright and Neighboring Rights Questions on December 20, 1996,</p> <p>Have agreed as follows:</p>	<p>締約国は、</p> <p>視聴覚的実演に関する実演家の権利の保護をできる限り効果的かつ統一的に発展させ及び維持することを希望し、</p> <p>経済的、社会的、文化的及び技術的發展によって生ずる問題について適当な解決策を与えるため、新たな国際的な規則を導入する必要があることを認め、</p> <p>情報及び通信に係る技術の発展及び融合が視聴覚的実演の製作及び利用に重大な影響を与えることを認め、</p> <p>視聴覚的実演に関する実演家の権利と、特に教育、研究及び情報の入手のような広範な公共の利益との間の均衡を保つ必要があることを認め、</p> <p>1996年12月20日にジュネーブにおいて作成されたWIPO実演・レコード条約が、視聴覚固定物に固定された実演に関して実演家に保護を及ぼしていないことを認め、</p> <p>1996年12月20日の著作権及び著作隣接権の問題に関する外交会議において採択された視聴覚的実演に関する決議を参照し、</p> <p>次のとおり協定した。</p>

<Article 1>

Text	仮訳
<p>Relation to Other Conventions and Treaties</p> <p>(1) Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the WIPO Performances and Phonograms Treaty or the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome, October 26, 1961.</p> <p>(2) Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.</p> <p>(3) This Treaty shall not have any connection with treaties other than the WIPO Performances and Phonograms Treaty, nor shall it prejudice any rights and obligations under any other treaties.</p>	<p>他の条約との関係</p> <p>(1)この条約のいかなる規定も、WIPO実演・レコード条約又は1961年10月26日にローマで作成された実演家、レコード製作者及び放送機関の保護に関する国際条約に基づく既存の義務であって締約国が相互に負うものを免れさせるものでない。</p> <p>(2)この条約に基づいて与えられる保護は、文学的及び美術的著作物の著作権の保護に変更を加えるものではなく、また、いかなる影響も及ぼすものではない。したがって、この条約のいずれの規定も、これらの著作権の保護を害するものと解することはできない。</p> <p>(3)この条約は、WIPO実演・レコード条約以外の条約といかなる関係も有するものではなく、また、この条約以外の条約にもとづくいかなる権利及び義務に影響を及ぼすものでもない。</p>

<Article 2>

<p>Text</p> <p>Definitions</p> <p>For the purposes of this Treaty:</p> <p>(a) "performers" are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;</p> <p>(b) "audiovisual fixation" means the embodiment of moving images, whether or not accompanied by sounds or by the representations thereof, from which they can be perceived, reproduced or communicated through a device;</p> <p>(c) "broadcasting" means the transmission by wireless means for public reception of sounds or of images or of images and sounds or of the representations of sounds; such transmission by satellite is also "broadcasting"; transmission of encrypted signals is "broadcasting" where the means for decrypting are provided to the public by the broadcasting organization or with its consent;</p> <p>(d) "communication to the public" of a performance means the transmission to the public by any medium, otherwise than by broadcasting, of an unfixed performance, or of a performance fixed in an audiovisual fixation. For the purposes of Article 11, "communication to the public" includes making a performance fixed in an audiovisual fixation audible or visible or audible and visible to the public.</p>	<p>仮訳</p> <p>定義</p> <p>この条約の適用上、</p> <p>(a)「実演家」とは、俳優、歌手、演奏家、舞踊家その他文学的若しくは美術的著作物又は民間伝承の表現を上演し、歌唱し、口演し、朗詠し、演奏し、演出し、又はその他の方法によって実演する者をいう。</p> <p>(b)「視聴覚固定物」とは、音又は音の表現物を伴うか若しくは伴わない動く影像の収録物で、装置を用いることによりこれらが知覚され、複製され、又は伝達され得るものをいう。</p> <p>(c)「放送」とは、音若しくは影像若しくは影像及び音又は音の表現物を、公衆に受信させるために無線の方法により送信することをいう。衛星によるそのような送信も「放送」である。放送機関により又はその同意を得て、暗号解除の手段が公衆に提供されている場合は、暗号化された信号の送信も「放送」である。</p> <p>(d)実演の「公衆への伝達」とは、放送以外のあらゆる媒体により、固定されていない実演又は視聴覚固定物に固定された実演を、公衆に送信することをいう。第11条の規定の適用上、「公衆への伝達」は、視聴覚固定物に固定された実演を公衆に聴取可能若しくは視覚可能又は聴取可能及び視覚可能にすることを含むものとする。</p>
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<p>Agreed statement concerning Article 2(b)</p> <p>It is hereby confirmed that the definition of "audiovisual fixation" contained in Article 2(b) is without prejudice to Article 2(b) of the WPPT.</p>	<p>第2条(b)に関する合意声明</p> <p>第2条(b)における「視聴覚固定物」の定義は、WPPT第2条(b)を害さないことを確認する。</p>
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<Article 3>

<p>Text</p> <p>Beneficiaries of Protection</p> <p>(1) Contracting Parties shall accord the protection granted under this Treaty to performers who are nationals of other Contracting Parties.</p> <p>(2) Performers who are not nationals of one of the Contracting Parties, but who have their habitual residence in one of them shall, for the purposes of this Treaty, be assimilated to nationals of that Contracting Party.</p>	<p>仮訳</p> <p>保護の受益者</p> <p>(1)締約国は、他の締約国の国民である実演家に対して、この条約に規定される保護を与えなければならない。</p> <p>(2)いずれの締約国の国民でもない実演家でいずれかの締約国に常居所を有するものは、この条約の適用上、その締約国の国民とみなす。</p>
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<Article 4>

Text	仮訳
<p>National Treatment</p> <p>(1) Each Contracting Party shall accord to nationals of other Contracting Parties the treatment it accords to its own nationals with regard to the exclusive rights specifically granted in this Treaty and the right to equitable remuneration provided for in Article 11 of this Treaty.</p> <p>(2) A Contracting Party shall be entitled to limit the extent and term of the protection accorded to nationals of another Contracting Party under paragraph (1), with respect to the rights granted in Article 11(1) and 11(2) of this Treaty, to those rights that its own nationals enjoy in that other Contracting Party.</p> <p>(3) The obligation provided for in paragraph (1) does not apply to a Contracting Party to the extent that another Contracting Party makes use of the reservations permitted by Article 11(3) of this Treaty, nor does it apply to a Contracting Party, to the extent that it has made such reservation.</p>	<p>内国民待遇</p> <p>(1)各締約国は、この条約において特に規定する排他的権利及びこの条約の第11条に規定する衡平な報酬を請求する権利に関して、自国民に与えている待遇を、他の締約国の国民に与えなければならない。</p> <p>(2)締約国は、この条約の第11条(1)及び第11条(2)において付与される権利に関して、(1)により他の締約国の国民に対して与えられる保護の程度及び期間を、その自国の国民が他の締約国において享有するそれらの権利にまで制限することができる。</p> <p>(3)(i)に規定する義務は、他の締約国がこの条約の第11条(3)により許容される留保を利用する場合には、その限りにおいて適用せず、また、ある締約国がそのような留保をする場合においても、その限りにおいて適用しない。</p>

<Article 5>

Text	仮訳
<p>Moral Rights</p> <p>(1) Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live performances or performances fixed in audiovisual fixations, have the right</p> <p>(i) to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance; and</p> <p>(ii) to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation, taking due account of the nature of audiovisual fixations.</p> <p>(2) The rights granted to a performer in accordance with paragraph (1) shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the Contracting Party where protection is claimed. However, those Contracting Parties whose legislation, at the moment of their ratification of or accession to this Treaty, does not provide for protection after the death of the performer of all rights set out in the preceding paragraph may provide that some of these rights will, after his death, cease to be maintained.</p> <p>(3) The means of redress for safeguarding the rights granted under this Article shall be governed by the legislation of the Contracting Party where protection is claimed.</p>	<p>人格権</p> <p>(1)実演家は、その財産的権利とは別個に、それらの権利が移転した後においても、生の実演及び視聴覚固定物に固定された実演に関して、次のような権利を保有する。</p> <p>(i)実演の利用の態様により省略することがやむを得ない場合を除き、その実演の実演家であることを主張すること</p> <p>(ii)視聴覚固定物の特質を十分に勘案しつつ、実演の変更、切除又はその他の改変で、自己の声望を害するおそれのあるものに対して異議を申し立てること</p> <p>(2)(1)の規定に基づいて実演家に認められる権利は、実演家の死後においても、少なくとも財産的権利が消滅するまで存続し、保護が求められる締約国の法令により資格を与えられる人又は団体によって行使される。もつとも、この条約の批准又はこれへの加入の時に効力を有する法令において、前項に基づいて認められる権利のすべてについて実演家の死後における保護を確保することを定めていない締約国は、それらの権利のうち一部の権利が実演家の死後は存続しないことを定める権能を有する。</p> <p>(3)この条に基づいて認められる権利を保全するための救済の方法は、保護が要求される締約国の法令の定めるところによる。</p>

<p>Agreed statement concerning Article 5</p> <p>For the purposes of this Treaty and without prejudice to any other treaty, it is understood that, considering the nature of audiovisual fixations and their production and distribution, modifications of a performance that are made in the normal course of exploitation of the performance, such as editing, compression, dubbing, or formatting, in existing or new media or formats, and that are made in the course of a use authorized by the performer, would not in themselves amount to modifications within the meaning of Article 5(1)(ii). Rights under Article 5(1)(ii) are concerned only with changes that are objectively prejudicial to the performer's reputation in a substantial way. It is also understood that the mere use of new or changed technology or media, as such, does not amount to modification within the meaning of Article 5(1)(ii).</p>	<p>第5条に関する合意声明</p> <p>この条約の目的の為及び他の如何なる条約も害することなく、視聴覚固定物の特性及びそれらの製作及び流通を考慮して、編集、要約、吹き替え、又はフォーマットングであつて、既存の若しくは新しい媒体若しくは形式において行われるような、実演の利用の通常の過程においてなされる実演の変更であつて、実演家により許諾された使用の過程においてなされるものは、それ自体では、第5条(1)(ii)の意味における変更とはならないと解するものとする。第5条(1)(ii)における権利は、実演家の声望を相当程度客観的にみて害する変更のみと関係する。また、新しい又は変更された技術又は媒体の単なる使用は、それ自体は、第5条(1)(ii)の意味における変更とはならないと解するものとする。</p>
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<Article 6>

<p>Text</p> <p>Economic Rights of Performers in their Unfixed Performances</p> <p>Performers shall enjoy the exclusive right of authorizing, as regards their performances:</p> <p>(i) the broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance; and</p> <p>(ii) the fixation of their unfixed performances.</p>	<p>仮訳</p> <p>固定されていない実演に関する実演家の財産的権利</p> <p>実演家は、その実演に関して、次のことを許諾する排他的権利を享有する。</p> <p>(i)既に放送された実演を除き、固定されていない実演を放送し、又は公衆に伝達すること</p> <p>(ii)固定されていない実演を固定すること</p>
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<Article 7>

<p>Text</p> <p>Right of Reproduction</p> <p>Performers shall enjoy the exclusive right of authorizing the direct or indirect reproduction of their performances fixed in audiovisual fixations, in any manner or form.</p>	<p>仮訳</p> <p>複製権</p> <p>実演家は、視聴覚固定物に固定された実演について、あらゆる方法及び形式による直接的又は間接的な複製を許諾する排他的権利を享有する。</p>
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<p>Agreed statement concerning Article 7</p> <p>The reproduction right, as set out in Article 7, and the exceptions permitted thereunder through Article 13, fully apply in the digital environment, in particular to the use of performances in digital form. It is understood that the storage of a protected performance in digital form in an electronic medium constitutes a reproduction within the meaning of this Article.</p>	<p>第7条に関する合意声明</p> <p>第7条に規定され、及び第13条で例外が認められている複製権は、デジタル環境—特にデジタル形式の実演の利用—についてもそのまま適用される。保護を受ける実演をデジタル形式により電子的媒体に蓄積することは、第7条が意味する複製に当たると解するものとする。</p>
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<Article 8>

Text	仮訳
<p>Right of Distribution</p> <p>(1) Performers shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their performances fixed in audiovisual fixations through sale or other transfer of ownership.</p> <p>(2) Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or other transfer of ownership of the original or a copy of the fixed performance with the authorization of the performer.</p>	<p>仮訳 譲渡権</p> <p>(1)実演家は、視聴覚固定物に固定された実演の原作品及び複製物について、販売又はその他の所有権の移転により、公衆への供与を許諾する排他的権利を享有する。</p> <p>(2)この条約のいかなる規定も、固定された実演の原作品又は複製物の販売又はその他の所有権の移転(実演家の許諾を得たものに限る。)が最初に行われた後における(1)の権利の消尽について、締約国が自由にその条件を定めることを妨げるものではない。</p>

Agreed statement concerning Article 8 and 9	第8条及び第9条に関する合意声明
<p>As used in these Articles, the expression "original and copies," being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.</p>	<p>これらの条文中で使用されている「原作品又は複製物」という表現は、これらの条文中に基づく譲渡権及び商業的貸与権に関しては、有体物として流通に供され得るような、固定された複製物のみを指す。</p>

<Article 9>

Text	仮訳
<p>Right of Rental</p> <p>(1) Performers shall enjoy the exclusive right of authorizing the commercial rental to the public of the original and copies of their performances fixed in audiovisual fixations as determined in the national law of Contracting Parties, even after distribution of them by, or pursuant to, authorization by the performer.</p> <p>(2) Contracting Parties are exempt from the obligation of paragraph (1) unless the commercial rental has led to widespread copying of such fixations materially impairing the exclusive right of reproduction of performers.</p>	<p>仮訳 商業的貸与権</p> <p>(1)実演家は、実演家自身による又は実演家の許諾による頒布の後においても、締約国の国内法が定める視聴覚固定物に固定された実演の原作品及び複製物の公衆への商業的貸与を許諾する排他的権利を享有する。</p> <p>(2)締約国は、その商業的貸与が、実演家の排他的複製権を著しく侵害するような当該固定物の広範な複製をもたらすものでない場合には、(1)の権利を与える義務を免除される。</p>

Agreed statement concerning Article 8 and 9	第8条及び第9条に関する合意声明
<p>As used in these Articles, the expression "original and copies," being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.</p>	<p>これらの条文中で使用されている「原作品又は複製物」という表現は、これらの条文中に基づく譲渡権及び商業的貸与権に関しては、有体物として流通に供され得るような、固定された複製物のみを指す。</p>

<Article 10>

Text	仮訳
<p>Right of Making Available of Fixed Performances</p> <p>Performers shall enjoy the exclusive right of authorizing the making available to the public of their performances fixed in audiovisual fixations, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.</p>	<p>固定された実演を利用可能にする権利</p> <p>実演家は、視聴覚固定物に固定された実演を、公衆の構成員が個別に選択した場所及び時においてこれにアクセスできるように、有線又は無線の放送により、公衆に利用可能な状態にする排他的権利を享有する。</p>

<Article 11>

Text	仮訳
<p>Right of Broadcasting and Communication to the Public</p> <p>(1) Performers shall enjoy the exclusive right of authorizing the broadcasting and communication to the public of their performances fixed in audiovisual fixations.</p> <p>(2) Contracting Parties may in a notification deposited with the Director General of the World Intellectual Property Organization (WIPO) declare that, instead of the right of authorization provided for in paragraph (1), they establish a right to equitable remuneration for the direct or indirect use of performances fixed in audiovisual fixations for broadcasting or for communication to the public. Contracting Parties may also declare that they set conditions in their legislation for the exercise of the right to equitable remuneration.</p> <p>(3) Any Contracting Party may declare that it will apply the provisions of paragraphs (1) or (2) only in respect of certain uses, or that it will limit their application in some other way, or that it will not apply the provisions of paragraphs (1) and (2) at all.</p>	<p>放送及び公衆への伝達に関する権利</p> <p>(1) 実演家は視聴覚固定物に固定された実演を放送し又は公衆に伝達することを許諾する排他的権利を享有する。</p> <p>(2) 締約国は、WIPO事務局長に寄託する通告において、(1)に規定する許諾権の代わりに、視聴覚固定物に固定された実演の放送又は公衆への伝達のための直接的又は間接的な使用について、衡平な報酬を請求する権利を創設することを宣言することができる。また、締約国は、衡平な報酬を請求する権利の行使に関する条件をその法令において設定することを宣言することができる。</p> <p>(3) 締約国は、(1)又は(2)の規定の適用に関しこれを特定の使用のみに適用すること、その適用を他の方法により制限すること、又は(1)及び(2)の規定をまったく適用しないことを、WIPO事務局長に寄託する通告において、宣言することができる。</p>

<Article 12>

Text	仮訳
<p>Transfer of rights</p> <p>A Contracting Party may provide in its national law that once a performer has consented to fixation of his or her performance in an audiovisual fixation, the exclusive rights of authorization provided for in Articles 7 to 11 of this Treaty shall be owned or exercised by or transferred to the producer of such audiovisual fixation subject to any contract to the contrary between the performer and the producer of the audiovisual fixation as determined by the national law.</p> <p>A Contracting Party may require with respect to audiovisual fixations produced under its national law that such consent or contract be in writing and signed by both parties to the contract or by their duly authorized representatives.</p> <p>Independent of the transfer of exclusive rights described above, national laws or individual, collective or other agreements may provide the performer with the right to receive royalties or equitable remuneration for any use of the performance, as provided for under this Treaty including as regards Articles 10 and 11.</p>	<p>仮訳 権利の移転</p> <p>締約国は、国内法において、国内法に定められるところにより交わされた実演家と当該視聴覚的固定物の製作者間の契約に他の定めがない限り、一度実演家が自らの実演を視聴覚的固定物に固定することに同意した場合には、本条約第7条から第11条に規定する排他的許諾権は当該視聴覚的固定物の製作者が有し若しくは行使し又は当該製作者に移転するものとするを規定することができる。</p> <p>締約国は、自らの国内法の下で製作された視聴覚的固定物に関し、そうした同意や契約は、書面により、かつ契約の両当事者又は適正な代理人によって署名されることを要するものとしてすることができる。</p> <p>上記の排他的許諾権の移転とは関わりなく、国内法又は個別的、集会的若しくはその他の契約等をもって、第10条及び第11条を含む本条約により定められた実演のいかなる利用についても、ロイヤリティ又は同等の報酬を受け取る権利を実演家に与えることを定めることができる。</p>

<Article 13>

Text	仮訳
<p>Limitations and Exceptions</p> <p>(1) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of performers as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works.</p> <p>(2) Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the performance and do not unreasonably prejudice the legitimate interests of the performer .</p>	<p>仮訳 制限及び例外</p> <p>(1)締約国は、その国内法令により、実演家の保護に関して、文学的及び美術的著作物の著作権の保護に関して国内法令において定めるものと同一の種類制限又は例外を定めることができる。</p> <p>(2)締約国は、この条約に規定される権利に対するいかなる制限又は例外も、実演の通常の利用を妨げず、かつ実演家の正当な利益を不当に害しない特別な場合に限定しなければならない。</p>

Agreed statement concerning Article 13	第13条に関する合意声明
<p>The agreed statement concerning Article 10 (on Limitations and Exceptions) of the WIPO Copyright Treaty is applicable mutatis mutandis also to Article 13 (on Limitations and Exceptions) of the Treaty.</p>	<p>WIPO著作権条約第10条(制限及び例外)に関する合意声明は、本協定の第13条(制限及び例外)についても準用される。</p>

<Article 14>

Text	仮訳
Term of Protection	保護期間
The term of protection to be granted to performers under this Treaty shall last, at least, until the end of a period of 50 years computed from the end of the year in which the performance was fixed.	この条約に基づいて実演家に認められる保護の期間は、実演が固定された年の終わりから、少なくとも50年間とする。

<Article 15>

Text	仮訳
Obligations concerning Technological Measures	技術的手段に関する義務
Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their performances, which are not authorized by the performers concerned or permitted by law.	締約国は、実演家によって許諾されておらず、かつ法令で許容されていない行為がその実演について実行されることを抑制するための効果的な技術的手段であって、この条約に基づく権利の行使に関連して当該実演家が用いるものに関し、そのような技術的手段の回避を防ぐための適当な法的保護及び効果的な法的救済について定める。

Agreed statement concerning Article 15	第15条に関する合意声明
The expression "technological measures used by performers" [emphasis added] should, as this is the case regarding the WIPO Performances and Phonograms Treaty, be construed broadly, referring also to those acting on behalf of performers, including their representatives, licensees or assignees, including producers, service providers, and persons engaged in communication or broadcasting using performances on the basis of due authorization.	「技術的手段であって、実演家が用いるもの」[強調を付加]という表現は、WIPO実演・レコード条約に関する場合と同様、広く解釈されるべきであり、実演家のために行為を行う者をもいい、実演家の代理者、ライセンシー又は譲受を包含し、それには製作者、サービスプロバイダー及び正当な許諾に基づいて実演を利用する伝達又は放送に従事する者をも含む。

<Article 16>

<p>Text</p> <p>Obligations concerning Rights Management Information</p> <p>(1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right covered by this Treaty:</p> <p>(i) to remove or alter any electronic rights management information without authority;</p> <p>(ii) to distribute, import for distribution, broadcast, communicate or make available to the public, without authority, performances or copies of performances fixed in audiovisual fixations knowing that electronic rights management information has been removed or altered without authority.</p> <p>(2) As used in this Article, "rights management information" means information which identifies the performer, the performance of the performer, or the owner of any right in the performance, or information about the terms and conditions of use of the performance, and any numbers or codes that represent such information, when any of these items of information is attached to a performance fixed in an audiovisual fixation .</p>	<p>仮訳</p> <p>権利管理情報に関する義務</p> <p>(1)締約国はこの条約が対象とする権利の侵害を誘い、可能にし、助長し、又は隠す結果となることを知りながら(民事上の救済については、そのような結果となることを知る事ができる合理的な理由を有しながら)、次に掲げる行為を故意に行う者がある場合に関し、適当かつ効果的な法的救済について定める。</p> <p>(i)電磁的な権利管理情報を権限なく除去し又は改変すること</p> <p>(ii)電磁的な権利管理情報を権限なく除去され又は改変されたことを知りながら、実演又は視聴覚固定物に固定された実演の複製物を権限なく、頒布し、頒布のために輸入し、放送し、公衆に伝達し又は利用可能にすること</p> <p>(2)この条において「権利管理情報」とは、実演家、実演家の実演、又は実演に係る権利を有する者又は実演の利用の条件に係る情報を特定する情報及びその情報を表す数字または又は符号をいう。ただし、これらの項目の情報が視聴覚固定物に固定された実演に付される場合に限る。</p>
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<p>Agreed statement concerning Article 16</p> <p>The agreed statement concerning Article 12 (on Obligations concerning Rights Management Information) of the WIPO Copyright Treaty is applicable mutatis mutandis also to Article 16 (on Obligations concerning Rights Management Information) of the Treaty.</p>	<p>第16条に関する合意声明</p> <p>WIPO著作権条約第12条(権利管理情報に関する義務)に関する合意声明は、本協定の第16条(権利管理情報に関する義務)についても準用される。</p>
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<Article 17>

<p>Text</p> <p>Formalities</p> <p>The enjoyment and exercise of the rights provided for in this Treaty shall not be subject to any formality.</p>	<p>仮訳</p> <p>方式</p> <p>この条約に規定する権利の享有及び行使には、いかなる方式の履行をも要しない。</p>
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<Article 18>

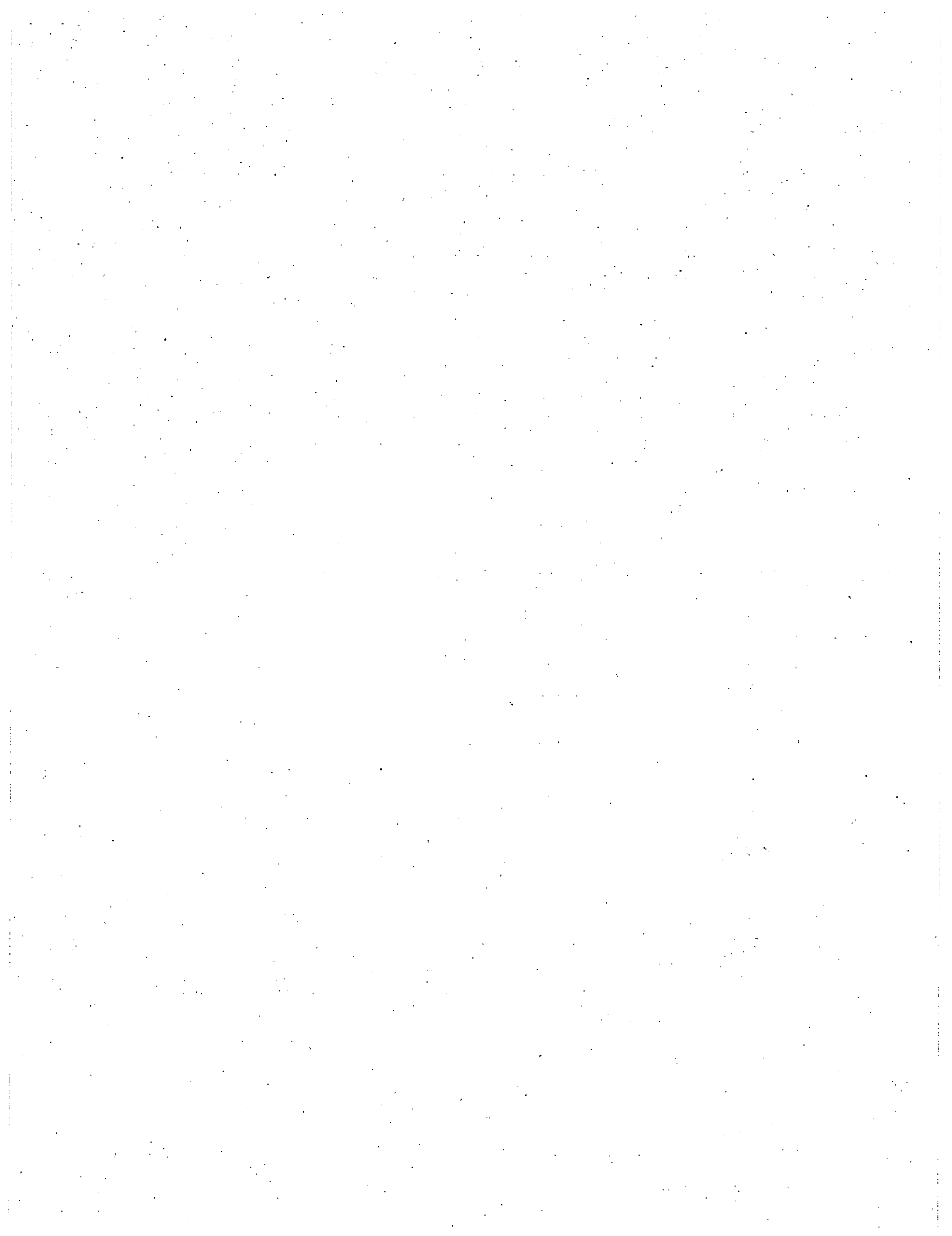
Text	仮訳
<p>Reservations and Notifications</p> <p>(1) Subject to provisions of Article 11(3), no reservations to this Treaty shall be permitted.</p> <p>(2) Any declaration under Article 11(2) or 19(2) may be made in the instruments referred to in Article ..., and the effective date of the declaration shall be the same as the date of entry into force of this Treaty with respect to the State or intergovernmental organization having made the declaration. Any such declaration may also be made later, in which case the declaration shall have effect three months after its receipt by the Director General of WIPO or at any later date indicated in the declaration.</p>	<p>留保及び通告</p> <p>(1)第11条(3)の規定に基づくものを除き、この条約に関してはいかなる留保も認められない。</p> <p>(2)第11条(2)又は第19条(2)に基づきいかなる宣言も、…で言及する文書により行うことができ、その宣言が有効となる期日は、宣言を行った締約国又は政府間機関に関しこの条約が発効した期日と同一でなければならない。かかる宣言を後に行うことができるが、その場合には宣言はWIPO事務局長が受領してから3ヶ月後、又は、宣言に示されたそれより後の期日に効力を生じる。</p>

<Article 19>

Text	仮訳
<p>Application in Time</p> <p>(1) Contracting Parties shall accord the protection granted under this Treaty to fixed performances that exist at the moment of the entry into force of this Treaty and to all performances that occur after the entry into force of this Treaty for each Contracting Party.</p> <p>(2) Notwithstanding the provisions of paragraph (1), a Contracting Party may declare in a notification deposited with the Director General of WIPO that it will not apply the provisions of Articles 7 to 11 of this Treaty, or any one or more of those, to fixed performances that existed at the moment of the entry into force of this Treaty for each Contracting Party. In respect of such Contracting Party, other Contracting Parties may limit the application of the said Articles to performances that occurred after the entry into force of this Treaty for that Contracting Party.</p> <p>(3) The protection provided for in this Treaty shall be without prejudice to any acts committed, agreements concluded or rights acquired before the entry into force of this Treaty for each Contracting Party.</p> <p>(4) Contracting Parties may in their legislation establish transitional provisions under which any person who, prior to the entry into force of this Treaty, engaged in lawful acts with respect to a performance, may undertake with respect to the same performance acts within the scope of the rights provided for in Articles 5 and 7 to 11 after the entry into force of this Treaty for the respective Contracting Parties.</p>	<p>適用の時期的範囲</p> <p>(1)締約国は、この条約が効力を生じた時に存在する固定された実演に対し、及びこの条約が各締約国について効力を生じた後に行われるすべての実演に対し、この条約に基づく保護を与えなければならない。</p> <p>(2)(1)の規定にかかわらず、締約国は、WIPO事務局長に寄託する通告において、この条約の第7条から第11条までの規定あるいはその一部の規定を、この条約が各締約国について効力を生じた時に存在した固定された実演に対し、適用しないことを宣言することができる。そのような締約国に関し、他の締約国はこの条約の第7条から第11条までの規定の適用を、この条約が効力を生じた後に行われた実演に制限することができる。</p> <p>(3)この条約に規定される保護は、この条約が各締約国について効力を生じる前に行われた行為若しくは締結された取極又は取得された権利を害するものではない。</p> <p>(4)締約国は、この条約が効力を生じる前に実演について適法な行為に参加した者が、この条約が当該締約国について効力を生じた後に、同一の実演について第5条及び第7条から第11条までに規定される権利の範囲内で、行為を約束することができるよう、国内法令において、経過措置を設けることができる。</p>

<Article 20>

Text	仮訳
<p data-bbox="139 212 505 237">Provisions on Enforcement of Rights</p> <p data-bbox="139 264 732 344">(1) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.</p> <p data-bbox="139 373 708 533">(2) Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.</p>	<p data-bbox="751 212 1052 237">権利行使の確保に関する規定</p> <p data-bbox="751 264 1385 317">(1)締約国は、自国の法制に従い、この条約の適用を確保するために必要な措置について定めることを約束する。</p> <p data-bbox="751 344 1385 480">(2)締約国は、この条約が対象とする権利の侵害行為に対し効果的な措置(侵害を防止するための迅速な救済措置及び追加の侵害を抑止するための救済措置を含む。)がとられることを可能にするため、権利行使を確保するための手続きを国内法において確保する。</p>



World Intellectual Property Organization (WIPO)
Standing Committee on Copyright and Related Rights (SCCR)
21st session
Geneva - November 8 to 12, 2010

CONCLUSIONS

Protection of Broadcasting Organizations

1. The Committee noted with appreciation, and commented on the third part of the Study on "the Socioeconomic Dimension of the Unauthorized Use of Signals" (document SCCR/21/2) addressing the social and economic effects of the proposed treaty on the protection of broadcasting organizations. It noted, as well, the Analytical Document, prepared by the Secretariat, on the Study on the Socioeconomic Dimension of the Unauthorised Use of Signals, Parts I, II and III (document SCCR/21/4).
2. The Committee took note of the reports presented by the
 - Delegation of India on the Regional Seminar for Asian and Pacific Countries on the Protection of Broadcasting Organizations and Audiovisual Performances, which took place on July 14 to 16 in New Delhi, and
 - Delegation of Nigeria on the Regional Seminar for African Countries on the Protection of Broadcasting Organizations and Audiovisual Performances, which took place on October 18 to 20, 2010 in Abuja.

The reports of pending regional seminars will be presented to the 22nd Session of the Committee, and an analytical document containing the results and outcomes of the regional seminars will be prepared by the Secretariat for consideration of the Committee.

3. The Committee reaffirmed its commitment to continue work, on a signal-based approach, towards developing an international treaty to update the protection of broadcasting and cablecasting organizations in the traditional sense.
4. Members of the Committee are invited to present new proposals on the protection of the broadcasting organizations by March 1, 2011, if possible in treaty language, in addition to the proposals contained in the document SCCR/15/2 rev., to form the basis of the preparation of a new draft treaty.
5. The Secretariat was requested to organize, in Geneva, before the 22nd Session of the SCCR, an informal consultation meeting of Members, involving technical experts, to clarify outstanding technical and technological issues, relevant for the updated protection of the broadcasting organizations in the traditional sense, by following the signal-based approach. The Secretariat will prepare a list of issues based on the 2007 mandate of the General Assembly, with regard to the objectives, specific scope and object of protection. The consultation meeting will report its suggestions to the Committee.
6. The protection of broadcasting organizations will be maintained on the agenda of the 22nd session of the SCCR, where the timetable on future work program should be agreed upon, taking into account any possible new proposals.

Protection of Audiovisual Performances

1. The Committee reaffirmed its commitment to work on developing the international protection of audiovisual performances.
2. The Committee expressed its appreciation to the Secretariat for the regional seminars on the protection of audiovisual performances that took place in New Delhi on July 14 to 16, 2010 and in Abuja on October 18 to 20, 2010 (seminars referred to above under paragraph 2 on broadcasting organizations).

The reports of pending regional seminars will be presented to the 22nd Session of the Committee, and an analytical document containing the results and outcomes of the regional seminars will be prepared by the Secretariat for consideration of the Committee.

3. The Committee thanked the Secretariat for organizing Open-ended Consultations on the Protection of Audiovisual Performances in Geneva on May 28, 2010. The Committee also noted with approval the calls for a faster pace of work towards concluding a treaty for the protection of audiovisual performances, which were expressed by Member States during those Consultations.
4. The Committee considered that the nineteen articles provisionally agreed in 2000 were a good basis for advancing the negotiations on the treaty.
5. The Committee noted with appreciation the comments on the draft legal text on the Protection of Audiovisual Performances, submitted by India (document SCCR/21/5) and Mexico (document SCCR/21/6).
6. The Committee invited Member States to submit, by January 31, 2011, written proposals, if possible in treaty language, to address the outstanding issues from the 2000 Diplomatic Conference as well as on any additional or alternative elements for a draft treaty.
7. The Secretariat was invited to organize in Geneva informal open-ended consultations among Members to examine the new proposals, with a view to making recommendations to the next session of the Committee. These recommendations should include a timetable for concluding the negotiations.
8. The protection of audiovisual performances will be maintained on the agenda of the 22nd session of the SCCR.

Limitations and exceptions

Bearing in mind

- *the Development Agenda recommendations;*
- *the agreement reached during the 19th session of the SCCR on December 2009, namely that "all the aspects concerning limitations and exceptions will be maintained on the Agenda of the twentieth session of the SCCR with the aim of establishing a work program concerning those limitations and exceptions, following a global and inclusive approach, and taking into account their equal importance and different level of maturity, while recognizing the need for concurrently addressing all the issues with a view to achieving progress on all of them";*
- *the international conventions in the field of copyright and related rights, including the SCCR's authority to make a recommendation to convene a Diplomatic Conference.*

Following a global and inclusive approach, the SCCR agrees to work towards an appropriate international legal instrument or instruments¹ (whether model law, joint recommendation, treaty and/or other forms), taking into account the proposals already tabled or any additional submissions.

The SCCR agrees to the following work program on exceptions and limitations for the two-year period 2011-2012:

1. Recognizing the need to advance the more mature areas, the Committee will undertake text-based work with the objective of reaching agreement on appropriate exceptions and limitations for persons with print disabilities and other reading disabilities. In a similar manner, the Committee will undertake text-based work on appropriate exceptions and limitations for libraries, archives, educational, teaching and research institutions, and persons with other disabilities.
2. The Committee will follow, as set out in this Annex, a clearly defined work program for the two-year period 2011-2012.

The focus of the Committee's work in the two-year period 2011-2012 will build on the existing work carried out by the Committee and use all WIPO working documents on exceptions and limitations as well as any additional relevant working documents which are to constitute the basis of the Committee's work, including:

- the Proposal by Brazil, Chile, Nicaragua and Uruguay for work related to exceptions and limitations (document SCCR/16/2);
- the Proposal by Brazil, Ecuador, Mexico and Paraguay, relating to Limitations and Exceptions: Treaty Proposed by the World Blind Union (WBU) (document SCCR/18/5);
- the Draft Consensus Instrument, submitted by the United States (document SCCR/20/10);
- the Draft WIPO Treaty on Exceptions and Limitations for the Disabled, Educational and Research Institutions, Libraries and Archive Centers, submitted by the African Group (document SCCR/20/11);
- the Draft Joint Recommendation Concerning the Improved Access to Works Protected by Copyright for Persons with a Print Disability, submitted by the European Union (document SCCR/20/12);
- the Updated report on the Questionnaire on Limitations and Exceptions (document SCCR/21/7).

All four current substantive proposals were presented and Members made initial comments and asked preliminary questions thereon, and were invited to submit in writing questions asked during the meeting.

3. The Committee is requested to submit recommendations to the General Assemblies on exceptions and limitations for persons with print disabilities and other reading disabilities. In a similar manner, the Committee will undertake to submit recommendations to the General Assemblies on limitations and exceptions for libraries, archives, educational, teaching and research institutions, and persons with other disabilities, according to the annexed timetable.
4. The International Bureau is requested to continue to assist the Committee by providing Member States with necessary expertise and funding of the participation of experts, according to the usual formula.

¹ This is without prejudice to any other process under negotiation in other WIPO bodies.

Next Session of the SCCR

The 22nd session of the SCCR will take place from June 15 to 24, 2011.

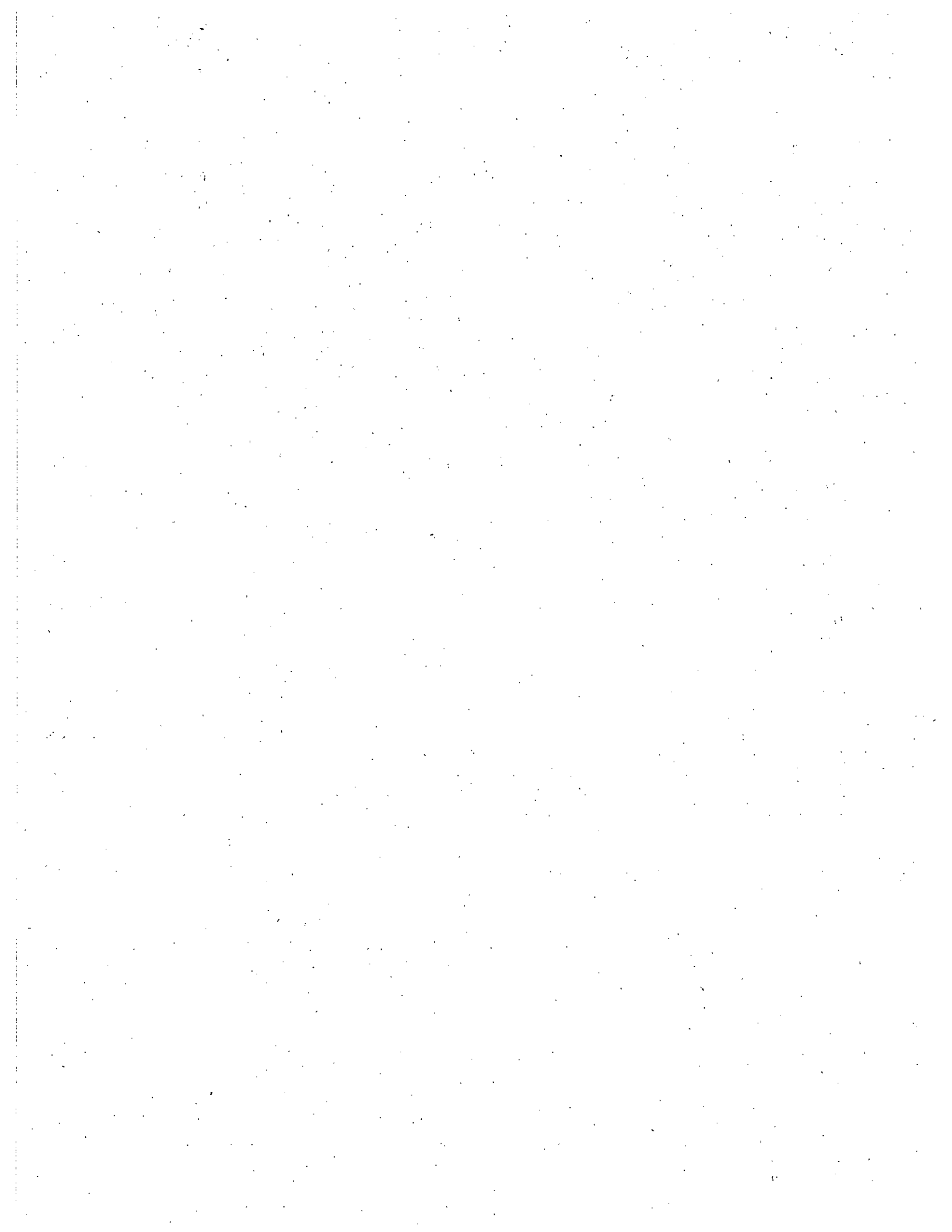
[Annex follows]

ANNEX

Timetable on the SCCR Agenda Item on Limitations and Exceptions

Event	Action
May/June 2011 SCCR/22 session	Three additional working days to the SCCR regular session dedicated to limitations and exceptions for persons with print and other reading disabilities SCCR regular agenda item on limitations and exceptions: Focus on limitations and exceptions for persons with print and other reading disabilities Recommendation to the WIPO General Assembly, pursuant to the authority of the SCCR, on limitations and exceptions for persons with print and other reading disabilities
September 2011 WIPO General Assembly	Decision on any SCCR recommendation Decision on SCCR/22 session of a recommendation on limitations and exceptions for persons with print and other reading disabilities
November 2011 SCCR/23 session	Three additional working days to the SCCR regular session dedicated to limitations and exceptions for libraries and archives SCCR regular agenda item for exceptions and limitations: Focus on limitations and exceptions for libraries and archives
May/June 2012 SCCR/24 session	Three additional working days to the SCCR regular session dedicated to limitations and exceptions for educational and research institutions and persons with other disabilities SCCR regular agenda item on limitations and exceptions: Focus on limitations and exceptions for educational, teaching and research institutions and persons with other disabilities Recommendation to the WIPO General Assembly, pursuant to the authority of the SCCR, on limitations and exceptions for education, teaching and research and for libraries and archives and persons with other disabilities
September 2012 WIPO General Assembly	Decision on any SCCR recommendation Decision on SCCR/23 and SCCR/24 session recommendations on limitations and exceptions for educational, teaching and research institutions and libraries and archives and persons with other disabilities.

[End of Annex and of conclusions]





**SCCR/23/7 PROV.
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Standing Committee on Copyright and Related Rights

Twenty-third Session

Geneva, November 21 to 25, 28, 29 and December 2, 2011

WORKING DOCUMENT ON AN INTERNATIONAL INSTRUMENT ON LIMITATIONS AND EXCEPTIONS FOR PERSONS WITH PRINT DISABILITIES

document prepared by the Secretariat (to be adopted by the Committee during the SCCR/23 session)

INTRODUCTORY NOTE

The aim of this working document is to present in a comprehensive and coherent manner various contributions on an international instrument on limitations and exceptions for persons with print disabilities. It contains:

- the proposal of the SCCR Chair on an international instrument on limitations and exceptions for persons with print disabilities (document SCCR/22/16)
- the comments made by SCCR Members to the above proposal during the SCCR/23 session, and
- the text-based options proposed by SCCR Members during the SCCR/23 session.

The texts of Articles of the Chair's proposal appear on the top of odd-numbered pages (right hand side).

Comments on the text of the Articles of the Chair's proposal appear on the even-numbered pages (left-hand side).

The text-based options of SCCR Members appear at the bottom of the odd-number pages (right hand side) as footnotes.

[End of introductory note]

[Preamble continues, page 5]

Comments on the Preamble

0.01. Replace "visually impaired persons and persons with print disabilities" by "visually impaired persons/persons with print disabilities". These are not two different groups, but two different ways to describe the same beneficiary group (European Union and its Member States, Kenya, on behalf of the African Group; United States of America). *This change was included in the Chair's text.*

0.01bis Replace visually impaired persons/persons with print disabilities by "beneficiary persons" (Australia, Austria, Brazil, United States of America).

0.01ter The term "visually impaired persons/persons with print disabilities" should also appear in the title of the proposal (Kenya, on behalf of the African Group).

0.02 The second paragraph should read "Mindful of the challenges that are prejudicial to the complete development of persons who have limited vision and those with print disabilities, which limits their freedom of information and communication, their right to education and their freedom of research," (Switzerland).

0.03 In the second paragraph, "limited vision" should be replaced by "print disabilities" (India, Kenya, on behalf of the African Group).

0.04 The second and tenth paragraphs are largely duplicative and can be merged (United States of America).

0.05 The second and third paragraphs are duplicative and cover a matter dealt with by the fifth and sixth paragraphs (Senegal).

0.06. The fourth paragraph needs further consideration (United States of America). This paragraph should emphasize the importance of copyright protection as an incentive and reward for literary and artistic or should be deleted (European Union and its Member States). This paragraph should be deleted (Morocco, Senegal).

[Comments on the Preamble continue, page 6]

PREAMBLE

(First)

Recalling the principles of non-discrimination, equal opportunity, accessibility, and full and effective participation and inclusion in society, proclaimed in the United Nations Convention on the Rights of Persons with Disabilities,

*(Second)*¹

Mindful of the challenges that are prejudicial to the complete development of persons who have limited vision and those with print disabilities, which limits their right of access to information and communication, and also education and research,

*(Third)*²

Emphasizing the importance of copyright protection as an incentive for literary and artistic creation and enhancing opportunities for everyone to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits,

*(Fourth)*³

Emphasizing the importance and flexibility of copyright protection as an incentive for literary and artistic creation, and for increasing the opportunities for all persons with limited vision and those that have reading disabilities to participate in the cultural life of the community, enjoy the arts and share scientific progress and its benefits.

[Preamble continues, page 7]

¹ (Second) Mindful of the challenges that are prejudicial to the complete development of persons who have limited vision and those with print disabilities, which limits their freedom to seek, receive, and impart information and ideas of all kinds, (United States of America).

(Second) Mindful of the challenges that are prejudicial to the complete development of persons who have limited vision and those with print disabilities, which limits their freedom of information and communication, their right to education and their freedom of research," (Switzerland).

² (Third) Emphasizing the importance of copyright protection as an incentive and reward for literary and artistic creation and enhancing opportunities for everyone to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits, (European Union and its Member States).

³ (Fourth) Delete this paragraph (European Union and its Member States).

0.07 In the fifth paragraph, the word "uniform" should be deleted. There are differences in developing and developed countries and the current draft does not suggest uniformity (European Union and its Member States).

0.08 The sixth paragraph should read "Aware of the many barriers to access to information and communication experienced by persons who are blind or have limited vision, or have other disabilities regarding access to published works," (United States of America).

[Comments on the Preamble continue, page 8]

[Preamble, continued]

(Fifth)⁴

Recognizing the importance of both accessibility to the achievement of equal opportunities in all spheres of society and of the protection of the rights of authors in their literary and artistic works in a manner as effective and uniform as possible,

(Sixth)

Aware of the many barriers to access to information and communication experienced by persons who have limited vision and those who have print disabilities, or have other disabilities regarding access to published works,

(Seventh)

Aware also that the majority of visually impaired persons/persons with print disabilities live in developing countries,

(Eighth)

Desiring to provide full and equal access to information, culture and communication for the visually impaired persons/persons with print disabilities and, towards that end, considering the need both to expand the number of works in accessible formats and to improve access to those works,

(Ninth)

Recognizing the opportunities and challenges for the visually impaired/persons with a print disability presented by the development of new information and communication technologies, including technological publishing and communication platforms that are transnational in nature,

[Preamble continues, page 9]

⁴ (Fifth) Recognizing the importance of both accessibility to the achievement of equal opportunities in all spheres of society and of the protection of the rights of authors in their literary and artistic works in a manner as effective and uniform as possible, (European Union and its Member States).

0.09. The tenth and eleventh paragraphs should be merged and read as follows "Recognizing also the need to seek, receive and impart information and ideas through any media and regardless of frontiers, and that the use of new technologies and services that can potentially improve the lives of the visually impaired/persons with print disabilities," (European Union and its Member States).

0.10. The tenth paragraph should be deleted as it is duplicative of the eleventh paragraph (Senegal).

0.11 The twelfth paragraph is not clear and needs further consideration. The problem is not the shortage but the need of international norms on limitations and exceptions (Senegal). Many countries do have national exceptions and limitations for visually impaired persons. But even counting on these exceptions and limitations, the cross-border exception should help in reducing the shortage in certain countries (Brazil).

0.12 In the twelfth paragraph, the word "acceptable" should be replaced by "accessible" (United States of America).

[Comments on the Preamble continue, page 10]

[Preamble, continued]

*(Tenth)*⁵

Recognizing also the need to seek, receive and impart information and ideas through any media and regardless of frontiers,

(Eleventh)

Aware that national copyright legislation is territorial in nature, and where activity is undertaken across jurisdictions, uncertainty regarding the legality of activity undermines the development and use of new technologies and services that can potentially improve the lives of the visually impaired/persons with print disabilities,

(Twelfth)

Recognizing the large number of Members who, to that end, have established exceptions and limitations in their national copyright laws for visually impaired persons/persons with a print disability, and yet there is a continuing shortage of available works in acceptable formats for such persons,

[Preamble continues, page 11]

⁵ (merge Tenth and Eleventh) Recognizing also the need to seek, receive and impart information and ideas through any media and regardless of frontiers, ~~Aware that national copyright legislation is territorial in nature, and where activity is undertaken across jurisdictions, uncertainty regarding the legality of activity undermines the development and use of new technologies and services~~ and that the use of new technologies and services can potentially improve the lives of the visually impaired/persons with print disabilities, (European Union and its Member States)

(merge Tenth and Eleventh) Recognizing also the need to seek, receive and impart information and ideas through any media and regardless of frontiers, as well as the fact that legislation is territorial in nature and there is uncertainty regarding the legality of activity that undermines the development and use of new technologies, (Senegal).

0.13. In the thirteenth paragraph, "copyright exceptions and limitations" should be replaced by "alternative measures" (European Union and its Member States).

0.14 The thirteenth paragraph is not clear and needs further consideration. The objective is to have limitations and exceptions within a harmonized international environment. It should refer to the fact that there may also be works that are not in a format available to such persons, not necessarily print works or also other kinds of works (Senegal).

0.15 The fifteenth paragraph should read "Reaffirming the obligations of Member States under the existing international treaties on the protection of copyright and the importance and flexibility of the three-step test for limitations and exceptions established in Article 9(2) of the Berne Convention and other international instruments;" (European Union and its Member States).

0.16 In the fifteenth paragraph, the sentence "emphasizing the importance and flexibility of the three step test" should be replaced by "reaffirming the importance and flexibility of the three step test". The concept of three step test should be the base of this instrument (European Union and its Member States, Japan).

[Comments on the Preamble continue, page 12]

[Preamble, continued]

*(Thirteenth)*⁶

Recognizing that the preference is for works to be made accessible by rights holders to people with disabilities at publication and that, to the extent that the market is unable to provide appropriate access to works for visually impaired persons/persons with a print disability, it is recognized that appropriate copyright exceptions and limitations are needed to improve such access,

(Fourteenth)

Recognizing also the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information, and that such a balance must facilitate effective and timely access to works for the benefit of visually impaired persons/persons with a print disability,

*(Fifteenth)*⁷

Emphasizing the importance and flexibility of the three-step test for limitations and exceptions established in Article 9(2) of the Berne Convention and other international instruments,

[Preamble continues, page 13]

⁶ (Thirteenth) Recognizing that the preference is for works to be made accessible by rights holders to people with disabilities at publication and that, to the extent that the market is unable to provide appropriate access to works for visually impaired persons and persons with a print disability, it is recognized that alternative measures are needed to improve such access, (European Union and its Member States).

⁷ (Fifteenth) Reaffirming the obligations of Members States under the existing international treaties on the protection of copyright and the importance and flexibility of the three-step test for limitations and exceptions established in Article 9(2) of the Berne Convention and other international instruments, (European Union and its Member States, Japan).

(Fifteenth) Emphasizing the importance and flexibility of the three step test for limitations and exceptions established in article 9(2) of the Berne Convention and other international instruments and its interpretation in a manner that respects the legitimate interests of third parties, including interests deriving from human rights and fundamental freedoms; interests in competition, notably on secondary markets; and other public interests, notably in scientific progress and cultural, social, or economic development, (Pakistan).

0.17 In the sixteenth paragraph, the word "Needing" should be replaced by "Prompted by the desire" (European Union and its Member States).

0.18 The seventeenth paragraph should read "Taking into account the importance of increasing the number and range of accessible format works available to visually impaired persons/persons with print disabilities in the world, and to ensure full and equal access to information and communication for persons who are visually impaired or have a print disability in order to support their full and effective participation in society on an equal basis with others, and to ensure the opportunity to develop and utilize their creative, artistic and intellectual potential, for their own benefit and for the enrichment of society," (European Union and its Member States).

0.19 In the seventeenth paragraph, "to support" should be replaced by "to guarantee" (Spain).

0.20 In the seventeenth paragraph, replace "of Member States agreeing to make commitments both to increase" with "of increasing" (United States of America).

0.21 The final wording of the Preamble "having agreed as follows" may depend on the nature of the instrument (United States of America).

0.22 A new paragraph should be added and read "Desiring to harmonize and enhance national laws on such limitations and exceptions through an international framework consistent with the Berne Convention in order to facilitate access to knowledge in copyrighted works by persons with disabilities," (Kenya, on behalf of the African Group).

0.23 Member States have agreed to craft a clause recognizing the Development Agenda for the Audiovisual Performers Treaty (AVP) and that, eventually, there probably should be some consistency between the AVP provision and the provision in this instrument (United States of America). This is related to the sixteenth paragraph.

0.24 The number of paragraphs of the Preamble can be reduced from 17 to no more than 10 paragraphs (Egypt, Kenya, on behalf of the African Group; Russian Federation, United States of America).

[End of comments on the Preamble]

*(Sixteenth)*⁸

Needing to contribute to the implementation of the relevant recommendations of the Development Agenda of the World Intellectual Property Organization,

*(Seventeenth)*⁹

Taking into account the importance of Member States agreeing to make commitments both to increase the number and range of accessible format works available to visually impaired persons/persons with print disabilities in the world, and to provide the necessary minimum flexibilities in copyright laws that are needed to ensure full and equal access to information and communication for persons who are visually impaired or have a print disability in order to support their full and effective participation in society on an equal basis with others, and to ensure the opportunity to develop and utilize their creative, artistic and intellectual potential, for their own benefit and for the enrichment of society,

¹⁰

Have agreed as follows:

[End of Preamble]

⁸ (Sixteenth) Prompted by a desire to contribute to the implementation of the relevant recommendations of the Development Agenda of the World Intellectual Property Organization, (European Union and its Member States).

⁹ (Seventeenth) Taking into account the importance of Member States agreeing to make commitments both to increasing the number and range of accessible format works available to visually impaired persons/persons with print disabilities in the world, and to provide the necessary minimum flexibilities in copyright laws that are needed to ensure full and equal access to information and communication for persons who are visually impaired or have a print disability in order to support their full and effective participation in society on an equal basis with others, and to ensure the opportunity to develop and utilize their creative, artistic and intellectual potential, for their own benefit and for the enrichment of society, (European Union and its Member States).

¹⁰ (New paragraph) Desiring to harmonize and enhance national laws on such limitations and exceptions through an international framework consistent with the Berne Convention in order to facilitate access to knowledge in copyrighted works by persons with disabilities, (Kenya, on behalf of the African Group).

Comments on Article A

A.01 The definition of "work" should also refer to scientific works as provided by the Berne Convention (Egypt, Russian Federation). Other construction could be made to include the scientific works (United States of America).

A.02 The definition of "work" should read "means a protected work within the meaning of the Berne Convention, whether published or otherwise made publicly available in any media." (Brazil, European Union and its Member States, United States of America). Works refer to printed material (European Union and its Member States, United States of America). Variations to the current definition are also acceptable (United States of America).

A.03 The definition of "work" should be further elaborated (Senegal).

A.04 In the definition of "work", "literary" should be replaced by "written literary" (Switzerland). Some other construction could be made to include the print format (United States of America)

[Comments on Article A continue, page 16]

ARTICLE A
DEFINITIONS

For the purposes of these provisions

"work"¹¹

means a literary or artistic work protected by copyright and includes any literary and artistic work in which the copyright remains valid, whether published or otherwise made publicly available in any media.

[Article A continues, page 17]

¹¹ "work" means a protected work within the meaning of the Berne Convention, whether published or otherwise made available to the public in any media (Brazil, European Union and its Member States, United States of America).

"work" means a literary, scientific or artistic work protected by copyright and includes any literary and artistic work in which the copyright remains valid, whether published or otherwise made publicly available in any media (Egypt, Russian Federation).

"work" means a literary or artistic work protected by copyright and includes any written literary and artistic work in which the copyright remains valid, whether published or otherwise made publicly available in any media (Switzerland)

A.05 The definition of "accessible format copy" should refer to any work, not just those that are printed but also those that are in digital form (Algeria). Other construction could be made to recognize works that exist principally or originally in a digital format, even though what they are is print or writing (United States of America).

A.06 In the definition of "accessible format copy," the phrase "as a person without a print disability" should be replaced by "as a person without visual impairment and print disabilities" (India).

A.07 The definition of "accessible format copy" should refer to actually any type of copy (Senegal).

A.07*bis* The definition of accessible format copy should be comprehensive and holistic in a manner that it encompasses both the printed and digital works (Pakistan).

[Comments on Article A continue, page 18]

[Article A, continued]

"accessible format copy"¹²

means a copy of a work in an alternative manner or form which gives a beneficiary person access to the work, including to permit the person to have access as feasibly and comfortably as a person without a print disability. The accessible format copy must respect the integrity of the original work and be used exclusively by beneficiary persons.

[Article A continues, page 19]

¹² "accessible format copy" means a copy of any work in an alternative manner or form which gives a beneficiary person access to the work, including to permit the person to have access as feasibly and comfortably as a person without a print disability. The accessible format copy must respect the integrity of the original work and be used exclusively by beneficiary persons (Algeria).

"accessible format copy" means a copy of a work in an alternative manner or form which gives a beneficiary person access to the work, including to permit the person to have access as feasibly and comfortably as a person without visual impairment and print disabilities. The accessible format copy must respect the integrity of the original work and be used exclusively by beneficiary persons (India).

"accessible format copy" means any copy of a work in an alternative manner or form which gives a beneficiary person access to the work, including to permit the person to have access as feasibly and comfortably as a person without a print disability. The accessible format copy must respect the integrity of the original work and be used exclusively by beneficiary persons (Senegal).

- A.08 As to the definition of "authorized entity", it is asked who authorizes the authorized entity and how trust is got (Japan).
- A.09 As to the definition of "authorized entity", first paragraph, the phrase "activities" should be replaced by "primary missions" (European Union and its Member States, United States of America).
- A.10 As to the definition of "authorized entity", first paragraph, the phrase "in accordance with national law" should be further clarified (Brazil) or deleted (European Union and its Member States, United States of America).
- A.10*bis* In the definition of "authorized entity", first paragraph, the reference to "one of the activities" of the governmental agency, a non-profit entity or non-profit organization shall allow for the possibility of inclusion of many schools, universities and other bona fide organizations for which accessible format provision is vital work but not a "primary" part of what they do. Therefore the first paragraph of definition is supported as it is in the text (Pakistan).
- A.11 In the definition of "authorized entity", the phrase "to assist persons with print disabilities" should be replaced by "to assist persons with visual impairment and persons with print disabilities" (India).
- A.12 As to the definition of "authorized entity", the second paragraph should read "an authorized entity maintains rules and procedures to establish the bona fide nature of persons with print disabilities that they serve." (European Union and its Member States).
- A.13 As to the definition of "authorized entity", the second paragraph should start with the sentence "The national competent authorities authorize the authorized entities." (Morocco, Senegal).
- A.14 As to the definition of "authorized entity", the second paragraph should read "an authorized entity maintains rules and procedures to determine the eligibility of the beneficiary persons that they serve" (United States of America).
- A.15 In the definition of "authorized entity", third paragraph, delete "prior" (Ecuador).
- A.16 As to the definition of "authorized entity", the third paragraph should have an additional sentence that reads "Member States/Contracting parties should encourage rightholders and beneficiary persons to cooperate and participate in authorized entities." (European Union and its Member States).
- A.17 As to the definition of "authorized entity", third paragraph, the meaning of "trust" should be further discussed. There is a concern that the current wording might lead to a licensing system (India).
- A.17*bis* As to the definition of "authorized entity", third paragraph, a complex set of authorization, security and reporting standards for "authorized entities", and a reference to prior permission to be attached to authorized entities shall defeat the purpose of the flexibility as it would make the process extensively cumbersome and complex. Each authorized entity should undertake self regulation with respect to security and reporting standards. The text proposes to introduce exceptions and limitations and the exercise of such exceptions or limitations should not be subject to the "trust" of rights holders or the approval of rights holders, whether it is prior or post approval. In view of this, it is proposed that the third paragraph be deleted entirely (Pakistan).

[Comments on Article A continue, page 20]

[Article A, continued]

"authorized entity."¹³

means a governmental agency, a non-profit entity or non-profit organization that has as one of its activities to assist persons with print disabilities by providing them with services relating to education, training, adaptive reading, or information access needs, in accordance with national law.

An authorized entity maintains rules and procedures to determine the beneficiary persons that they serve.

An authorized entity has the trust of both beneficiary persons and copyright rights holders. It is understood that to obtain the trust of such rights holders and beneficiary persons, it is not necessary to require the prior permission of said rights holders or persons.

If an authorized entity is part of a nationwide network of organizations, then all organizations, institutions, and entities must adhere to these characteristics, in accordance with national law.

[Article A continues, page 21]

¹³ "authorized entity" means a governmental agency, a non-profit entity or non-profit organization that has as one of its activities to assist persons with print disabilities by providing them with services relating to education, training, adaptive reading, or information access needs, in accordance with national law.

~~An authorized entity maintains rules and procedures to determine the beneficiary persons that they serve.~~
An authorized entity has the trust of both beneficiary persons and copyright rights holders. It is understood that to obtain the trust of such rights holders and beneficiary persons, it is not necessary to require the prior permission of said rights holders or persons (India).

"authorized entity" means a governmental agency, a non-profit entity or non-profit organization that has as one of its primary missions to assist persons with print disabilities by providing them with services relating to education, training, adaptive reading, or information access needs authorized entity maintains rules and procedures to establish the bona fide nature of persons with print disabilities that they serve. An authorized entity has the trust of both beneficiary persons and copyright rights holders. It is understood that to obtain the trust of such rights holders and beneficiary persons, it is not necessary to require the prior permission of said rights holders or persons. Member States/Contracting parties should encourage rightholders and beneficiary persons to cooperate and participate in authorized entities. Organizations, institutions, and entities which are part of a nationwide network and adhere to all these characteristics are authorized entities (European Union and its Member States).

A.18 The definition of "authorized entity" should be deleted. Reservations are kept regarding the fourth paragraph (Kenya, on behalf of the African Group). African do not have authorized entities and a certain amount of flexibility is needed in that respect (Senegal).

A.19 In the definition of "authorized entity", the fourth paragraph should be replaced by "Organizations, institutions, and entities which are part of a nationwide network and adhere to all these characteristics are authorized entities." (European Union and its Member States).

A.20 The definition of "authorized entity" should include a reference to the need to keep statistical tracking of what is being used and how many copies are produced and distributed (Jamaica).

[Comments on Article A continue, page 22]

[Article A continues, page 23]

A.21 The definition of "reasonable price for developing countries" should be replaced by "means that the accessible format copy of the work is available at a similar or lower price than the price of the work available to persons without print disabilities in that market, taking into account the needs and income disparities of persons who have limited vision and those with print disabilities in that market." (European Union and its Member States).

A.21bis The word "affordable" must be retained in the definition of "reasonable price for developing countries". Each developing country Member State must have the flexibility to determine what "reasonable price" is (Pakistan).

A.22 Further discussions and debates are essential on the complex issue of "reasonable price" as it is not mature (European Union and its Member States).

A.23 The definition of "copyright" should be further discussed, but in the meantime it is desirable to delete it (European Union and its Member States).

A.24 According to the nature of the instrument, there will be a need to agree on a definition of "Member State" or "Contracting Party". In the meantime, it is desirable to delete it (European Union and its Member States).

A.25 The definition of "Member State" should read "means a State member of the World Intellectual Property Organization or a country of the Union established by the Berne Convention for the Protection of Literary and Artistic Works and/or a Contracting Party of the WCT" (Argentina).

A.26 The instrument should refer to "copyright and related rights to copyright" as using the single term of "copyright" to cover both categories of rights is confusing (Senegal). This is a cross-cutting issue, particularly in relation to the inclusion of neighboring or related rights (Brazil, European Union and its Member States) and the reference to members of WCT in the definition of "Member State" (Brazil).

A.27 An additional definition on "limitations" and "exceptions" should be included, particularly regarding the different effects that each definition according to national law (Algeria). It is not wise to introduce such a definition (Brazil, United States of America).

[End of comments on Article A]

[Article A, continued]

"reasonable price for developed countries"

means that the accessible format copy of the work is available at a similar or lower price than the price of the work available to persons without print disabilities in that market.

"reasonable price for developing countries"¹⁴

means that the accessible format copy of the work is available at prices that are affordable in that market, taking into account the needs and income disparities of persons who have limited vision and those with print disabilities.

"Member State"¹⁵

means a State member of the World Intellectual Property Organization or of the Berne Convention for the Protection of Literary and Artistic Works and/or a Contracting Party of the WCT.

References to "copyright"¹⁶ include copyright and any rights related to copyright recognized by Member States in accordance with national law.

[End of Article A]

¹⁴ "reasonable price for developing countries" means that the accessible format copy of the work is available at a similar or lower price than the price of the work available to persons without print disabilities in that market, taking into account the needs and income disparities of persons who have limited vision and those with print disabilities in that market (European Union and its Member States).

¹⁵ "Member State" means a State member of the World Intellectual Property Organization or of the Berne Convention for the Protection of Literary and Artistic Works and/or a Contracting Party of the WCT. (European Union and its Member States).

"Member State" means a State member of the World Intellectual Property Organization or a country of the Union established by the Berne Convention for the Protection of Literary and Artistic Works and/or a Contracting Party of the WCT (Argentina).

¹⁶ References to "copyright" include copyright and any rights related to copyright recognized by Member States in accordance with national law. (European Union and its Member States).

Comments on Article B

B.01 There is no need to refer to persons with print disabilities, persons with reading disabilities, persons with visual impairment, etc. in the instrument. Since there is a definition of "beneficiary persons", the term "beneficiaries" suffice and can replace the above terms in the text (Brazil, United States of America).

B.02 The definition of "beneficiary persons" should be included in Article A with the other definitions (Algeria, India). The separate treatment of this definition is the approach taken in the draft treaty submitted by Brazil, Ecuador, Mexico, Paraguay, later joined by Argentina. This construction stresses the importance that this is for the benefit of those people (Brazil, Egypt, Morocco, Nigeria, United States of America). Definitions in Article A and B could also be grouped under one single chapter called "Chapter on definitions" (Algeria).

B.03 The first line of the definition should read "A beneficiary person is:" Then each paragraph (a), (b) and (c) should start with the words "a person", so that it is clear that there are three categories of beneficiaries (Morocco).

B.04 In Paragraph b), delete "or any other print disability" (United States of America).

B.05 Paragraph c) should read "is unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading in the manner of a person without such a disability" (United States of America).

[End of comments on Article B]

ARTICLE B
BENEFICIARY PERSONS

A beneficiary person is a person who

- (a) is blind;
- (b) has a visual impairment or a perceptual or reading disability or any other print disability, which cannot be improved by the use of corrective lenses to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or
- (c) is unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading.

[End of Article B]

Comments on new Article X

X.01 It is proposed to reinsert Article X which reads:

ARTICLE X

NATURE AND SCOPE OF OBLIGATIONS

1. Member States/Contracting parties should/shall adopt appropriate measures to implement the provisions of this international legal instrument/joint recommendation/treaty.
2. Member States/Contracting Parties should/shall apply the international legal instrument/joint recommendation/treaty transparently, taking into account the priorities and special needs of developing countries as well as the different levels of development of the Member States/Contracting Parties.
3. Member States/Contracting parties should/shall ensure the implementation of this international legal instrument/joint recommendation/treaty allows for timely and effective exercise of actions covered, including expeditious procedures that are fair and equitable (Kenya, on behalf of the African Group).

[End of comments on Article X]

NEW ARTICLE X¹⁷
NATURE AND SCOPE OF OBLIGATIONS

[End of Article X]

¹⁷ **NATURE AND SCOPE OF OBLIGATIONS**

1. Member States/Contracting parties should/shall adopt appropriate measures to implement the provisions of this international legal instrument/joint recommendation/treaty.
2. Member States/Contracting Parties should/shall apply the international legal instrument/joint recommendation/treaty transparently, taking into account the priorities and special needs of developing countries as well as the different levels of development of the Member States/Contracting Parties.
3. Member States/Contracting parties should/shall ensure the implementation of this international legal instrument/joint recommendation/treaty allows for timely and effective exercise of actions covered, including expeditious procedures that are fair and equitable (Kenya, on behalf of the African Group).

Comments on Article C

C.01 Replace Member States by Member States/Contracting Parties. Also, replace shall by should/shall. This is to reflect the prevailing difference regarding the nature of the instrument, namely a recommendation or a treaty. This applies to the other articles as well (Brazil, Egypt, United States of America, European Union and its Member States, Senegal). *This change was included in the text.*

C.02 Article C should include the right of translation, after the right of reproduction. Translation is a key to technological and cultural development and exceptions to that right are allowed by Article 13 of the TRIPs Agreement (Egypt). The right of translation is implicit in the right of reproduction, but it can be included explicitly (Ecuador). The inclusion of the right of translation is a matter of concern, particularly regarding its justification and the moral rights ramifications (United States of America).

C.03 Article C should refer not only to "exceptions" but to "limitations and exceptions" (Algeria, United States of America).

C.04 The phrase in Paragraph (1) "to facilitate the availability of works in accessible formats" significantly broadens the aim of the instrument and has broad implications. It should be preceded by the phrase "or any other equally effective measure" (European Union and its Member States).

C.05 In Paragraph (1), the reference to the WCT should be reinserted so that it reads "the right of making available to the public, as defined in article 8 of the WCT" (Brazil). The issue of rights "such as the reproduction right and the making available right while referring to copyright as defined under national law" needs further clarification (United States of America).

C.06 Paragraph (2)(A) should read "Authorized entities shall be permitted to make an accessible format copy of a work, obtain from another authorized entity a work in accessible format, and supply such a copy to a beneficiary person by any means, including by non-commercial lending or by electronic communication by wire or wireless means, and undertake any intermediate steps to achieve those objectives, when all of the following conditions are met:" (European Union and its Member States).

C.07 The footnote of Paragraph (2)(A) which reads "It is understood that cooperation or partnerships with other organizations, including for profit organizations, shall be permitted." should be reinserted (Brazil, United States of America).

[Comments on Article C continue, page 30]

ARTICLE C¹⁸

NATIONAL LAW EXCEPTIONS ON ACCESSIBLE FORMAT COPIES

1. A Member State/Contracting Party should/shall provide in its national copyright law for an exception or limitation to the right of reproduction, the right of distribution and the right of making available to the public, to facilitate the availability of works in accessible formats for beneficiary persons as defined herein.

2. A Member State/Contracting Party may fulfill Article C (1) by providing an exception or limitation in its national copyright law such that:

(A) Authorized entities shall be permitted without the authorization of the copyright rights holder to make an accessible format copy of a work, obtain from another authorized entity a work in accessible format, and supply those copies to a beneficiary person by any means, including by non-commercial lending or by electronic communication by wire or wireless means, and undertake any intermediate steps to achieve those objectives, when all of the following conditions are met:

1. the authorized entity wishing to undertake said activity has lawful access to that work or a copy of that work;
2. the work is converted to an accessible format copy, which may include any means needed to navigate information in the accessible format, but does not introduce changes other than those needed to make the work accessible to the beneficiary person;
3. copies of the work in the accessible format are supplied exclusively to be used by beneficiary persons; and
4. the activity is undertaken on a non-profit basis.

[Article C continues, page 31]

¹⁸ 1. A Member State/Contracting Party should/shall provide in its national copyright law for an exception or limitation to the right of reproduction, the right of distribution and the right of making available to the public, or any other equally effective measure, to facilitate the availability of works in accessible formats for beneficiary persons as defined herein.

2. [...]:

(A) Authorized entities shall be permitted to make an accessible format copy of a work, obtain from another authorized entity a work in accessible format, and supply such a copy to a beneficiary person by any means, including by non-commercial lending or by electronic communication by wire or wireless means, and undertake any intermediate steps to achieve those objectives, when all of the following conditions are met: [...]

3. A Member State/Contracting Party may fulfill Article C(1) by providing any other exception or limitation in its national copyright law.

4. The Member State/Contracting Party shall limit the exceptions or limitations provided for in this article to published works which, in an applicable special format, cannot be otherwise obtained within a reasonable time and at a reasonable price (European Union and its Member States).

C.08 In Paragraph (3), delete reference to three-step test "that is limited to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder." This proposal of deletion is absolutely conditional on the inclusion of a separate Article *Ebis* (European Union and its Member States).

C.09 In Paragraph (3), the word "likewise" should be inserted before "limited" (Brazil, United States of America). Paragraph (3) is intended to state the freedom of Contracting Parties of the Berne Convention and the other copyright treaties to adopt other exceptions and limitations that meet the three-step test (United States of America).

C.10 Paragraph (4) should read "the Member State/Contracting Party shall limit the exceptions or limitations provided for in this article to published works which, in an applicable special format, cannot be otherwise obtained within a reasonable time and at a reasonable price" (European Union and its Member States). The word "otherwise" should be retained in this paragraph (Brazil, United States of America). Exceptions should not depend on the existence of commercially available works, as in this case the question is defending a fundamental human right (Ecuador).

C.11 Paragraph (4) should read "The Member State/Contracting Party should/shall limit the exceptions or limitations provided for in this article to published works which, in an applicable special format, cannot be otherwise obtained within a reasonable time and at a reasonable price." The term "otherwise" shows that there is a leeway for market-based solutions to get copies as an alternative to the exception (European Union and its Member States).

C.12 As to Paragraph (4), it is asked what "reasonable time" means. Delete from the second sentence "within a reasonable time and" (India).

C.13 Paragraph (4) should use the word "shall" so that exceptions are applied when there are no reasonable alternatives, and incentives to produce accessible materials remain (Jamaica).

C.14 In Paragraph (4), the word "said exceptions or limitations" should change to "exceptions or limitations under this Article". This will clarify the scope of the provision (European Union and its Member States, United States of America).

C.15 Paragraph (4) should be moved as part, and at the end, of Paragraph (2) (Japan, Switzerland). This paragraph provides flexibility for alternative solutions but should not limit the flexibility in paragraph (3) beyond the limitations of the three-step test (Switzerland). This scope and proper ordering of this paragraph needs further consideration (United States of America).

C.16 In Paragraph (5), the expression of exceptions or limitations is used, but it does not mean that this refers to the licensing system (India).

C.17 The order of paragraphs could be a matter of further consideration for the sake of clarity. Paragraph 2(B) can change with 2(A), paragraph (3) can change to (1), paragraph (4) can change to (2), and paragraph (5) can change to (3) (Senegal). This sequence seems acceptable for the sake of coherence (European Union and its Member States).

[End of comments on Article C]

[Article C, continued]

- (B) A beneficiary person or someone acting on his or her behalf may make an accessible format copy of a work for the personal use of the beneficiary person where the beneficiary person has lawful access to that work or a copy of that work.
3. A Member State/Contracting Party may fulfill Article C(1) by providing any other exception or limitation in its national copyright law that is limited to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.
4. The Member State/Contracting Party may limit said exceptions or limitations to published works which, in the applicable special format, cannot be obtained within a reasonable time and at a reasonable price.
5. It shall be a matter for national law to determine whether exceptions or limitations referred to in this Article are subject to remuneration.

[End of Article C]

Comments on Article D

D.01 In paragraph (1), add "or otherwise" after "export license" (Ecuador).

D.02 It is asked whether the reference in the first paragraph to "authorized entity" is an authorized entity of an exporting country. Under Japanese copyright law, the accessible format copy which is made in accordance with the provision of limitation on reproduction right can be exported as long as it is treated within the purpose of the provision of limitation. Therefore, it is possible for Japan to enable accessible format copies to be exported without an authorized entity which is precisely defined in Article A although an authorized entity may be one of good measures to ensure accessible format copies are treated within the purpose of the limitation. This kind of flexibility can contribute to cross-border exchange of accessible format copies (Japan).

D.03 It is also asked what paragraph (1) of Article D asks Member States to do exactly. According to the first paragraph, a Member State is required to achieve its legal condition under which its own authorized entity is allowed to distribute or make available accessible format copies in case the member state has an authorized entity and the authorized entity wants to do so. In other words, a member state is not necessarily required to establish an authorized entity or to implement the exportation of accessible format copies through an authorized entity. On the basis of this understanding on the first paragraph and thanks to the third paragraph, Article D is interpreted as it allows a Member State to adopt any other measure which satisfies the criteria of three step test and does not require an authorized entity (Japan).

D.03*bis* As to Paragraph (1), An authorized entity in one Member State must be able to distribute accessible format copies to beneficiaries in another Member State after determining the bonafide nature of the beneficiary persons they serve without having to undertake any other inquiry. Therefore the paragraph 1 be reworded as follows :

"Member States shall provide that if an accessible format copy of a work is made under an exception or limitation or export license in accordance with the national law, that accessible format copy may be distributed or made available to a person with print disabilities in another Member State by an authorized entity after determining the bona fide nature of the beneficiary person" (Pakistan)

D.03*ter* As to Paragraph (1), delete from the last sentence "where that other Member State would permit that beneficiary person to make or import that accessible copy" (India).

D.04 The word "importation" and "exportation" usually means the exchange of tangible goods or products, and usually does not mean, exchanging intangible goods such as the digital format. If the word importation and exportation in this instrument include exchanging the digital format, it is better to explicitly write this point somewhere in this instrument in order to prevent ambiguity (Japan).

D.05 In Paragraph (2)(A), delete "without the authorization of the rightholder" (European Union and its Member States).

D.05*bis* As to Paragraph 2, an authorized entity in one Member State must be able to provide accessible format copies to an authorized entity in another Member State. Article D(2)(a) must be retained as is (Pakistan).

[Comments on Article D continue, page 34]

ARTICLE D¹⁹

CROSS-BORDER EXCHANGE OF ACCESSIBLE FORMAT COPIES

1. Member State/Contracting Party should/shall provide that if an accessible format copy of a work is made under an exception or limitation or export license in accordance with the national law, that accessible format copy may be distributed or made available to a beneficiary person in another Member State by an authorized entity where that other Member State would permit that beneficiary person to make or import that accessible copy.

[Article D continues, page 35]

¹⁹ 2. A Member State/Contracting Party may fulfill Article D(1) by providing an exception or limitation in its national copyright law such that:

(A) Authorized entities shall be permitted ~~without the authorization of the rights holder~~ to distribute or make available accessible format copies to authorized entities in other Member States/Contracting Parties for the exclusive use of beneficiary persons, where such activity is undertaken on a non-profit basis.

(B) Authorized entities shall be permitted ~~without the authorization of the rights holder~~ to distribute or make available accessible format copies to persons with print disabilities in other Member States where the authorized entity has verified the individual is properly entitled to receive such accessible format copies under that other Member State's national law.

~~The Member State may limit said distribution or making available of published works which, in the applicable accessible format, cannot be otherwise obtained within a reasonable time and at a reasonable price, in the country of importation.~~

3. A Member State/Contracting Party may fulfill Article D(1) by providing any other exception or limitation in its national copyright law that is limited to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

3bis. The Member State/Contracting Party should/shall limit the exceptions or limitations provided for in this article to published works which, in an applicable special format, cannot be otherwise obtained within a reasonable time and at a reasonable price in the country of importation (European Union and its Member States).

1. Member States shall provide that if an accessible format copy of a work is made under an exception or limitation or export license in accordance with the national law, that accessible format copy may be distributed or made available to a person with print disabilities in another Member State by an authorized entity after determining the bona fide nature of the beneficiary person (Pakistan).

2. [...]

(A) the Member State/Contracting Party may limit distribution or making available under this article of works which, in the applicable special format, cannot be otherwise obtained within a reasonable time and at a reasonable price, in the country of importation (United States of America).

D.06 In Paragraph (2)(B), delete "without the authorization of the rightholder" (European Union and its Member States).

D.07 In Paragraph (2), after subparagraph (B), delete the last paragraph that reads "The Member State/Contracting Party may limit said distribution or making available of published works which, in the applicable accessible format, cannot be otherwise obtained within a reasonable time and at a reasonable price, in the country of importation" (European Union and its Member States). A separate paragraph (3)*bis* is proposed in this connection (European Union and its Member States).

D.08*bis* In Paragraph (2), delete in the second sentence "within a reasonable time and" (India).

D.08 In Paragraph (2), after subparagraph (B), include the phrase "under this article" after "making available," to clarify that it does not refer to other things the Member State or Contracting Party may do. Also, delete the word "published" before "works," to address the concern about capturing published and making available in media in the digital era. The paragraph will read "the Member State/Contracting Party may limit distribution or making available under this article of works which, in the applicable special format, cannot be otherwise obtained within a reasonable time and at a reasonable price, in the country of importation." (United States of America).

D.09 In Paragraph (3), delete reference to three-step test "that is limited to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder." This proposal of deletion is absolutely conditional on the inclusion of a separate Article *Ebis* (European Union and its Member States).

D.10*bis* In Paragraph (3), add in the last sentence "and without prejudice to other exceptions to the exclusive rights of authors that are otherwise permitted by the Berne Convention or the TRIPS Agreement" (India).

D.10 In Paragraph (3), the word "likewise" should be inserted before "limited" (Brazil, United States of America). More clarification is needed regarding the insertion of this term (Ecuador). Paragraph (3) is intended to state the freedom of Contracting Parties of the Berne Convention and the other copyright treaties to adopt other exceptions and limitations that also meet the three-step test (United States of America).

D.11 It is proposed to add a new paragraph *3bis* that reads "The Member State/Contracting Party should/shall limit the exceptions or limitations provided for in this article to published works which, in an applicable special format, cannot be otherwise obtained within a reasonable time and at a reasonable price in the country of importation." (European Union and its Member States).

[End of comments on Article D]

[Article D, continued]

2. A Member State/Contracting Party may fulfill Article D(1) by providing an exception or limitation in its national copyright law such that:

(A) Authorized entities shall be permitted without the authorization of the rightholder to distribute or make available accessible format copies to authorized entities in other Member States/Contracting Parties for the exclusive use of beneficiary persons, where such activity is undertaken on a non-profit basis.

(B) Authorized entities shall be permitted without the authorization of the rightholder to distribute or make available accessible format copies to beneficiary persons in other Member States/Contracting Parties where the authorized entity has verified the individual is properly entitled to receive such accessible format copies under that other Member State/Contracting Party's national law.

The Member State/Contracting Party may limit said distribution or making available of published works which, in the applicable accessible format, cannot be otherwise obtained within a reasonable time and at a reasonable price, in the country of importation.

3. A Member State/Contracting Party may fulfill Article D(1) by providing any other exception or limitation in its national copyright law that is limited to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

[End of Article D]

Comments on Article E

E.01 The word "importation" and "exportation" usually means the exchange of tangible goods or products, and usually does not mean, exchanging intangible goods such as the digital format. If the word importation and exportation in this instrument include exchanging the digital format, it is better to explicitly write this point somewhere in this instrument in order to prevent ambiguity (Japan).

E.02 Delete the phrase "without the copyright rights holder's authorization" (European Union and its Member States, United States of America). Article E should allow Member States to mirror the flexibility of their exception in relation to imports. That phrase could mean, for example, that in other articles where it is not specified, there is no need the right holders' authorization. This article requires further discussion, in particular regarding the notion of importation in relation to copyright (European Union and its Member States).

E.03 The word "likewise" should be included in this provision after the word "shall" (United States of America).

[End of comments on Article E]

ARTICLE E²⁰

IMPORTATION OF ACCESSIBLE FORMAT COPIES

To the extent that national law would permit a beneficiary person or an authorized entity acting on the beneficiary person's behalf to make an accessible format copy of a work, the national law should/shall permit a beneficiary person or an authorized entity acting on that person's behalf to import an accessible format copy, without the copyright rights holder's authorization.

[End of Article E]

²⁰ To the extent that national law would permit a beneficiary person or an authorized entity acting on the beneficiary person's behalf to make an accessible format copy of a work, the national law should/shall permit a beneficiary person or an authorized entity acting on that person's behalf to import an accessible format copy without the copyright rights holder's authorization. (European Union and its Member States).

Comments on new Article *Ebis*

Ebis.01 It is proposed to add a new Article *Ebis* which reads:

ARTICLE *Ebis*

All exceptions and limitations provided for in this instrument shall be limited to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder (European Union and its Member States).

Ebis.02 Here the provision should read "shall" as it refers to the three-step test which relates to existing obligations under international agreements.
(European Union and its Member States)

[End of comments on Article *Ebis*]

NEW ARTICLE *Ebis*²¹

[End of New Article *Ebis*]

²¹ All exceptions and limitations provided for in this instrument shall be limited to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder (European Union and its Member States).

Comments on Article F

F.01 The wording of the article should change as follows:

"Member States shall ensure that beneficiaries of the exception provided by Article C are not prevented from enjoying the exception in cases where technological protection measures have been applied to a work.

A Member State may fulfill Article F(1) by permitting, under its national copyright law, circumvention of technological protection measures for the purposes of, and to the extent necessary for benefiting from an Article C exception" (Australia, Japan).

F.02 In the second paragraph, "At least" should be replaced by "in particular." This article should be seen in connection with the WCT and should a matter of further discussion as it could be construed as giving technical protection measures precedence over other exceptions and limitations, which is not the case under WCT (Switzerland).

F.03 Change "the work" to "a work," and change "Member States" to "a Member State/Contracting Party" because the intent of this article is to express the capacity of a single Member State or a single Contracting Party, not member states working together. Add "may" before "should/shall". After "should/shall", add "authorize competent authorities to". The first paragraph of the Article would read "Member States/Contracting Parties may/should/shall authorize competent authorities to take appropriate measures to ensure that beneficiaries of the exception provided by Article C have the means to enjoy the exception where technological protection measures have been applied to a work". The second paragraph remains the same (United States of America).

F.04 Revise the title as "Obligations concerning Technological measures", and delete paragraph (2) (India).

F.05 There are works that have fallen in the public domain and others that are still protected but can be used under certain exceptions, for instance, for scientific research purposes. Those works may be locked by the use of technological protection measure used by the rightholders which hamper the correct exercise of limitations and exceptions (Egypt).

[End of comments on Article F]

ARTICLE F²²

OBLIGATIONS CONCERNING TECHNOLOGICAL MEASURES

Member States shall ensure that beneficiaries of the exception provided by Article C have the means to enjoy the exception where technological protection measures have been applied to a work.

In the absence of voluntary measures by rights holders and to the extent that copies of the work in the accessible format are not available commercially at a reasonable price or via authorized entities, Member States/Contracting Parties should/shall take appropriate measures to ensure that beneficiaries of the exception provided by Article C have the means of benefiting from that exception when technological protection measures have been applied to a work, to the extent necessary to benefit from that exception.

[End of Article F]

²² Member States shall ensure that beneficiaries of the exception provided by Article C are not prevented from enjoying the exception in cases where technological protection measures have been applied to a work.

A Member State may fulfill Article F(1) by permitting, under its national copyright law, circumvention of technological protection measures for the purposes of, and to the extent necessary for benefiting from an Article C exception (Australia, Japan).

"Member States/Contracting Parties may/should/shall authorized competent authorities to take appropriate measures to ensure that beneficiaries of the exception provided by Article C have the means to enjoy the exception where technological protection measures have been applied to a work [...] (United States of America).

Comments on Article G

No comments were made on this Article.

[End of comments on Article G]

ARTICLE G
RELATIONSHIP WITH CONTRACTS

Nothing herein shall prevent Member States/Contracting Parties from addressing the relationship of contract law and statutory exceptions and limitations for beneficiary persons.

[End of Article G]

Comments on Article H

No comments were made on this Article.

[End of comments on Article H]

ARTICLE H
RESPECT FOR PRIVACY

In the implementation of these exceptions and limitations, Member States/Contracting Parties should/shall endeavor to protect the privacy of beneficiary persons on an equal basis with others.

[End of Article H]

Comment on new Article I.

I.01 It is proposed to add a new Article I which reads:

"The three-step test should be interpreted in a manner that respects the legitimate interests of third parties, including

- interests deriving from human rights and fundamental freedoms;
- interests in competition, notably on secondary markets; and
- other public interests, notably in scientific progress and cultural, educational, social, or economic development" (Venezuela)

[End of comments on New Article I]

NEW ARTICLE I²³

[End of New Article I and of document]

²³ The three-step test should be interpreted in a manner that respects the legitimate interests of third parties, including

- interests deriving from human rights and fundamental freedoms;
- interests in competition, notably on secondary markets; and
- other public interests, notably in scientific progress and cultural, educational, social, or economic development" (Venezuela)



Informal Consultations on the Protection of Broadcasting Organizations

November 26, 2011 to November 27, 2011

Proposed list of issues for consideration for a draft treaty on the protection of broadcasting organizations

I) Objectives

- Relation to other treaties, in particular the WIPO International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done at Rome in October 26, 1961 (?)
- The distinction between *platform of origin* and the *platform of exploitation* (?)
- Differentiated approaches for the scope of application and the scope of protection (?)

II) Object of protection

Proposed list of definitions that might be considered as element of a draft treaty on the protection of broadcasting organisations:

- Broadcasting (?)
- Broadcasting organization (?)
- Broadcast (?)
- Signal (?)
- Electronic communication (?)
- Transmission (?)
- Retransmission (?)
- Fixation (?)
- Other definitions (?)

III) Scope of application

- The protection afforded by the draft treaty should apply both in relation to the visual and sound elements of programs (?)
- The protection granted under the draft treaty should extend only to the transmission of programs by the broadcasting organizations and to pre-broadcast transmissions intended for them, and not to works and other protected subject matter carried by such transmissions, nor to any material in the public domain (?)
- The object of protection under the provisions of the draft treaty should not include mere retransmissions (?)
- The simultaneous and unchanged transmission of its programs over computer networks by a broadcasting organization should be regarded as if it were broadcasting, and shall be afforded the same protection under the draft treaty (?)

IV) Scope of protection

- Exclusive right or right to prevent (?)
- Right to authorize:
 - Communication of programs to the public (?)
 - Making available of programs to the public (?)
 - Performance in public of programs for commercial advantage (?)
 - Use of a pre-broadcast transmission (?)
 - Fixation (?)
 - Reproduction (?)
 - Retransmission of unencrypted broadcasts prior ratification or accession to the treaty (?)
 - Other rights(?)

IV) Exceptions and limitations

The rights provided by the treaty will be subject to exceptions and limitations and public interest safeguards (?)

V) Other elements to be considered

- Protection of encryption and rights management information (?)
- Minimum term of protection (?)
- National treatment (?)
- Enforcement measures(?)
- Operative clauses(?)
- Other provisions (?)



SCCR/23/6
ORIGINAL: ENGLISH
DATE: NOVEMBER 28, 2011

Standing Committee on Copyright and Related Rights

Twenty-third Session

Geneva, November 21 to 25, 28, 29 and December 2, 2011

DRAFT TREATY ON THE PROTECTION OF BROADCASTING ORGANIZATIONS

Proposal presented by the Delegations of South Africa and Mexico

PREAMBLE

The Contracting Parties,

[A paragraph and preamble recognizing the Developmental Agenda to be discussed]

Desiring to develop and maintain the protection of the rights of broadcasting organizations in a manner as effective and uniform as possible,

Recognizing the need to introduce new international rules using a signal-based approach in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,

Recognizing the impact of the development and convergence of information and communication technologies which have given rise to increasing possibilities and opportunities for unauthorized use of broadcasts signals, both, within and across borders,

Recognizing the need to maintain a balance between the rights of broadcasting organizations and the larger public interest, particularly in relation to education, research and access to information,

Recognizing the objective to establish an international system of protection of broadcasting organizations without compromising the rights of holders of copyright and related rights in works and other protected subject matter carried by broadcasts signals, as well as the need for broadcasting organizations to acknowledge these rights,

Recognizing the benefits to the owners of copyright works and related rights works of effective and uniform protection against illegal use of broadcasts signals,

Have agreed as follows:

ARTICLE 1

RELATION TO OTHER CONVENTIONS AND TREATIES

1. Nothing in this Treaty shall derogate from existing rights and obligations that Contracting Parties have to each other under any international, regional or bilateral treaties addressing copyright or related rights.
2. Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright or related rights in subject matter incorporated in broadcasts signals. Consequently, no provision of this Treaty shall be interpreted as prejudicing such protection.
3. This Treaty shall not have any connection with, nor shall it prejudice any rights and obligations under, any other treaties.

ARTICLE 2 DEFINITIONS

For the purposes of this Treaty:

- (a) "signal", means the electronically-generated carrier of information, data and/or audiovisual content, consisting of sounds or images or sounds and images or representations thereof, whether encrypted or not.
- (b) "broadcast", means the transmission of the signal by a broadcasting organization for reception by the public of sounds or images or images and sounds, and broadcasting shall be construed accordingly. Such transmission does not include any rights with respect to the data and/or representations thereof.
- (c) "broadcast signal" means the signal that is broadcast by the broadcasting organization.
- (d) "broadcasting organization", means the legal entity that takes the initiative for packaging, assembling and scheduling of program content for which it has, where necessary, been authorized by rights holders and takes the legal and editorial responsibility or otherwise has rights of use for the broadcasting to the public of everything which is included in its broadcast signal.
- (e) "retransmission", means the simultaneous or delayed transmission for the reception by the public by any means of a broadcast by any other person than the original broadcasting organization; simultaneous transmission of a re-broadcasting shall be understood as well to be a retransmission.
- (f) "fixation", means the embodiment of sounds or of images or of images and sounds or of the representations thereof, from which they can be perceived, reproduced or communicated through a device.

ARTICLE 3 SCOPE OF APPLICATION

1. The protection granted under this Treaty extends only to broadcast signals, and not to works and other subject matter carried by broadcast signals, whether such works and other subject matter are protected by copyright or are in the public domain.
2. The object of protection granted under the provisions of this Treaty shall not include mere retransmission.

ARTICLE 4 BENEFICIARIES OF PROTECTION

1. Contracting Parties shall accord the protection provided under this Treaty to broadcasting organizations that are nationals of other Contracting Parties.
2. Nationals of other Contracting Parties shall be understood to be those broadcasting organizations that meet either of the following conditions:

- (i) the headquarters of the broadcasting organization is situated in another Contracting Party, or
- (ii) the point of origin of the broadcast output signal in an uninterrupted chain of communication intended for direct reception by the public, sections of the public or subscribers is situated in another Contracting Party.

ARTICLE 5 NATIONAL TREATMENT

1. Each Contracting Party, shall accord to the national broadcasting organizations of other Contracting Parties treatment no less favorable than it accords to its own broadcasting organizations in respect of the application of the rights recognized expressly under this Treaty.

ARTICLE 6 RIGHTS OF BROADCASTING ORGANIZATIONS

Alternative A

Broadcasting organizations shall enjoy the right to authorize:

- (i) the communication of their broadcast signals to the public, by any means, including the making available to the public of their broadcast signals in such a way that members of the public may access them from a place and at a time individually chosen by them;
- (ii) the transmission of their broadcast signal;
- (iii) the fixation of their broadcast signal;
- (iv) the direct or indirect reproduction, in any manner or form, of fixations of their broadcast signal;
- (v) the performance in public of their broadcast signals for direct profit-making purposes;
- (vi) the making available to the public of the original and copies of fixations of their broadcast signals, through sale or other transfer of ownership;
- (vii) the use of a pre-broadcast signal intended for them;
- (viii) the transmission by any means for the reception by the public of their broadcasts signals following fixation of such broadcasts signals.

Alternative B

(1) Broadcasting organizations shall enjoy the right to authorize:

- (i) The transmission of their broadcast signal to the public, by any means.
- (ii) The performance in public of their broadcast signals for direct profit-making purposes.
- (iii) The use of pre-broadcast signal.

(2) With respect to the acts under paragraphs (1)(ii) and (iii), in this article, it shall be a matter for domestic law of the Contracting Party where protection of this right is claimed to determine the conditions under which it may be exercised, provided that such protection is adequate and effective.

ARTICLE 7
LIMITATIONS AND EXCEPTIONS

(1) Any Contracting State may, in its domestic laws and regulations, provide for exceptions to the protection guaranteed by this Treaty as regards:

- (i) private use;
- (ii) use of short excerpts in connection with the reporting of current events;
- (iii) use solely for the purposes of education and scientific research.

(2) Notwithstanding the contents of paragraph (1) of this Article, any Contracting State may, in its domestic laws and regulations, provide for same or further limitations or exceptions as are applied in connection with the protection of copyright in copyrightable works to the extent such exceptions and limitations are confined to special cases that do not conflict with the normal exploitation of the broadcast signal and do not unreasonably prejudice the legitimate interests of the broadcasting organization.

ARTICLE 8
TERM OF PROTECTION

The term of protection to be granted to broadcasting organizations under this Treaty shall last for a minimum period of 20 years computed from the end of the year in which the broadcast signal was broadcast.

ARTICLE 9
OBLIGATIONS CONCERNING TECHNOLOGICAL MEASURES

(1) Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by broadcasting organizations in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their broadcast signals, that are not authorized by the broadcasting organizations concerned or are not permitted by law.

(2) Contracting parties may, in the absence of voluntary measures by the relevant rights holders, expressly provide that the legal protection and legal remedies contemplated in paragraph 1) of this Article shall not apply to situations where national laws relating to the protection of the work being broadcast or the broadcast itself would permit the work to be used, where the enforcement and exercise of such legal protections or remedies would adversely impact such permitted uses.

ARTICLE 10
OBLIGATIONS CONCERNING RIGHTS MANAGEMENT INFORMATION

(1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty:

- (i) to remove or alter any electronic rights management information without authorization;
- (ii) to distribute or import broadcast signals for distribution, retransmission or communication to the public, broadcasting, or making available to the public, without authorization, knowing that electronic rights management information has been, removed from or altered in the broadcast signal or the signal prior to broadcast without authorization.

(2) As used in this Article, "rights management information" means information which identifies the broadcasting organization, the broadcast signal, the owner of any right in the broadcast signal, or information about the terms and conditions of use of the broadcast signal, and any numbers or codes that represent such information, when any of these items of information is attached to or associated with the broadcast signal or the signal prior to broadcast or its use in accordance with Article 6.

ARTICLE 11 PROVISIONS ON ENFORCEMENT OF RIGHTS

1. Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.
2. Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights or violation of any prohibition covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

[End of document]

放送機関の保護に関する南アフリカ・メキシコ共同提案について

<ARTICLE 1> 他の協定及び条約との関係

<ARTICLE 2> 定義

- (a) 信号、(b) 放送、(c) 放送信号、(d) 放送機関、(e) 再送信、(f) 固定について定義。
- 「(b) 放送」とは、音又は映像又は映像及び音を公衆に受信させるために、放送機関により信号を送信することを意味する旨を規定している¹。
- 「(d) 放送機関」とは、「放送信号に含まれるすべてのものを公衆に放送行為するために、必要に応じて権利保持者の許諾を得かつ法律上及び編成上の責任を負うか、又は使用権限を有する番組コンテンツをまとめ、収集し、編成することに発意を有する法人とすることを意味する」と規定。

<ARTICLE 3> 適用範囲

- 保護の対象は、放送信号のみに及ぶ点、単なる再送信は含まれない点を規定。

<ARTICLE 4> 保護の受益者

- 放送機関に対して、保護を与えると規定。

<ARTICLE 5> 内国民待遇

<ARTICLE 6> 放送機関の権利 放送機関の権利として、以下の許諾権を規定。

Alternative A (i) 放送信号の公衆への伝達 (利用可能化含む)、(ii) 放送信号の再送信、(iii) 放送信号の固定、(iv) 放送信号の複製、(v) 利益を得る目的での公の演奏、(vi) 譲渡/頒布、(vii) 放送前信号の使用、(viii) 放送信号の固定物の公衆への送信

Alternative B (i) 放送信号の公衆への送信、(ii) 利益を得る目的での公の演奏、(iii) 放送前信号の使用 ((ii)、(iii)について、権利の保護を行使する条件は、締約国の法令の定めるところによる)

<ARTICLE 7> 制限及び例外 (任意規定)

- ローマ条約と同様、(i) 私的使用、(ii) 時事的事件の報道に関し短い抜粋の使用、(iii) 教育及び科学研究の目的のためだけの使用について規定。
- 2項において、著作権と同様の制限及び例外及びスリーステップテストについて規定。

¹送信手段として「無線の方法」に限定せず、あらゆるプラットフォームが含まれるとも解される。

<ARTICLE 8> 保護期間

○保護期間は、放送信号が放送された年の終わりから少なくとも20年と規定。

<ARTICLE 9> 技術的手段に関する義務

○基本的にW P P T並みの規定。

○2項において、例外について規定。

<ARTICLE 10> 権利管理情報に関する義務

○基本的にW P P T並みの規定。

<ARTICLE 11> 権利行使の確保に関する規定