

**International Labour
Organization**

ILO – Geneva

**United Nations Educational,
Scientific and Cultural
Organization**

UNESCO – Paris

**World Intellectual Property
Organization**

WIPO – Geneva

OIT/UNESCO/OMPI/ICR.19/9

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**INTERNATIONAL CONVENTION FOR THE PROTECTION OF PERFORMERS,
PRODUCERS OF PHONOGRAMS AND BROADCASTING ORGANIZATIONS
(ROME CONVENTION, 1961)**

**INTERGOVERNMENTAL COMMITTEE
NINETEENTH ORDINARY SESSION
(Paris, 27-28 June 2005)**

FINAL REPORT

Introduction

1. The Intergovernmental Committee of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), hereinafter referred to as “the Committee”, convened in accordance with Article 32(6) of the Convention and Rule 10 of the Rules of Procedure of the Committee, held its 19th Ordinary Session at the United Nations Educational, Scientific and Cultural Organization Headquarters (UNESCO) in Paris, from 27 to 28 June 2005.
2. The following 11 Member States of the Committee were represented, namely: Belgium, Burkina Faso, Colombia, France, Germany, Hungary, Japan, Latvia, Mexico, Poland and the United Kingdom.
3. The following 25 States party to the Convention, but not members of the Committee, namely: Andorra, Argentina, Australia, Brazil, Canada, Costa Rica, Croatia, Czech Republic, Dominican Republic, Finland, Greece, Honduras, Lebanon, Lithuania, Monaco, Netherlands, Peru, Portugal, Romania, Slovakia, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Turkey and Ukraine, and 12 States not party to the Convention, namely: Benin, Central African Republic, China, the Holy See, India, Madagascar, Malawi, Myanmar, Sudan, Syrian Arab Republic, Thailand and the United States of America, as well as the Palestinian Authority, were represented as observers.
4. Representatives of two intergovernmental organizations, the European Commission and the European Audiovisual Observatory, and representatives of the following six international non-governmental organizations attended in an observer capacity: European Broadcasting Union (EBU), Association of European Performers’ Organisations (AEPO-ARTIS), International Confederation of Societies of Authors and Composers (CISAC), International Federation of Actors (FIA), International Federation of Musicians (FIM) and International Federation of the Phonographic Industry (IFPI).

5. The representatives of the three sponsoring Organizations – the ILO, UNESCO and WIPO – attended the meeting of the Committee in their advisory capacity.
6. The list of participants is attached as an annex to this report.

I. Opening of the session

7. In the absence of the Chairperson of the Committee, Mme Assetou Touré (Burkina Faso) and the Vice-Chairperson Mr Wojciech Dziomdziora (Poland), the Vice-Chairperson Mr Henry Olsson (Sweden) chaired the opening of the Committee and welcomed the participants.

8. Mr. Mounir Bouchenaki, Assistant Director-General of UNESCO for Culture, welcomed the participants, on behalf of Mr. Koïchiro Matsuura, Director-General, who was absent from Paris. He underlined that, at this time when the debate relating to safeguarding of cultural diversity had an impact on intellectual property law, the future of copyright as well as that of neighbouring or related rights seemed more important than ever. He recalled that the action of UNESCO in the field of copyright had been normative but also included public awareness, training and teaching, information and research. After the meeting of the Intergovernmental Committee of the Universal Copyright Convention, which had taken place the previous week and had devoted a large part of its work to the fundamental question of piracy, and in particular Internet piracy, and not long before the second phase of the World Summit on the Information Society (Tunis, November 2005), this 19th session of the Intergovernmental Committee of the Rome Convention was still important. Indeed this Convention remained the only international instrument that covered the rights of performers, producers of phonograms and broadcasting organizations, all together. If the adaptation to the digital environment of the first two categories had already been considered by the WPPT, the third category was the subject of ongoing discussion and work. A proposal inviting UNESCO to undertake preliminary work on a “convention on broadcasting and the new technologies”, considering that the subject corresponded to UNESCO’s mandate, had been included in the agenda of the 171st session of the Executive Board of UNESCO at the request of India. In its decision, the Executive Board had invited the Director-General to submit the aforementioned proposal for examination by the present session of the Intergovernmental Committee of the Rome Convention. Mr. Bouchenaki stressed the importance of this point on which the expertise of the Committee would allow the Secretariat to formulate an opinion, which would be presented to the Executive Board in the autumn of 2005. He also evoked the interest of the other items on the agenda, in particular that of item 8, relating to the future of the Rome Convention.

II. Election of the Chairperson and two Vice-Chairpersons

9. Following a proposal made by the delegate of France, the Committee unanimously elected, by acclamation, Mr Péter Munkácsi (Hungary) as Chairperson, and Mr Shinichi Isa (Japan) and Mr Víctor Manuel Guizar López (Mexico) as Vice-Chairpersons.

III. Adoption of the Agenda

10. The Committee unanimously adopted the provisional agenda (document OIT/UNESCO/OMPI/ICR.19/1 Prov. Rev.).

IV. Information on the state of adherence to the Rome Convention (document OIT/UNESCO/OMPI/ICR.19/2)

11. The Secretariat informed the Committee that since the 18th session, the following States had adhered to the Rome Convention: Andorra, Armenia, Belarus, Georgia, Israel, Kyrgyzstan, Portugal, Russian Federation, Serbia and Montenegro, Togo, Turkey, United Arab Emirates and

Ukraine. Those new accessions had brought the number of States party to the Convention, as of 22 March 2005, to 80.

12. The Committee took note of this information.

V. Information on States not party to the Rome Convention but party to the international copyright conventions referred to in Article 24 of the Rome Convention (document OIT/UNESCO/OMPI/ICR.19/3)

13. The Secretariat informed the Committee that, since the 18th session, the following States had ratified or adhered to the Berne Convention: Andorra, Bhutan, Comoros, Democratic People's Republic of Korea, Djibouti, Ireland (1971 Act.), Micronesia (Federated States of), Saudi Arabia, Syrian Arab Republic, United Arab Emirates, Uzbekistan and Viet Nam. The total number of States party to the Convention was, as of 22 March 2005, 159.

14. As regards the Universal Copyright Convention, the Secretariat informed the Committee that since 2001 three States had made a declaration according to which they considered themselves bound by the obligations arising from the 1952 text of the Convention: Albania, Serbia and Montenegro and Togo. The number of Member States party to the Convention, as at 22 March 2005, was 99. The same States – Albania, Serbia and Montenegro and Togo - had notified the Director-General of UNESCO of their accession to the text of the Convention of 24 July 1971. Thus, the current number of States party, as at 22 March 2005, was 64.

15. The Committee took note of this information.

VI. Information on membership of the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (Phonograms Convention), of the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Satellites Convention) and of the WIPO Performances and Phonograms Treaty (WPPT) (document OIT/UNESCO/OMPI/ICR.19/4)

16. The Secretariat informed the Committee that, since the 18th session, Albania, Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Serbia and Montenegro and Togo had ratified or adhered to the Phonograms Convention. The total number of States party to the Convention as of 22 March 2005 was therefore 73.

17. As regards the Satellite Convention, Rwanda, Serbia and Montenegro, Togo and Singapore had adhered to the Convention, bringing the total number of States to 27 as of 22 March 2005.

18. As regards the WIPO Performances and Phonograms Treaty (WPPT), the following States had ratified or adhered to it since the 18th session: Armenia, Botswana, Czech Republic, Gabon, Georgia, Guatemala, Guinea, Honduras, Indonesia, Jamaica, Japan, Jordan, Kazakhstan, Kyrgyzstan, Mali, Mongolia, Nicaragua, Peru, Philippines, Poland, Senegal, Serbia and Montenegro, Singapore, The former Yugoslav Republic of Macedonia, Togo and Ukraine. The total number of ratifications or accessions to the WPPT had reached 49 as of 22 March 2005 and the Treaty entered into force after 30 instruments of ratification or accession had been deposited with the Director-General of WIPO on 20 May 2002.

19. The Committee took note of this information.

VII. Report on the activities of the three organizations, to provide assistance and training for developing countries with a view to promoting the protection of performers, producers of phonograms and broadcasting organizations (document OIT/UNESCO/OMPI/ICR.19/5)

20. The Representative of ILO pointed out that ILO's main activities of relevance to the Rome Convention in this four-year period were outlined in Annex I of document OIT/UNESCO/OMPI/ICR.19/5, the highlights being:

- the five-day Tripartite Meeting on the Future of Work and Quality in the Information Society, held in October 2004,
- technical assistance in the field of Small Enterprise Development and Job Creation in the Cultural Industries in Africa,
- assistance to performers' organizations.

In addition to these activities, he underlined that ILO co-organized an International Forum on the Creative Industries in Salvador, Bahia State, Brazil, in April 2005, in cooperation with the government of Brazil and UNCTAD. He also mentioned the publication by ILO of several books and working papers on the cultural industries during this period, as listed in section 4 of Annex I, and that ILO was currently in the process of finalizing the studies on the music and film industries in Brazil for publication later in 2005.

21. A representative of UNESCO, referring to the activities carried out by this Organization, stated that these included information and awareness-raising activities; teaching and training activities; studies and research; activities related to enforcement and management of rights, as well as legal and technical assistance provided on specific request by Member States. With regard to the information and awareness-raising initiatives, an emphasis was placed on the new language versions and the new format of the *Copyright Bulletin*, which was now available online and accessible free of charge in all six official languages of UNESCO (Arabic, Chinese, English, French, Spanish, Russian). Another useful on-line tool was the electronic Collection of National Copyright Laws, launched in December 2003. Among the research activities, a special focus was placed on the study which UNESCO had undertaken in 2002, on the exceptions and limitations to copyright protection, particularly in the field of scientific research, education and culture, and the striking of a fair balance between the legitimate rights of authors and other rights holders and those of general interest for transmission of knowledge. Concerning the activities relating to enforcement and management of rights, special attention was paid to the Anti-Piracy Training for Trainers project developed in the framework of the Global Alliance for Cultural Diversity and mainly funded by Norway.

22. The representative of WIPO remarked that the overall goal of the organization's activities had been to promote intellectual property as a tool for economic development. While making reference to the elements described in detail in Annex III of document OIT/UNESCO/OMPI/ICR.19/5, he focused, more specifically on WIPO's assistance programmes regarding copyright and related rights and their objectives:

- promotion of copyright and related rights through studies in different Member States aiming to analyse systematically the contribution of copyright-based industries to the economies of these countries, based on national turnover, employment and foreign trade. WIPO had published a guide on the methodology of such surveys. In addition,

meetings and seminars were organized at the national and regional levels to discuss current copyright and related rights issues;

- modernization of copyright and related rights systems including automation of national offices;
- creation of value from copyright and related rights through collective and individual licensing and other business opportunities;
- public outreach and information dissemination.

23. All delegations that took the floor thanked ILO, UNESCO and WIPO for their legal and technical assistance.

24. The delegate of Sweden described his country's new approach in providing assistance to developing countries in the field of intellectual property. He pointed out that the Swedish Government runs three programmes each year, one on copyright and related rights, another on industrial property and a third one for least developed countries. The delegate added that these programmes also dealt with international negotiations and with public policy matters, and underlined that they were practically oriented. He then detailed the different phases of the programmes, stressing their usefulness.

25. The delegate of Mexico, recalling the major problem of piracy faced by Mexico, insisted on the importance of UNESCO anti-piracy training programmes, which were a useful contribution for developing countries.

26. The delegate of Burkina Faso remarked that her country worked closely with WIPO, particularly for training of professionals and managers. She stressed that her country was facing difficulties in enforcing the current copyright and related rights legislation and was not able to fully implement it because of technical problems. On the other hand, the country was very concerned about the negative impact of piracy. The delegate drew attention to a WIPO study on the economic impact of piracy in Western Africa, which had not yet been finalized. She expressed the wish to benefit from WIPO's support in this regard.

27. The delegate of Japan focused on the activities developed by his government for the promotion of and training on copyright and related rights in developing countries, especially in Asia and the Pacific region. He underlined the importance of WCT and WPPT.

VIII. The future of the Rome Convention: report on current international activities concerning the protection of rights of performers, producers of phonograms and broadcasting organizations (documents ILO/UNESCO/WIPO/ICR.18/7 (para. 46); OIT/UNESCO/OMPI/ICR.19/6)

28. At its 18th Session, the Intergovernmental Committee had decided that the agenda of the 19th session of the Intergovernmental Committee in 2005 would include an item on the future of the Rome Convention, taking account of developments that would have taken place in the interim (document ILO/UNESCO/WIPO/ICR.18/7 (para. 46)).

29. In presenting document OIT/UNESCO/OMPI/ICR.19/6, the representative of WIPO outlined developments, which mainly concerned the protection of audiovisual performances and the protection of the rights of broadcasting organizations. He evoked, more specifically, the 2000 Diplomatic Conference on the Protection of Audiovisual Performances, which had achieved provisional agreement on 19 articles of a draft WIPO Audiovisual Performances Treaty, but had

failed to reach agreement on Article 12, which concerned ownership and transfer of rights. Despite the fact that all parties concerned had shown a continuing recognition of the importance of the issue and its timely resolution, no significant change in the positions had been identified by the International Bureau. An Ad Hoc Informal Meeting on the Protection of Audiovisual Performances had been held at the headquarters of WIPO in November 2003, where many delegations had expressed their interest in further progress on the outstanding issues.

30. Since the Ad Hoc Informal Meeting, the Director General of WIPO had been conducting informal consultations among Member States and key stakeholders in the private sector, in order to identify ways and means making progress on outstanding issues. The WIPO General Assembly, at its 31st session from 27 September to 5 October 2004, had decided that the protection of audiovisual performances should remain on the agenda of the General Assembly for its sessions in 2005. An information meeting on audiovisual performances took place in November 2004, where a comparative study on private international law in relation to the transfer of rights in audiovisual performances from performers to producers was presented.

31. Concerning rights of broadcasting organizations, the WIPO representative indicated that the 1996 WIPO Treaties, WCT and WPPT, had represented a major step forward in updating the protection of copyright and related rights to the realities of the information society, but they did not address the protection of broadcasting organizations. The updating of the rights of broadcasting organizations had been discussed by the Standing Committee on Copyright and Related Rights (SCCR) since that Committee was established in 1997. The 11th session of the SCCR, had adopted a recommendation to the WIPO General Assembly, for the 14th session of the Assemblies of the Member States of WIPO in 2004, inviting it to consider the possibility of convening, at an appropriate time, a diplomatic conference on the protection of broadcasting organizations. It was also agreed that for the 12th session of the Standing Committee the Chair would prepare a revised version of the Consolidated Text, in which the possible protection of webcasting organizations and other proposals having received very limited support would be indicated in square brackets.

32. At its September/October 2004 session, the WIPO General Assembly had requested the SCCR to accelerate its work on the protection of broadcasting organizations, with a view to approving the convening of a diplomatic conference by the General Assembly in 2005. At the 12th session of the SCCR, the Chairman concluded that a second revised version was to be prepared by him, as well as a working paper on alternative non-mandatory solutions to the protection of webcasting organizations, including simulcasting organizations. Regional consultations and other types of informal consultation meetings would be organized by the International Bureau, further to the request of Member States. Currently, consultation meetings were organized, from May to July 2005. Finally, the issue was included in the agenda of the 32nd session of the WIPO General Assembly (26 September to 5 October 2005).

33. In response to a request from the delegate of Burkina Faso, the representative of WIPO stated that no consensus had been reached during the 2000 Diplomatic Conference on the Protection of Audiovisual Performances on Article 12 of the draft treaty, which dealt with ownership of rights and transfer of rights from the performer to the producer. There had been several different alternatives as to the content of the article, namely: a proposal for a presumption of transfer from the performer to the producer; another proposal was a presumption of entitlement to exercise the economic rights, modelled on Article 14 bis of the Berne Convention for the Protection of Literary and Artistic Works; a third proposal suggested to leave the question of transfer of rights open for determination under national law but with an obligation, as regards foreign films, to apply the law of the country of origin. A fourth proposal was to have no provision on the subject at all. During the conference there had been efforts to find a compromise but no agreement could be reached.

34. The delegate of Japan endorsed the work of WIPO and supported its efforts. He underlined the need to respect a balance between the three categories of holders of neighbouring rights.

35. The delegate of India considered that document OIT/UNESCO/OMPI/ICR.19/6 in its second part mischaracterized the situation concerning the negotiations in WIPO on a broadcasting treaty. There were inaccuracies in the text which he wanted corrected so as not to give the impression that the discussion during the Geneva Assembly of WIPO had gone smoothly. He recalled that in the case of audiovisual performers, absence of agreement on just one article had put it on hold for the last five years. On the other hand, there were still major differences in position of Member States on several aspects of the proposed broadcasting treaty. A diplomatic conference was, therefore, clearly premature. The Indian delegate also pointed out that paragraph 16 of the document OIT/UNESCO/OMPI/ICR.19/6 was incorrect. This was pointed out when the draft report of the WIPO Assembly was being discussed last October, and the delegation of Germany supported India in recalling the correct position. Despite this, the WIPO Secretariat repeated the same language in the final report that came out over a month later, and this incorrect language is contained in document OIT/UNESCO/OMPI/ICR.19/6. The Indian delegate added that paragraph 17 of the document also conveyed a misleading impression. The Chairperson of SCCR had no mandate to take any decision regarding the conclusions of the meeting. He reiterated that the issue of protection of the rights of broadcasting organizations remained contentious and that any impression that the draft of a WIPO treaty was progressing smoothly was erroneous.

36. The delegate of Benin observed that his country attached great importance to the present committee. He noted that the 1996 WPPT would be ratified by Benin soon. He explained the efforts made in his country in the field of awareness-raising and eradicating piracy. He asked UNESCO and WIPO for assistance in putting into place effective application of copyright and related rights legislation in Benin.

37. The delegate of Brazil endorsed the intervention of the delegate of India and stated that document OIT/UNESCO/OMPI/ICR.19/6 did not precisely reflect the status of the discussion on broadcasting that was still ongoing, neither did it reflect the decisions taken at the WIPO General Assembly in 2004.

38. The delegate of Mexico felt that document OIT/UNESCO/OMPI/ICR.19/6 adequately reflected the current situation. Mexico appreciated the efforts of WIPO on both subjects – audiovisual performances and broadcasting organizations.

39. The representative of AEPO-ARTIS expressed a reservation as to the formulation concerning the term “adoption” of 19 articles of the draft WIPO Audiovisual Performances Treaty during the 2000 Diplomatic Conference on the Protection of Audiovisual Performances. There had been differences with regard to content of rights to be granted, moral rights and application in time. Therefore the agreement on these articles had a provisional character and should not be understood as limiting any further development beyond the question of the transfer of rights in Article 12. He stressed that the debate was still open concerning all issues addressed by the draft.

IX. Proposal for amendment of Rule 11 of the Rules of Procedure (document OIT/UNESCO/OMPI/ICR.19/7).

40. In introducing the document, the representative of UNESCO recalled that during its 18th session, the Chairperson of the Committee had invited the delegations’ views on whether the two-year cycle of the Committee’s sessions should be maintained or modified. Delegations had agreed that the periodicity of sessions had to be adapted to developments affecting the Rome Convention’s legal framework.

41. Further to the discussion, the Chairperson had suggested to the Committee the suspension of Rule 11. The Committee had decided to suspend it and to convene the 19th session in 2005. The Committee had also decided that the agenda of the 19th session would include an item on the amendment of Rule 11.

42. The document presented three alternative proposals, namely: decreasing the frequency of ordinary sessions and holding such sessions every three or four years (Alternatives A and B); or postponing the ordinary sessions *sine die* (Alternative C). The Secretariat informed the Committee that Alternative C might necessitate further modifications of the Rules of Procedure. More specifically Article 12 concerning extraordinary sessions should be deleted.

43. The delegate of Japan considered that the Committee needed more flexibility and endorsed therefore Alternative C. The delegate of France asked for a precision regarding Alternative C from the Secretariat. She considered the deletion of Article 12 concerning extraordinary sessions as being dangerous, and expressed support for Alternative B. The delegate of Burkina Faso stated that her country supported Alternative C, but would be ready to align to a consensus. The delegate of Colombia preferred the present two-year cycle and endorsed therefore Alternative A. The delegate of Germany preferred a decrease in the frequency of the sessions and endorsed therefore Alternative C. However, Alternative B, with a four-year frequency, would also be acceptable. The delegates of Sweden and Latvia preferred Alternative B, but C would, however, also be acceptable. The delegate of Poland endorsed Alternative C, willing, however, to accept another alternative in case of evolving consensus. The delegate of Belgium stated that he would accept any decision as regards the frequency of the meetings. He pointed out that suspending Rule 11 of the Rules of Procedure a second time would also be an option. The delegate of Mexico took the floor asking for some time to consider the issue.

44. The Chair invited the delegates to consider the question during the lunch break.

45. At the beginning of the afternoon session, the delegate of Mexico stated that he endorsed the opinion of Belgium to suspend Rule 11 and again discuss the issue of the frequency of sessions of the Committee in four years.

46. The Chairperson suggested the following: to suspend Rule 11 of the Rules of Procedure, to hold the 20th ordinary session in 2009 and to retain an item on Rule 11 of the Rules of Procedure on its agenda. This proposal was adopted unanimously.

X. Other business

X.1 Proposal for a convention on broadcasting and the new technologies (document OIT/UNESCO/OMPI/ICR.19/8).

47. The representative of UNESCO introduced document OIT/UNESCO/OMPI/ICR.19/8. She explained that India had made a proposal to the 171st session of the UNESCO Executive Board to recommend to the UNESCO General Conference that UNESCO develop a new convention on broadcasting and the new technologies. Taking into account the work done by WIPO, the technical complexity of the issue and the fact that it was covered by the Rome Convention, the Executive Board had invited the Director-General of UNESCO to submit this proposal for examination at the present session of the Intergovernmental Committee of the Rome Convention. The conclusions of the Committee on this question would be reported to the Director-General and subsequently to the Executive Board at its 172nd session.

48. The delegate of India took the floor, at the invitation of the Chairperson, because India is not party to the Rome Convention. He made the following statement:

“A broadcasting treaty, which would strengthen broadcasters’ rights beyond those provided in the Rome and Brussels conventions and in TRIPS, has been the subject of discussion in WIPO for some years. The WIPO treaty would also extend these rights to cablecasting and to webcasting i.e. transmissions via Internet computer networks. Though initially couched as a call for protection of their signals, the demand of broadcasters to strengthen their rights goes well beyond.

Countries that are members of WTO are subject to TRIPS. It is significant that though TRIPS does have an article (Article 14) on Protection of Performers, Producers of Phonograms and Broadcasting Organizations, in respect of broadcasting organizations it does not, of and in itself, require members to provide any ‘related rights’. The only obligation is to provide copyright owners with the right to protect their materials when broadcast. The concern, rightly, is for the copyright of the owners of the underlying material, not of the rights of broadcasters per se. What this clearly tells us is that even as recently as the last decade when an important international agreement on IP rights and related rights was being negotiated there was no recognition of any need to provide any special protection to broadcasters qua broadcasters.

There is little or no evidence of any widespread unauthorized use (as opposed to legitimate use, including private, educational or research uses) of broadcast signals. Besides, signal theft is already covered in the Rome and Brussels conventions. The only conclusion that one can draw from the demand of stronger protection by broadcasters is that they are keen to lock in a broad range of new rights that currently exist nowhere in any national law – rights that have the potential to trump true copyright and restrict the flow of information on the Internet. This concern about impact on the Internet is quite serious. It could have a damaging impact on the free flow of information using this vital new medium.

Such a treaty would restrict the flow of information, reduce access to knowledge and retard technological innovation. Not surprisingly, the debate in WIPO had triggered major concerns – not only in developing countries, where the question of access to information in promoting the dissemination of knowledge is paramount, but in developed countries as well. The proposed WIPO treaty would also impact negatively on the production of creative works in many fields.

The WIPO broadcasters’ treaty would severely maul and undermine the public domain, by effectively blocking off large segments for private profit. Society relies on access to public domain materials for various purposes, not least the promotion of education and preservation of culture. These would be curtailed by creating a new layer of proprietary control exercised by broadcasters, which is clearly not in the largest interests of society. No organization should be more concerned about the proposed treaty’s potential for causing harm than UNESCO, whose mission is to promote education, culture and science through dissemination of information and diffusion of knowledge.

Artists’ and performers’ associations, civil society and public interest groups have expressed serious reservations regarding the expansion of rights for broadcasters. They are frequently not the creators or producers of the works they transmit. To the extent they are, they already enjoy protection under the existing treaties. Conferring any new rights to broadcasters would enable them to commercially exploit works they did not create and do not own, at the cost of both the creators and the consumers at large – the public. We need to realize that the lines between technologies used in different means of communication – whether broadcast, cablecast or webcast – are constantly being blurred. Cable and satellite television networks offer Internet services, and new wireless networks for television, mobile phones, audio broadcasts, Internet connections and other services are increasingly offering the products and services of the others.

The solution cannot, of course, be the extension of these rights to cablecasters and webcasters. That would only further exacerbate the situation. By granting these rights to cablecasters and webcasters they could become the new sentries deciding who has access to information and knowledge and at what price, even when the copyright owners do not want the distribution of their works restricted. It would add cablecasters and webcasters to entities claiming, for all intent and purposes, ownership rights over works that are in the public domain. What is more, given the absence of any significant “start up” costs for webcasting (as opposed to broadcasting), granting such rights would lead to the emergence of millions of claimants to these new rights, leading to chaos and virtual dismemberment of the public domain.

Even assuming that broadcasters need additional protection in this digital age – an assumption for which there is no validating evidence – it is unclear why it needs to be a right related to intellectual property. Grant of such rights to broadcasters would not only seriously undermine the rights of the content rights holders – such as playwrights, artists, performers and producers – it would lock-in the rights for periods that are unconscionably long. Broadcasters, unlike copyrights holders, are not creators of works, but intermediaries in their diffusion. The nature of their activity is that of a distributor of other people’s innovation or creative works.

It is simply untenable for broadcasters to demand investment protection disguised as IP protection. It is even more indefensible to demand a protection term of 50 years – a period appropriate for incentivizing innovation and creativity, but not for investment protection. To view this in perspective, one needs only to recall that the period for which most countries grant data protection for clinical data – an activity requiring far more investment in terms of resources than broadcasts do – is typically less than ten years.

The proposed WIPO broadcasting treaty also raises concerns about the proliferation of digital rights management obligations inherent in the mandated ‘technological protection measures’ (TPMs). This would grant broadcasting organizations the right to prevent individuals from bypassing technological restrictions placed on broadcast signals. As a result, dissemination of programme content, even when not protected by copyright, would be restricted. Such a requirement would be in serious conflict with the development aspects of broadcast, and thus with national development policy. It would enable distant rights holders to override public interest flexibilities and national exceptions and limitations. It would also undermine ‘fair dealing’ and personal copying exemption for educators, researchers and other entities. It would allow TPM rights holders to set the boundaries for access and use of technologically protected material. It could open the door to an unprecedented range of technology mandates, which would surely constrain technology development, inhibit transfer of technology and stifle technological innovation. TPM regimes could also be used to restrict legitimate market competition and entrench the use of monopoly-priced proprietary products and technology.

Rights that are not required to fight piracy but to exploit the content used by the broadcasting organization clearly should not be granted. It is simply not possible to ensure that the proposed new rights of broadcasters would not impact on the exploitation and licensing practices of the underlying content. Without the ability to ensure this, it would be impossible to avoid situations where works, performances and phonograms can be exploited or controlled by broadcasters at the cost of those that create, perform and produce them. There are many cases where broadcasters have managed to make legal use of works covered by copyright or related rights on a basis that would clearly not meet the conditions of the three-step test of Article 9(2) of the Berne Convention for permitting such uses.

UNESCO has a mandate responsibility to promote the dissemination and sharing of information and knowledge at the global level. It is the specialized agency of the United Nations in this field. Its mission is to work as a laboratory of ideas and standard setting to forge universal agreements on emerging ethical issues. Its mandate includes, inter alia, promoting international cooperation in the diverse fields of education, culture and communication. To this end, UNESCO is engaged in activities aimed at building a knowledge society, and in promoting freedom of access to information.

Broadcasting is an important part of the activities of the Communication and Information Sector of UNESCO. Given the far-reaching impact that the rights proposed in the WIPO treaty would have, UNESCO clearly has a responsibility to address the totality of issues surrounding the demand for enhanced rights for broadcasters. Indeed, UNESCO should consider including in its work programme on a priority basis the negotiation of a comprehensive treaty on broadcasting. Such a treaty, encompassing all aspects of broadcasting, including the question of broadcasters' rights, would obviate any need for this subject to be addressed separately in the context of WIPO”.

49. The delegates who took the floor thanked the delegate of India for having raised this important issue and for his explanations.

50. The delegate of Germany stated that this issue reflected how much the field of intellectual property had changed, but launching the process at UNESCO would risk to complicate and to duplicate ongoing work at WIPO. Although he agreed that the negotiation process at WIPO had been difficult, he insisted that WIPO remained the appropriate forum to discuss the issue. As UNESCO Member States and UNESCO itself participate in WIPO deliberations on this issue, there would be no added value in opening a second treaty negotiation. The delegate of Belgium endorsed the opinion of Germany that launching negotiations within UNESCO would be a duplication of ongoing work at WIPO. The delegate of France pointed out that important and useful work had been achieved by WIPO, which proved its competence. Like Germany and Belgium, she considered that double work should be avoided and that the cooperation between States, ILO, WIPO and UNESCO should be continued in order to achieve a satisfactory result. The delegates of Mexico, Burkina Faso, Colombia, Poland, Japan and Latvia agreed. Latvia encouraged UNESCO to participate actively in WIPO discussions. Latvia and Japan furthermore stressed that the issue of the balance between copyright and neighbouring rights on the one hand, and the public interest on the other hand, was very important and had been the subject of discussions at WIPO.

51. The floor was given to States with observer status. The delegate of Romania agreed with the views expressed by the members of the Committee and pointed out that his country was presently organizing a regional consultation on the issue.

52. The delegate of Brazil disagreed with the preceding statements and stated that convening a diplomatic conference was premature within WIPO. The aspects mentioned by India should be considered with care. It was important to promote and enhance public domain as a vital means of providing access to information and knowledge, as explained in paragraph 7 of the decision adopted by the Executive Board, contained in the annex to document OIT/UNESCO/OMPI/ICR.19/8. WIPO did not treat such issues with necessary care and UNESCO would therefore be more appropriate to negotiate such a treaty. Brazil therefore welcomed the proposal of India and deemed it useful to go deeper into it within UNESCO.

53. The delegate of Sweden stated that his Government was satisfied with the work done at WIPO. All the efforts in WIPO would be lost if the negotiations had to be reopened at UNESCO. Sweden therefore endorsed the opinion of the States that supported the continuation of WIPO negotiations.

54. The representative of the Palestinian Authority spoke in favour of the proposal of India stressing the educational value of public domain material and the importance of a proper balance between the protected rights. He also insisted on the pre-eminent role of UNESCO within negotiations for such a convention.

55. The delegate of the United States of America stated that his country had also been concerned about the balance between various rights of holders and users, and did not wish to give more protection than needed. However, his Government contributed its expertise to the elaboration of the WIPO draft treaty and therefore saw no need for a second negotiation at UNESCO.

56. The Chairperson summarized the debate, stating that concerns had been raised by Committee members that starting a second negotiating process in UNESCO on a subject already dealt with in WIPO negotiations would lead to unproductive overlapping of energies and duplication of efforts. The members of the Committee had expressed unanimous support for continuation of the work in WIPO. Among the observers, Brazil and the Palestinian Authority had endorsed the proposal of India, while Sweden, Romania and the United States of America had expressed their support for continuing the work at WIPO.

57. The delegate of India reiterated that UNESCO was the place to discuss the proposed convention and his government had hoped to sensitize the members of the Rome Committee about its concerns. Eight of the twelve Member States of the Committee were from the European Union, which has been a strong supporter of the WIPO broadcasting treaty, as is Japan. With nine of the 12 members in this limited members' Committee supportive of the WIPO process, the delegation of India recognized that it had an uphill task. Therefore India did not expect much from the present meeting. Consensus was necessary for successful negotiations, but there was none in WIPO. For such consensus to develop, a different forum was necessary to discuss all the relevant aspects, and UNESCO was the best choice for this.

58. The representative of UNESCO pointed out that several speakers had invited UNESCO to take a more active part in negotiations at WIPO, and asked the Committee if this should form part of the recommendation to be forwarded to UNESCO's Director-General.

59. The delegate of Mexico confirmed that a more active involvement of UNESCO in the ongoing WIPO negotiations would be welcome.

60. The delegate of India endorsed the statement of Mexico. He also proposed that Member States of UNESCO should discuss the Organization's approach to the issue. He suggested including this in the Committee's advice to UNESCO's Director-General.

61. The delegate of Belgium indicated that UNESCO could follow discussions in WIPO more closely. He recalled that all members of the Committee were also members of WIPO and additional consultations at UNESCO regarding issues discussed at WIPO would be unnecessary duplication of work, which all members wanted to avoid. The delegate of Germany completely agreed with this opinion and reiterated that UNESCO's Executive Board would anyhow come back to this issue.

62. The Chairperson summarized the proposed opinion of the Committee as follows:

“The Committee examined the proposal of India, further to the decision of the Executive Board of UNESCO and at the request of its Director-General. The Committee is concerned about duplication of work if negotiations were to be launched at UNESCO. All members of the Committee who took the floor were therefore not in favour of launching such negotiations and endorsed the continuation of efforts at WIPO. Three observers agreed with the opinion of the Committee members and two

observers supported the proposal of India. UNESCO was encouraged to become more actively involved in the negotiations at WIPO.”

X.2 Other issues

63. The Secretariat announced that an application for observer status with the Committee had been received from the non-governmental organization “Consumers International”, which had over 250 member organizations in various countries in the world and represented the interests of the public. The Committee decided unanimously to grant it such status.

XI. Adoption of the report

64. The Committee unanimously adopted this report with the proposed amendments submitted by certain delegations.

XII. Closing of the session

65. After the customary expression of thanks, the Chairperson declared the session closed.

**International Labour
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ILO – Geneva

**United Nations Educational,
Scientific and Cultural
Organization**

UNESCO – Paris

**World Intellectual Property
Organization**

WIPO – Geneva

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