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The Conclusions of SCCR 44

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THE CONCLUSIONS OF SCCR 44

Sean Flynn

ABSTRACT

Last week, the World Intellectual Property Organization’s Standing Committee on Copyright and related Rights (SCCR) held its 44th meeting where substantial progress was made in protecting public interest issues within the two major standing items of the agenda -- on the Broadcast Treaty and on Limitations and Exceptions. This document summarizes the decisions made at the meeting as recorded in the Chair’s Summary.

ABSTRACT	1
AGENDA ITEM 5: PROTECTION OF BROADCASTING ORGANIZATIONS.....	1
AGENDA ITEM 6: LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES	3
AGENDA ITEM 7: LIMITATIONS AND EXCEPTIONS FOR EDUCATIONAL AND RESEARCH INSTITUTIONS AND FOR PERSONS WITH OTHER DISABILITIES	3
AGENDA ITEM 8: OTHER MATTERS	4
AGENDA ITEM 9: CLOSING OF THE SESSION.....	5
ABOUT PIJIP @ SCCR	6

AGENDA ITEM 5: PROTECTION OF BROADCASTING ORGANIZATIONS

During the plenary (public) discussion of the agenda item, some regional groups expressed desires to limit the treaty to a “signal based” (AG, APG) approach or to “acts of piracy” (CEBS). The Asia Pacific Group, which spans countries from very different legal cultures and economic contexts, called for a limitation of the Treaty “for cable casting and broadcasting in the traditional sense.”

The Chair opened the discussion by noting two issues that “are unlikely to be resolved in this committee, given that there are divergent views on the way forward.”

“The first issue relates to transmissions over computer networks. My assessment is that there are divergent views in the room on the appropriate scope of an international instrument as it relates to transmissions over computer networks. The second relates to limitations and exceptions. There are divergent views in the room related to whether the limitations and exceptions are permissive in nature, as currently reflected in the chair text, or whether they should be compulsory in nature.”

Jukka Liedes, the Facilitator appointed by the Chair to help create the Chair’s draft being used as the basis of the negotiation, described the core elements of the treaty including requirements to provide several exclusive rights of broadcasters organizations (Article 6 – Right of Retransmission to the Public; Article 7 – Right of Fixation; Article 8 –Transmission of Stored Programmes; Article 9 – Pre-Broadcast Signals) or to provide instead “Other Adequate and Effective Protection” (Article 10). The draft provides for permissive Limitations and Exceptions, limited by a confining version of the three-step test (Article 11), and obligations to adopt Technological Protection Measures with a previous draft’s requirement to provide limitations and exceptions removed.

A key issue for the committee is whether this exclusive right based approach accords with the often expressed will of the Committee members and of the General Assembly to keep the treaty “signal based.” An alternative model would be to base the treaty on the Brussels Convention, which only promotes laws to regulate signal theft with no new exclusive rights required or encouraged.¹ Liedes described the draft’s requirement of exclusive right with an option to implement in other ways as building “a bridge between those two schools of thought -- more exclusive rights and other kinds of protection.”

The Chair’s summary recording the decisions of the meeting suggested that the focus may shift more toward the “other kinds of protection” model. The key paragraphs include:

8. The Chair’s assessment of the status of this work is as follows. With respect to objectives, there is common understanding amongst the Committee that any potential treaty should be narrowly focused on signal piracy, should not extend to any post-fixation activities and that it should provide member states with flexibility to implement obligations through adequate and effective legal means. There is also common understanding that the object of protection (subject-matter) of any potential treaty should be related to programme-carrying signals linked to linear transmission.”

9. The Chair believes that there are three main remaining decision points

¹ See Hugenholtz, "Simplifying the WIPO Broadcasting Treaty: Proposed Amendments to the Third Revised Draft" (2023). Joint PIJIP/TLS Research Paper Series. 111 <https://digitalcommons.wcl.american.edu/research/111>

THE CONCLUSIONS OF SCCR 44

of this agenda item, specifically:

i. Whether there should be a minimum level of protection for transmissions over computer networks; and if so, what kind and level of protection.

ii. The scope of programme-carrying signals to be protected by any treaty, specifically pre-transmission access, catch-up (transmission of “stored programmes”) and pre-broadcast signals.

iii. Striking the right balance concerning the approach to limitations and exceptions.

10. As part of the transition to the incoming Chair, the Chair intends to close out work on the Third Revised Draft Text for the WIPO Broadcasting Organizations Treaty by addressing the technical issues raised in discussions.

AGENDA ITEM 6: LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES

AGENDA ITEM 7: LIMITATIONS AND EXCEPTIONS FOR EDUCATIONAL AND RESEARCH INSTITUTIONS AND FOR PERSONS WITH OTHER DISABILITIES

For the limitations and exceptions agenda item, three documents were submitted for consideration by the committee:

Challenges of Research Institutions and Research Purposes in Relation to Copyright prepared by Professor Raquel Xalabarder, SCCR 44/4 https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=621815

Updated Version (by USA) of the Document “Objectives and Principles for Exceptions and Limitations for Libraries and Archives” (SCCR/26/8) SCCR/44/5²

Draft Proposal by the African Group for the Implementation of the Work Program on Exceptions and Limitations, Adopted at the 43rd Session of the WIPO SCCR 44/6³

In the statements of the regional coordinators, all delegations expressed support for implementing the Work Program on Limitations and Exceptions adopted in SCCR/43/8. The submission by the African Group (SCCR 44/6) outlined actions to implement paragraph 4 of the Program, calling for the Chair to facilitate activities toward a new text on “principles, objectives and options.” But Poland for CEBS expressed the position that the next step of implementation should be limited to point three, focusing on cross border uses of works. Those two paragraphs of the Work Program adopted by the

² https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=622473

³ https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=622548

committee stated:

3. The Secretariat should invite further presentations by experts on the questions related to choice of law for cross-border uses of copyrighted works, with a focus on a case-study approach, such as cross-border implications of an online educational class with students in multiple countries, or where collaborating researchers or the subjects of their research are located in different countries.

4. The Chair should advance information sharing and consensus building on points 1-3 between SCCR meetings through processes which are transparent and inclusive in conformance with WIPO Development Recommendation #44, such as working groups of member states, supported by experts as appropriate and agreed, preparing objectives and principles and options for implementation at national level for consideration by the Committee.

Following the first informal negotiating session held on the L&E agenda since 2016 or earlier, and an extensive private meeting on the last day, the Committee agreed to progress work on both points aided by intersessional work of the Secretariat. The Chair's Summary concluded:

17. Taking into account the proposed Implementation Plan presented by the African Group at SCCR 44 and comments from member states on that proposed plan at this SCCR session, the Secretariat should before the next SCCR organize a virtual panel discussion, using a case study approach, on cross-border uses of copyrighted works in the educational and research sectors, open to all member states as well as observers. In addition, the Secretariat should present at the next SCCR a detailed implementation plan for the Work Program on Exceptions and Limitations taking into account comments from member states made at this SCCR session. The Secretariat should consult member states on a draft version of this implementation plan before presenting it at the next SCCR.

The Chair's Summary invites comments on the Study on the Challenges of Research Institutions and Research Purposes in Relation to Copyright (document SCCR/44/4) "to copyright.mail@wipo.int by January 12, 2024."

AGENDA ITEM 8: OTHER MATTERS

On the other matters agenda, the only item drawing any discussion by delegates was on Copyright in the Digital Environment. The item was subject to three proposals by delegations:

Proposal for a Study on the Rights of Audiovisual Authors and their Remuneration for the Exploitation of their Works, prepared by the Delegation Côte d'Ivoire, SCCR/44/7

Proposal for Information Session on Generative AI and Copyright, prepared by Group B SCCR/44/8

THE CONCLUSIONS OF SCCR 44

The Group B proposal was submitted about an hour into the discussion on November 7. GRULAC proposed that the artificial intelligence issue be included within the Copyright in the Digital Environment agenda item and that it be made a standing item on the agenda. The Chair's Summary notes the agreement on the first request, but not to add the item permanently to the agenda, which was opposed by Group B.

21. ... GRULAC will table a workplan on Copyright in the Digital Environment at the next committee meeting.

22. The Delegation of Cote d'Ivoire introduced the Proposal for a Study on the Rights of Audiovisual Authors and their Remuneration for the Exploitation of their Works (document SCCR/44/7). ... The proposal will be further discussed at the next committee meeting.

...

25. In light of the plenary discussion on copyright in the digital environment and the growing impact of artificial intelligence (AI) on the creative industries, the Committee invites the Secretariat to organize an information session on the opportunities and challenges raised by generative AI as it relates to copyright. The information session would take place as part of the agenda item related to Copyright in the Digital Environment at the next committee meeting.

AGENDA ITEM 9: CLOSING OF THE SESSION

The number and time allocation of meetings the SCCR has been a subject of contention at some meetings. The Summary does agree to a number of meetings next year, and rather suggests that the Group Coordinators "work with the incoming chair ... to confirm the modalities of non-plenary discussions going forward." This may indicate that next year there will be one full plenary meeting and other informal intercessional meetings.

28. In relation to future meetings, some members expressed preference that the Committee get back to a pattern of two sessions per calendar year, while some do not share this view.

29. The Chair invites Group Coordinators and interested member states to work with the incoming Chair and the Secretariat to clarify and confirm the modalities of non-plenary discussions moving forward. The outcome of these discussions should be clearly communicated to the Committee and observers in advance of the next committee meeting.

The Summary also suggests that the time of the committee should be "divided equally" between broadcasting, limitations and exceptions and other matters. This would be a shift from the past where all other matters were often considered only on Friday, receiving less than a third of the Committee's time.

30. For the next session of the Committee, the time for four and one-half days should be divided equally between broadcasting, limitations and exceptions and other matters, including copyright in the digital environment, the resale royalty right, rights of theatre directors, and the public lending right, after the handling of preliminary, administrative agenda items.

ABOUT PIJIP @ SCCR

PIJIP's project on the Right to Research provides technical assistance and training on copyright matters that impact the ability of researchers to create and provide public access to scientific research. PIJIP published research⁴ and held several workshops before the SCCR, including in seminars for developing country delegates co-sponsored with the South Centre and workshops for stakeholders co-sponsored with the A2K Coalition. PIJIP observes and shares research with SCCR meetings represented by Senior Analyst Andres Izquierdo. The Global Expert Network on Copyright User Rights is an observer of the SCCR and a member of the [Access to Knowledge Coalition](#), which submitted [Comments](#) on the SCCR agenda, especially on implementing the Work Program on Exceptions and Limitations [43/8](#) adopted by the Committee in the 43rd meeting. The User Rights Network was represented at SCCR by Professors Sean Flynn and Allan Rocha.

⁴ PIJIP released two papers on the Broadcast Treaty. In "Simplifying the WIPO Broadcasting Treaty: Proposed Amendments to the Third Revised Draft" (2023). Joint PIJIP/TLS Research Paper Series. 111 <https://digitalcommons.wcl.american.edu/research/111>, Professor Bernt Hugenholtz argues that the current draft text fails to protect broadcasters solely against acts of "signal piracy," along the model of the Brussels Convention, and instead continues to use exclusive rights as its core method of protection, more similar to the Rome Convention. In "Comments on the September 6, 2023 Draft of a WIPO Broadcasting Treaty, the Definitions, Scope of Application, National Treatment and Formalities" (2023). Joint PIJIP/TLS Research Paper Series. 110 <https://digitalcommons.wcl.american.edu/research/110>, KEI Director James Love examines and proposes amendments for the draft's language on definitions, scope of application, national treatment and formalities.