

## **Standing Committee on Copyright and Related Rights**

**Thirty-first Session  
Geneva, December 7 to 11, 2015**

**DRAFT REPORT**

*prepared by the Secretariat*

1. The Standing Committee on Copyright and Related Rights (hereinafter referred to as the “Standing Committee”, or the “SCCR”) held its thirty-first session in Geneva, from December 7 to 11, 2015.
2. The following Member States of the World Intellectual Property Organization (WIPO) and/or members of the Bern Union for the Protection of Literary and Artistic Works were represented in the meeting: Afghanistan, Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Belarus, Belgium, Brazil, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Czech Republic, Democratic Republic of the Congo, Denmark, Ecuador, El Salvador, Finland, France, Gabon, Georgia, Germany, Greece, Guatemala, Holy See, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Japan, Jordan, Kenya, Latvia, Libya, Lithuania, Luxembourg, Mexico, Monaco, Morocco, Nepal, Netherlands, Niger, Nigeria, Oman, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic Of Moldova, Romania, Russian Federation, Senegal, Singapore, Slovakia, Solomon Islands, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, The Congo (The Republic of), Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, United Kingdom, United States of America, Viet Nam, Yemen and Zimbabwe (84).
3. The European Union (EU) participated in the meeting in a member capacity.
4. The following intergovernmental organizations (IGOs) took part in the meeting in an observer capacity: African Regional Intellectual Property Organization (ARIPO), African Union (AU), European Audiovisual Observatory, South Centre (SC) and the World Trade Organization (WTO) (5).
5. The following non-governmental organizations (NGOs) took part in the meeting in an observer capacity: Actors, Interpreting Artists Committee (CSAI), Agence pour la protection des programmes (APP), *Alianza de Radiodifusores Iberoamericanos para la Propiedad Intelectual* (ARIPI), American Federation of Musicians of the United States and Canada (AFM), Asia-Pacific Broadcasting Union (ABU), Asociación internacional de radiodifusión (AIR), International Association of Broadcasting (IAB), Asociación Argentina de Intérpretes (AADI), Association des télévisions commerciales européennes (ACT), British Copyright Council (BCC), Canadian Copyright Institute (CCI), Canadian Library Association (CLA), Central and Eastern European Copyright Alliance (CEECA), Centre for International Intellectual Property Studies (CEIPI), Chamber of Commerce and Industry of the Russian Federation (CCIRF), Chartered Institute of Library and Information Professionals (CILIP), *Conseil national pour la promotion de la musique traditionnelle du Congo* (CNPMT), Copyright Research and Information Center (CRIC), Electronic Information for Libraries (eIFL.net), European Broadcasting Union (EBU), European Bureau of Library, Information and Documentation Associations (EBLIDA), European Law Students' Association (ELSA International), European Publishers Council, European Visual Artists (EVA), European Writers' Council (EWC), Featured Artist Coalition (FAC), *Fédération européenne des sociétés de gestion collective de producteurs pour la copie privée audiovisuelle* (EUROCOPYA), German Library Association (Deutscher Bibliothekverband e.V. (DBV)), Ibero-Latin-American Federation of Performers (FILAIE), Information Technology Industry Council (ITI), Ingénieurs du Monde (IdM), International Association for the Protection of Intellectual Property (AIPPI), International Association of Scientific Technical and Medical Publishers (STM), International Authors Forum (IAF), International Confederation of Music Publishers (ICMP), International Council of Authors of Graphic, Plastic and Photographic Arts (CIAGP), International Council of Museums (ICOM), International Council on Archives (ICA), International Federation of Actors (FIA), International Federation of Film Producers Associations (FIAPF), International Federation of Journalists (IFJ), International Federation of Library Associations and Institutions (IFLA), International Federation of Musicians (FIM), International Federation of Reproduction Rights Organizations (IFRRO), International Federation of the Phonographic Industry (IFPI), International Literary and Artistic Association

(ALAI), International Publishers Association (IPA), International Society for the Development of Intellectual Property (ADALPI), International Video Federation (IVF), Knowledge Ecology International, Inc. (KEI), Latin Artis, Motion Picture Association (MPA), North American Broadcasters Association (NABA), International Confederation of Societies of Authors and Composers (CISAC), Program on Information Justice and Intellectual Property (PIJIP), Scottish Council on Archives (SCA), Society of American Archivists (SAA), The Japan Commercial Broadcasters Association (JBA), TransAtlantic Consumer Dialogue (TACD), Union Network International - Media and Entertainment (UNI-MEI) and the World Association of Newspapers (WAN) (60).

## **AGENDA ITEM 1: OPENING OF THE SESSION**

6. The Chair welcomed the delegates to the Thirty-First Session of the SCCR and invited the Director General to provide his opening address.

7. The Director General joined the Chair in welcoming the delegates to the Thirty-First Session of the SCCR, which was the last substantive meeting that would be held in 2015. He observed that in previous sessions the Member States had not been able to reach consensus on recommendations, despite the extraordinarily good progress that had been made on the substantive issues before the Committee. On the issue of broadcasting, the Director General reiterated three points. First, its economic and cultural importance was extraordinarily high. Second, it was the last component of the international copyright framework that had not received a review and an update, in view of the digital environment. Third, it was the longest standing agenda item on the normative agenda at WIPO. Those factors operated in favor of a clear recommendation being taken by the SCCR as to the future. The Director General observed that there was a lot of work, including the Chair's text, which required substantive discussions during the current session of the SCCR. On the issue of exceptions and limitations for libraries and archives, the Director General noted that there was widespread recognition in the SCCR of the fundamental cultural importance of libraries and archives. The current session of the SCCR would include the presentation of a study on limitations and exceptions for museums, which would facilitate understanding amongst all the delegations of the important role of museums. With regard to the issue of exceptions and limitations for educational institutions and research institutions and persons with other disabilities, the Director General stated that it was important to have a way forward for the SCCR. Making reference to the other proposals or suggestions that had been made in previous sessions of the SCCR, for example, the resale right, which had been put forward by a number of delegations, the Director General noted that one of the difficulties that the SCCR faced was its full agenda, and how to deal with all of the items that were on that agenda. The Director General hoped the agenda would be able to accommodate some forward movement, not only on existing subjects, but also in the examination of potential new subjects. He informed the delegates of the April 2016 Conference on the Global Digital Content Marketplace, scheduled to take place at WIPO in Geneva, and highlighted the important synergy between the Conference and the paper that had been put forward by the Group of Latin American and Caribbean Countries (GRULAC). He noted that the Conference would provide information on the rapid developments that were occurring in relation to the ways in which creative works were produced, distributed and consumed across the world. He also pointed out that the Conference did not have a normative dimension, as that was the responsibility of the SCCR. In closing, the Director General informed the delegates of the personnel changes, which had taken place at WIPO since the last SCCR session and wished the Committee good luck in its deliberations.

8. The Chair informed the Committee that the Regional Coordinators had agreed that the Member States would continue to work on all subjects on the draft Agenda for the thirty-first

session of the SCCR. The discussions would be based on all working documents considered at the thirtieth session of the SCCR. The Regional Coordinators had also accepted a compromised proposal to divide the meeting time equally between the protection of broadcasting organizations and limitations and exceptions. The Chair pointed the delegate's attention to two new documents, which had been submitted to the SCCR, including Document SCCR/31/4, a proposal for analysis of copyright related to the digital environment, which had been put forward by GRULAC. He noted that document SCCR/31/5 related to the resale right and had been submitted by the Delegations of Senegal and the Congo (The Republic of).

## **AGENDA ITEM 2: ADOPTION OF THE AGENDA OF THE THIRTY-FIRST SESSION**

9. The Chair moved to Agenda Item 2, the adoption of the Agenda of the thirty-first session of the SCCR as included in Document SCCR/31/1prov. As there were no comments on the proposed Agenda, the Chair approved the Agenda.

## **AGENDA ITEM 3: ACCREDITATION OF NEW NON-GOVERNMENTAL ORGANIZATIONS**

10. The Chair moved to Agenda Item 3, the accreditation of non-governmental organizations (NGOs). The SCCR had received a new application for accreditation, which was contained in SCCR/31/2 and was a request by the African Broadcasting Foundation (APBF). The Committee approved the accreditation of the APBF.

## **AGENDA ITEM 4: ADOPTION OF THE REPORT OF THE THIRTIETH SESSION OF THE SCCR**

11. The Chair moved to Agenda Item 4, the adoption of the report on the thirtieth session of the SCCR. As there were no comments, the Chair invited the Delegations to send comments or corrections to the Secretariat and invited the Committee to approve Document SCCR/30/6. The Committee approved Document SCCR/30/6.

12. The Chair invited the Secretariat to make announcements regarding the various side events. The Secretariat confirmed the proposed schedule and summarized the side events scheduled.

## **OPENING STATEMENTS**

13. The Chair invited Regional Coordinators to deliver their opening statements.

14. The Delegation of Greece, speaking on behalf of Group B, congratulated the Chair and thanked the Secretariat for its work. Group B continued to attach great importance to the negotiations on the Treaty for the Protection of Broadcasting Organizations. WIPO as a specialized agency on intellectual property (IP) had the responsibility to continue to be relevant within the evolving environment of the real world, for example, to the advancement of technologies. In order to maintain this relevancy, WIPO had to continue to hear the voices of the real world and respond to developing demands in various fields, including through norm-setting activities, in a timely manner. In that regard, the Member States had to find a solution that fit with the current environment, through the consideration on its own merit, without becoming outdated. It was only the Member States that could ultimately agree on practical and meaningful solutions and maintain the relevancy of the SCCR. The Delegation

thanked the Chair for the proposal on the broadcasting text, on “Definitions, Object of Protection and Rights to be Granted”. The proposal was not a new document, but an attempt to clarify the text and the definitions, and move the work on broadcasting organizations forward. It was a text on which Group B would have a number of comments and technical clarifications. Turning to exceptions and limitations, the Delegation stated that it expected to find a consensual basis for the future work of the SCCR. The presentation by Professor Kenneth Crews and the ensuing intensive discussions at the last SCCR session had given the Member States a clue to the way forward. It had demonstrated that Member States needed an informative reference for policy making, in order to adopt exceptions and limitations, respecting the established differences in their legal systems. The results of the study could be further processed in a manner that could serve as an informative reference for policymakers at the national level, in a more accessible, user friendly manner. Additional exchanges of national experiences at the SCCR, including the process and the behind-the-scenes of collated final provisions on limitations and exceptions for libraries and archives, could serve to complement the study and allow the Committee to reach tangible outcomes. The Delegation stated that it was looking forward to the presentation of the Study on Copyright Limitations and Exceptions for Museums. Additionally, it stated that the SCCR should give due consideration to the objectives and principles related to limitations and exceptions, as proposed by the Delegation of the United States of America, which strove to find common ground in a reality where no consensus existed within the SCCR for the normative work. Group B confirmed its commitment to constructive engagement in the work of the SCCR.

15. The Delegation of Brazil, speaking on behalf of GRULAC, congratulated the Chair and thanked the Secretariat. The issues of interest to the Group included the protection of broadcasting organizations, limitations and exceptions for libraries and educational and research institutions and persons with disabilities. The Delegation hoped to continue to discuss the issues under a balanced scheme, determined by the Chair, which addressed the interests and priorities of all Member States. With respect to limitations and exceptions for libraries and archives, GRULAC valued the work, which had been done and welcomed the presentation of the study on copyright and limitations and exceptions for museums. The Delegation supported an open, frank discussion on exceptions and limitations for libraries and archives, which would not prejudge the nature of the outcome of the discussion, in order to reach effective solutions to the problems affecting libraries and archives around the world. The Delegation expressed its interest in the discussion under the proposal submitted by the Delegations of Brazil, Ecuador, India and the African Group regarding the treatment of that topic. In order to promote the work on exceptions and limitations, GRULAC supported the document on the table, proposed by the Chair, and reiterated its willingness to continue discussions on broadcasting organizations, with a view to update their protection. The Group welcomed the text proposed, and the assistance of the Secretariat, as a contribution to the discussion on “Definitions”, “Object of Protection”. GRULAC also informed the delegates that it would introduce a new proposal under Agenda Item 8, Document SCCR/31/4, entitled “Proposed Analysis of the Copyright Related to the Digital Environment”. The document addressed protecting IP in the digital environment. With respect to the Marrakesh Treaty, the Delegation announced that Brazil had completed its national ratification process and through the deposit of its instrument of ratification, it would join Argentina, El Salvador, Mexico and others that had ratified the Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities.

16. The Delegation of India, speaking on behalf of the Asia Pacific Group stated that the SCCR was an important committee at WIPO, dealing with three issues of critical importance to Member States, namely, the protection of broadcasting organizations, limitations and exceptions for libraries and archives and limitations and exceptions for educational and research institutions and persons with other disabilities. Those three issues were of great importance to the Group. Based on previous sessions of SCCR, it would not be wrong to

mention that the SCCR was facing difficulty in finding agreement on how to continue its work on the Agenda Items. The Delegation believed that the issues had not received the same level of commitment and understanding, commensurate with their importance, based on the differential socioeconomic development of Member States. Inclusiveness and mutual understanding of each other's priorities and concerns were essential for progress. In that spirit, the Group was committed to engaging constructively in negotiating a mutually acceptable outcome for all three issues before the SCCR. The Delegation supported the proposed program of work and hoped to see the finalization of a balanced treaty on the protection of broadcasting organizations, based on the mandate of the 2007 General Assembly, to provide protection on the signal based approach for cablecasting and broadcasting organizations in the traditional sense. Exceptions and limitations were of critical importance for individuals, as well as for the collective development of enlightened societies. However, there was no denying the fact that some divergence on how to approach exceptions and limitations existed among Member States. Exceptions and limitations had an important role to play in attaining the right to education, the actualization of which was hampered in many developing countries due to the lack of access to relevant educational and research materials. It was unfortunate that the absence of adequate will to discuss and develop the two exceptions and limitations before the SCCR had resulted in inertia on all three issues, which had led to an absence of a decision by the General Assembly in October, 2015. The Delegation hoped that all Member States would engage sincerely and constructively during the current session on those two issues, based on previous discussions and new inputs, so that in the future they would have a text to discuss and work with. The SCCR was the same committee which had given them the Beijing Treaty on Audiovisual Performances and the Marrakesh Treaty. The Delegation was optimistic that with the requisite will they would be able to achieve similar outcomes regarding the development of appropriate international instruments on all three issues soon. The Asia Pacific Group looked forward to tangible progress and productive results in that session.

17. The Delegation of Nigeria, speaking on behalf of the African Group, hoped the current session of the SCCR would take substantial steps forward, enabling the Committee to advance towards a Diplomatic Conference, to conclude a Treaty for the Protection of Broadcasting Organizations, in conformity with the 2007 General Assembly mandate. The African Group also hoped to significantly advance and identify the pathway to return to text-based work on exceptions and limitations for libraries and archives and for education and research institutions and persons with other disabilities. The Delegation underscored its desire for international legal instruments on those three topics being discussed in the SCCR. The relevance of the SCCR could not be overstated and needed to take into account the digital environment and the need for both to be positioned to respond to the global realities, and continually ensure an appropriate balance and relationship between the rights of creators and the public interest. The Delegation appreciated the different levels of maturity of the three SCCR subjects and thanked the Chair for the preparation of Document SCCR/31/3, which contained a consolidation of "Definitions, Object of Protection and Rights to be Granted". The African Group welcomed the study on copyright exceptions and limitations for museums and made note of the proposal in Document SCCR/31/4, proposed by GRULAC, regarding copyright management in the digital environment.

18. The Delegation of Romania, speaking on behalf of the Group of Central European and Baltic States (CEBS) noted that it had been a long time since the topic of the protection of broadcasting organizations had been first addressed by the SCCR. Both the efforts and the resources invested in the process had been significant and they needed to turn the achievements made into a solid basis for the conclusion of the debate, arriving at agreement on defining the scope of protection to be granted to broadcasting organizations. The Delegation welcomed the Chair's text on, "Definitions, Object of Protection and the Rights to be Granted". CEBS also reiterated its support for an effective treaty on the protection of broadcasting organizations to regulate the new developments in the field. With regard to

limitations and exceptions, the Delegation appreciated the updated study by Professor Kenneth Crews on limitations and exceptions for libraries and archives, and the previous discussions in the SCCR. CEBS welcomed the study on copyright limitations and exceptions for museums. As a means to make progress, it supported the exchange of best practices. The current international framework allowed for Member States to update the limitations and exceptions in their national legislation, therefore it could not support embarking on a normative path. The same approach applied to the topic of limitations and exceptions for educational and research institutions and for persons with other disabilities. The Delegation made note of the new proposal which had been made by GRULAC relating to copyright in the digital environment, however as it was a complex proposal CEBS would not yet react to its content at that time.

19. The Delegation of China stated that it would continue to take an active part in the relevant discussions, as it had always done, and would be open to any constructive proposals. China hoped that the delegations would take a cooperative, flexible and pragmatic approach in their substantive discussions, as advocated by the Director General and the Chair, so that the Committee could engage in balanced and substantive discussions on the protection of broadcasting organizations, and limitations and exceptions for libraries and archives. In the limited time it had, the Delegation hoped that the Committee would be able to bridge differences and reach consensus on key issues, so that the SCCR would be fruitful. China also observed that Member States were in the process of ratifying the Beijing Treaty. The Delegation urged relevant Member States to make joint efforts in that regard so the Beijing Treaty would be entered into force as soon as possible.

20. The Delegation of the European Union and its Member States stated that the SCCR should again strive to make the best possible use of time and resources, which demanded clarity, as to the goals and expected deliverables under each Agenda Item. The European Union and its Member States had been actively involved in the discussions on the treaty for the protection of broadcasting organizations. Those discussions were of great importance and the Delegation was ready to continue to work constructively to advance work on that matter, which undeniably was a complex and technical one. The Delegation welcomed the "Consolidated Text on Definitions, Object of Protection and Rights to be Granted". A broad consensus was needed as to the extent of the protection to be granted, so that the Treaty could provide broadcasting organizations with adequate and effective protection. Considerable efforts had been made during the previous sessions of the SCCR to build consensus on a treaty, which was meaningful in view of technological realities, and reflected the needs of broadcasting organizations in the twenty-first century. The Delegation would continue to contribute constructively to the discussion on exceptions and limitations. It was hopeful that the discussions on those matters would continue in a way that led to useful results, with a purposeful use of time and resources. The Delegation strongly believed that the current international copyright framework already empowered Member States to introduce, maintain and update limitations and exceptions in their national legislation that could meaningfully respond to local needs and traditions, while continuing to ensure that copyright was an incentive and reward to creativity. There was no need for legislatively binding instruments and it was not in favor of work in that direction. Useful work could instead be done at WIPO on how exceptions and limitations could best function within the framework of the existing international treaties. Discussions would be most useful if they were aimed at a more thorough understanding of the issues at stake, and an investigation of possible solutions among those available under the framework of the existing international treaties. The Delegation hoped that the SCCR would come to a shared understanding of how that could be achieved on a consensual basis. The European Union and its Member States was of the view that exchanging best practices in a conclusive way for all Member States could be a useful tool. It was important to devote future work to the implementation of the existing international framework, including the WIPO Copyright Treaty (WCT), the WIPO Performances and Phonograms Treaty (WPPT) and the Beijing and Marrakesh Treaties,

which had not yet entered into force. The Delegation expressed support for a discussion on the resale right as proposed by some Delegations, as both subjects were important for the international IP system and should find that place in the proceedings of the SCCR.

## **AGENDA ITEM 5: PROTECTION OF BROADCASTING ORGANIZATIONS**

21. The Chair opened Agenda Item 5 on the protection of broadcasting organizations. He reminded Delegations of the mandate, which had been received during SCCR 30, to prepare a Consolidated Text with respect to Definitions, the Object of Protection and Rights to be Granted. Document SCCR/31/3 entitled, Consolidated Text on Definitions, Object of Protection and Rights to be Granted, was put before the delegations for their consideration. The Chair also reminded delegations of the study on, "Current Market and Technology Trends in the Broadcasting Sector", contained in document SCCR/30/5, which had been presented at the last SCCR as well as the other charts presented at the last SCCR. The Chair opened the floor to Regional Coordinators.

22. The Delegation of Romania, speaking on behalf of the CEBS Group thanked the Chair for the Consolidated Text and confirmed that offering protection to broadcasting organizations was important. The Group would provide more specific comments when the delegations discussed the concrete language proposed.

23. The Delegation of India, speaking on behalf of the Asia Pacific Group welcomed the contributions on the table, which had contributed to a better understanding of different positions. The Group supported developing an international Treaty for the Protection of Broadcasting Organizations based on the 2007 General Assembly mandate, which had been agreed upon during the Twenty-second Session of the SCCR and later reiterated at the Forty-first General Assembly in 2012. The Asia Pacific Group supported the attempts to reach agreement, based on the signal-based approach for broadcasting and cablecasting organizations in the traditional sense. The Group was committed to working to achieve a balanced text, cognizant of the interests and priorities of all stakeholders. The Delegate stated that adhering to the original mandate, without introducing new layers of protection, would facilitate achieving the desired balance between the rights and responsibilities of broadcasting organizations. The Asia Pacific Group would continue to participate in all consultations, with a view of finalizing the Treaty in the traditional sense, by reaching consensus on outstanding issues and taking into account the concerns of all Member States.

24. The Delegation of Sudan stated that electronic infringements, which were happening on-line, were copyright symbolic and raised questions of how to protect them and what WIPO could do. That was very dangerous. The Delegation hoped that a program that would catch on-line crime would do so with security.

25. The Delegation of the European Commission and its Member States stated that the Treaty on the Protection of Broadcasting Organizations was a high priority. The Delegation remained strongly committed to advancing work on various technical issues discussed in previous SCCRs. The Delegation welcomed the Consolidated Text on, Definitions, Object of Protection and the Rights to be Granted, and had a number of technical and substantive comments. Even though the Delegation attached great importance to other aspects, such as protection for the digital transgressions going beyond simulcasting, it was prepared to continue to follow an open, constructive, flexible approach, which focused the discussion on the main elements of the Treaty and those aspects on which there seemed to be more convergence among the delegations. It hoped the session would bring the Member States closer to finding a solution on the main elements of the Treaty, so that they could extend their discussions to other elements of the working documents. A broad consensus was needed,



as to the extent of the protection to be granted, so that the Treaty could provide broadcasting organizations with adequate and effective protection needed in the current and future world. Considerable efforts had been made during previous discussions to build such a consensus. The Delegation hoped to continue on that path without losing sight of the aim, which needed to remain the conclusion of a Treaty that was meaningful in view of the technological realities and the needs of broadcasting organizations in the twenty-first century. The Delegation strongly believed that the Treaty should protect both transmissions made by traditional means and Internet transmissions of broadcasting and cablecasting organizations from international acts of piracy, whether those acts of piracy occurred simultaneously with the transmissions or after the transmissions had taken place.

26. The Delegation of South Africa aligned itself with the position stated by the Delegation of Nigeria, speaking on behalf of the African Group. The Delegation was in favor of defining broadcasting in a more signal-based, neutral fashion, based on the activity of broadcasting, inclusive of cablecasting and networks using an Internet Protocol. The Delegation supported a definition in the Treaty that was inclusive of cablecasting. When addressing the scope of the proposed Treaty, it was useful to go back to the papers regarding the problem that the Treaty intended to remedy. The problem was the unlawful interception and hijacking of broadcasting organizations' legal or licensed broadcast signals, for simultaneous or near-simultaneous transmission, to an unintended audience for direct or indirect commercial gain. The purpose was to prohibit the hijacking or piracy of the broadcasting signal, subject to limitations, such as the use of the recording for the reporting of current events or for the purpose of education, science, research and so forth. The Delegation supported the mandate of the 2007 General Assembly for the signal-based approach, in which broadcasters were given a narrow scope of rights relating to broadcasting signal and the content carried over that signal. The Delegation was fully committed to further negotiations and the finalization of the Treaty.

27. The Delegation of the Republic of Korea emphasized the importance of updating broadcasting organizations' rights, to reflect the digital environment, which continued to change the landscape of the reality of broadcasting. Therefore, it was inevitable to take into consideration transmissions over the Internet in the scope of protection. The Delegation would work actively in the SCCR to reach consensus on unresolved issues, with the goal of producing a text in a traditional sense, with a signal-based approach that could be acceptable to the Member States.

28. The Delegation of Japan noted that after the thirtieth session of the SCCR they had seen progress on substantial issues of the Treaty, especially in relation to the issues of, Definitions, Objective of Protection and Rights to be Granted. The Delegation had shared the position that the definition of broadcasting should be drafted taking into account similar definitions in existing treaties, such as the WPPT and the Beijing Treaty.

29. The Delegation of Greece, speaking on behalf of Group B reiterated the necessity of establishing an international legal framework for the effective protection of broadcasting organizations in the digital era, in a timely manner, which fit with the day-to-day evolving environment. With that in mind, Group B thanked the technical experts who had contributed to the update of the study in the previous information session, covering a wide range of geographical areas. Those exercises had been very useful in raising the level of technical understanding on the trends of the environment, where they stood and what they had to take care of. Delegations had to further elaborate their understanding of the legal aspects, based on what they would hear at that session. For that purpose, the continuation of the discussions using the Chair's paper as a starting point and technical working non-papers would be a pragmatic, effective way forward. It should be kept in mind that the critical phase was a transformation of the technical understanding of the subject matter, to a legal understanding and language, which consisted of Treaty text. Therefore due consideration

should be paid to that fact in any kind of exercises during the session, in order to take maximum advantage of those technical exercises for the facilitation of the negotiation process of the Treaty. Additionally, it should be recognized that they had reached the stage where they could seriously consider ideas put on the table during the previous discussions, as possible compromises that could bring the Committee to a consensus. Group B was committed to continuing to engage and contribute to the exercise, to realize effective protection for broadcasting organizations in a digital era.

30. The Delegation of Monaco aligned itself with the statement made by the Delegation of Greece, speaking on behalf of Group B. The technological context was constantly changing and implied structural changes, including for broadcasting. The Delegation had great interest in updating protection for broadcasting organizations, in line with the challenges of technological change in the sector and the new consumer trends that had developed. Broadcasting had been very deeply affected by all of those changes and they needed modern protection, which was adapted to twenty-first century technology. The SCCR should make headway in its work towards finding a balanced agreement on the protection of broadcasting organizations. The Delegation hoped the SCCR would be in a position to adopt a recommendation to be addressed to the General Assembly, in order to hold a Diplomatic Conference shortly.

31. The Delegation of the United States of America stated that in the last two sessions of the SCCR they had come a long way in clarifying the various proposals that had been on the table, as well as in achieving a deeper understanding of the changing technological environment in which broadcasting organizations operated. There was growing support for an approach that would establish a targeted right to authorize the real-time retransmission of the broadcast signal to the public over any medium. The Delegation thanked the Chair for his thoughtful and productive work in preparing the Consolidated Text on Definitions, Object of Protection and Rights to be Granted. Such a text was the best way for the SCCR to make progress at that point. However, the draft was fairly minimalist and did not reflect all of the topics on which some clarity had been achieved in prior discussions. The Delegation looked forward to having the opportunity to suggest a few additions and amendments that would allow them to more fully capture the SCCR's progress. It was ready to work actively to resolve as many outstanding issues as possible and to continue the work on a single text that could serve as a good basis for negotiations.

32. The Delegation of Iran (Islamic Republic of) aligned itself with the statement of the Delegation of India, speaking on behalf of the Asia Pacific Group. It attached great importance to continuing the work on signal-based protection for broadcasting organizations in the traditional sense, consistent with 2007 General Assembly mandate, towards developing a legal framework for protecting broadcasting organizations against signal piracy. The SCCR should not establish a second layer of protection for broadcasts through the proposed legal framework. Additionally, it should not restrict society's free access to knowledge and information, in order to balance the Treaty for the benefit for rights holders, broadcasters and society at large. There was a general agreement that a Treaty was necessary. There was also a general consensus that the Treaty should be, first and foremost, a signal-based treaty. Member States should collectively work to find a way forward and to resolve the divergent approaches, as some positive progress had been made in the process of the negotiations on the preparation of a text. There was a need to reach a common agreement on objectives, a specific scope and the rights to be granted in the proposed broadcast Treaty. The Delegation welcomed the Chair's proposed text.

33. The Delegation of Argentina stated that the Treaty on the Protection of Broadcasting Organizations was a priority. The technological progress that had taken place over the last decades meant that it was absolutely necessary to update protection, which was contained in the Treaty. There had been treaties that had assisted in updating and protecting the rights of

producers, artists and performances, but broadcasting organizations had been awaiting change for more than a decade. The Delegation expressed its appreciation for the Consolidated Text on, Definitions, Object of Protection and Rights to be Granted, and would make specific comments later. It hoped the SCCR would make substantive progress during the meeting and would be able to convene a Diplomatic Conference, in order to adopt the Treaty on the Protection of the Rights of Broadcasting Organizations.

34. The Delegation of Ecuador aligned itself with the statement of the Delegation of Brazil, speaking on behalf of GRULAC. It appreciated the work that had been done during SCCR 30 and believed it was a significant basis for their ongoing work. A meeting held the previous week in Colombia had confirmed how important broadcasting organizations were and their relationship with those who created content. It was important for the delegations to have constructive discussions on that Agenda Item.

35. The Chair invited the Delegation of Ecuador to assist the SCCR as the Vice-Chair as it had played a very useful role in previous meetings, including during the Plenary and Regional Coordinator meetings.

36. The Delegation of Armenia stated that it appreciated the importance placed on the adoption of the Treaty for broadcasting organizations in the digital world. That should guarantee the necessary protections against any illicit use or illicit broadcasting, by broadening the rights of the broadcasting organizations. It was necessary and urgent to establish adequate and effective protection for broadcasting organizations at the international level to fight against the unauthorized use of signals.

37. The Delegation of Nigeria aligned itself with the statement made by the African Group regarding all Agenda Items of the SCCR, including the protection of broadcasting organizations. It noted the progress already made by the SCCR on the protection of broadcasting organizations and remained optimistic that the renewed Agenda Item would have more positive outcomes in that area. In that regard, the Delegation thanked the Chair for putting together a consolidated document on Definitions, Object of Protection and Rights to be Granted, which was necessary to advance to the work of the SCCR. There was a need to adopt a flexible approach that would take into account future technological developments, without prejudice to the rights of broadcasting content. The Delegation was happy to engage in a constructive manner within the agreed work program of the SCCR and on the basis of the mandates offered by the 2007 WIPO General Assembly, notably on the signal-based approach to the drafting process of any treaty. It was optimistic and looked forward to the achievements of the target of the Diplomatic Conference as soon as possible.

38. The Delegation of Colombia stated it was important to extend protection for broadcasting organizations and update the legal framework to new technological advances. It was also important to increase standards to include in the framework of protection all distance related forms of broadcasting, so that the rights could avoid retransmission via any procedure or any type of retransmission.

39. The Delegation of India submitted a formal request that the very helpful automated transcriptions being provided by the Secretariat be made available to other Standing Committees and important meetings of WIPO. The Delegation had played a constructive role in the deliberations of past SCCR meetings, so that they could reach a common understanding, which would lead to an effective instrument for the broadcasting sector. It took pride in having a truly diverse and dynamic broadcasting sector, which not only catered to more than a billion internal users, but also to millions in the Indian Diaspora, as well as other foreign users. The proposed broadcasting Treaty should be in conformity with the mandate of the 2007 General Assembly, which was broadcasting and cable-casting in the traditional sense, adopting a signal-based approach. The Delegation reiterated its position

that such rights should protect signals legitimately emanating from broadcasters, including that of the right to prohibit unauthorized retransmission of live signals over computer networks or any other digital or on-line platforms. The Delegation did not support the inclusion of webcasting and simulcasting under the framework of the Treaty, as it was not a part of the WIPO General Assembly mandate of broadcasting in the traditional sense. The proposed Treaty should not accord any additional layer of rights to broadcasters at the cost of content owners, and it should not be a 'blanket right', but rather a 'right to prohibit', based on the acquisition of the 'content rights.' No post-fixation rights should be allowed under the proposed Treaty, as the scope of protection covered only signal protection. However, the Delegation was flexible in considering fixation for rebroadcasting and time-shifting purposes. The Treaty should provide for exceptions to the protection in case of private use, use of short excerpts in connection with the reporting of current events, use solely for education and scientific research, and ephemeral fixation by a broadcasting organization, using its facilities and for its own broadcasts. The Delegation was ready to engage constructively with Member States holding divergent views on that subject. Its aim was to maintain a balance on the copyright issues for content owners and disseminators; that was the broadcasters and the consumers that were the public at large.

40. The Chair introduced Document SCCR/31/3, "Consolidated Text on Definitions, Object of Protection and Rights to be Granted." He referred to the Summary by the Chair at the thirtieth session, which requested that the Chair prepare, for the thirty-first session, a Consolidated Text. He noted that the text should be considered as a tool. It was not a mere compilation of the different contributions of the Delegations but rather reflected the stage of the discussions. The text contained a proposed definition of signal and cablecasting, together with certain alternatives, as well as a definition of broadcasting organizations and retransmission, including transmission in general and near-simultaneous retransmission. Those definitions reflected the discussions and documents from previous sessions. The Chair described the challenges of the definitions, including the reference to other international treaties, as well as the alternative definitions of A and B for broadcasting, the former of which described the traditional approach from the Beijing Treaty. He suggested that the Committee may wish to consider the addition of cablecasting, as it was not in the traditional definition. Alternative B was a neutral definition, which reflected the submission from Delegation of South Africa and its national legislation, with the focus on the activity rather than the platforms used. Alternative B read: "broadcasting means the transmissions either by wireless means or any other means for reception by the public of sounds or of images or of images and sounds or of their representation thereof. 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." There was also a definition of broadcasting organizations, and also of cablecasting. It stated: "the legal entity with the initiative for the packaging, the assembling, the scheduling, with the legal and editorial responsibility for the transmission irrespective of the technology used to the public of its broadcast or cablecast. It is understood that for the purpose of this Treaty entities which deliver their program output exclusively by means of a computer network do not fall under the definition of a broadcasting organization." A natural person undertaking webcasting was out of the scope of the Treaty, as almost all of them had agreed. He suggested that it was up for discussion whether broadcasting would evolve to deliver the activity, for example transmissions exclusively delivered through computer networks. The definition of retransmission was contained in D, which stated that it was the transmission by any means of a broadcast, cablecast, by any other entity than the original broadcasting organization, whether simultaneously or delayed. The term was being used widely in a number of international treaties and bilateral agreements in a wider way. The Committee could discuss whether to restrict the language of retransmission and add near-simultaneous for example. The definition of near-simultaneous retransmission meant a transmission delayed only to the extent necessary to accommodate time differences, or to facilitate the technical transmission of the broadcast or cablecast. The definition of

retransmission mentioned that it was when it was made by any other entity than the original broadcasting organization. The definition of near-simultaneous referred to retransmission made by any other entity than the original broadcasting. Finally, there was a definition of pre-broadcast, meaning a transmission prior to a broadcast that a broadcasting organization intended to include in its program schedule and which was not intended for direct reception by the public. The definition included, in brackets, the terms cablecast or cablecasting.

41. The Chair stated that with reference to the Object of Protection, the protection granted under the Treaty extended only to broadcasts transmitted by or on behalf of a broadcasting organization, but not to works or other protected subject matter carried on them. There was no reference to cablecast. The protection related only to the broadcast transmitted by the broadcasting organization, but also a transmission made on behalf of a broadcasting organization. It was very important to clarify what they were protecting in the proposed Treaty, as they were not referring to copyrighted content of the broadcast, meaning works or other protected subject matter carried on them. The protection of copyright works would be dealt with by existing copyright international treaties or copyright legislation at a national level. The definition of pre-broadcast was in brackets in the Definition section. The second paragraph stated that the provisions of the Treaty should not provide any protection in respect of mere retransmissions by any means, which was part of previous documents submitted by different Delegations. In the Definition section there was a definition of retransmission in a way which implied that it had been made by any other entity than the original broadcasting organization. Mere retransmission made by any entity other than the original broadcasting organization might not be protected by the provision of the Treaty. That would be a part of the discussions. The third paragraph related to the protection for not only the broadcast but the simultaneous and near-simultaneous retransmission. Broadcasting organizations should also enjoy protection for simultaneous or near-simultaneous retransmission by any means as if such transmission were a broadcast. That could be modified depending on the definition of broadcasting. Some clarification could be made regarding the protection for simultaneous or near-simultaneous retransmissions. Paragraph 4 related to the application, *mutatis mutandis*, with respect to cablecasting organizations in respect of their cablecasts. If the definition of broadcasting was to be technologically neutral, that paragraph would not be required. There was a Chair's note on that section referring to further discussion of the inclusion, as an Object of Protection, transmissions by broadcasting/cablecasting organizations in such a way that members of the public may access them from a place and a time individually chosen by them. Finally, Section Number 3, Rights to be Granted under Protection, had two alternatives, Alternative A and Alternative B. Alternative A recognized that broadcasting organizations had rights to authorize or prohibit the retransmission of their broadcast to the public by any means, which was related to the broader definition of retransmission. Alternative B had the same goal by giving the broadcasting organization the right to prohibit the unauthorized retransmission of the broadcast to the public by any means. The sources for the alternatives were the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). The Chair stated that the intention of the Consolidated Text was to consider which options needed to be defined in the Treaty.

42. The Delegation of Nigeria, speaking on behalf of the African Group thanked the Chair for the Consolidated Text and the detailed explanation. The Member States of the African Group would speak in their national capacities in addressing the Consolidated Document in the informal session.

43. The Chair invited the Regional Coordinators to undertake the discussions in the informal session. He stated that NGOs would have an opportunity in the Plenary to provide a review of the Consolidated Text.

44. The Delegation of Greece, speaking on behalf of Group B stated that it could not see the added value of having informal sessions on the Consolidated Text, but rather supported having the discussion in the Plenary with the experts.
45. The Delegation of Brazil, speaking on behalf of GRULAC stated that it was inclined to have a discussion initially in the Plenary, followed by an informal session in Room B.
46. The Delegation of Greece, speaking on behalf of Group B responded that it was in favor of the exercise being inclusive, and that the limited format of the informal session would not help the inclusiveness. It proposed that the experts coming from the capitals could participate in the exercise.
47. The Chair confirmed that the work undertaken had to be based on consensus and inclusiveness, thus it would continue in the Plenary. The Chair opened the floor for detailed comments on provisions in the first section on Definitions, unless there was a general comment regarding some introductory remark on some elements that could be considered essential. He confirmed that NGOs could also make specific contributions to the provisions that were to be discussed.
48. The Delegation of Italy asked for more explanation as to the use of the words relating to the program output of a broadcasting organization.
49. The Chair referred to previous documents or submissions, which had provided those definitions of signal. The program output of a broadcasting organization did not refer to the copyright content or the copyrighted works. There were three layers being conveyed, the first one, the electronic carrier, which was technologically neutral, and the electronic carrier, which was a signal that carried the broadcast. The signal carried the broadcast, which could be considered as the program output of a broadcasting organization. The signal was the electronic carrier, which carried the broadcast and the broadcast was the result of the activity of the broadcasting organization, meaning the programming, scheduling and assembling. Those were a number of the activities that were carried out by the broadcasting organization. The broadcast that was carried by the electronic carrier would be the broadcast, which was as a result of the activity of the broadcasting organization. There was a third layer, which was not a part of the Object of Protection of the Treaty. That was the copyrighted content; the works that were contained in the broadcast. The Chair stressed that some of the delegations had tried to identify the signal with the broadcast itself, meaning the Object of Protection. However, in considering the Rome Convention treatment of the issue, which referred to the protection of broadcasts, and since the broadcast was the program output of broadcasting organizations and not the copyrighted work contained in it, the Chair considered it would be interesting to have the three layers. The Chair noted that Member States could have different approaches.
50. The Delegation of the European Union and its Member States noted that it was closer to the Chair's interpretation that the programed output of a broadcasting organization was a broadcast and would rather try to avoid adding other terms to the definition. The Delegation had a general observation, namely that the term signal was not used in any of the definitions, nor the Object of Protection or Rights to be Granted. Therefore, the term was not being used in any other part of the Consolidated Text.
51. The Chair agreed with the Delegation of the European Union and its Member States that the definition of signal did not relate to other parts of the text. He noted that in previous drafts there had been an intent to refer to broadcasts by using the term broadcast signal. That had been to differentiate the mere telecommunications term signal, which was technologically related, from the element that was the Object of Protection of the proposed Treaty, which included the creative activity of a broadcasting organization, which was the

broadcast. The Chair had not added the definition of broadcast, however he reflected on the fact that it had been defined in previous international treaties. The Object of Protection of the Treaty was not the signal, which nationally was referred to in a telecommunications regulated sector, but the broadcast, which was in accordance with the Rome Convention.

52. The Delegation of the United States of America stated that it had referred to the Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite (Brussels Satellite Convention), which was ultimately the source of the definition of signal in the Consolidated Text. The report of the Rapporteur had discussed some of the reasons for adopting that particular phrase, "the program carrying a signal". The Rapporteur had stated that they were interested in focusing the Treaty on, in her words, the container, not the content. The Brussels negotiators had arrived at the term, "program carrying a signal", in order to limit the scope of the subject matter protected by the Treaty. Only signals that carried programs, whether live, such as a sports event or a newscast, or recorded such as a film, would be protected. The Delegation submitted for consideration the possibility of adding a definition of program and some possible changes to the definition of "signal", which were closer to the Brussels Satellite Convention definition. With respect to the definition of program, the Delegation proposed: "Program means live or recorded material consisting of images, sounds, or both, or representations thereof that is authorized for transmission by the rights holder." The Delegation had incorporated the phrase, consisting of images, sounds or both or representations thereof, from the WPPT, which would focus attention on radio, TV or digital representations of those signals. If they were incorporated into the definition of program, then other references in the text would be simpler. The definition of signal was fairly faithful to the Brussels Satellite Convention definition and they had already covered the issue of programed output, which posed some difficulties. However, there was an important element missing, which was for the direct reception of the public. The Delegation submitted that as a possible change for consideration of the SCCR.

53. The Chair stressed that the definition of "signal" had been included from Document SCCR/27/2 Rev, which included the Alternative A for Article 5. The definition of signal contained in that document stated that signal meant an electronically generated carrier consisting of sounds or images or sounds and images or representations thereof, whether encrypted or not. The Alternative A to that definition contained in the same document used the definition as follows: "Signal means an electronically generated carrier capable of transmitting broadcast or cablecast." The definition in the Consolidated Text mixed the two alternatives contained in Document SCCR/27/2 Rev. The definition in the Brussels Satellite Convention, Article 1(i) stated that a signal was an electronically generated carrier capable of transmitting programs and there was a specific definition of program. The Chair suggested that the proposal from the Delegation of the United States of America should be developed.

54. The Delegation of Italy stated that if they interpreted the programed output of a broadcasting organization as the intention to link the signal and the transmission to a broadcasting organization, the phrase had no added value. It was well explained in Object of Protection that the protection of the Treaty extended only to broadcasts transmitted by a broadcasting organization. However, if they wanted to make reference to programs, as proposed by the Delegation of the United States of America, they would go around in circles because the definition of programs in the Brussels Satellite Convention made reference to the sounds, sound and images and those were reference to programs. That was already in the definition of broadcasting. The Delegation preferred the previous definition of signal, namely electronic generated carrier, consisting of sound or images or sound of images or representation thereof, whether encrypted or not, or generated carrier capable of transmitting a broadcast or cablecast, with some slight modifications.

55. The Chair opened the floor to NGOs as to whether to use the definition of "signal", and if so, whether to use the definition of "signal" on the basis of the previous definition submitted in SCCR/27/2 Rev.

56. The Delegation of Iran (Islamic Republic of) stated that the expression "programed output or input" was a technical expression that needed itself a new definition. According to some sources found in Wikipedia, a program input or output was a method of transforming data between the CPU and a peripheral, such as a network adapter or an AAT storage device. Due to the technical nature of the expression it was better to remove it and replace it with the more familiar expression, such as program consisting of sound and image, or sound or image and such ancillary expressions.

57. The Delegation of Nigeria proposed a slightly different definition, which captured all the elements in the definition proposed by the Chair: "Signal means an electronically generated carrier of information capable of transmitting a broadcast or cablecast whether encrypted or not."

58. The Chair referred to the proposal from the Delegation of Nigeria, incorporating the element of whether encrypted or not and adding the terms of information to the definition contained in Article SCCR/27/2 Rev. The Chair suggested that it would be best to analyze which approach would be the best one, to reflect the chance to reach consensus. The Chair summarized the different options available to the SCCR.

59. The Delegation of the United Kingdom aligned itself with the statement made by the Delegation of Italy, on the basis that the specific language did not add a lot of value or clarify the definition and was too detailed and restrictive. Therefore, in its view, it was redundant.

60. The Delegation of Senegal aligned itself with the statement made by the Delegation of Italy that a clarification should be made between signal, program and broadcast. The SCCR had to be quite clear about what it wanted to propose. In defining broadcasting for the purposes of reception by the public, that would distinguish it from a signal destined for the military or for intelligence services. The Committee was not trying to protect the activities of the army but the activities of those who invested in creation. There should be a balance between the interests of the creators, the interests of the public and the interests of the broadcaster. There was a need for a clear distinction to be made between broadcast, program and signal. The Delegation referred to the statement of the Delegation of the European Union and its Member States, and asked why they needed to define a concept that was not in the Consolidated Text.

61. The Chair responded by stating that the mandate of the General Assembly related to the signal-based approach and there had been a lot of discussion regarding what it meant. For some delegations it was something restrictive, but that depended on the definition of signal used for the signal-based approach. The Chair suggested that they needed clarity on the signal-based approach and outlined the options available to the SCCR.

62. The Delegation of the Russian Federation stated that the Committee should focus on those terms, which were used in practice and which had received broad support by the public. Reference had been made, in particular, to the definition in the Brussels Satellite Convention. New terminology would be further departing from the idea of preparing the text of the Treaty. Incorporating the programed output in the definitions raised many questions: What was the programed output, was it the program, the broadcast or some other technological thing? The Delegation reiterated that it was important to stick to those terms which were already being used in practice and had already worked out long ago what signal-based meant. For the purposes of the discussion, a decision had to be made on the definitions which would underpin the Consolidated Text.



63. The Chair noted that it was interesting to differentiate what had been used before in international treaties when the term signal had been included, for example, in the Brussels Satellite Convention. He noted that they had clarity that the Object of Protection was the broadcast.
64. The Delegation of the European Union and its Member States stated that even if they did not have a definition, it did not mean that the protection would not be based on the signal, because in the definitions of broadcasting and cablecasting they were always referring to a transmission. That also indicated that they were talking about a signal and about protection that was given to a transmission. The Delegation was open to discuss whether they needed a definition of signal, and if such definition was needed, it suggested that they use the existing term in another international agreement, such as the Brussels Satellite Convention, or just refer to a carrier that was capable of transmitting a broadcast or cablecast.
65. The Chair invited the comments of NGOs to the discussion on the definition of a signal.
66. The Representative of the American Federation of Musicians of the United States and Canada (AFM) stated that on behalf of musicians and performers throughout North America, it supported the option proposed by the Delegation of the United States of America, which included the addition of a definition of the term “program” and the modification of the term “signal”.
67. The Representative of Knowledge Ecology International, Inc. (KEI) aligned itself with the proposal of the Delegation of the United States of America to define “program” narrowly to one that was authorized for transmission by the rights holder. However, the Representative pointed out that in some cases people released information under Creative Commons licenses, which authorized the rights holder to transmit the information. The terms under the Creative Commons licenses, which may be designed to promote very broad access may impact the definition of “program”. The Delegation of the United States of America had also proposed that the definition of signal be narrowed for direct reception for the public. It was hard to evaluate some of the definitions because there were many other issues which were not presented. It was fairly confused about the mechanics of some of the issues. However, the Representative considered the proposal by the Delegation of the United States of America to be helpful.
68. The Chair stated that there was some clarity in using the term “signal”, which related to the mandate of the General Assembly and mentioned the signal-based approach. However, the Treaty did not require a minimum definition of signal, meaning mere electronic carrier, but probably a definition of signal, which was related to the program carrying signal, which was what it was interested in protecting. It could be understood as the Object of Protection of the Treaty and it could be understood as a broadcast. The inclusion of a definition of signal had advantages, but not with a very neutral definition of signal, because it could cause confusion as a second layer, relating to the broadcast itself. The Committee could decide either to define the signal as a program carrying signal or use the term broadcast. An interesting suggestion had also been proposed to include a definition of program, which clarified that the program required legal use of the content to be programed. That was a concern which had been expressed previously by different delegations. He welcomed comments regarding the definition of broadcasting/cablecasting or the technologically neutral definition of broadcasting, referred to under letter B of the Chair's Consolidated Text.
69. The Delegation of Nigeria referred to the Chair's statement on signal and reiterated its preference for a definition of signal in the text. The Delegation recalled the desire of many Member States to ensure that the draft Treaty on the Protection of Broadcasting Organizations conformed with the 2007 General Assembly mandate. The best way to go

forward would be a simple definition of signal without the layering that would require new definitions.

70. The Delegation of South Africa aligned itself with the statement of the Delegation of Nigeria for a definition of signal, regardless of the fact that there was no reference made to it in the Consolidated Text. Such a definition would confine the scope of the protection to only signal-based and would be in line with the 2007 General Assembly mandate.

71. The Delegation of Costa Rica stated that the definition of signal would not be helpful as a stand-alone provision. Anything defined in terms of signal should be a sentence in the definition of broadcasting. It noted that to understand the object of the Treaty, one had to go to the definition of broadcasting and then go to the definition of signal, and to the definition of programming. The Delegation proposed a definition of signal and to the extent it was necessary, a definition of broadcast.

72. The Delegation of Chile stated that its preference was for Alternative A, which had separate definitions for broadcasting and cablecasting. The Chilean legislation on telecommunications provided that broadcasting meant transmissions destined to direct reception by the public. It did not include cable operators, qualified in its law, as those who were entitled to limited telecommunication services.

73. The Delegation of Brazil aligned itself with the statement made by the Delegation of Chile and referred to the long-standing discussion on the protection of cablecasters and broadcasters in national legislations.

74. The Delegation of Japan stated that regarding the definition of broadcasting and cablecasting it preferred to exclude transmission over computer networks from the definition of broadcasting because traditional broadcasting and transmission over computer networks were technologically different. In that sense, the Delegation was not in a position to support Alternative B and preferred the definition in Alternative A.

75. The Delegation of the European Union and its Member States proposed a definition of broadcasting that was consistent with the use of the term in its treaties. It was more aligned with Alternative A. The Delegation also considered there were two possibilities. The first was separate definitions of broadcasting or cablecasting, and the second was that they could be merged into one definition. The Delegation referred to the statement of the Delegation of Japan regarding transmissions over computer networks and reaffirmed that it was in favor of the inclusion of protection for such transmissions, but agreed that it would be better achieved through the Object of Protection. In order to have a definition of broadcasting, or definitions of broadcasting and cablecasting that were in line with the existing treaties, Alternative A would need to be clarified so that it did not extend to transmissions over computer networks. Transmissions over computer networks could be included in the Object of Protection, currently referred to as simultaneous or near-simultaneous retransmission by any means in the Consolidated Text.

76. The Delegation of the United States of America stated that consistent with the earlier discussions, it was very important to make clear that protection should be limited to the broadcast signal. There was a possibility for underscoring that important point in that section, including the word "signal" in the definition of broadcasting and cablecasting. With respect to the definition of broadcasting, it agreed with the Delegation of the European Union and its Member States that Alternative A was consistent with well-established international treaty definitions of broadcasting, in particular the definitions of broadcasting in Article 2f of the WPPT, which in turn drew on the definition of broadcasting in the Rome Convention, Article 3f. The Delegation referred to the phrase: "to capture satellite broadcasting", which could be added to the definition of broadcasting after the phrase: "with its consent, such

transmission by satellite is also broadcasting". If the broadcast was an over-the-air broadcast and it otherwise met the definitional requirements, a transmission by satellite that met those criteria would also constitute broadcasting.

77. The Chair thanked the Delegation of the United States of America for its suggestion on the need to clarify that the Object of Protection was the signal and that in order to be clear, the Delegation of Costa Rica had pointed out that there was a need to have coherence among the different definitions requiring the use of the term signal. Regarding the topic of satellite, the suggestion that a transmission by satellite was also broadcasting was already in both alternative A and Alternative B. Regarding the preference for the definitions of the WPPT, that intention was already there also.

78. The Delegation of South Africa supported a technologically neutral definition of broadcasting and therefore was more inclined to go with Alternative B, as it took into account the concerns that it had with regards to defining broadcasting. The Delegation agreed with the other delegations that there was a need to take into account previous definitions of broadcasting as found in other international treaties, however nothing precluded them from coming up with a definition that had the foresight to take into account the rapidly developing digital world in which they found themselves. The Delegation reiterated its preference of having a definition that served the objectives of the Treaty and therefore supported Alternative B.

79. The Delegation of Romania, speaking on behalf of the CEBS Group aligned itself with the position of the Delegation of the European Union and its Member States.

80. The Delegation of Argentina supported Alternative A, based on prior international agreements.

81. The Delegation of Senegal stated its preference for Alternative B, which covered all of the different variants of broadcasting. Having listened to the arguments put forward, in view of the speed of technology, Alternative B would cover all of the different modalities, at least from the past and possibly even into the future.

82. The Delegation of Brazil, speaking on behalf of the GRULAC commented on the proposals to use elements of other treaties that had definitions on broadcasting organizations and cablecasting. The WCT and WPPT viewed the concepts as concepts for users and included definitions for users of the treaties. They were discussing a new Treaty that would possibly use the definitions as beneficiaries. The Delegation pointed out that if a definition was borrowed from other treaties, it may not be accurately suited to a treaty that would deal with those concepts as beneficiaries.

83. The Delegation of India commented on the statement by the Delegation of Brazil, speaking on behalf of GRULAC and stated that even though other international treaties talked about beneficiaries, all along one of the arguments had been about maintaining a balance between the content providers and the rights of the broadcasters. Content providers were in a sense, beneficiaries.

84. The Delegation of Nigeria expressed its preference for Alternative B, as the language was fairly aligned with some pre-existing definitions of broadcasting and to some extent it also took into account the high demand for a technologically neutral definition that could give comfort to different interests. Alternative B encompassed a lot of the elements that different delegations would like to see in a definition of broadcasting in the Treaty.

85. The Delegation of Iran (Islamic Republic of) stated that it supported Alternative A, as it considered the neutrality of the Treaty unjustified.

86. The Representative of KEI stated that it was important to have separate definitions for broadcasting and cablecasting to provide flexibility to Member States in the implementation of the Treaty, because for a lot of Member States, including the United States of America, there were very different regulatory regimes that existed for over-the-air television and cable systems. The Treaty provided rights that primarily went to people that scheduled the content, and in the area of cable systems, that was often not the local company, but often one of the large companies that owned lots of channels. In the document put forward by the Delegation of Brazil, speaking on behalf of GRULAC, the issue of the concentration of ownership of large firms that internationally controlled some of the distribution of digital content, had raised an issue that would be discussed later, which was relevant when looking at definitions of beneficiaries. The Rome Convention was limited to over-the-air free type services and the entity providing the services was providing a public service. Things like cable services were just businesses, where everyone had to pay to get the service and they were subject to all kinds of special laws on the service being subject to payment. That was very different from radio or television that was available to the public for everyone. The best case for the Treaty had been made by the over-the-air television and radio operators and the people who operated cable broadcasting had not requested the Treaty. The only group supporting the Treaty was the Hollywood industries that owned the cable channels and saw themselves as beneficiaries. Having multiple definitions allowed greater flexibility as they moved forward for those Member States that wanted to apply the Treaty more narrowly rather than broadly.

87. The Representative of the Ibero-Latin-American Federation of Performers (FILAIÉ) stated there were great advantages to Alternative A and B. Alternative A could be started with slightly different drafting and incorporate three concepts that were very well established, broadcasting, transmission and retransmission. The Representative's proposal was that in Alternative A, B1 should begin with an understanding of a transmission as wireless broadcasting, then the text would talk about the transmission of signals and transmission. The definition would therefore be fairly complete. For the variant of B, in C there would be a definition of the broadcasting as the legal entity, the broadcasting organization or an individual. The definition of retransmission was sufficient in that it incorporated being from one organization to another and not directly to the public, which would clarify the concept.

88. The Representative of the Copyright Research and Information Center (CRIC) referred to the General Assembly mandates and the definition of broadcasting. The 2007 Mandate stated: "All the parties continue to strive to achieve an agreement on the objective, specific scope and object of protection as mandated by the General Assembly." The 2006 General Assembly stated: "The scope of the Treaty will be confined to the protection of broadcasting and cablecasting organizations in the traditional sense." The decision at the Fourteenth Session of the SCCR had been that the protection of simulcasting and broadcasting were to be discussed separately from that of traditional broadcasting. Therefore, the definition of broadcasting should be confined to that of traditional broadcasting, excluding transmission over computer networks. When broadcasting was so defined, it was only natural that the definition of a broadcasting organization should be in the traditional sense, because a broadcasting organization was that which made the transmission for broadcasting. It was not possible to set the protection of transmissions over computer networks done by broadcasting organizations under the 2006 and 2007 General Assembly mandates. The mandate was confined only to broadcasting and cablecasting organizations in the traditional sense. It was an issue of scope of protection, not beneficiaries, that the type of transmission done by traditional broadcasters should be protected and determined by the scope of the Treaty. Further discussion of the scope was needed from the viewpoint of the General Assembly Mandate. The definition of broadcasting should be limited to the traditional definition.

89. The Chair stated that one alternative referred to the traditional definition of broadcasting, while the other tried to encompass another technologically neutral definition for broadcasting. He had taken note of the delegations' different opinions regarding the alternatives. Some of them had expressed a preference for Alternative A, through a consideration of specific national legislation, which considered those activities in different ways that would help implementation at the national level. Furthermore, Alternative A included or made reference to previous international treaties. Regarding Alternative B, different Member States, from one regional group, had expressed their preference to tackle the twenty-first century use of technologies or technologies being used by broadcasters at that point. The options were clear and the advantages and disadvantages had been expressed. There was an opportunity to consider a more traditional definition of broadcasting, Alternative A, while using the Object of Protection section of the proposed Treaty to extend the protection, without modifying the traditional definition for broadcasting. Comments regarding the definitions of retransmission and simultaneous retransmission, as set out in D in the Definitions in the Consolidated Text, were requested. The definition of retransmission was extended to transmission by any means, which could have some usefulness in the section on Rights to be Granted, where unauthorized retransmission could be protected, meaning for example such retransmission over any platform. However, if that protection was to be limited, it could be achieved through adding a restriction for simultaneous retransmission.

90. The Delegation of the European Union and its Member States asked for clarification on whether the discussion had already referred to the definition of broadcasting organizations.

91. The Chair stated that they had missed the definition of broadcasting organizations and opened the floor for discussions on the definition of broadcasting organization and cablecasting organization, referred to as C in Definitions in the Consolidated Text. The definition contained the elements suggested by previous submissions, including the activities packaging, assembling, scheduling and the responsibility both legal and editorial. There was also a clarification that entities that delivered the program exclusively by means of a computer network would not be a part of the definition of broadcasting organization.

92. The Delegation of the European Union and its Member States stated that the definition of broadcasting organizations was important because it linked broadcasting and cablecasting. It was important to make clear that a broadcasting organization was an organization that had legal and editorial responsibility for transmission to the public or reception by the public, for the transmission of broadcasts or cablecasts, or using the terms broadcasting and cablecasting, because they were the defined terms. For example, the definition could state that it had legal and editorial responsibility for broadcasting and cablecasting, or cablecasting, because they had already defined broadcasting and cablecasting as transmissions, so they did not need to repeat that. They also did not need to repeat "to the public" because it was already part of the definition of broadcasting/cablecasting. The Delegation suggested that the broadcaster should be defined to have legal and editorial responsibility for broadcasting and/or cablecasting. It questioned the purpose of the term "irrespective of the technology used", because the technology was again already included in Alternative A or Alternative B. In both cases the technology was already settled there. That would be clarified by the definition of broadcasting and as to whether they took Alternative A or Alternative B. The Delegation referred to the final sentence, which excluded entities that delivered a programed output, it suggested that they should not refer to programed output but rather refer to delivering the program exclusively by means of computer network. It was not convinced that it was necessary. Those entities were not included in the Treaty. If they had other definitions, like broadcasting and broadcasting/cablecasting and the Object of Protection was properly phrased, such as referring to the fact that the protection granted extended only to broadcasts, then the clarification was not really needed. If they had broadcasting

organizations again linked to broadcasting and cablecasting, also for Paragraph 3 of the Object of Protection, where the Consolidated Text referred to broadcasting organizations, it would also create protection for simultaneous and near-simultaneous retransmissions as it was linked to the definition of broadcasting and cablecasting. Regarding the exclusion of certain parts of the Object of Protection, that could be done in the definition of broadcasting and then clarified in the Object of Protection, where exact transmissions were protected under the Treaty.

93. The Delegation of the United States of America stated that as it had stated during SCCR 30, the word “packaging” added no additional value, as everything that was of any value was already encompassed within the terms “assembling” and “scheduling”. The Delegation referred to the fact that one of the broadcasting organizations had even recognized that that was the case and was comfortable with it. With respect to the phrase “irrespective of the technology”, it agreed with the Delegation of the European Union and its Member States that it was an unnecessary element. It was already treated in other definitions and it could cause confusion because it could be interpreted as being intended with the last sentence. Turning to the last sentence, the Delegation questioned whether it was necessary to include that particular exclusion in the definition. Rather, it thought that the more appropriate place to include that would be under the Object of Protection. Finally, it referred to a minor other point to note that program output was apparently a new phrase. If they had a well-established definition of program, that would avoid the need to introduce the new phrase.

94. The Delegation of Brazil, speaking on behalf of GRULAC raised a question regarding the definition of broadcasting organizations. It understood that there were four elements that needed to be present in order to reach a definition of broadcasting organizations. Packaging was the first element, the second element, assembly, the third, scheduling and the fourth, legal and editorial responsibility for the transmission. The question was whether those four elements would be applicable to all broadcasting organizations and all national laws or whether in some jurisdictions they would find broadcasting organizations that actually only met two or three out of the four elements. The question was whether the “and/or” clause would be the best suited for the definition, since it was not clear whether the four elements of the definition would be applicable to all national experiences. Additional information was sought on the feasibility of having a definition with all of those elements.

95. The Chair summarized the previous day’s discussion regarding the Chair’s Consolidated Text contained in document SCCR/31/3. An interesting exchange of views had taken place regarding the definition of signal, which had not only triggered a technical definition of signal, but also a discussion regarding the Object of Protection. The Committee had analyzed whether protection was granted to the mere signal, a program carrying a signal, or a broadcast and how a definition could usefully address a signal. The term “program carrying signal” was the most closely related to the term “broadcast” itself. The exchange had been useful because it had been suggested that if in the definition of signal reference was made to a program-carrying signal, this could make it necessary to define program as well. An interesting suggestion had been made to define program with the relationship to the rights holders for that program content. There had been concerns expressed at previous SCCR sessions that the framework would be built to support a legal approach, that is the legal function of broadcasters, meaning that they were going to undertake their role, complying with their own legal obligations, including the legal obligations of rights holders for the content they used. A definition of signal had to be provided in a way which was helpful to comply with the General Assembly Mandate. It had also been stated that the definition of signal should also be referred to in other provisions of the Treaty. One way to address that was to mention the term “broadcast” in the definition of “broadcast signal” and there had been some suggestions to include the term “signal” in the remaining provisions. The discussion about the definition of “signal” was extremely useful because it

implied a clarification of what was the Object of Protection. The definition of broadcasting had also been discussed as part of Alternative A and Alternative B and analyzed the pros and cons of the different alternatives. Alternative A was useful for Member States that wanted to differentiate the treatment they gave to broadcasting activities and cablecasting activities and having two different definitions would help them when implementing the proposed Treaty. For those Member States with concerns that the traditional definition of broadcasting could imply that the Treaty was going to be outdated technologically because it did not contain the developments of the twenty-first century, they could achieve that in the section on Definitions, but also in the section on Object of Protection. Even though they could adopt a traditional definition for broadcasting, they could then in the Object of Protection extend that to other technologies or platforms to be sure that they would be covered. Regarding Alternative B, several delegations had expressed a preference for it because its neutrality helped them nationally to maintain their legislation as technology was developing. It would also be useful for including the new activities and platforms that broadcasters would use currently and in the future. The discussions related to the definition in letter C addressed the definition of broadcasting organization, which listed activities including packaging, assembling, scheduling and then another condition, the legal and editorial responsibility. The Delegation of Brazil, speaking on behalf of GRULAC had asked whether a broadcasting organization needed to comply with each one of those activities. The Delegation of the United States of America had questioned the condition of packaging, given that it could be part of the assembling activity. It had also been also questioned whether the phrase “irrespective of the technology used” could be tackled either through the definition of broadcasting itself or by other clarifications. Regarding the last part of that definition, referring to the fact that the entities which delivered output by a network did not fall within the definition of a broadcasting organization, some delegations had suggested that that part of the definition would be better placed in the section on Object of Protection, as a clarification. The Chair opened the floor to the Delegations of Italy and Argentina regarding the third definition of a broadcasting organization.

96. The Delegation of Italy stated that with respect to Paragraph C, it shared the opinion expressed by the Delegation of the European Union and its Member States, in the sense that the words “irrespective of the technology used” should be deleted. It also considered that the last phrase “it is understood that for the purpose of this Treaty, et cetera” should be deleted. The phrase was ambiguous and ambiguity came out from the word “exclusively” because what happened if a broadcasting organization did not exclusively deliver the programs? The reality was that certain activities were done by delivering in the traditional way, but there were also activities of broadcasting organization that were delivered by means of a computer network. In that situation it questioned whether the broadcasting organization would be protected? That was a very important issue that they had to think about and find a middle ground solution, as the Delegation considered that it was also a necessity to protect the simultaneous transmission by network, by the broadcasting organization, where the content was transmitted by wireless and by computer networks.

97. The Chair responded to the Delegation of Italy by highlighting that the phrase was used in order to tackle specifically what it had mentioned, that was when broadcasters undertook their activities both by traditional means, wireless means and by computer networks as they did. They would still be considered broadcasting organizations under the definition, with the intention of stating that if they exclusively delivered their broadcast or their signals by means of computer network, exclusively, they did not fall into that definition. Therefore, if a broadcasting organization undertook activities both by traditional means and by computer networks, they would fall within the definition.

98. The Delegation of Argentina stated that in relation to Paragraph C it considered that cablecasting organizations should be covered by the Treaty, and therefore would delete the square brackets. In relation to the reference to the legal entity, it suggested clarifying it was

a legal entity legally authorized to carry out those activities. The last sentence had to be deleted.

99. The Chair took note of the suggestions of the Delegation of Argentina and suggested that with respect to removing the brackets, a note could be added or clarification stating that if Member States wished, different treatments at a national level could be maintained, so as not to clash with either constitutional or regulatory norms in the Member State.

100. The Delegation of the European Commission and its Member States referred to the issue raised by other delegations regarding the elements of packaging, assembling and scheduling in the definition of broadcasting organizations. The legal and regulatory responsibilities were very important together with the assembling and scheduling of programs. However, the term “packaging” could be discussed further.

101. The Chair suggested that it may be a good time to discuss which of the remaining activities could be a part of the definition.

102. The Delegation of Colombia stated that with regard to the definition of broadcasting, it considered it sufficiently broad to allow Member States to choose. The Delegation was of the opinion that the last part could be placed in a different place, so that they only referred to broadcasting organizations in the subject.

103. The Chair invited the Delegation of the United States of America to discuss the possible deletion of packaging activity and provide some additional reasons why it considered that the packaging activity was not necessary.

104. The Delegation of the United States of America stated that the argument was simply that the concept of packaging was already included in the other concepts mentioned in the relevant phrase. At one of the previous sessions of the SCCR, in the informal exchange, the deletion of that phrase was not of concern to the broadcasting entities that were actually involved in broadcasting. If those broadcasters were with them at the current session they could shed further light on that issue. It was not a priority point, but it was simply a matter of drafting efficiencies to eliminate words that really did not do any work.

105. The Chair invited the Representatives of NGOs to the floor to give clarification regarding the specific issue of the activities that were going to be listed in the definition of a broadcasting organization.

106. The Representative of the European Broadcasting Union (EBU) stated that to the extent that it could add to the discussion, the wording had come from previous texts, but had not been discussed in much detail. Its initial reaction was that of the three elements of packaging, assembling and scheduling, the assembling and scheduling were the most important ones, as packaging was probably the activity which followed the assembling and came before the scheduling.

107. The Chair confirmed the sequence in which the activities took place and the fact that the Representative of EBU did not see packaging as a crucial activity to be included in the definition. The Chair referred to the question from the Delegation of Brazil, speaking on behalf of GRULAC, regarding whether a broadcasting organization needed compliance with all of the activities mentioned in the definition, in order to be considered a broadcasting organization? The Chair opened the floor to comments on that point.

108. The Delegation of Nigeria aligned itself with the suggestion made by the Delegation of the United States of America about removing the term “packaging”. Packaging was part of the activity of assembling. If broadcasting organizations or cablecasting organizations were



a legal entity, reference should be made to scheduling and their legal and regulatory responsibility. The Delegation supported keeping the last paragraph because traditional broadcasters made a lot of investment in broadcasting, whereas competitors using the broadcast had minimal investment. The provision should exclude those who were essentially or mostly engaged in computer networks for their broadcasting activities.

109. The Chair stated that the Delegation of Nigeria had suggested that the reference to legal entity may include legal and editorial responsibility requirements at some point. There was strong support for the deletion of the term “packaging”. In relation to the section on retransmission in paragraph D, it stated that: “the retransmission means the transmission by any means of a broadcast/cablecast by any other entity than the original broadcasting (cablecasting organization/cablecasting) whether simultaneous or delayed.” That was a very broad definition of retransmission that could be helpful to include rights in the Rights to be Granted section, to avoid the illegal use of a broadcast over any other platform. A way to restrict the scope of protection could be to add some objectives to the retransmission in order to point out which type of retransmission could be covered and which type of retransmission could not be covered.

110. The Delegation of Iran (Islamic Republic of) stated that the definition of retransmission without the definition of transmission in the Consolidated Text created some ambiguity and the definition of retransmission was linked to the definition of transmission. The Delegation suggested including the definition of transmission in Document SCCR/27/2 Rev.

111. The Delegation of the European Union and its Member States stated that it was important to have a broad definition of retransmission. The definition of retransmission was in line with the understanding of retransmission in previous treaties. In practice the main element was that the transmission was done by another entity other than the original broadcasting organization. That was the core understanding of the definition retransmission. The term, as defined in the Consolidated Text needed the last point emphasized in the Rights to be Granted, where there was a right to authorize or prohibit retransmission of broadcasts so that it was also always the retransmission done by another entity. When it came to the Object of Protection, Paragraph 2 stated that the Treaty should not provide any protection in respect of mere retransmission and transmissions by any means, which it understood referred to the fact that retransmissions by entities other than the broadcasting organizations should not be granted protection. That was in line with the objective of the Treaty. In Paragraph 3 in the Object of Protection, those transmissions that were protected should not use the term retransmission. A technical issue was raised related to the situation where the broadcasting organization was making a retransmission and then there was another entity that was making a retransmission of the retransmission and the need to ensure that a broadcasting organization could authorize and prohibit such retransmission of a retransmission. A chain of retransmission could fall outside of the definition of retransmission. Therefore it was proposed to add to the definition of retransmission, that the simultaneous transmission of a retransmission should be understood to be a retransmission, to make sure that the chain was protected. The Delegation was very supportive of having a broad definition of retransmission.

112. The Chair confirmed that it was important to find some coherence among the definition of retransmission and the way the term “retransmission” was defined throughout the document.

113. The Delegation of Colombia requested that the definition of retransmission be as broad as proposed and stated that it was in agreement about the need to refer to the original broadcasting organization.

114. The Chair noted that the English version of the Consolidated Text did mention the original broadcasting organization.

115. The Delegation of the United States of America agreed with the statement of the Delegation of the European Union and its Member States that the definition of retransmission was an important definition because it went to the rights established in the Treaty. In the United States the right to prevent the unauthorized retransmission of a broadcast signal over any medium was critical to be clarified. Retransmission addressed both authorized and unauthorized retransmissions, so it played a double role and it was very important that it be defined. With respect to the technical aspects of retransmission, the Delegation understood that retransmission traced its roots back to the Rome Convention, in the definition of rebroadcasting, so it had been recast, but under the Rome Convention the definition was strictly limited to a simultaneous retransmission. The Delegation also noted that nothing in the development of related rights treaties after that had departed from that tradition. The phrase at the end of the definition “whether simultaneous or delayed” could cause some difficulties with respect to well-established understanding; in particular, the difficulty that a delayed retransmission would simply fall outside of the scope of a retransmission. That also brought the Delegation to the question of not only of simultaneous retransmission, but perhaps how close in time a near-simultaneous retransmission could be, in order to still constitute a retransmission. There could be a continued discussion of a near-simultaneous retransmission. The Delegation had some drafting suggestions to build on the definition in the Consolidated Text namely: “retransmission means the simultaneous (or near-simultaneous transmission) for the reception by the public, by any means of a signal, by any other person than the original broadcasting (or cablecasting) organization or someone authorized by it.” In terms of the phrase “by any means”, the classic understanding of the phrase was that it would refer to either a wire or wireless transmission, based on the Rome Convention tradition. The sentence was vague and it could be understood as going beyond wire or wireless, to include transmissions over computer networks, although certainly that was not the intention.

116. The Chair invited the Delegations to respond to the comments made by the Delegation of the United States of America, as well as the question of whether the term “signal” should be used instead of “broadcast”, which referred to the first definition. Another suggestion was adding a phrase “or entity, authorized by them” that could be considered as a way to tackle the legal chain of transmissions. The second issue was adding “for reception by the public, and narrowing the definition of “retransmission” to the “simultaneous or near-simultaneous retransmission”. The Chair referred to an example of a pirate that was receiving a simultaneous retransmission and took it for illegal purposes. What would happen if the pirate delayed the signal? And could that act be prevented under the Treaty? Regarding “by any means”, the intention behind adding that phrase in the definition of retransmission was to use it in the section of Rights to Granted, in order to stop the different activities carried out by pirates along the whole chain of retransmission by any means.

117. The Delegation of Chile aligned itself with the statement of the Delegation of Colombia. The Spanish text omitted the word original so there was a need to correct the Spanish translation. With regard to the words “by any means”, the Delegation agreed with the Delegation of the United States, in that it was not prepared for the Treaty to extend to the protection of retransmission of broadcast via the Internet.

118. The Delegation of the European Union and its Member States referred to the statement made by the Delegation of the United States of America and understood that taking the understanding of retransmission in previous treaties, reference should be made only to simultaneous retransmissions. In the Berne and Rome Conventions the term used was “rebroadcasting” and not “retransmission”. That was why there was a certain discretion as to the definition of retransmission, in what was defined by rebroadcasting, including

simultaneous transmissions. Delayed or deferred transmissions could also be included. The Delegation was open to having a separate definition for retransmission as being simultaneous transmission of a broadcast and having a separate term which was a delayed or deferred transmission. What was important was that both were included when they talked about rights. Broadcasting organizations needed to have the rights to authorize and prohibit retransmission, in the sense of the simultaneous and deferred transmission to the public. The Delegation was confused with the statement of the Delegation of the United States of America with respect to the term "by any means". It had understood the proposal or suggestion made as a single rights proposal, where "by any means" included by computer networks, whether that was a traditional retransmission by air, by cable or if it was a digital retransmission. It sought clarification regarding the meaning of the term "by any means", unless it was in reference to the Object of Protection and not in relation to rights.

119. The Delegation of India stated that based on the discussions of the term "by any means", flagged by the Delegation of the United States of America, and the comments made by the Delegation of the European Union and its Member States, it understood "by any means" as two notions, to prohibit unauthorized retransmission by any means would include computer networks other than those which had been stated. There was a difference to authorize "by any means", which meant including computer networks, et cetera, and that was not acceptable, as it had previously stated. The phrase "by any means" in the context of the right to prohibit had a double connotation. The right to authorize had a different connotation and there was a clear division regarding this between the Member States.

120. The Chair stated that the Delegation of India had highlighted that there would be a connection in the rights section, depending on the type of right and that they had understood the phrase "by any means" to include by other computer networks, when there was the chance to prevent such activities. The situation could change in relation to the right to authorize such activities. It was important to understand the Delegation of India's position regarding retransmission "by any means", including over computer networks, which could be prevented by broadcasters. There was a clear intention for a broader definition, using it for the rights section, in order to clearly give the right to prevent any unauthorized use over any platform. It was useful to recognize the usefulness of having a broad definition of retransmission including "by any means", which referred specifically to rights.

121. The Delegation of Iran (Islamic Republic of) stated that it supported the inclusion of near-simultaneous rather than delayed retransmissions. That wording appeared to be more compatible with Section 2, regarding the Object of Protection, Paragraph 3. Regarding the question about the legal effect of delayed retransmission, it was outside the scope of the Treaty as it was a post fixation right.

122. The Delegation of the United States of America suggested a separate term for a delayed, deferred transmission until that issue was resolved. In respect of the second point, it stated that the Delegation of the European Union and its Member States was correct in suggesting that its proposal for a single right did use the phrase "by any means". It was the right to authorize transmission or retransmission of the pre-broadcast signal over any medium. This encompassed over any platform, which would also be the right to prevent the unauthorized retransmission over the Internet. The Delegation stated that in its previous intervention it had flagged the classical understanding of "by any means", which was a more limited scope of understanding and they may consider in the Rights to be Granted discussion, the possibility of adapting its version, using the phrase "over any medium". Regarding the topic of near-simultaneous retransmission, the Delegation reinstated its offer of proposing a draft for such a definition as follows: "Near-simultaneous retransmission means a transmission that was delayed only to the extent necessary to accommodate time differences or to facilitate the technical transmission of the broadcast (or cablecast)", depending on the ultimate scope of the Treaty.

123. The Chair noted that there was also an additional suggestion to include a definition for delayed or deferred transmission and suggested that a Delegation may wish to propose a way to define it. Regarding the use of the term “by any means” he summarized the statement made by the Delegation of the United States of America and specifically referred to the Delegation’s use of the term retransmission, which was used to include retransmission over the Internet. The Delegation had suggested a broader definition of retransmission in the Definitions. The Chair noted that a discussion had begun on the definition contained in letter C, broadcasting organization, and there had been a good exchange regarding the list of activities that were a part of that definition. The Committee had taken note of whether the activity of packaging was essential or not for inclusion and had concluded that the activity could be considered a part of assembling. Some Delegations had referred to the phrase “irrespective of the technology used” and questioned the term “program output”. The last sentence of that definition was considered to be better placed in another section, the Object of Protection. Some Delegations had highlighted that legal responsibility was important and they were considering whether to mention that expressly. They then had a rich discussion on the definition in letter D, retransmission. The core elements of the definition had been discussed in relation to transmission made by any other entity than the original broadcasting entity, with a clarification that that should be reflected in both Spanish and English versions of the Consolidated Text. The usefulness of the definition was that it could be used in the section on Rights to be Granted, as a way to give the opportunity to a broadcaster to prevent any unauthorized retransmissions. Some specific suggestions had been made regarding some possible amendments to the definitions, for example instead of using “by any means”, using “by any medium”, in order to clarify that the transmission could include transmissions over the Internet. A specific suggestion had been made to use signal rather than broadcast, which was related to the first definition they had discussed. It had also been suggested to include the phrase: “the transmission by any means, over any medium of a signal by any other entity than the original broadcasting organization or authorized by them”, to include extended situations. The usefulness of the broad definition of the transmission was that the right to prevent would not be limited in the context of Rights to be Granted. It was important to find clarity and consensus regarding the scope of the retransmission. In relation to the Object of Protection and Rights to be Granted, solutions could be found to limit the scope of protection but not in the definition itself. Some suggestions had been made to limit the retransmission to a simultaneous or near-simultaneous transmission. Some of the Delegations had suggested including a definition of delayed or deferred transmission, given that retransmission was only related to the transmission made by other entities than the original broadcasting, while the term simultaneous or deferred transmissions could include the activities made by the original broadcaster.

124. The Delegation of the European Union and its Member States stated it was preferable to have a broad definition of transmission, as proposed in the Consolidated Text, as it was not inconsistent with the other international treaties, because in those treaties the term rebroadcasting had been used. Therefore, a definition of retransmission along those lines could be provided, which included both simultaneous and delayed retransmissions. If that could not be achieved, it was very important to keep the term “delayed transmission”, even if it was not defined when they referred to the Rights to be Granted. The Delegation recommended adopting a definition of transmission that was inclusive of the simultaneous and delayed transmission.

125. The Representative of AADI noted that in Spanish, words always had a moveable value. For example, the term “retransmission” was simply fully transmitting something again, it did not matter whether it was simultaneous or in a delayed form. The Delegation of the United States of America clarified that it was good to add a delayed signal, despite the fact that they had not spoken of it before. It would be useful to understand the expression that the Delegation of Spain had used, as to whether the Spanish-speaking Delegations needed

to have a more precise translation and whether or not those applied in the same way as they were used in English. The idea of defining retransmission, whether it was simultaneous or delayed was not a new concept if they looked at proposals which had been submitted at the beginning of the SCCR process. There were a number of Member States which had already proposed simultaneous or deferred, so the idea was not new. However, the definition proposed by the Delegation of the United States of America for near-simultaneous retransmission was a new element.

126. The Delegation of the United States of America stated that a definition of deferred or delayed transmission would not be forthcoming. Rather, to capture the discussion, it suggested that the Chair's definition might be elaborated to include the ultimate phrase "whether simultaneous, near-simultaneous or delayed". The Delegation thought that there was agreement regarding simultaneous, but perhaps not near-simultaneous. There did not seem to be agreement within the definition for delayed, so it respectfully submitted that delayed should be placed in brackets. The Delegation wished to retain its drafting suggestion, which focused both on simultaneous and near-simultaneous.

127. The Delegation of South Africa stated that in the broadcasting or programming of content, usually they were transmitted either live or delayed, in terms of the retransmission, especially with sports. In national regulations, when a person carried the channels, one of the options for the conditions of carriage was for the simultaneous broadcast of the program. The Delegation observed that using the term retransmit connoted the three packages of simultaneous, live or delayed and it was comfortable with using all or two of those terms.

128. The Delegation of India stated that with regard to Paragraph B1 and 2, in B1 retransmission was stated to be other than the original broadcaster, that was another entity other than the original broadcaster. In Paragraph B2, it was unclear whether near-simultaneous retransmission meant the original broadcaster or another entity. The proposal was for near-simultaneous transmission, which was a slightly delayed transmission by the original broadcaster. Retransmission was defined as something that was done by another entity, but near-simultaneous transmission was in fact looking at the original broadcaster, based on past discussions to manage the time differences and other issues.

129. The Chair thanked the Delegation of India for its request for clarification regarding whether retransmission was made by another entity than the original broadcaster. That was related to the Rights to be Granted section. It was also suggested that in order to avoid confusion it should be referred to as near-simultaneous transmission. That term would also be used in the Object of Protection section. The Chair referred to Paragraph E, pre-broadcast, and stated that there was no agreement on it at that point.

130. The Delegation of the United States of America stated that it believed that there was a theme that emphasis should be placed on protection of the signal, not the broadcast. The pre-broadcast signal referred to the broadcast. It had been drafted with the intention of the broadcasting organization being the central concept, as it was used twice, and tended to include its program and was not intended for direct reception by the public. Intentions were notoriously difficult to pin down and may introduce some ambiguity into the definition. The Delegation suggested an alternate drafting as follows: "pre-broadcast signal means a signal transmitted to the broadcasting organization for the purpose of subsequent transmission to the public." It was aligned with its twin, the broadcast signal itself, which was for direct reception by the public.

131. The Delegation of the Syrian Arab Republic stated that it wished to return to the definition of "pre-broadcast", as there was a discrepancy between the term and the definition itself. Given pre-broadcast signified full coverage of something, which was going to be transmitted later, the Delegation aligned itself with the proposal of the Delegation of South

Africa, referring to highlights instead of pre-broadcast. Highlights referred to instances where the broadcasting entity was going to broadcast something later on it and highlighted the program, whereas pre-broadcast was full coverage.

132. The Delegation of the European Union and its Member States considered the wording proposed by the Delegation of the United States of America, especially the element that the signal had to be transmitted to the broadcasting organization. The Delegation understood the suggestion to narrow down what kind of signal it was, but it was addressed to the broadcasting organization, which had not been present in the previous wording. There was a doubt as to whether it could be resolved in that definition relating to the Object of Protection. Paragraph 1 of the Object of Protection stated that protection granted under the Treaty extended to a broadcast transmitted by or on behalf of a broadcasting organization. That could provide a similar protection for pre-broadcast signals because it could be pre-broadcast signals that were transmitted to the broadcasting organization or to an entity that was acting on behalf of broadcasting organization. That could be clarified either in the definition of a pre-broadcast signal or later in the Object of Protection.

133. The Delegation of Colombia stated that it was important to include the signal only if it was decided to adopt a definition of pre-broadcast and in that case they would include the word "signal" together with "program". There had been an important discussion about the definition of signal and its relationship with other international treaties. From that point of view, that discussion was only important if they included the word "signal" in the definition of pre-broadcast as well as "program".

134. The Delegation of India questioned whether it was correct to put the word "pre-broadcast signal" rather than the word "pre-broadcast". The issue was about a technical transmission between broadcasters from certain places to other places or affiliates. Pre-broadcast should be designed as pre-broadcast signal, meaning a transmission going out to a broadcast and that should solve the problem of the contribution of the word "broadcast".

135. The Delegation of South Africa clarified that it was correct to say that pre-broadcasting was when a broadcasting organization sent its program signal to the signal distributor and the signal distributor was the one that would take it to the public, specifically those that subscribed, if it was a subscription channel to that service. The Delegation supported the statement by the Delegation of Colombia that in terms of program, it was the program that carried the signals. The pre-broadcast signal was taken to the signal distributor and it was the program that the signal distributor would take to the public. The Delegation supported the inclusion of program-carried signal, rather than pre-broadcast signal. The person that would take the signal to the public was the signal distributor. The broadcasting organization would take it to the signal distribution organization that would distribute the signal. That was based on the understanding that the ownership of signal distribution was not the same everywhere. In other Member States, the signal distributors were owned by the broadcasters and in others it was a public entity or a private entity.

136. The Chair confirmed that if a decision was made to include such a clarification in the definition of signal it would be sufficient.

137. The Delegation of the United States of America thanked Delegation of the European Union and its Member States for the suggestion to broaden the phrase to the broadcasting organizations and to also include organizations acting on behalf of a broadcasting organization. If that issue was not resolved otherwise, the Delegation saw value in the amendment.

138. The Delegation of Italy suggested that the Committee give further thought to the relationship that existed between the signal and the transmission, because the transmission

consisted of a number of signals. When they spoke of transmission they were also speaking of signals. In other words, the signal was something special and the definition from the previous discussion was correct. They were actually trying to protect the transmission, in other words, a series of signals.

139. The Chair observed that they had reached a point where they had finished receiving suggestions regarding the section on Definitions. There had been a number of suggestions and some of them had been similar. The Chair would take note of these suggestions, in order to have them reflected in a revised version of the Consolidated Text, which could be helpful in reflecting the exact situation and the options they were dealing with, to see if it was possible to reach some consensus regarding the Definitions. The Chair moved the discussion to Section 2, the Object of Protection. Paragraph 1 stated: "The protection granted under this Treaty extends only to broadcasts transmitted by or on behalf of a broadcasting organization, but not to works or other protected subject matter carried on them." The Chair opened the discussions on that paragraph. He pointed out that the section was related to the understanding of what they were going to protect, and the first paragraph reflected the suggestion to include the broadcast as the Object of Protection. In the Definition section they had discussed the definition of "signal" as not being a mere signal but a program carrying signal. Then there had been a reference to the activity, the transmission made not only by the broadcasting organization, but on behalf of the broadcasting organization, which should be considered or highlighted as well. The third element was that it did not cover protection of the works or other protected subject matter carried on them, to avoid confusion because such protection was covered by copyright treaties or copyright legislation.

140. The Delegation of the European Union and its Member States had two comments on the statement, which had been made by the Delegation of Italy. The Delegation was of the opinion that since the definitions of broadcasting and cablecasting referred to the transmission, they already included the notion of signal in them. It was not wrong to have a definition of signal and whatever other elements they needed to have, but the question was whether it was necessary. With reference to the Object of Protection and the first paragraph, the Delegation observed that a reference to pre-broadcast was missing. The paragraph should be corrected in the sense that the protection granted under the Treaty would be extended only to a broadcast transmitted by a broadcasting organization as well as to pre-broadcasts. Its proposal was to include pre-broadcast in that paragraph.

141. The Chair took note of the intervention. However, he stated that the proposal would still be inserted in brackets, since there was still no agreement on the inclusion of pre-broadcasts at that point, unless consensus had been reached regarding its inclusion. Regarding the first comment made by the Delegation of the European Union and its Member States, the Chair stated that it was a very important contribution, which could be considered after the revision of the entire document.

142. The Delegation of the United States of America stated that in the Chair's opening remarks he had asked for comments that would align the Object of Protection with others on the signal. The Delegation noted that the use of the phrase "broadcasts" aligned it with the earlier discussions and the points that the Delegation and others were making. The Delegation suggested that it could read as follows: "only to the broadcast signals", as opposed to broadcast, "transmitted by or on behalf of a broadcasting organization", but not include the reference to works. The Delegation assumed that it was a reference to copyrighted works, and although it was fully supportive of the idea of not extending protection under the Treaty to the underlying copyrighted works, it noted that that was the first time that they were using works. The Delegation had an alternate solution, which was to use the word "program", which related to its suggested definition of program, which had been made the previous day. Finally, the Delegation drew attention to the phrase "other protected subject

matter.” The term seemed quite vague and the Delegation was not sure exactly what other protected subject matter carried on the signal was being referred to, other than the program and that uncertainty gave it reason to pause.

143. The Chair replied that the reference to, “other protected subject matter carried on them”, had come from previous submissions made by other Delegations, which were contained in the Document SCCR/27/2 R, specifically at page 5 of SCCR/27/2 Rev. Alternative A for Article 6, which was contained in the Consolidated Text, referred to “protected subject matter” and Alternative B for Article 6 referred to “other subject matter carried by such signal.” The Chair suggested that proponents of the text should offer further explanations. Those proposals had come from the original proposals made by the Delegations of South Africa and Mexico and the other came from the Delegation of Japan.

144. The Delegation of India supported the proposal to change the expression “broadcast” to “broadcast signal”, as the whole purpose was signal protection. The expression “broadcast signal” made that clearer. The Delegation referred to the suggestion from the Delegation of the United States of America that “other protected subject matter” would come under “underlying content”. The proposal would make it clear that it was about signal protection and not content protection. Protection should be extended only to broadcast signals transmitted by or on behalf of a broadcasting organization, which could include pre-broadcasting signals but not programs or alternatively the underlying content.

145. The Delegation of Italy stated that normally the expression “all other protected subject matter” was used to indicate the enabling rights, the related rights.

146. The Delegation of the European Union and its Member States stated that to follow up on the comments of the Delegation of Italy, it was clear that works and other matters referred to the copyright and other related rights. It was open to discussions as to wording that would explain that the protection of the object of copyright and related rights in the works and other matters that were included in broadcast would not be affected.

147. The Chair referred to the discussions on the Object of Protection and the comments which had been made by the Delegations of the European Union and its Member States, the United States of America, India and Italy. The Chair had asked the proponents of the text, which had included the term “other subject matter” to explain their reasoning, which had been reflected in Alternative A and Alternative B of the corresponding part of the Document SCCR/27/2/Rev. Some Delegations had noted that the usual understanding of that term was connected to the related rights. The Chair summarized the suggestion made by the Delegation of India to use the term “underlying content.” There was also the suggestion of considering whether the protection of pre-broadcasts should be included. The Chair welcomed comments.

148. The Delegation of Nigeria stated that the introduction of that language had been to ensure that the scope was narrowed down to protection of the signal, and that was the role that the phrase “but not to works or other protected subject matter carried on them” would serve. The Delegation could accept the proposal put forward by the Delegation of India as long as the focus was on the protection of the signal and not the content of the broadcast.

149. The Delegation of South Africa supported the view of the Delegation of Nigeria.

150. The Delegation of the European Union and its Member States stated that it had a preference for the formulation, “works or other subject matter”, or otherwise a formulation that stated that protection granted under the Treaty would not affect the protection of copyright or related rights in materials or program incorporated in the broadcast. The Delegation would prefer to use formulations that were clear and known, rather than for example, referring to



“underlying content”, which may raise some questions as to what it exactly meant. It would prefer to avoid having other definitions explaining the meaning of underlying content and rely on clear terms.

151. The Delegation of the United States of America stated that it understood that there was an interest in certainty. The phrase “other protected subject matter” still raised a little uncertainty. The Delegation wished to share a possible reformulation, which it was still consulting on internally. Instead of the phrase “but not to works or other protected subject matter”, it would be, “without prejudice to the protection of copyright in literary and artistic works, including any copyright in a protected program or part thereof, and any interests protected under related rights or neighboring rights carried by the broadcast signal (pre-broadcast signal).” In full the proposal was that the protection granted under the Treaty extended only to “the broadcast signal (pre-broadcast signal) transmitted by, or on behalf of the broadcasting organization, without prejudice to the protection of copyright in literary and artistic works, including any copyright in a protected program, or part thereof, and any interests protected under related rights.” Instead of “without prejudice” it could also be “not”, to stay closer to the existing formulation.

152. The Chair asked for comments on the suggestions from the Delegation of the United States of America and other alternatives that had been submitted, in an attempt to reflect a common intention.

153. The Delegation of Nigeria thanked the Delegation of the United States of America for the proposal it had put forward. It suggested a simplification would be better than the proposal, as they needed to stay focused on the signal. They had recognized it was copyright, however it could be related rights and even trademarks. The Delegation announced that it would provide a simplified proposal as well.

154. The Delegation of India stated that in keeping with the simplification, the underlying content could include any type of IP as well as materials in the public domain which may be out of copyright. The term “underlying content” was in tune with the earlier discussion they had had on the container and the content, with the signal being the container and content was what was being carried upon it. The signal was the technical process, whereas what it conveyed was content, which could be copyright material. That content could also be non-copyright material because it was in public domain. The crucial question was about protecting the signal of a broadcaster, and if they used some public domain material then there may be a problem in terms of signal protection.

155. The Chair noted the Delegation of India had raised another issue regarding what happened if the signal transmitted material, which was in the public domain, for example.

156. The Delegation of Sudan stated that it was speaking to the common intention of finding the best way to express the signal. It supported the statements made by the Delegations of India and Nigeria. It pointed out that the African Group at other SCCR sessions had looked into that subject. It reminded the Committee that the Delegation of South Africa was talking about the protection of the signal. There was another aspect linked to the content and since the other treaties were on copyright and related rights, they contained different forms of protection for the content, which could be transmitted by the signal. There were already other WIPO Treaties dealing with those aspects, and when Member States made reference to content they were speaking about both protected and non-protected content. There were exceptions and limitations to copyright and related rights and, in addition, there were works in the public domain and protected works. Another very important question was that they were in a new era where there was a cultural market for innovative new products and the modern media. The Delegation suggested that the Committee looked at those issues when considering the GRULAC proposal. Referring to the TRIPS Agreement, the Delegation

suggested that they should try to find a common understanding among Member States to avoid misinterpretations, since there was already the Rome Convention and other treaties already on the rights of broadcasting organizations. The SCCR should take those international treaties into account without talking about new rights that might arise from a certain situation. Member States were only talking about the protection of broadcasting organizations through the signal, not simultaneous transmission or any other type of transmission. Broadcasting organizations did have certain limits with regard to the transmission of regulations, which they should take into account in the cultural market place. The Delegation suggested that they should take into account the content they wanted to regulate, so that broadcasting organizations could transmit the content, which should be subject to the conditions governing IP. It was also important to accommodate exceptions and limitations in national legislations.

157. The Chair stated that the topic of exceptions and limitations would be dealt with at a later stage. Member States had to find the way to enact exceptions and limitations in order to serve some public goals or public interests, as the Delegation of Sudan had mentioned. The Chair referred to the definition of the Object of Protection and stated that the best way to clarify the Treaty was to make clear that it was not a treaty that would deal with content, as there were already copyright treaties for that purpose. The Chair summarized the discussions and proposals, which had been made until that moment. It was clear that the Object of Protection was not the content, was not the program and was not the copyrighted work. The task was to find the best way to express that.

158. The Representative of Knowledge Ecology Information (KEI) referred to the comment, which had been made by the Delegation of India about the public domain. In many respects, many of the issues that the Delegations had about the Object of Protection would depend upon some other parts of the Treaty. If they were creating a temporary right that did not include post fixation rights - not like a 20 year or 50 year right, like that which had been published in some drafts, but some kind of temporary thing to protect live broadcasts - then issues on the public domain and other exceptions became less important. To the extent that there were those sorts of durable rights created, then KEI did not want to see the creation of a layer of rights that protected things that were in the public domain. KEI also did not want a situation where people freely licensed their works under Creative Commons licenses and then broadcasters were able to turn them into their private property. The Representative gave the example of the United States of America, where there were performances where the works were not fully paid for and if they were broadcasted, it meant the broadcaster could commercialize them. The Object of Protection did need to address the issue of works in the public domain or under Creative Commons licenses. The Representative suggested that it could be dealt with in the limitations and exceptions.

159. The Representative of the American Federation of Musicians of the United States and Canada (AFM) reiterated a previous point, which was relevant to Paragraph 1 under the Object of Protection, that the terms, signal and program, as defined by the Delegation of the United States of America, would solve many of the problems that had been raised in the discussion.

160. The Chair moved the discussion to Paragraph 2 that read “the provisions of this treaty shall not provide any protection in respect of mere retransmissions by any means.” He recalled that the definition of retransmission was a core element and was defined as an activity made by any other entity than the original broadcasting organization. Mere retransmission referred to that activity made by any other entity than the original broadcasting organization. He noted the proposals by delegations to add “by any means.”

161. The Delegation of the European Union and its Member States recalled the points that it had raised previously. It was correct to have the provision that stated that retransmissions

by other entities than the original broadcasting organizations were not protected under the Treaty. The Delegation's other points were purely technical; since they had a definition of retransmission, which was transmission by any means, the two additions were no longer needed. There was no need to say "mere retransmission", because they referred to the definitions of the retransmission and they did not have to say "by any means" because it was already included in the definition of retransmission.

162. The Chair confirmed that the phrase "by any means" was in the proposed definition of retransmission, so it could be deleted. With regard to, "mere", even if it was a part of the previous proposals that were contained in Document SCCR/27/2/Rev, that paragraph was taken from different proposals that were part of the document. The second paragraph reflected exactly what had been proposed at that point. It had been inserted into the new Consolidated Text and therefore some amendments could be made in order to properly reflect the interconnection with the definition of retransmission. Whatever the definition of retransmission they were going to use, it was still under consideration, so he suggested that it be put in brackets.

163. The Delegation of the United States of America stated that the definitions of broadcasting organization and cablecasting organizations referred to the original transmitters. They were the principal beneficiaries, the only beneficiaries of the Treaty. Reading those definitions closely there was an argument to be made that the entire Paragraph 2 was not required, because the mere fact that an entity was a retransmitter would bring it outside of the scope of the definition of broadcasting organization or cablecasting organizations and therefore outside of the scope of protection under the Treaty.

164. The Chair stated that the previous proposals were contained in Document SCCR/27/2/Rev at page 5, Article 6, the scope of application. Paragraph 2 stated that the provision of the Treaty should not provide any protection in respect of mere retransmissions by any means. In Alternative B, Article 6, Paragraph 4(i) stated: "the provisions of this treaty shall not provide any protection in respect of mere retransmission by any means of transmissions referred to in Article 5, A, B and D."

165. The Delegation of Iran (Islamic Republic of) stated that the act of retransmission may be made along with some modification, such as the simultaneous translation and interpretation, for example, in sport events. It questioned whether retransmission along with simple modifications would be considered mere retransmission or was excluded from the Object of Protection of the Treaty.

166. The Delegation of Italy responded by stating that it was the content, not the signal. If the Treaty protected the signal, then it remained as it was. If they confined themselves to signal, the retransmission would always remain the same.

167. The Delegation of the European Union and its Member States referred to the suggestion by the Delegation of the United States of America to delete Paragraph 2 and stated that it would respond in due course.

168. The Delegation of the United States of America agreed with the Delegation of Italy that the re-characterized transmission that the Delegation of Iran (Islamic Republic of) was discussing would probably constitute a new transmission, rather than retransmission, and it also raised issues with respect to the distinction that they had been trying to make between a content and signal. By adding additional content, it would be a new transmission. It questioned whether minor changes in the signal, minor changes in technical format, that allowed the character of the signal to be unchanged, would therefore constitute a mere retransmission.

169. The Chair suggested that they should consider thinking about the points raised by the Delegation of Iran (Islamic Republic of). He asked for comments from the NGOs on Paragraph 2. As there were none, the discussion moved to the Paragraph 3 related to the Object of Protection. Paragraph 3 stated that broadcasting organizations should also enjoy protection for simultaneous or near-simultaneous retransmission by any means, as if such retransmissions were a broadcast. The Chair stated that he had been cautioned by several delegations about the use of the term retransmission because as they had clarified, the term "retransmission" was defined as related to the activity undertaken by another entity other than the original broadcaster. They were probably referring to simultaneous or near-simultaneous transmissions made by the original broadcaster. Instead of using the term "retransmission" perhaps they could use the term "transmission" in order not to clash with the definition of retransmission that was only reserved for activities made by other entities than the original broadcaster. He opened the floor to comments for Paragraph 3.

170. The Delegation of Japan stated that "transmission by any means" stated in Paragraph 3 included transmission over computer networks, so it seemed that protection for the transmission by computer networks was mandatory in Paragraph 3. However, there were different views among Member States as to whether or not to protect transmission signals over computer networks. The Delegation had proposed a provision in Document SCCR/27/2/Rev, that is Article 6 BIS, which provided Contracting Parties with flexibility in determining how to protect transmission signals over computer networks. The Delegation requested that its proposal be reflected in the text from page 3 of the Annex.

171. The Delegation of the European Union and its Member States agreed with the Chair's suggestion that the term "retransmission" should be changed to "transmission" as that was a transmission that was done by the broadcasting organization. It suggested that the list of transmissions should be extended in such a way that the paragraph would read: "shall also enjoy protection for simultaneous, near-simultaneous or delayed transmission of their broadcasts by any means as if such transmission were a broadcast." The Delegation explained that in addition to simultaneous and near-simultaneous transmissions, delayed transmissions of broadcasting organizations should also be protected. The addition of "their broadcast" indicated that they were talking about a situation in which the broadcasting organization was transmitting its own broadcasts simultaneously or in a near-simultaneous manner, or with delay. The Delegation also supported the inclusion as an Object of Protection, the transmissions by broadcasting organizations in such a way that members of the public may access them from a place and at the time individually chosen by them. That would be a fourth category that would be included as an Object of Protection.

172. The Chair referred to the proposal made by the Delegation of Japan and asked the Secretariat to read the proposal contained in Article 6 BIS of page 3 of the Annex of Document SCCR/27/2.

173. The Secretariat stated that Article 6 BIS provided for the protection of signals transmitted over computer networks, which was a proposal from the Delegation of Japan. "(1) Broadcasting organizations and cablecasting organizations shall enjoy protection for [their transmission signals excluding on-demand transmission signals /simultaneous and unchanged transmission signals of their broadcast] over computer networks. (2) The protection provided for in paragraph (1) may be claimed in a Contracting Party only if legislation in the Contracting Party to which the broadcasting organizations and cablecasting organizations belongs so permits, and to the extent permitted by the Contracting Party where this protection is claimed. (4) The extent and specific measures of the protection granted in paragraph (1) shall be governed by the legislation of the Contracting Party where protection is claimed."

174. The Chair invited Delegation of Japan to provide reasons for the advantages of having that proposal, as well as an explanation of why it had been drafted. He also summarized the additional suggestions made by the Delegation of the European Union and its Member States.

175. The Delegation of the United States of America stated that it was sympathetic to the proposals raised both by the Delegations of Japan and the European Union and its Member States. It had been considering ways that they may reflect those proposals as part of a text. One of the ideas it had been discussing and had submitted for consideration was essentially to recast Paragraph 3 as a set of two options. It recalled that over the previous sessions of the SCCR, the protection of over-the air-broadcasts and the exclusion of webcasts was widely accepted by almost all Delegations. That would compromise option one. The Delegation referred to the suggestions that they had heard from the Delegation of Japan with respect to protection for on-demand transmissions and the suggestion from the Delegation of the European Union and its Member States for deferred transmissions and noted that even the making available right could be established as a separate option, with an optional level of protection that Member States could adopt. It was happy to work with other Delegations on specific drafting to make those two options workable.

176. The Delegation of Colombia highlighted the importance of looking at the word “retransmission” with respect to Paragraph 3. Reviewing Paragraph 2, there could be some confusion. The Delegation referred to the statements made by the Delegations of the United States of America and the European Union and its Member States and agreed that Paragraph 2 was unnecessary. Although it provided clarity on the fact that “retransmissions”, or “the mere retransmission”, were not the object of protection per se, it could create conflict when looked at in light of Paragraph 3.

177. The Chair confirmed that they were attempting to avoid that conflict by providing clarification in Paragraph 3. Instead of using the term “retransmission”, the term “transmission” would be used in its place.

178. The Delegation of the European Union and its Member States stated that it wished to clarify the options that had been outlined by the Delegation of the United States of America. It understood one option could be to retain Paragraph 3 as it stood, with the reference to simultaneous and near-simultaneous transmission. The second option was to have a broader protection that would also include delayed transmission and transmission on-demand. The third option, proposed by the Delegation of Japan, was to have protection for simulcasting and protection for webcasting on an optional basis. The difference was that the first two options would be mandatory protection, but one narrower and one broader, the narrower only for simultaneous or near-simultaneous. The second option was for mandatory protection but on a broader basis. Its understanding of the proposal from the Delegation of Japan was that it was a protection, but on the optional basis.

179. The Delegation of the United States of America stated that it was consulting internally on the three options, but on a preliminary basis, it thought that while simulcasting should be reflected, the Delegation wanted an option, which would allow flexibility for certain delegations that were not at that point able to sign on to a simulcasting right. The Delegation referred to the statement of the Delegation of Colombia and agreed that there was a certain tension between paragraphs 2 and 3. It suggested that a drafting approach to resolve that tension could be to begin Paragraph 3 with the phrase: “notwithstanding Paragraph 2 above” and that would allow both paragraphs to coexist.

180. The Delegation of Japan explained the benefit of its proposal. Firstly, each Contracting Party could itself decide whether or not to protect transmission signals over computer networks, and in addition, each Contracting Party could also decide the extent and measures

of the protection. For those reasons, it thought that the proposal was a flexible and appropriate one.

181. The Chair confirmed that the flexibility was related not only to the protection, but to the extent of that protection on the measures to be taken regarding protection over computer networks. The Chair summarized the discussion regarding the different options. He referred to the statement made by the Delegation of Japan that flexibility could help them to consider other elements of the scope of protection and that there were some opinions regarding to what extent they could include as mandatory provisions, some parts of the activities that had been mentioned previously in the chart at previous SCCR sessions. The Chair opened the floor to comments of NGOs.

182. The Representative of the International Federation of Musicians (FIM) stated that it represented trade unions and the professional organizations of musicians in more than 65 countries, across five continents. During the 18 years of SCCR discussions about the protection of broadcasters against the piracy of their signals, reservations had been expressed several times because of the timeliness and the possibility of having rights, which would affect the protected content under other rights. The Representative recalled that the same broadcasting organizations were rights owners and had a great content of recorded music. There would be an inconsistency and profound injustice to grant new rights to broadcasting organizations, which could impinge on those of the creators, whereas in certain Member States, the latter had expressed some hostility to the rights of creators of content, even preventing music performers from enjoying the fruits of their labor. There was an urgent issue in settling the question of protecting broadcasters against the piracy of their signals and there was also urgency to properly remunerate professionals, who were involved in the content being transmitted by the signals. The Representative expressed interest in the developments regarding remuneration for performers, contained in Document SCCR/31/4, submitted by GRULAC under Item 8 of the Agenda of the SCCR. That document raised the essential question of remuneration for performers for the on-line use of their recordings, in addition to having access to transparent information where there were unfair practices. It provided a greater understanding of all of those impinging on rights, which prevented the performers from receiving a fair share of the music, which was used on-line. That was the relevance of the WPPT in an age of Internet streaming. The Representative encouraged the SCCR to deal with that issue to ensure that there were instruments protecting performers, rather than leading to practices, which deprived them of remuneration for the on-line use of their works. Particularly in the WPPT, there was strong pressure from the world of performers that they should respond to as quickly as possible.

183. The Representative of Knowledge Ecology International (KEI) referred to the discussion of the notion of signal versus the content, or container versus the content. It sounded appealing and people had been talking about it for many years; the idea that there was a signal and there was content that could be separated. However, it did not actually work that way. The Representative referred to the interventions by the Delegations of Japan and the European Union and its Member States, who had described what they were expecting in the Treaty. If they had a container around the content and they could not explain when the container disappeared or ceased to be relevant for the use of the content itself, then they had in fact designed a layer of protection that did compete with copyright and user rights. The Representative suggested that the Committee considered other paradigms once they worked out what they were trying to do. It was appropriate to ask whether they were talking about something that had a short term life, like a 24-hour life, or something perpetual. It questioned the idea that the signal versus the content conversation was playing out well in the negotiations. The Delegation of the European Union and its Member States had proposed to include, as the Object of Protection, transmissions by broadcasting organizations in such a way that members of the public may access them from a time at a place individually chosen by them. The Representative referred to websites such as Netflix

or Hulu. The special right proposed by the Delegation of the European Union and its Member States only applied to broadcasters, but there were other organizations doing the same thing, such as Yahoo. The proposal from the Delegation of the European Union and its Member States would create an uneven playing field because broadcasters were going to be favored and politically powerful. They would create a right which would be difficult to deny to other parties such as Yahoo, Facebook, Google and YouTube. They would be giving YouTube the right to claim an IP right in materials that were user generated and that were uploaded onto their website. The Representative referred to the statement of the Delegation of the United States of America and stated it was not very comforting. The statement was suggesting that they give the Delegation of the European Union and its Member States everything that it was asking for as long as it could be implemented differently in the United States of America. In the implementation phase, broadcasters would put politicians on television and determine who got elected in every Member State and then there would be a minimalist installation. The broadcasters would lobby for extreme versions of the Treaty. KEI was concerned about the direction the discussions on the Treaty were taking, given that it was not being narrowed down through restricting the beneficiaries. The Object of Protection only created a thin layer that dealt with legitimate piracy in the way that reflected the concerns of television and radio stations.

184. The Representative of the Japan Commercial Broadcasters Association (JBA) referred to the Object of Protection and stated that it supported the approach proposed by the Delegation of Japan, namely the approach on an optional basis, because it was more flexible and would be conducive to moving forward beyond the impasse. Concerning the “Rights to be Granted” to broadcasting organizations, given that the scope of piracy was wide ranging, and taking the diversity of technology into account, it underlined the importance of broadcasters being able to fight against piracy. The rights to be granted to broadcasting organizations should be sufficient ones from that perspective and should not be confined to retransmission rights, but should be extended to fixation and post fixation rights. Furthermore, the Representative stressed that the rights to be granted under the Treaty should not fall below the rights granted to under the Rome Convention.

185. The Representative of the Alliance of Latin American Intellectual Property Broadcasters (ARIP) stated that it had spoken on various occasions about the amount of years the topic on the protection of broadcasting organizations had been on the SCCR’s Agenda. The Representative referred to the proposals of GRULAC and the Delegations of Senegal and the Congo (The Republic of) to include other topics on the Agenda. There was a pressing and urgent need for the protection of broadcasting organizations. Broadcasters in Latin America and the rest of the world needed to have it looked at. The Representative proposed an inter-sessional meeting where the SCCR could continue discussing that issue in particular, so as to be able to have a commitment from all the Delegations and the NGOs to make significant progress. The Representative hoped that the General Assembly would convene a Diplomatic Conference the following year.

186. The Representative of the Copyright Research and Information Center (CRIC) stated that with regard to the Object of Protection, it supported the proposal made by the Delegation of Japan. That proposal was on an optional basis, as a result, it was very flexible and a good compromise. The Representative had one small technical question for the Chair on the Consolidated Text. In Paragraph 3 of the Object of Protection, the last words were: “as if such transmission were a broadcast.” Both Alternative A and Alternative B of the definition of broadcasting meant the transmission. If so, the Representative asked whether it was correct to state “as if such transmission were broadcast.” The Representative observed that the SCCR’s discussion had matured based on the Consolidated Text and suggested that they focus on one goal, the finalization of the object of protection, in order to accelerate the discussion. An extra session for informal discussions on the text would also be helpful.

187. The Representative of the European Federation of Joint Management Societies of Producers for Private Audiovisual Copying (EUROCOPYA) stated that it represented European producers. In that capacity, it strongly supported the adopted signal-based approach of the Treaty. Broadcasters were major partners of producers. The Treaty should help all of them to fight against piracy. The Treaty should also embrace new technologies in such a manner that broadcasters' transmissions would not be assimilated in the way of simple aggregators of content, to be distributed by digital platforms of any kind. With regard to the Object of Protection, the Representative supported the introduction of making available, within the same signal-based approach.

188. The Representative of the Association of Commercial Television in Europe (ACT) stated that signal misappropriation jeopardized all broadcasting organizations' ability to protect and invest in the creation of content, as well as the organization, scheduling, promotion and distribution of it. That adversely affected the jobs of its members' and their ability to serve their audiences with information and entertainment. European broadcasting organizations were indispensable to the vitality of the audiovisual creative community, as they were the major financiers of European audiovisual content. TV piracy was a global problem, the Internet was global and the solutions must therefore also be global. The Representative saw it as fundamental that it be a forward-facing Treaty that was not tied to old technologies. The simple reality was that its members were dynamic organizations that were able to respond to rapidly evolving technological environments and to the demands of their viewers. The Representative supported the proposal from the European Union and its Member States in that regard.

189. The Representative of American Federation of Musicians of the United States and Canada (AFM) expressed support for the statements made by the Representatives of FIM and KEI, the latter with qualifications. It was more optimistic about the evolution of the process. Musicians, though they were not direct beneficiaries of the Treaty, did have a considerable stake. Musicians had a very significant interest in the prevention of piracy. In both the United States of America and Canada, the protection of performers flowed from the protection of rights holders. The Representative supported the approach of focusing on the broadcast signal, which contained recorded material authorized for transmission by the rights holder. In that regard, it supported the position advanced by the Delegation of the United States of America. The Representative referred to the fact that the SCCR was admirably conservative with regard to drafting the Treaty. However, they had experienced a digital revolution since the adoption of the Rome Convention and even the WPPT. It may be that such radical changes in the ecosystem required new ways of thinking and new ways of expressing concepts long embodied in the international framework of copyright and related rights. To that extent, AFM wished to encourage the discovery of effective and bold responses to the growing problem of unauthorized exploitation of creative content.

190. The Representative of the International Federation of the Phonographic Industry (IFPI) stated that it represented the recording industry worldwide. As it had stated before, it believed that the Treaty against broadcasting piracy was justified. However, care had to be taken so as not to inadvertently give the Treaty's beneficiaries rights over the further use of the content carried by the signals. Broadcasters deserved protection against the unauthorized retransmission of their broadcast or pre-broadcast signals, whether by wire or by wireless means and including on-line. However, extending protection to cover any post transmission acts, including communication to the public, making available, or reproduction, would effectively give broadcasters rights over the content they carried, which they often did not own. The Representative reminded the delegations of the importance of taking into account and building upon the definitions already incorporated in the international copyright treaties and in particular in the Rome Convention. The term "broadcasting" should continue to be used to refer to transmissions by wireless means for public reception and similarly the term "retransmission" should be used to refer to simultaneous broadcasting by one



broadcasting organization of the broadcast of another broadcasting organization. Naturally, to the extent that the Treaty would be extended protect retransmissions over cable or computer networks, the relevant definitions would need to be agreed. The protection of broadcasting signals produced by broadcasting organizations had been discussed for many years in the SCCR with the understanding and based on the principle that those who invested in producing content should also have the legal tools to receive remuneration for doing so. The Representative maintained that that principle also applied to record producers and it should be understood that before granting additional rights to broadcasters, Member States should guarantee that record producers were granted rights for the broadcasting of their sound recordings.

191. The Representative of the North American Broadcasters Association (NABA) stated that it represented broadcasters in Canada, the United States of America and Mexico. The Representative referred to its previous statements on the urgent need to update the international framework for the protection of broadcast signals and did not seek to repeat those submissions. The Representative also referred to Section 2 and Section 3 of the Consolidated Text. With respect to the Object of Protection, the first paragraph referred to the protection for broadcasts, with a clarification that it should not cover underlying content. To that end, there may be merit in the proposal made by the Delegation of the United States of America to substitute the term “broadcast signals” in order to make that point clearer. With respect to Subsection 3, broadcasters agreed that the appropriate wording should be “transmission” and not “retransmission” for the reasons explained by the Chair and by other Delegations. In Subsection 3, the expression “by any means” was of the utmost importance to broadcasters operating in the current communications environment. The failure to protect broadcast signals when they were simulcast over the Internet would create an enormous loophole, which would undermine the protection for broadcast signals. Jumping ahead to Section 3, the Representative made note of the fact that broadcasters supported the approach set out in Alternative A. Broadcasters could accept a streamlined and narrowly focused protection for broadcasters, but it must be effective to protect against piracy and unauthorized exploitation of signals. Alternative B did not provide the basis for meaningful and effective protection.

192. The Representative of the International Association of Broadcasting (IAB) stated that it had been present at the meetings of the SCCR for the last 15 years, which demonstrated the importance of the Treaty for Latin American broadcasters. Over those years IAB had listened very carefully to the comments and contributions made by the Delegations. The Representative noted with satisfaction that they were achieving the necessary determination to proceed towards a treaty that would update the rights of broadcasters. From that point of view, the Representative believed that in order to speed up the process it would be advisable to have a specific meeting of the SCCR to deal exclusively with the drafting of the aspects upon which there was no consensus. It was proposed that the meeting take place during the first six months of the following year and then during the second six months of the following year. The usual meetings of the SCCR would proceed to enable the results to be submitted to the General Assembly. The Representative aligned itself with the Representative of NABA with respect to the text proposed.

193. The Representative of the International Federation of Library Associations and Institutions (IFLA) stated that it represented electronic information for libraries and worked with libraries in developing and transition countries. The Representative referred to the Object of Protection and stressed the importance of ensuring that any new instrument would limit the object of protection to the signal and not to any underlying content. The creation of a new layer of rights that affected access to content was of great concern to libraries, because it imposed additional barriers to the access to knowledge, especially to content in the public domain. A new layer of rights would, in addition to creating problems for users, also create problems for rights holders of content, as it would impact their ability to freely

license their works. Libraries had practical experience with such overprotection caused by multiple layers of rights. A library in Europe wanted to publish a sound recording from their archive that was originally broadcast in the 1950s. The recording was taken from a rebroadcast in the 1980s. Although the performer's rights had expired and the author's heirs waived any fees due to cultural importance of the work, the library had to pay the broadcasting organization approximately \$10,000 for permission to use the recording because signal protection also applied to the retransmission. For many libraries, such costs were out of the question. As a result, socially valuable works remained inaccessible in libraries and archives, depriving the public of the enjoyment of the work. The Representative asked the Delegations to consider the costs to taxpayers and society of any proposed treaty, as well as its perceived benefits.

194. The Representative of the Federation of Film Producers Associations (FIAPF) stated that it represented film and audiovisual production and enterprises throughout the world. As it had stated in preceding statements, its creative sector licensed large volumes of the original programming it produced to broadcasters throughout the world. The commercial partnership with broadcasters was strategic to many producers and broadcasters themselves were dependent on their creativity to make a success of their services and give consumers the quality experience they expected. The Representative recognized that broadcasters' signal piracy was an endemic problem. Like all forms of piracy, it drained value away from the audiovisual economy as a whole with negative consequences for consumers. FIAPF supported the Member States in making meaningful progress towards the Treaty on the protection of broadcasting organizations, so long as it was limited to signal protection and did not impinge on the underlying exclusive rights of content creators and producers. In that respect, the Representative noted with satisfaction that that approach had been the core focus of Member States' discussions during that session of the SCCR and was in keeping with the 2007 mandate from the General Assembly. The Representative noted with interest the discussions that had taken place on other aspects of the Consolidated Text and looked forward to Member States reaching an accord on meaningful definitions.

195. The Representative of the European Broadcasting Union (EBU) stated that although there had been good progress, for some time they had been running behind the pace of technologies and the longer the process took, the more difficult it would become. The more they went into the details, the more legal and practical expertise was needed. In a few years' time, there would be a 5G network, which meant a super speed mobile Internet bringing broadcasting to another dimension. People would have their refrigerator telling them that they could buy a few extra beers for the sports broadcast that was coming up that evening. People would have their mobile phone asking them, since they had an appointment, whether it should record the program for a time convenient viewing. The Representative was pleasantly surprised to learn that the laws in some Member States of the African region were already in good shape to cover those issues and suggested that perhaps other regions could learn from them. However, piracy would also become quicker, easier and more widespread than before. Those developments must have an impact on the scope of application and on the scope of the rights. That meant indirectly also on the definitions. The EBU supported the suggestions of the Delegation of the European Union and its Member States on the scope of application and keeping those definitions as simple and straightforward as possible. Once it was recognized that the signal could be transmitted via wire or via wireless means, there was no need to refer to new concepts like media or networks or platforms, etcetera. Otherwise they would end up with something like videogame console casting. In relation to other issues, the EBU aligned itself with the views of the Representatives of other broadcasting unions.

196. The Chair asked whether there were any IGOs requesting the floor. As there were none, he proposed that they return to the discussion on the Object of Protection. He recalled that during the discussions on Paragraph 2, it had been suggested that retransmission was

the appropriate term because it referred to activities made by entities different than the original broadcasting organization. Regarding Paragraph 3, one clarification that had been made, addressed the use of the term “retransmission” and questioned whether it should be “transmission” instead, to avoid clashing with the definition of retransmission, since they were referring to activities made by the original broadcasting organizations. They had heard many suggestions regarding Paragraph 3 and they would defer the decision to be based on whether they took an optional approach for those transmissions, which were made over computer networks, or if they considered that simultaneous and near-simultaneous transmissions could be included in the mandatory provisions on the Object of Protection of the Treaty. Delayed transmissions could be left as an option to be taken by the Member States. It had also been suggested by some delegations that they should include the making available of a transmission in a way that members of the public may access it from a place and at a time individually chosen by them, as an option. The Chair referred to the interesting discussion regarding the proposal by the Delegation of Japan and suggested that they reflect on whether there was consensus on that proposal. If they needed more time to think about it, then they could go to Paragraph 4. Paragraph 4 addressed the issue of cablecasting. It stated that the provisions of the Treaty should apply *mutatis mutandis* to the protection of cablecasting organizations in respect of their cablecasts. It did not include alternatives. The Chair opened the floor for discussions on Paragraph 4, noting that the definition of cablecasting was the same mirror-like definition for broadcasting, with the difference of addressing transmissions by wire. Cablecasting was defined as the transmission by wire, for reception by the public, of sounds or images, or images and sounds, or the representation thereof and transmission by wire of encrypted signal as cablecasting, or by providing means of encryption to the public by the cablecasting organization with its consent. Regarding another reference to cablecasting, the Chair recalled that in the alternatives in the Definition section, they had given a unique definition, stating that the broadcasting organization/and cablecasting organization meant the legal entity that took the initiative for assembling, scheduling and having the legal and editorial responsibility for the transmission. Bearing in mind those two definitions, there was the need to analyze whether they could agree on applying them *mutatis mutandis* to the protection of cablecasting organizations in respect of their cablecasts, as they had done with broadcasting organizations in respect of their broadcasts or program carrying signals. He stated that it was an appropriate moment to analyze that topic again.

197. The Delegation of Nigeria stated that it was difficult to determine how to reflect Paragraph 4 on the Object of Protection, because if they provided definitions for cablecasting in the definitions for broadcasting and broadcasting organizations, then it may not be necessary. The Delegation suggested that it may be something to come back to at a later stage when they had agreed on the definition of broadcasting organizations or if they agreed to a separate definition for cablecasting organizations.

198. The Chair agreed that it depended on the agreement on the definition of broadcasting, or if they were going to have separate definitions. The Chair suggested that it would be interesting to hear any concerns regarding the inclusion of the protection of cablecasting organizations, which had been discussed in previous sessions, such as constitutional concerns regarding the protection of cablecasting organizations. Some delegations had expressed concerns regarding the different regulatory environments that were applicable to cablecasting organizations. They had also heard suggestions by several delegations that the Object of Protection should include not only broadcasting but cablecasting as well. That was why the Consolidated Text had included a separate definition of some alternatives in order to add some clarification.

199. The Delegation of the European Union and its Member States supported the comments made by the Delegation of Nigeria and agreed that the wording depended on the definition of broadcasting and cablecasting. If there was a separate definition for broadcasting and

cablecasting, and it was of the opinion that there would be such a definition, then it did not have any comments on the wording in Paragraph 4. It would be necessary to have that kind of paragraph in the text. If some delegations had any specific concerns regarding cablecasting, there could be additional language added to address these concerns, for example the different manners of protecting cablecasting.

200. The Delegation of Brazil stated that with respect to Paragraph 4 and the Object of Protection it was difficult to respond before there was some consensus on the definitions and beneficiaries of the Treaty. The Delegation stated that the text in its existing form did not give the necessary comfort regarding the specificities of national legislation. Specifically, the term: "shall apply mutatis mutandis" did not leave any room for flexibility for Member States. In that regard, the text did not provide the necessary flexibility and the necessary comfort to the Delegation. It would await the revised version and would evaluate it.

201. The Delegation of the United States of America referred to the discussions on cablecasting organizations, which had taken place over many SCCR sessions. The Chair had mentioned the constitutional concerns and a number of times they had heard of the different treatments in the regulatory environment, most recently from the Delegation of Brazil. The Delegation agreed with the statements of the Delegations of the European Union and its Member States and Brazil, in that the issue was tied up with defining broadcasting organizations and cablecasting organizations. Given the expressions of concern and given the structuring of the Consolidated Text, one idea that had occurred to the Delegation was to make the protection of cablecasting organizations under the Treaty optional and leave it to Member States' discretion. If that idea was to gain traction, then they would need to consider how such a provision might be structured. The Delegation suggested an optional provision that would contain its own tailored definition of cablecasting organization. They would not have to arrive at that definition until they were discussing the Article that addressed that optional level of protection.

202. The Chair stated that they had arrived at a moment where they were not only hearing individual positions, which were often apart from each another, but they were starting a very interesting process where delegations were discussing how to tackle other delegations' concerns. It was a very interesting point where Member States were including other Delegations' perspectives.

203. The Delegation of Chile referred to the comments about the definitions and noted that its system had different ways of processing that legally for the operators and for the traditional broadcasters. It was living with a very different reality in its country because it did not have cable operator entities, which carried out the activities envisaged in the definition and which had been put forward in the definitions of cablecasting organizations and broadcasters. That was not an industry, which was interested in a treaty of that sort. That was why the Delegation believed that the possibility of maintaining the alternative or including the cable operator for the time being was unnecessary.

204. The Delegation of Brazil referred to the proposal from the Delegation of the United States of America regarding the possibility of allowing Member States' discretion on an optional level of protection and stated that it may be a good way forward, to give comfort to the Delegations of Chile and Brazil, as well as other delegations that had concerns regarding their national legislation.

205. The Chair stated that they had to be very respectful of the different concerns that had been expressed. It was a learning experience. It was a matter of respect of the different views and with that in mind they would start to find some alternatives. The Chair proposed that the following discussion would be on Section 3, the Rights to be Granted.

206. The Chair opened the session by summarizing the discussions of the previous day and noted that he had been trying to pool the suggestions together, in order to tackle the delegations' legitimate concerns to create a Revised Consolidated Text. The Chair referred to Paragraph 4 in the Object of Protection and opened the floor for additional comments.

207. The Delegation of Brazil referred to the Chair's note and supported the comments that had been made for further discussion on the possible inclusion of transmissions by broadcast organizations in such a way that members of public could individually chose the place and time of access, as an object of protection. The Delegation noted that it was unclear how that new possible object of protection would relate to the mandate given regarding the signal-based approach and how it would relate to content that was transmitted. The Delegation supported the Chair's note and understood the need for further discussion on that topic.

208. The Representative of the Alliance of Latin American Intellectual Property Broadcasters (ARIPI) stated that it was an association of broadcasters that included various different broadcasters around the Americas, the United States of America, Mexico, Latin America as well as Spain and Portugal that shared the idea that they should explore and continue to analyze all possibilities, including cablecasting, particularly because in the countries that it represented, most of the programs came to viewers through cable systems. ARIPI was concerned with respect to piracy in those countries. It had seen that signals were stolen directly from cable companies and therefore, it would like to see the possibility of cablecasting being included with regard to the protections that were foreseen under the Treaty.

209. The Representative of Knowledge Ecology International (KEI) stated that it was as concerned as everyone regarding the piracy of content that was provided over cable systems. However, it would be interesting for the Representative of ARIPI to explain if in any of the countries where they had problems with people stealing cable signals if it was not already against the law to do that. Part of the problem was the reference to problems involving piracy, which were already subject to criminal sanctions and fines, and in some cases jail time, in countries where they occurred and then they used that as a rationale to create a new layer of rights for distributors at the expense of content owners. For them to make the argument more persuasive in the context of cable systems, ARIPI should explain whether there were any gaps in the local protection that affected cable systems. The Representative asked whether it was actually legal to retransmit, broadcast or distribute over cable systems without the permission of the right owners or the cable operators in any Member States.

210. The Chair suggested that the question could be posed as an open question to the SCCR.

211. The Representative of the Alliance of Latin American Intellectual Property Broadcasters (ARIPI) stated that the problem was that foreign cablecasters did not have standing to sue according to domestic legislation. That was why they were pushing for an international treaty.

212. The Chair invited the delegations to make comments regarding the question posed by the Delegation of Brazil, regarding the Chair's note, related to the making available situation, and its effects. As there were no comments, he opened the floor to the NGOs.

213. The Representative of Knowledge Ecology International (KEI) stated that the making available right was something that it would associate with content and if the Treaty was not supposed to be about the rights and the content, then it was inappropriate to have a making available right in the Treaty.

214. The Representative of the European Broadcasting Union (EBU) recalled how the debate had started with broadcasting organizations and then it was recognized that also cable networks were included as the entities responsible for distribution, but also produced and distributed their own programming. That was why there was a consensus to include that particular activity. The start of the discussion was that broadcasting organizations and cable operators who acted and behaved as broadcast organizations in the same manner were covered. The Representative suggested that that may be a way out for possible options on the drafting. On the question of the inclusion of the making available right and content, it did not think that the making available right was necessarily linked with content because in the European Union broadcast organizations already had, for the previous 15 years, the making available right.

215. The Chair reflected on the different roles that cable entities could undertake and noted that they could act in the same manner as some broadcasters. It was an interesting point to take into account starting from the Definition section, in terms of what protection was proposed. The Treaty included broadcasting and cablecasting. The activity that they were emphasizing was the activity undertaken by cable entities when they acted as broadcasters, with the only difference being that they did it by wire. It was becoming clear that the intention of the definition was not to include those activities or entities which, undertook the cable related activities, but did not undertake cablecasting, including activities like assembling, programming and being the legal entity responsible. If they concentrated on those activities carried out by cablecasters, which were closely related to or similar to the activities performed by broadcasters, it might help. However he pointed out that there could still be constitutional or regulatory situations to take into account.

216. The Delegation of the European Union and its Member States agreed with the Chair's reference to the protection of cablecasters. The protection was not for cable retransmissions or for cable operators that merely retransmitted, but for those that were cablecasters that would make new transmissions. The Delegation referred to the discussion on on-demand transmissions in the Object of Protection and the making available right, because there were two issues. Its understanding of the Chair's note under the Object of Protection was that whoever transmitted, either broadcasting or cablecasting organizations, made them in such ways that members of the public may access them from a place and time individually chosen by them. The European Union and its Member States treated those transmissions as transmissions that should be protected under the Treaty. That was why the Delegation understood it had been placed under the Object of Protection. The Representative stated that the making available right was a separate issue. It was a question of which acts they wanted broadcasting organizations to be protected from when they created the catalog of rights. They had to decide whether they only wanted to protect broadcasting organizations from the inception of the signal, retransmissions, showing simultaneously or near simultaneously; or whether they also wanted to protect broadcasting organizations from such situations where a pirate entity intercepted the signal, made a fixation of the signal and then made a transmission. There were two ways of using the signals of broadcasting organizations and whether such transmission by a pirate entity was done in a simultaneous manner, or was being used to make on-demand transmissions, broadcasting organizations should have the ability to stop such activities. That was why the Delegation had always requested that the making available right be included in the Treaty.

217. The Chair referred to the fact that the topic had originally been raised by the Delegation of Brazil and noted that the making available right related to both an object of protection and a right to be granted. In order to have clarity, the Chair suggested that they focus the discussion at that point on the Object of Protection and discuss the difference with the possible use of making available in the Rights to be Granted section. The Delegation of the European Union and its Member States had done that. The Object of Protection section related to the kind of transmissions they were going to protect, while the Rights to be

Granted section referred to the actions that a broadcaster could take in order to prevent some specific acts. One initial difference was that in the Object of Protection section, they were talking about the making available by the original broadcasting organization, while in the Rights to be Granted section the act could be related to activities made by pirates to enable the broadcasting organization to take action. The Chair suggested that they should exchange additional views and express questions or concerns.

218. The Representative of the North American Broadcasters Association (NABA) reiterated its position that there should be no difference in terms of broadcasters and cablecasters. The problems of piracy and unauthorized exploitation across borders were largely the same for both, as a result the cases for new updated protections were the same. NABA aligned itself with the statement of the Representative of ARIPI.

219. The Chair suggested that when they discussed making available in reference to the Object of Protection, they should also discuss whether such an activity carried out by the original broadcaster was going to be protected or not, while in the Rights to be Granted section the focus would be on whether broadcasters should have the ability to stop an unauthorized making available, which would be an activity undertaken by the pirate. The Chair invited NGOs to provide their thoughts on that complex issue. The Chair moved to the third section of the Chair's note regarding the Rights to be Granted. There were two alternatives. Alternative A was the chance to give broadcasting organizations the right to authorize or prohibit the retransmission of the broadcast to the public by any means. Alternative B was the same, except that the type of right was the right to prohibit the unauthorized transmission of their broadcast to the public by any means. He referred to the fact that they were still missing references to cablecasting organizations, depending on how they defined broadcasting. The main difference was the phrase: "right to authorize or prohibit the retransmission of the broadcast or the right to prohibit the unauthorized transmission of the broadcast." The difference came from previous international agreements including the TRIPs Agreement.

220. The Delegation of the Philippines (the Republic of) stated that Alternative A was more in line with the objective of addressing signal piracy. While the exclusive right to authorize and prohibit mirrored that of copyright, it was clear that the Object of Protection extended only to the retransmission of broadcast signals and not to the work or the subject matter carried by such signal. The concern that the granting of that exclusive right would effectively allow them to control even out of copyright or public domain works, was understandable. However, as long as the proposed Treaty provisions reflected the signal-based approach such exclusive rights clearly could not extend to unprotected subject matter.

221. The Delegation of the United States of America stated that the suggestion for a single right to authorize the simultaneous or near simultaneous retransmission of broadcast signals over any medium, contained a number of concepts that were very critical to that right. It wished for those concepts to be reflected in the Chair's drafting of Alternative A and B. It suggested including the words "simultaneous or near simultaneous" before "retransmission" in both Alternative A and B. The second change that it wished to have reflected in both alternatives was the right attached to broadcast signals, so that broadcasting organizations had the right to authorize or prohibit the simultaneous or near simultaneous retransmission of their broadcast signals instead of just broadcasts to the public. The third change it recommended was to replace the phrase "by any means" with the phrase "over any medium." That request was due to the narrow interpretation of "by any means" in WIPO related rights treaties and even copyright treaties, which typically referred only to wire or wireless. The Delegation recalled that copyright treaties referred to wire or wireless and reverted to the phrase "by any means" to encompass both. It proposed the phrase "over any medium", which would capture essentially over any platform.

222. The Chair observed that the definition proposed for retransmission was broad. He noted that in the qualification of which retransmissions would be prohibited or authorized, they had been receiving suggestions to limit them with a simultaneous or near simultaneous retransmission. Regarding the suggestion on broadcast signals, the Chair stated that he had taken note of them, together with the proposal to use the term "over any medium."

223. The Delegation of the European Union and its Member States confirmed it had a strong preference for Alternative A, aligned with the definition of retransmission. If the broad definition of retransmission in the Consolidated Text stayed the same, including delayed retransmissions, then the wording would be sufficient. The Delegation agreed with the statement of the Delegation of the United States of America that the phrase "by any means" could be changed to "over any medium". However, if the definition of retransmission was limited to only simultaneous transmissions, then they would have to have an alternative wording under Alternative A that would also include the right to authorize and prohibit delayed transmissions. Therefore, the Delegation wished to add language, which would correspond to the alternative definition of retransmission that would read: "broadcasting organizations shall have the right to authorize or prohibit the retransmission and the delayed transmission of their broadcasts over any medium to the public." The Delegation's second point was that it would like to see language that would reflect the making available right. That language would read: "Broadcasting organizations shall enjoy the right to authorize or prohibit the making available to the public of their broadcasts/cablecasts in such a way that members of the public may access them from a place and at a time individually chosen by them." Its final point on that section was the need to include protection for pre-broadcasts, as currently they had no reference to rights that would be protecting pre-broadcast signals. The Delegation would share the wording in due course.

224. The Delegation of India stated that Alternate B fit in with the original mandate, as there was a right to prohibit the unauthorized retransmission of the broadcast to public by any means. As it had discussed earlier, the phrase "by any means" being inserted into Alternate A created additional rights. It also created further confusion about what it meant "by any means". Even if they substituted the word "medium" they could be talking about the Internet as a medium or Internet as a means. That point had been raised consistently by its Delegation and the Delegation of Brazil. The suggestion of the Delegation of the European Union and its Member States needed more thorough discussion. Even simultaneous or near simultaneous retransmissions, in order to accommodate time differences, which was a minor way of looking at post fixation rights had been acceptable at a point of time. However, to create an expanded right under Alternate A raised deep concerns.

225. The Delegation of Japan supported the statement of the Delegation of the European Union and its Member States in that not only the right of transmission but also the fixation right and post fixation right, especially the making available right were important in order to tackle signal piracy. If only simultaneous or near simultaneous retransmission was protected under the Treaty, broadcasting organizations would not have enough effective counter measures to the signal piracy. Therefore, it proposed to continue discussions on the right of fixation, the right of post fixation and the making available right.

226. The Delegation of the United States of America supported the intervention by the Delegation of the European Union and its Member States on the need to reflect on some options for the protection of pre-broadcast signals in the Chair's text. Over the years a number of options and textual provisions had been discussed. They fell largely into two categories. At times, the pre-broadcast signal had been drafted in a way as an exclusive right and in other options, it was simply the right to enjoy adequate and effective legal protection for pre-broadcast signals. There were two options and probably a third option would be no protection at all. The Delegation referred to Document SCCR/15/2 as an example. There were a range of options, including an exclusive right, a right for adequate



and effective legal protection and no protection at all, which could probably be reflected in the draft.

227. The Delegation of the European Union and its Member States supported the options outlined by the Delegation of the United States of America for the pre-broadcast signal. It agreed that if the three options outlined could be reflected, then the text would cover all possibilities.

228. The Delegation of Italy supported the statement of the Delegation of the European Union and its Member States and stated that the protection was for the signal and against signal theft, but that meant that the protection also continued with the consequences of signal theft. The Delegation could not imagine a situation in which the activity took place at the moment when the pirate stole the signal and afterwards, that theft no longer had any importance or consequence. If a person stole money and then bought something, for example, was the person responsible only at the moment of the stealing and then afterwards he or she could do as they liked. That was a very naive approach. If a person stole a signal and then afterwards used it in a different form, it was not appropriate to exclude the possibility of that person having responsibility. The owners of the signal needed to have the right to subsequently intervene and also to intervene in respect of the subsequent activities. It preferred Alternative A because it was clear that the broadcasting organization had the right to prohibit certain activities but only if it had the rights to authorize that activity too. Those rights were logically connected to one another. Alternative B also implicitly recognized that if a person had the right to prohibit something, which was unauthorized, then that would mean that previously the person had the right to authorize it. The consequence was that if it was unauthorized, then the person could prohibit it. The Delegation suggested choosing Alternative A, with all of the subsequent suggestions of the Delegation of the European Union and its Member States.

229. The Chair offered an invitation to think about the situation of how to prevent an unauthorized act. That was the question which had been posed by the Delegation of Italy. That point had also been raised by the Delegation of India and the Representative of Knowledge Ecology International regarding the possibility of preventing such unauthorized acts over any platform.

230. The Delegation of Nigeria stated that it was consulting with respect to Alternative A or B. It requested clarity particularly from the Delegation of the European Union and its Member States on whether they had a definition of broadcasting in the context of Alternative B, whether the definition of retransmission included simultaneous and near simultaneous retransmission, and even delayed transmission, and to what extent not having the expansion or layering of Rights to be Granted in the Treaty could restrict the normal activity of the making available of broadcasting organizations.

231. The Representative of Knowledge Ecology International (KEI) stated that once they got into things like authorizing uses of works, it became appropriate for the person doing the authorizing to have some agreement with the owners of the content to be doing those things. Copyright was there so that when people were trying to work out the commercial relationships to exploit works, they should be done through contracts with the content owners. Most of the things that were being proposed were substitutes for contracts and they should be reluctant to interfere with the freedom to contract in that area, or the rights of the copyright owners to shape the contracts in a way that they desired. For a signal-based treaty, it was important to do the minimum in terms of interfering with the commercial relationships and to try and focus on the things that were essential.

232. The Delegation of the European Union and its Member States responded to the comment of the Delegation of Nigeria stating that if the definition of retransmission in the

Chair's text also referred to simultaneous or delayed transmission by other entities, it would be sufficient to deal with its concerns. It agreed that it was the core question of the broader definition of retransmission. That was why it wanted to be transparent and had referred to the option of adding the making available right, because if the definition of retransmission was narrower, or if it did not include such types of transmissions in such way that members of the public could access them at a time chosen by them, then that would not be sufficient.

233. The Chair referred to the relationship with the definition of retransmission, such that if it was broad enough to cover all the types of activities, as expressed by the Delegation of the European Union and its Member States then it was not necessary to add any additional terms. If the definition of retransmission was limited to the simultaneous or near simultaneous retransmission, then they would need to include the making available right in the Rights to be Granted section.

234. The Delegation of the European Union and its Member States clarified that it would be sufficient for it to have a very broad definition of retransmission, but it emphasized only if it was broad enough to include the right of making available. It referred to the example given by the Delegation of Italy and noted that it did not change the harm being done to broadcasting organizations or to the investment that had been put into the programming and into the broadcasting. It did not see a difference if the signal was intercepted and retransmitted simultaneously, within 24 hours, or where the signal was fixed and transmitted after 72 hours or after a longer time. It was the same harm. It was the signal that had been intercepted. It was an illegal use of the signal of the broadcasting organizations and therefore, the Delegation saw merit for its protection.

235. The Chair invited the Delegations to reflect on the difference between the scope of the Object of Protection and the Rights to be Granted, specifically on the topic of the making available rights. He also invited them to think about the difference of protecting transmissions made in a way that members of the public may access them at a time and place elected by them, which was an activity that differentiated making available by the original broadcaster from the activity undertaken by the pirate, and the ability of the broadcaster to stop such an activity. One addressed instances when the broadcaster used that specific way to transmit, if that was going to be the Object of Protection, and the second was that even though the broadcaster did not use that opportunity, the pirate did. The second way to think about the problems that may be created by giving broadcasting organizations the right to authorize was in the Rights to be Granted section, for example, the making available right. It had been said clearly by some delegates that there would be a difference if they gave the right to authorize, rather than giving right to prevent the illegal activities. That was a key point. Member States should also consider whether they needed the right to authorize not only for the simultaneous or near simultaneous retransmission, but for the deferred transmissions as well, for example. The Chair summarized the alternatives again, and made reference to the term "by any means", which could be substituted by the term "over any medium".

236. The Delegation of the European Union and its Member States stated that it had been asked in the first part of the session to explain the reasons behind its proposal to include the making available right. It clarified that when it referred to the making available right, it was talking about a situation where the pirate that was intercepting the signal from a broadcasting organization was fixing the signal and then transmitting on a website. An example was where a broadcasting organization was transmitting films or series and they were later intercepted by a pirate entity, fixed and offered by that entity on a website. That was a situation where there were underlying rights to the particular film, it was probably a work, which may lie with the broadcasting organization because they may be the producer of the work or have an agreement with somebody who was the producer of the work. Those rights were not in any way affected by the making available right for the broadcasting organization,

but in its view, broadcasting organizations were also being harmed in that situation. It was not only the underlying rights holders that were obviously harmed, but also the broadcasting organizations. The broadcasting organization may have acquired a license from the film producer for a certain film in certain territory for a certain time and was paying a lot of money to be the only broadcaster to show that movie. If after the first episode had been shown, that episode was being intercepted and put on websites, it was both the producer and the broadcasting organization who had invested money in that program. That was one example showing why it was important and why it did not, in any way affect the protection that was there for the underlying rights holders. It emphasized that nothing in the Treaty should affect the protection of rights of underlying rights holders. That was very important. A second example was where a broadcasting organization was broadcasting some event, which was not covered by copyright or other kinds of related rights. In the European Union, sports events were not works in the meaning of copyright and therefore were not protected. The broadcasting organization was investing in acquiring broadcasting rights from those sports organizers, like football associations, who held the rights to show matches of a particular league on an exclusive basis for some time. If somebody was retransmitting or intercepting the signal and putting it on a website, the whole investment of the broadcasting organization was put at risk. In that case there was no double layer of rights because there was no copyright in sporting events. The making available right was necessary also to cover such situations. It was not talking about a situation, which was a separate issue, dealing with whether they also needed protection when it was the broadcasting organization that was putting something on their website on an on-demand basis, as that should be included in the Object of Protection. That was a separate issue. It was talking about the making available right, the situation when the signal was intercepted by a third party, fixed and put over Internet. Those were the situations where they would like to give protection to a broadcaster and there were no rights of underlying rights holders at stake.

237. The Chair highlighted the related use of copyrighted content and what happened when it was transmitted in a way that members of public may access it. If that was a part of the activity, they had to decide whether that situation should or should not be tackled by the Treaty. Secondly, he referred to the use of non-copyrightable material, like a sports event, where there were not alternative ways to stop such an activity.

238. The Delegation of India thanked the Delegation of the European Union and its Member States for providing relevant examples with and without underlying copyrighted materials. It suggested that Alternate B clearly fit as it referred to prohibiting any unauthorized retransmission, whereas the right to authorize in the examples did not clearly refer to what the broadcasting organization was trying to authorize. The right to prohibit clearly took care of both of the examples provided by the Delegation of the European Union and its Member States.

239. The Representative of Knowledge Ecology International (KEI) referred to the two helpful examples provided by the Delegation of the European Union and its Member States on how the Treaty might work. The first was the case where something like a movie was put into the market and there was unauthorized distribution in a way that undermined the exclusive rights of the person that was involved. In those cases, it was reasonable for the broadcaster to negotiate with the owner of the film sufficient rights to be able to protect the interests of both parties in the area, as was done in most markets. The sports broadcast had come up as a recurring issue in the discussions about the Treaty over the years. It was worth reflecting on it. Sports broadcasts were often a very profitable venture, despite the discussion by the Delegation of the European Union and its Member States that they were not protected by copyright in some countries, particularly in the European Union. It was interesting to understand how something that was not protected by copyright in the European Union resulted in such a massively profitable market for broadcasting, for example, soccer matches. To the extent that they did not rely upon copyright to protect their interests it may

be good to figure out what mechanisms they did use to protect themselves in such situations. There were also two other possibilities. Member States could solve those problems by doing what the United States of America and other countries did, which was to extend copyright protection to other events. In the United States of America, sporting events were copyrighted. Member States may need to think about changing their copyright laws and not creating a brand new related right. The other question was, if there was a completely unique problem with sports broadcasting that could not be resolved through copyright, maybe there could be special provisions related to sports, a sui generis situation. One was sporting events and another were public affairs or news programs. The bigger problem appeared to be the sports events. Rather than creating a Treaty that applied to everything to solve a very narrow problem in sports casting, perhaps the SCCR could create a very narrowly targeted instrument to look at the unique problems in sports casting if in fact, all of the other mechanisms which were used in the European Union or the extension of copyright to sports created gaps that could not be addressed through the legal mechanisms.

240. The Representative of Copyright Research and Information Center (CRIC) stressed the importance of the right of making available, from a different point of view than that of the Delegation of the European Union and its Member States. Whether it was an on-demand transmission or streaming transmission over computer networks, people could access and enjoy it at any time according to their choice. However, uploading, on the other hand, was a preparatory activity before such transmission. Some people contended that the transmission right of broadcast covered the making available of a broadcast. Logically if broadcasters had the right of the transmission of broadcasts by any means, including delayed retransmission, then broadcasters could stop an unauthorized transmission of their broadcast on a website. However, in reality, broadcasters could not stop unauthorized uploading itself. Transmission and uploading were two different activities. Therefore, the right of retransmission and the right of making available were separate and independent from each other. Once the broadcasters had the right of making available the unfixed broadcast, they could take action immediately after they found an unauthorized uploading, without verification of an authorized transmission. It was very difficult to verify an incident of unauthorized transmission over networks. Moreover, as the Delegation of the European Union and its Member States had stated and the broadcasters had stated repeatedly, in many Member States sports events such as the World Cup or the Olympic Games were not recognized as works. As a result, international events were not protected from simultaneous periodic transmission over computer networks. Accordingly, the right of making available and fixing the broadcast for broadcasters was a good and important tool against piracy on websites. In the digital era, when they established a protection for broadcasting organizations, the right of making available of fixed and unfixed broadcasts should be indispensable. The Representative referred to the three options put forward by the Delegation of the United States of America and suggested that there was another option, no rights but only protection, for example like under the WCT and WPPT.

241. The Representative of the International Federation of Journalists (IFJ) stated that it had previously refrained from commenting on the Treaty. In principle, if they needed a neighboring right for signal piracy and they should have the same kind of right as record producers. The Representative wished to avoid a flood of cases in the courts, which would be ruinously expensive for authors and performers. It agreed that it was essential that any new neighboring right not affect the right of authors and performers, but stated that on its face, the Treaty did not guarantee that there would not be practical effects. The Representative was concerned about the practical effect of adding a new layer of rights, one like the record producers' right that may serve as a gateway through which those who would license the use of an underlying work must pass. The Representative also wondered about the potential effect of a broadcaster in California having a right that sat on top of the rights of an author in Peru and a performer in Senegal. Further it asked whether there was an invitation to forum shop, as the existing law had led one major broadcaster to base itself in

the United Kingdom for the purposes of evading authors' right and in the Duchy of Luxembourg to entirely legally avoiding tax. It questioned whether broadcasters would be encouraged to locate their operations in territories where it was easier for them to impose unfair contracts on authors and performers. The Representative associated itself with the statement of the Representation of FIM in that regard. With respect to the new layers being added to the copyright system, in general terms, authors and performers shared an interest with broadcasters, producers and publishers in getting a fair share of the income that was collected by a new layer of intermediaries, the Internet service providers. It shared the concerns expressed by the Representative of KEI regarding the broadcasting of movies on-line. On-line services such as YouTube and its successors may gain the kind of gateway right that they had described, perhaps enforcing rights in Californian courts. It questioned what affect that would have on artists in Germany and Senegal. The issue of fair contracts for authors and performers was contentious and it was disputed whether or not it was the proper purview of the SCCR. There was some evidence that the legitimacy of authors rights, the legitimacy of everything in the eyes of the public, rested on the fact that the authors and performers were receiving a fair share.

242. The Delegation of Iran (Islamic Republic of) stated that the discussion about the rights of making available depended on the definitions in Alternative A or B. The Delegation referred to its previous comments regarding the need for the inclusion of a definition of transmission, in order to have a clearer understanding of retransmission. It suggested the inclusion of the definition of transmission, as provided in Article 5 of Document SCCR/27/rev which read: "transmission means the sending for reception by the public of visual measure, signs or representations thereof, by way of an electronic carrier." In addition, the issues that remained in the retransmission definition in the Consolidated Text made it difficult to determine which alternative to use. The Delegation suggested that it was better to use the term "near simultaneous."

243. The Chair referred to the interesting exchange regarding rights and the understanding that there was a connection between the Rights to be Granted and the Definitions sections, as stated by Delegation of Iran (Islamic Republic of). The Chair stated that it was not the goal to have a final definition, however the text could include suggestions in brackets and the Delegations could reflect on how that would affect other parts of the proposed Treaty, meaning the Object of Protection and the Rights to be Granted. He suggested that they sought clarity on the options available. He stated that the Definition section and the definition of signal had allowed them to look at alternatives and they had reached the point where the term "program signal" was the clearer term to use. They could also have a definition of program. The discussion on "broadcasting" was very useful, considering the traditional definition of broadcasting and the need to have additional definitions for cablecasting. Some delegations preferred the option of having a technologically neutral definition of broadcasting, which would have an impact on other international treaties. The definition of "broadcasting organization" depended on the definition of broadcasting and whether it would cover cablecasting organizations as well. They had discussed whether packaging could be considered part of the assembling activities and whether it was necessary to specifically mention it in the definition. Rather it was important to refer to assembling, scheduling and the legal responsibility of the entity. It was not necessary to mention that their activity would be irrespective of the technology used because that problem would be solved by the definition of broadcasting itself. Reference to transmission over computer networks would be better placed in the section on the Object of Protection. Regarding the definition of retransmission, the Committee had discussed the option of having a broader definition. If they wanted to use it in a limited way, they would need to qualify the broad definition of retransmission, stating in the rest of the text that simultaneous was qualified. The core element of the retransmission was an activity taken by any other entity than the original broadcasting organization. In order to avoid confusion with the use of such a term, it had been suggested that when they referred to activities made by the original broadcaster they

would use the term "transmission." They had discussed near simultaneous retransmission and had had an interesting exchange that it was related to the delay, but only to the extent necessary to accommodate time differences or to facilitate technical transmissions. Even though the protection of a pre-broadcast had not reached consensus, they had considered a definition of pre-broadcast. Regarding the second section, the Object of Protection, the Committee had discussed several elements. The first one was the protection granted. The first defined term could be considered a program carrying a signal, transmitted by or on behalf of a broadcasting organization. It was important to reinforce that content was not protected by the Treaty. There were several suggestions on how to do that and one was related to specified works or other protected subject matter, but there had been some problems with the latter one. Referring to programs was an option that was considered helpful. If the decision was going to be taken regarding the use of the protection of pre-broadcasts, that could also be reflected in that part of the Treaty. Regarding the second provision, the exclusion of protection of mirror transmissions by any means, it was agreed that "by any means" was not necessary if it was part of a radio transmission, while the use of the term "mirror" was also questioned. There was a suggestion to examine if a second provision was required at all, after having a horizontal view of the Treaty. It was recognized that there had been requests expressed in various submissions and so it probably would remain there. Regarding the third paragraph, the Object of Protection, in addition to the current signal itself, the protection would extend to simultaneous or near simultaneous transmissions. With reference to the previous charts, the Chair recalled that there was sympathy for parts of simultaneous or near simultaneous transmissions but not for further protection, such as deferred transmissions or transmissions made in a way that members of the public may select the place and time to access them. The right term was "access" but perhaps it could be defined as a transmission. The delegations had discussed the very important topic of how to properly reflect the application of the Treaty provisions to include cablecasting organizations, in order to consider legitimate, specific concerns, which had been made by some delegations on their constitutional or regulatory provisions. He clarified that given the constitutional and regulatory barriers, the best way to go forward was with flexibility to give comfort to those Member States. Regarding the discussion on the making available of transmissions made in such a way that members of the public may access them from a place and a time individually chosen by them, it was clear that they were not discussing a pirate act. That was part of the Rights to be Granted section. It was part of such an activity made by the original broadcaster, meaning that the original broadcaster had transmitted it in a way that members of the public may access it from a place and time individually chosen by them, so called on-demand. There had been an interesting discussion clarifying the different treatment they had regarding the Object of Protection and Rights to be Granted. Some concerns had been expressed regarding the extremes and some clarification was required. Finally, with respect to the Rights to be Granted, the right to authorize or prohibit the retransmission had also been discussed. The discussion had emphasized the differences among Member States. They had received some suggestions to align the terms with the previous work they had done regarding the definitions. They recognized that the use of the term "retransmission" could be adapted in order to reflect the activities that some delegations wanted to cover. However, there was not yet consensus and concerns had been expressed regarding the extension of the right to such an activity. However, on the other hand, it had been accepted that since they were considering pirate activities, they should give the broadcasters the ability to stop any unauthorized retransmission over any platform. He recalled the Chair's Conclusions at the last SCCR. NGOs had helped the SCCR in its deliberations when they had spoken about how to prevent pirate activities and there was a consensus that that should be to prevent such illegal acts over any platforms. However, some delegations had expressed concerns that expanding the right to prohibit may create a right to authorize. Some delegations had stated that there was a way to do it more effectively and some delegations had expressed that it required a new set of rights, which could create a collision with the rights holders. Additionally, there had been some interesting comments regarding the situation where there was no copyrighted work, with the specific

example of sporting events. There had been a general consensus on allowing broadcasters to prevent unauthorized retransmission over any platforms but when they discussed the rights authorized, there was no consensus. That was the Chair's brief review of the SCCR's rich discussion.

244. The Delegation of Chile clarified a point regarding the definition of retransmission. It stated that with regard to the phrase "by any means", it was still considering the protection of broadcasting through cable, and as it had indicated in the previous SCCR session, it was not prepared to support the protection of retransmission of broadcasts through the Internet. Despite the Chair's summary of the SCCR/30 session, there was no consensus on that point, as the Delegation was still in the same position.

245. The Delegation of the European Union and its Member States stated that the Chair's summary was quite correct in reflecting the discussions and it was impossible to go through every single point because so many different options and proposals had been proposed on the Consolidated Text. It outlined five further points. First, there was a discussion of definitions to be used in the Treaty and the need to be aligned with definitions in other treaties. That especially related to the definitions of broadcasting and cablecasting. Second, the protection for the pre-broadcast signal needed further discussion and was important for a number of the delegations. Third, there was a clear distinction between the Object of Protection in the Treaty, which was the broadcast or the cablecast and the underlying rights. That was broadly agreed and they needed to find the correct wording to reflect that. Fourth, there were a number of options for the Object of Protection. The first level was whether the Object of Protection should include transmissions over computer networks, whether they were linear, such as simultaneous, or near simultaneous and delayed retransmission, or whether they should be extended to also non-linear transmissions. The second level was whether it should be mandatory or optional. It referred to the proposal by the Delegation of Japan, to make the Object of Protection with respect to computer networks transmissions optional but not mandatory. The last point was the extent of rights, where they had made progress. The important point was the inclusion of the making available right and it responded to the Delegation of India, that Alternative B did not cover the examples that it had provided because it only referred to retransmission. It was not sufficient to cover the examples that it had provided where certain content and certain signals were there. The Delegation stated that it was open to further discussions on that topic.

246. The Delegation of Brazil requested that the Chair provide more detail on his reference to the delegations that had specific concerns regarding national legislation and that a possible solution had not been discussed. The Delegation recalled a proposal from the Delegation of the United States of America with specific language and stated that the proposal would be suitable. It wished for that to be reflected. Regarding the next steps of the Consolidated Text, the Delegation requested more clarification on the process, after the discussion on how the Committee would move forward, taking into account all the contributions that had been made and the concerns that had been raised.

247. The Chair stated that it was his intention to include the contributions of all delegations into the Consolidated Text, as a revised version. The revised version would be distributed before the next session of the SCCR. The revised version would reflect what had taken place at the current session of the SCCR, including all issues discussed, such as options, analysis, consequences and suggestions to tackle some other delegations' concerns. They would be added when they had reached a consensus, or in case of a non-problematic proposal. In cases of lack of agreement on the existence of concerns raised by delegations, the text would be bracketed to provide a tool for advancing in future discussions.

248. The Delegation of Brazil sought clarification about the status of the document and asked whether the new text would be drafted under the responsibility of the Chair.

249. The Chair confirmed that it would be a Chair's text.

## **AGENDA ITEM 6: EXCEPTIONS AND LIMITATIONS FOR LIBRARIES AND ARCHIVES**

250. The Vice-Chair opened Agenda Item 6 on exceptions and limitations. He referred to the study on limitations and exceptions, which had been requested on museums, Document SCCR/30/2. The study carried out an analysis of existing exceptions and limitations in various national legislations, taking into account the existing space within them for access to information and education, as well as the role of museums. It was necessary to point out that WIPO had given the responsibility of drafting the study to professionals, qualified persons in that area. Two of the three experts who had carried out the study were present at the SCCR. The Vice-Chair introduced Dr. Lucie Guibault from the University of Amsterdam in the Netherlands, who specialized in issues of copyright education and legal information and Ms. Elisabeth Logeais, a lawyer based in Paris, France and the author of various publications on topics related to exceptions and limitations to copyright, who specialized in topics around legal regulation of information, new Internet technologies and copyright.

251. Dr. Lucie Guibault stated that the study had also been co-written with Mr. Jean François Canat from the same law firm in Paris. She proposed to follow the content of the study faithfully and to inform the delegations of the study's methodology and main findings, as well as discuss case studies and the main recommendations. They had been asked by WIPO to study the current state of copyright law with regards to copyright works by museums and their patrons. The study was a rather descriptive analysis of the current legislative framework and national legislation regarding exceptions and limitations that benefited museums. They had also included a normative perspective, examining question in terms of whether measures should be implemented to facilitate the provision of museum services in compliance with the norms of copyright law. The first part of the study was descriptive. The second part was normative and the methodology was very important because they had relied, to a great extent, on the previous work that had been done by Professor Kenneth Crews on library exceptions, particularly the 2008 and 2014 versions of his study. They had completed their study before Professor Kenneth Crews published his 2015 update and revisions so they did not have the privilege of relying on that version of his study. They had looked at Professor Kenneth Crews' study in terms of all of the provisions in the legislation that mentioned museums or beneficiaries of museums. They also researched the WIPO Lex database and the Internet, using keyword searches to try and look at other new versions of copyright legislation that mentioned museums. That was the basis of the more descriptive parts of the analysis. The methodology also included a survey that was sent to the International Council of Museums (ICOM) members. For the study, they needed to agree on a definition for museums. They followed the definition that had been adopted by the ICOM and had been used since 2007, which was: "A museum is a non-profit, permanent institution in the service of society and its development open to the public, which requires, conserves, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of education, study and enjoyment." The study also highlighted the basis of ICOM's work and the main mandates of museums, which included the acquisition and preservation of cultural heritage, the communication and exhibition of cultural heritage and the facilitation of education, study and research. Those were the three core mandates of museums. Museums came in all shapes and sizes. The community of ICOM and broader museums included more than 55,000 museums, which were as diverse as possible and covered all fields of cultural heritage, history, art and culture. Any collection of artifacts or information could be labeled as a museum as long as they fit the definition that was previously referred to. Museums were also very conscious of IP and public domain



issues, as it was a part of their daily business to be aware of how copyright played a role in their activities. They also had core common goals, which related to the previously referred to mandates, as well as the acquisition, preservation, communication, exhibition of cultural heritage and the facilitation of education and study and research. They had common goals, which were distinct from those of libraries. Even if there was a definite overlap in terms of acquisition, preservation and facilitation of education and research, there were many issues that were different for museums because they dealt not with books or other types of works, but generally with visual arts or other types of works. Some of those concerns were specific to museums and were not shared by libraries or archives. The study then went on to examine the legislative framework applicable to museums and while there were several international conventions that dealt with cultural heritage, most of them had been adopted under the auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO). There were also important regional conventions in Africa and other regions in the world such as Latin America, which had important regional conventions protecting cultural heritage, as did national countries. In those conventions, the protection of cultural heritage was also dealt with differently from IP issues. In the IP framework, they had the usual treaties including the Berne Convention, the TRIPS Agreement and the other WIPO treaties, all of which to a certain extent contained limitations and exceptions. However, none of the three main treaties in the international framework referred directly to museums. The main limitations that applied to museums was the three-step test, as adopted in Article 9.2 of the Berne Convention, which had been adapted or adopted in subsequent international treaties and also at regional or national levels. Many Member States had incorporated the three-step test as the framework within which exceptions and limitations should be adopted. In general, there were no exceptions or limitations in the international IP framework that directly dealt with museums. Dr. Guibault referred to the situation at the national level. On the basis of the keyword search of the WIPO Lex database and using Professor Kenneth Crew's research on libraries, they had identified 45 countries with laws that expressly mentioned museums in the context of exceptions and limitations. They had been classified by region. She stated that she may have missed countries due to the fact that they were not referred to in the study or due to language. It was important to note that there were many systems that applied exceptions and limitations to museums, even if museums were not expressly mentioned in the legislation, for example, through the fair use exception. Fair use would most likely apply to museum situations if the situation met the fair use exception; however, museums were not mentioned in section 107 of the U.S. Copyright Act. The decision that the authors had made was to refer only to the national laws that expressly referred to museums, with the knowledge that there might be other systems that could apply exceptions and limitations, even if they were not named explicitly in the legislation. Dr. Guibault stated that they had also been asked in the terms of reference of the study to draw some attention to moral rights issues. Moral rights for visual artists and other authors were very important, especially in the context of museums. The attributes of moral rights were the most well-known and recognized in the Berne Convention as the right of paternity. That meant the right to be attributed as author of the work, the right of integrity, including the right to oppose any mutilation or change to the work that might affect the honor or reputation of the author and the right of full disclosure, which meant the rights of the author to decide when the work was ready to be conveyed to the public for the first time. That meant that the author was privileged to decide when his or her work was deemed ready to be disclosed to the public. Those were the three main attributes of moral rights and cultural rights issues that arose mainly in the museum context in relation to the restoration of works, i.e. when a museum restored a painting or another artifact. While a work that was too old may be in the public domain, restoration was one of the main issues that arose in the context of moral rights and very often, if the authors or assignees were still traceable and locatable, the issues of restoration would be dealt with in agreement with the authors or assignees. That was the common practice they had noticed from their survey. The common practice of museums was to establish contact with the authors or their assignees to solve any potential issues relating

to moral rights. The survey found that in 25 to 38 per cent of cases when museums dealt with authors' moral rights, they asked for permission in advance.

252. Ms. Elisabeth Logeais added that in the cases where permission was asked when the matter arose, the proportion was 13 to 19 out of 71 cases. That was just in cases where the issue of restoring, renovating or format shifting the work arose. Sometimes in cases where the work was damaged, there was an authorization or a contact from the museum with the concerned artist.

253. Dr. Lucie Guibault continued that the rest of the chart showed that other authors did not react, or that no permission had been granted. She referred to the chart on the right hand side of the slide and noted that the proportion of cases in which authors had challenged the agreement of the work, in terms of moral rights, amounted to 10 to 15 out of 71 responses. The amount of times that no challenge had occurred was between 18 to 37 out of 71 responses and the biggest proportion of cases was where there was no challenge and no answer by the author, which occurred in between 39 to 58 out of 71 responses, which represented about 58 per cent of cases. Looking at the national legislations that they had consulted, they had found that museums were mentioned in the following sets of specific exceptions: the reproduction for preservation purposes, the use of works in exhibition catalogs, the exhibition of works itself, communication to the public on premises of the museum and the use of older works. Reproduction for preservation purposes was the most common limitation aimed at the activities of museums that they had found in national legislations, with most laws recognizing an exception for preservation purposes. However, the scope of the exception varied quite a lot. Sometimes format shifting from analog to digital was clear but in most cases it was not clear. The possibility to digitize at all was not always clear. Most laws were silent on the possibility of digitizing works. Most laws were also silent on the possibility of making a digital reproduction of works, such as paintings, photographs and other types of visual arts. The types of works covered was not always clear and sometimes it was narrow so that only paintings could be reproduced or preserved, or other types of works, such as writing or audiovisual works were not covered by the exception. Sometimes there were some conditions mandated by law, meaning that the possibility to restore a work was restricted to only works that were not otherwise commercially available. If the museum could find the same work in the market, then there was no room for the museum to make a preservation copy and rather it should get the commercially available copy instead. Commercial availability was a known condition in some of the copyright legislation and in all cases commercial advantage was prohibited on the part of the museum that was preserving the copy. The use by a museum should be for non-commercial purposes either directly or indirectly. In terms of the use of works in exhibition catalogs, many would think that a museum should be able to advertise and promote exhibitions that took place within the walls of the museums, but that was also not as clear cut as they might imagine. The possibility of making a reproduction of a work for the purposes of advertising or promoting an exhibition was not very clear. Some Member States did recognize it in their legislation, including the European Union in Article 5(3)(j) of the Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the Harmonization of Certain Aspects of Copyright and Related Rights in the Information Society (the EU Copyright Directive). It had been implemented differently in its Member States and some of the Member States had limited the application of the provision only to galleries and other commercial entities and not to museums. Finally, it was not always clear whether museums were covered by the exceptions other than galleries and auction houses. That was a limitation that would actually ease the activities of museums, but was uncommon in national copyright legislation. Copyright laws did not always allow museums to display works in their collection to the public without the permission of the author. After a museum had acquired or gained possession a work, depending on the national laws, it may need permission from the author to display it at all in the rooms in the museum. National laws presented one of three options. Some copyright legislation like the Canadian Copyright Act

reserved the right of exhibition to the exclusive privilege of the author. Other pieces of legislation stated that the exhibition of the works was covered by an exception. Other copyright legislation said that the physical ownership of the work enabled it to be exhibited. If a person owned it, then they had acquired the rights to it, including the right to display it. The uncertainty and variation in treatment regarding the exhibition right created certain burdens for cross-border museum activities. The Canadian Copyright Act reserved the exclusive rights for exhibitions abroad so that if an exhibition took place beyond the Canadian territory, a museum would need to acquire permission. The variation in treatment created difficulties. The right of communication to the public related to the ability of the museum to make a reproduction and include it in a promotional video or a different setup inside the museum. Providing access and communicating the work to the public was part of the main mandate of museums, but to include a work in another form for the benefit of the public inside the walls of the museum was far from being always allowed. The EU Copyright Directive allowed the communication of works to the public on dedicated terminals inside the premises of the museum, which was also restrictive. Showing a work in another way from the physical way in which it had come was often difficult, even when it was limited to the museum's own premises. Orphan works were works where the rights owner could not be identified or located. It was a known phenomenon for libraries but also for museums. Certain categories of works were more prone to be orphaned than others, such as photographs for example. Museums were confronted with the orphan works issues and the European Union was the main region in the world where the orphan works challenge had been addressed by Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on Certain Permitted Uses of Orphan Works (EU Orphan Works Directive), which was based on the requirement that a cultural heritage institution carried out a diligent search for the rights owners. If they put on evidence that they had carried out a diligent search for the rights owners and were unsuccessful, then the work could qualify as orphan and could be used by the cultural heritage institution in the pursuance of their public mandate, meaning that they could be reproduced and made available on-line. There was a right of the author to put an end to the orphaned character of the work and to receive fair compensation if the author showed up later. Only a few other countries in the world had systems dealing with orphaned works and they were mainly based on the permission obtained by a licensing authority. In Canada a museum could ask the Copyright Board of Canada for permission to use an orphaned work after proving it had conducted a diligent search. Japan, India and the Fiji Islands also had a licensing authority for orphaned works. Dr. Guibault referred to the chart, which was based on the results of the survey showing how often the orphan works problem occurred. 24 per cent had no orphaned work problems, which could be due to the fact that many museums dealt with public domain works. If the core mission of a museum was dealing with Golden Age 17th century Dutch paintings, which were clearly in the public domain, or archeological findings, then they had no problem with orphaned works. Less than 37 per cent had problems with orphaned works and in 15 per cent of those times, more than 50 per cent of the collection created problems regarding orphaned works. In 24 per cent of cases, museums were not aware or did not know the status of the works or the findability of the author. Further, in 28 per cent of the cases, the national country had no legislation dealing with orphan works. In 30 per cent of cases there was legislation and quite a few of these were in the European Union. In 12 per cent of cases the museum surveyed had no idea whether there was a regulation pertaining to orphaned works and in 30 per cent of those cases they did not feel concerned about that. There were also general exceptions that were explained in the study that had relevance for the activities of museums because they allowed patrons of museums to do certain activities with the objects in the collection. The general exceptions dealt with reproductions for private purposes and study reproductions by reproductive means, which in most countries meant to make photocopies mostly on paper. Only a small percentage of legislation allowed reproduction by reprographic means that was wider than just paper. However the exception was actually aimed at something else other than reproduction for preservation purposes, because that had been dealt with in the specific limitations. Mainly the exception was aimed at the possibility of museum patrons making

photocopies of the works in the collection within the walls of the museum. Other general exceptions that were certainly relevant with regard to the last mandate of museums included exceptions dealing with educational use and research. Most of the national laws in that regard did not mention museums specifically, but were certainly relevant to museums as they tried to pursue an education or research function. As stated previously, fair use and fair dealing could also be applicable to museums if the situation fit or met the criteria.

254. Ms. Elisabeth Logeais stated that museums were faced with how to handle exceptions on copyright or with the ones that they would like to have adopted. She provided an overview, including a description of resale rights. She stated that the description of resale rights did not fully fall in the scope of exceptions to copyright because resale rights were not based on copyright, but were instead based on resales of works of art in specific conditions. The purpose of the resale right, which originated in France, was to redress a situation where an artist would at the beginning of his or her career sell the work for very little money, thereafter the artist would become successful and the work would be resold at much higher prices. The origin of resale rights was contained in the study. The resale right had been recognized in 65 Member States including in the European Union in Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the Resale Right for the Benefit of the Author of an Original Work of Art (EU Resale Right Directive). The basic statement of the resale right was that the author of a work of art, which was sold in the market through a professional art dealer would be paid a percentage of the selling price of the work. The resale right applied to original, plastic and graphic art works, which were usually unique works. The application of the resale right was limited to those kinds of works. The resale right was a right that had been recognized as being inalienable, which meant that the author could not give it up and it was also passed on to heirs. The framework for the application of the resale right was such that the sale must have been made by an art professional and the resale royalty was generally borne by the seller. There had been litigation in the Europe Union about the interpretation of the EU Resale Right Directive to determine whether national laws could decide that the resale right royalty would be paid by the seller or the purchaser. A decision by the European Court of Justice found that normally the obligation fell to the seller. There could be some flexibility, which may have the spinoff effect that the seller of a work of art could pay twice the resale right in the case when he or she purchased the art and then when they sold it afterwards. That was important because it meant that the art market had to make accommodations for the payment of the resale royalty by the art professional. The resale royalty right varied from 2 to 10 per cent depending on the relevant country. Some countries had set thresholds, which meant that the resale royalty would be owed only beyond a certain selling price. There was also a cap, which meant that the resale price may not exceed such amount or percentage of that said price. According to the survey in 21 per cent of cases the resale right had been included in national legislation and in 40 per cent of cases there was no legislation. Some of the museums had no idea whether there was a resale right and in some countries they had responded by stating that the resale right was not applicable to them. It was also interesting to mention that resale rights did not primarily concern museums because museums' collections were usually inalienable in the sense that they did not sell works in their collections. Furthermore, in Norway, there were some exceptions for the payment of the resale royalties, in the case where a private person sold an original graphic work to a non-profit museum, which would be accessible to the public. That meant that the importance of resale rights from the museums' perspective was not of primary concern at that time. The efficiency of the resale right implementation would depend on the existence of the art market in the country, which had adopted legislation promoting resale rights, as there needed to be art dealers and a business around art for its sale and purpose. There must also be an administrative organization, which collected the resale right and distributed it to the authors and their heirs as the case may be. The resale right could be a contentious issue in terms of whether a country should adopt it or not. In the United States of America, the resale right had not been adopted, with the exception of the State of California, which had case law that limited its scope. Ms.

Logeais moved on to discuss the survey, conducted with the assistance of ICOM, which had helped with the distribution of the questionnaire to the various museum communities worldwide. They had received 71 responses: 40 from the European Union, 14 from North America, a small number from South America, a couple from Asia and others from countries in Africa. The questionnaire was an annex to the study and included questions regarding who they were, what type of works they possessed, whether they knew which kind of works were in the domain public and which kind of works were standard copyrighted, and whether they used databases to record the collection of works. Other questions in the survey addressed the activities of the museum, including what kind of reproductions they made and whether they had encountered problems in carrying out reproductions and in carrying out their mandates. The questions also asked how they were dealing with artists and whether they were knowledgeable about applicable law when they wished to carry out the exhibition of works. The last part of the questionnaire addressed specific issues related to orphan works, such as how many orphan works they possessed and whether they would be willing to digitize the orphan works, even for internal purposes. In terms of the resale right, the questionnaire asked whether they were aware of their country's legislation on that issue. The questionnaire also inquired about granting access to the public, and asked about the importance of their educational activities compared to their exhibition activities, as well as what were their plans in terms of study and research? Finally, the questionnaire ended by requesting a general assessment of how the museums saw their main needs, in terms of adjusting or matching museum needs with rights holders' interests and other public interest issues. A variety of IP issues were raised by museums answering the questionnaire, including the need to modernize and digitize the inventories of their collections. Sometimes that was not easy for them in terms of traceability, especially if they had unpublished or orphan works to identify, which were in the public domain or copyrighted work. They also had some concerns about how they would deal with authorizations and moral rights. They observed that moral rights were not really an issue and that most of the museums would try to have the consent of an author. Locating rights holders was an issue that had been raised often. There was a need to obtain information more easily about rights holders, for the purpose of organizing exhibitions, obtaining authorizations and paying royalties. Preserving the works in the collection was a major long term issue. It was easy when a museum could make a scan or a copy of a work, but often the legislation which authorized such activity was silent about the number of copies a museum could make of a work for preservation purposes. Digital works now raised the issue of format shifting as did preserving works. Other issues included claiming rights for international exhibition. One of the concerns expressed by the museums pertained to how they could deal with rights and get a fast and quick solution in the SCCR. There were countries where the right of exhibiting had a scope that was broader than in other countries, which meant a museum had to investigate the scope of the legislation in the country of either the borrower or the lender of the work. The final concern for museums pertained to how they could legally promote their collections. Museums needed better knowledge of the existing legal environment, the scope of the existing exceptions to copyright, as well as an understanding of how their activities fit within the relevant exceptions. There was clearly a need for guidance and for a broadening of the exceptions and limitations. Only 40 per cent of the museums surveyed stated that they only had works in the public domain. 24 per cent of the museums surveyed stated that they did not know. On the issue of copyright, they were interested in finding out whether museums could acquire or provide for the transfer of copyright from the author of the work, when they had acquired works of art by whatever means, including donation or purchase. The question was whether there were some conditions which enabled museums to make further uses of the work, in addition to the right to exhibit. 30 per cent of museums stated that they did not acquire copyright and 19 per cent did not give a clear answer. 81 per cent of museums stated that they reproduced works in their collection. That had to be read in connection with the digitization of collections, because 82 per cent of museums stated that they had digitally reproduced the works in their collection. The question then arose as to how they could carry out this activity. Some of them digitalized their collection only for internal use, but did not

make the digitized inventory as a collection available to the public on the website or otherwise. In terms of displaying public exhibitions at home or abroad, 22 per cent of the museums stated that they asked for permission to do so, whereas 68 per cent did not. That provided some insight that it was a broadly accepted practice, except that in some countries they still had legislation, which included a right of display in the right of exhibition and the submitted the consent of the owner. The study also incorporated four priority situations, which were not shared among all the museum respondents because the community was so diverse. The first priority was the digitization of collections. The question was whether it was enriched with text and images and that was an area where guidance was requested by museums. The question also pertained to the conditions under which they could make their collections available on their websites or otherwise, once they had been digitized. The second priority was that domestic and traveling exhibitions should benefit from more harmonized treatment. That referred to the requirement of obtaining consent from all of the artists of the works that were exhibited in traveling exhibitions. There were concerns about having access to readily available information in order to identify the rights holders and the applicable legislation, so that the museum exhibitions could be organized and run more smoothly. Another priority was addressing the changing state of the works of art in a museum's collection full time. That related to the concept of preservation. If it was one piece of work, then it needed to be preserved over time and if it was a digital work then it may not be used on all technical devices over time. Museums were concerned about what could be done with or without the consent of the rights holder to preserve the work. That question was likely to persist for some time because there were so many new forms of arts of collective works and digital works, mixed with different works of various kinds. The first situation assumed the growing role of museums in education and research, with modern means of communication. Museums saw themselves as having a role in the communication of works to the public, not just as an exhibitor, but also as entities responsible for bringing knowledge, information and teaching to the public about the environment. Museums were also concerned about being able to put together pedagogical materials or publications related to the works they exhibited. They also wanted to be able to open more of their collections for certain research. Additionally, they wanted to be able to communicate this information through new means of communication. The first case study was entitled, "The Digitization of Museum Collections". It listed issues that had been raised by museums, for which they were seeking guidance or exceptions or limitations. The goal was to highlight and illustrate what types of changes to the law were needed so that museums could address the issues of digitization. That was the key to managing and promoting their collections. What should they do with the digitization of an orphaned and then published work, was that something that would be allowed? While that had been clarified in the EU Orphan Works Directive, there was a reluctance to spend too much money on digitizing works for which there was an unclear status. In terms of making available to the public, there were questions regarding when and how. One of the examples where guidance and simplification was needed was on the standards which were allowed without requesting the consent of the rights holder for the reproduction of images in the various databases of a museum. The museums also asked: what was the scope of the licenses by collective societies? Did they encompass the reproduction of images that they were making already or that they wanted to make? There was also the question of on-line access to collections and museum activities. That was not only related to Internet access and display on museums' websites but it was also a main means of communication. That was referred to in case study number two, which related to the scope of the right of exhibition. There were diverging laws on the requirements to obtain the consent of the copyright owner. Museums wanted to know how to address that in terms of having consulting websites, which had databases of images. Whether or not they could find certain information about works of art, there were also a number of complex issues regarding promotional materials for exhibitions. The EU Copyright Directive allowed for promotional use that included use for the purpose of advertising to the public an exhibition or sale of artistic work, to the extent necessary to promote the event excluding any other commercial use. The question was how could the museum promote the event? What was

the scope of the exceptions that applied to promotional activities, which had been defined differently in each and every European Union Member State? There was also a need to consider the possibility of a permanent on-line database of exhibitions, which could be consulted by the public, for exhibitions which had already ended. Case study number three related to the changing states of works of art that related to the preservation mandate. Museums had huge storing places for their collections of works, but some works needed to be stored in specific conditions. Some museums expressed concerns about instances when the works were in digital format. How could they store digital works for the longer term? How could they store ephemeral creations? How could they repair or restore works in the museum's collections? Those were all issues that were usually more technical than legal, which could be addressed through contact with the authors, upon the acquisition of the work of art. In the current changing times that was probably one of the best solutions, but it was not always workable. Another possibility was trying to anticipate what kind of modification or intervention could be done to a work without necessarily requesting the authorization of the author. Some national laws allowed for the copying of works for preservation purposes. The question was whether that exception should be extended. It depended on what would be the use of the copies of the work, as well as what type of works, because some types of works could not be copied. The second consideration was the anticipation of new forms of copyrightable works. Finally, there was the question of how museums could deal with or address the specific status of collective works and unpublished works. The last case study related to the research and study exceptions, which were provided for in most copyright laws but not necessarily focusing on museums. The EU Copyright Directive mentioned reproduction and communication to the public in two instances; first, for the illustration of copyrighted works for teaching or scientific research and second, for the communication onsite of copyrighted content in collections. The way that was worded was difficult for research or private study purposes. Those kinds of exceptions had been incorporated into the European Union's Member States more or less restrictively. The interesting thing was that in the reform going on in the European Union and its Member States, the exception related to the illustration of copyrighted works, which was one of the items that the European Commission was examining. Research and study exceptions did matter for museums, and they also mattered in terms of how museums made materials available for that research and study, which should be facilitated, because museums had a duty or a mandate to communicate to the public and to teach the public. They also discovered that museums did allow for research. However, they did not always require the use of a consent form from the person who wanted to do research or study to acknowledge that they would only use the works for those purposes. Some museums stated that they used consent forms and some of them were asking for them, but a related question was whether they controlled the use of the materials. The key findings of the study were that there was uncertainty regarding the scope of reproduction rights, exhibition rights and communication rights for museums. The role of museums in education and research was essential, but how did that fit either in specific exceptions, or in more general exceptions, and what did it mean for the museums concerned in terms of reproductions, making available and putting together educational materials or publications? Those issues needed to be delineated on more practical terms in order to move forward. The open issues included digitizing and displaying works in museum collections and communicating works for non-commercial purposes. Identifying commercial versus non-commercial uses was a key issue. Other key findings in the study included the need to: simplify the laws to make them easier to understand and more flexible, take digitization needs into account, clarify the requirement of non-commercial purposes, take account of public-private partnership constructions and address those types of partnerships that resulted in the creation of works and make them available to the public, centralize information on collection and authors in order to address licensing issues or exhibition issues when they arose and facilitate the use of databases, some of which already existed but were not fully addressing the exact needs of museums.

255. The Vice-Chair thanked Dr. Lucie Guibault and Ms. Elisabeth Logeais for their presentation and stated that those issues were of the greatest importance. The Vice-Chair opened the floor to delegations that wished to ask specific questions and stated that after those interventions he would open the floor to NGOs.

256. The Delegation of Brazil congratulated the three researchers on their study on copyright limitations and exceptions for museums. The Delegation believed that they had succeeded in demonstrating the importance of discussing, at the multilateral level, the difficulties museums confronted in the use of protected works. It involved the exercise of rights from different territories with different laws, which made the work developed by them even more complex. As they had seen in the study, only 45 of the 188 Member States had specific limitations and exceptions to copyright for museums. On top of that, according to the study, there was no overall licensing framework for international exhibitions and the scope of the required authorizations for digital transmissions was not very clear. A recent survey by ICOM had also identified the IP issues. Debating those issues internationally was essential, especially with the rise of new digital technologies that were changing the way art works were created, preserved, disseminated and enjoyed by society as a whole. In that sense it was understandable that museums would request a simplification of copyright laws, as part of a movement they had witnessed in many areas, such as those related to libraries and archives, as well as education and research, which had already been discussed at the SCCR. Finally, they should never forget the importance of museums for the promotion of national and foreign cultural heritage worldwide. In that regard, the Delegation posed one question to the researchers about their opinion of whether they believed discussing a possible international legal instrument on the issue could have a positive impact on museums' activities. When they had discussed Professor Kenneth Crews' study on exceptions and limitations in archives, it was clear that an international solution was necessary to allow for cross-border activities. The Delegation asked whether a similar scenario was applicable to museums. If there was an important role to be played by exceptions and limitations in the international setting for museums, the Delegation inquired which exceptions and limitations would be the most important from their perspective.

257. The Delegation of the European Union and its Member States congratulated the authors of the study on a subject that had been of concern to European Union legislators. That had been demonstrated by the fact that 23 out of the 45 Member States that had been identified in the study as having exceptions that referred explicitly to museums were the European Union's Member States. The Delegation recalled that museums were explicitly considered in various Directives of the European Union, as had been illustrated in detail by the presentation. To complement that information, the Delegation stated that in some of the European Union's Member States, legislation provided for and supported interesting licensing based solutions that were not necessarily specific to museums, but very relevant to museums. For example, these included solutions based on extended collective licensing for orphan works, above and beyond what was required by the EU Orphan Works Directive. It was an interesting discussion because it also illustrated that there was a multiplicity of solutions under current legal frameworks and also that it was possible and fruitful to have concrete discussions under those frameworks. The Delegation referred to the statement in the study that museums attempted to obtain the assignment of copyright, together with the physical ownership of works of art, or more generally speaking with works in their collections, as a way to manage copyright related issues in an easier way. The authors had provided a static picture with some figures and the Delegation asked if they had identified any trends in that respect, regarding whether museums were more interested in going in that direction, especially with the acquisition of new works of art or contemporary art. The Delegation also asked whether in that respect rights holders and the authors of the works were mainly responsive and receptive to that. The Delegation's second question regarded the chapter on the policy rationales for having exceptions in that area. They had mentioned public policy objectives, for example, the participation in cultural life, education and research and more



broadly cultural heritage policy. The Delegation asked whether they had also explored or come across in the study, issues related to the transaction costs that were related to obtaining a license for the activities that museums carried out or wanted to carry out. In relation to that the Delegation also inquired whether they had explored solutions that were a compliment to exceptions that were also based on licenses. Finally, the Delegation made a practical request and inquired whether there was a way to communicate a couple of factual corrections to the study, for example regarding private legislation in a European Unions' Member State and the exhibition right in other Member States.

258. The Delegation of Senegal thanked the authors of the study. Referring to the resale right the Delegation noted first, that in the previous year, the European collection authority had stated that there were 74 countries which had the resale right. Secondly, the authors had put forward that the effectiveness of the implementation of the resale right depended on the way in which it was organized and that was absolutely correct. That was even more so for Africa, where the art market was still very disorganized and that discouraged certain countries from implementing the resale right within their country. The art market was not a national market it included the international market and the works of African artists were sold all over the world, more and more so in countries where the resale right already existed. Many African artists were not benefiting from that because of the principle of reciprocity. In countries that did not have the resale right, African artists did not benefit at all. The Delegation referred to some official artists from Senegal and in France whose works had been resold and noted that sometimes the resale royalties amounted to thousands of Euros. That completely transformed their lives. Establishing the resale right within legislation, with the benefits it provided to artists, could and would lead to artists putting pressure on everyone including their governments for better organization of their art markets. The resale right was a tool – although not the only tool - which could be used to help organize the art market.

259. The Delegation of Nigeria, speaking on behalf of the African Group, thanked the authors for their study on copyright exceptions and limitations for museums. The African Group believed that the study provided more information, understanding and appreciation of the challenges faced by museums in relation to the fulfillment of their mandate, while operating within their moral and legal limits. The African Group hoped that more important insights had been gained from the study and its presentation, which would positively impact their discussion on exceptions and limitations for libraries and archives in the SCCR. In general terms, the Group would like to hear more from the authors regarding their views on the success rate of the use of Creative Common licenses by museums for the purposes of fulfilling their mandate in the area of education, research and study.

260. The Delegation of Chile thanked the authors of the study for their presentation. Chile was convinced that museums had an important role to play in the preservation and diffusion of knowledge. As the study had shown, the digital environment presented challenges for museums in carrying out their mandate. The issues raised in the ICOM's questionnaire were very interesting, although the Delegation noted that the annex to the study did not include the actual questions that had been sent. The Delegation requested information on the specific percentage of museums in Latin America that had responded to the questionnaire. Additionally, the Delegation asked the Secretariat whether it was possible to have a Spanish version of the study, given that that would help it to spread the information contained in it, which would benefit its country and the region as a whole.

261. The Delegation of the United States of America appreciated the contribution that the study had made in informing discussions on the issue within the SCCR and commended the authors for their comprehensive achievement. The Delegation referred to the statement of the Delegation of the European Union and its Member States and also welcomed the opportunity to give comments on the study, to provide additional information regarding the

way in which the United States Government supported cultural heritage. The Delegation also hoped to clarify the discussion on several key areas of its law, which had been referenced in the study. Turning to the subject matter of the study, the Delegation was glad to see that a number of countries had recognized the important role that museums played in preserving cultural heritage and in promoting education, by crafting copyright limitations and exceptions to promote mandates. Museums were the caretakers of their nation's cultural heritage, assembling a wealth of knowledge and culture for the benefit of their visitors. Limitations and exceptions to copyright could play an important role in enabling museums to carry out their public service of preserving cultural history and advancing research, education and knowledge. Their objectives and principles for exceptions and limitations of recent archives demonstrated that museums shared similar public service roles as libraries and archives and suggested that Member States should extend the same or similar exceptions and limitations to museums when they performed those roles. While it did not currently have a separate copyright exception for museums, museum services were supported through several existing copyright exceptions. In addition, from 2005 to 2008 the U.S. Copyright Office and the Library of Congress convened a Working Group to review possible improvements for the exceptions for libraries and archives contained in Section 108 of its Copyright Act. One of the key recommendations coming out of the Study Group was that Section 108 should be expanded to cover museums. In that regard, it was interested to learn more about other countries' experiences with such exceptions and limitations for museums and looked forward to the remainder of the discussion on that important topic.

262. The Delegation of Canada thanked the authors for their work on the study and their presentation to the SCCR. The Delegation had two specific follow up questions for the authors regarding their research. First, the Delegation wished to hear more about the cross-border challenges that arose in the context of the exhibition of works. Secondly, in relation to the premises of the museum, which was referred to in the communication to the public, the Delegation asked, the extent to which the premises of the museum had been defined in the laws they had examined, whether the premises of the museum were limited to a geographical location, such as a building or a property, or if the premises of the museum included an on-line presence, such as a website or an on-line forum.

263. The Delegation of Germany thanked the authors for conveying the study. The study drew attention to the needs of museums, which were important to enable them to carry out tasks concerning culture and knowledge. The Delegation observed that copyright was especially an important issue for museums that showed modern objects. The Delegation was happy to announce that Germany had already implemented some of the recommendations that were made in the study in its national law. That included, for example, a limitation of the reproduction right, permitting museums to digitalize work from their own collection for the purpose of conservation. Unfortunately, the reference to German law in the study did not mention that explicitly. It requested that, in page 38 of Appendix II, the reference to reproduction for preservation be corrected in that way. It was also happy to announce that Germany was preparing a legislative amendment to clarify that issue. The study suggested that museums should develop their own licensing models. The Delegation raised the question of how that would work in relation to possible exceptions and limitations. The study also suggested that museums and rights holders should cooperate to ensure that they got a fair return for the subsequent exploitation of their art work by third party operators. The Delegation asked whether it was intended that the museum itself, who was not an author should benefit in the future from the exploitation of works and if so, which laws should be the basis for that. Did the authors propose that museums should have in that context their own rights to be granted, for example, since they were the legal owners of the work?

264. The Delegation of Sudan thanked all those who had prepared and presented the study on exceptions and limitations to copyright for museums. Through their collections and their exhibitions, museums had enabled humanity to transmit knowledge. UNESCO attached

great importance to museums and had made great efforts for the conservation of human heritage, through agreements on non-tangible heritage and also on the protection of cultural forms of expression. All of that made the work of the SCCR and the work being undertaken in different fora a little bit contradictory, since there were museums of ethnography, which also ought to be taken into account. The Delegate stated that the ICOM also had its own rules. The Delegation suggested that they work more closely with the SCCR, so they could make progress on the issue of exceptions and limitations for museums. That was particularly important when they were discussing essential human heritage and trade in that heritage, whether it was through e-commerce or trade in physical items. The Delegation clarified that it was not talking about reproduction for trade, but noted that a number of museums also had commercial collections and therefore that topic was relevant. Technology had enabled innovation, including three and four-dimensional reproductions, which were almost entirely faithful to the original. In those instances they must look at the financial aspects, as well as the moral rights, when discussing the preservation of the heritage of humanity. Another aspect was the resale right. The study had referred to different countries and case studies, whether in reference to plastic parts, reproduction or the copying of those items. A number of countries had specific legislation on museums, which was separate from any issues relating to copyright or IP. Therefore, they needed to look at the legislation that governed museums, because that would help them in dealing with the questions from all aspects, when they were talking about loans of materials that museums possessed, making that material available and the reuse and introduction into other formats, including commercialized formats. The Delegation stated that for instance, when they spoke of woodworking or textiles, sometimes they were based on items in the museum's collections and visitors had the opportunity to purchase those items. It was not just the material aspects of the items, but there were also traditional cultural barriers. All of those issues should be addressed in order to help them to have a more in depth and complete understanding of the subject matter, so that they could ensure modern cultural tourism was accessible to all. The Delegation concluded by referring to collective management of both the collections and the individual articles within them. It thanked WIPO for its work in that area and suggested that it would be appropriate to help Member States to have directives in order to profit from the experience of other countries and regions.

265. The Delegation of the Congo (The Republic of) aligned itself with the statement made by the Delegation of Nigeria, speaking on behalf of the African Group.

266. The Secretariat set out the procedures regarding written comments and clarifications to the study. In terms of the request for the translation, it would be able to provide a translated study if a written request was received from a Delegation.

267. Dr. Lucie Guibault referred to the question posed by the Delegation of Brazil and replied that putting museums on the agenda for discussion was important, especially if it led to clarification of existing laws. That included not only exceptions and limitations but also the scope of rights and how they affected authors and the activities of museums. In response to the question on whether there were any limitations that might be more important than others, she stated that preservation was a very important one. Any limitation or clarification on the state of laws, which made clear how museums could meet their mandates, was very important, either in the form of clarifying the scope of rights, or by clarifying or designing limitations. Further, it would be helpful to clarify the extent and under what conditions museums would be allowed to exhibit and communicate their works digitally. Currently museums were not sure of the extent to which they could engage in all of those activities and that had consequences on their functioning.

268. Ms. Elisabeth Logeais noted that it was a preliminary study and many of the issues were national to some extent. There were also issues regarding international policies. It was a difficult task that needed to be identified. However, it was helpful to identify the different

types of practical issues that were faced by each category of museums in a more pragmatic way. They did not have a recipe to give a precise answer to every specific question. It was open to discussion. What came out of the research and the survey was that most of the museums were in the process of digitizing their collection of works, so what they were going to do, or what they could do to digitize, with their database, was an approximate issue and question. That was one area where there could be some discussion about the scope of existing exceptions and limitations, or potential licensing solutions that could address that question. It was also a financial investment for museums to create databases. Preservation was something that may be less problematic in broad terms. However, it was a case-by-case situation that depended on the kind of works and whether the museum had a lot of works stored in conditions, which were not fully satisfactory and which needed to be taken care of.

269. Dr. Lucie Guibault referred to the fact that there were a lot of studies about museum activities and a few studies which discussed copyright issues. However not many of those studies were regional or even local. It was the first time that it had been put in an international context, so it was the start of the international discussion.

270. Ms. Elisabeth Logeais replied to the question from the Delegation of the European Union and its Member States, regarding the existing legislation in the European Union. The next step would be to bring answers to the issues through more concrete discussions. She referred to the question about whether museums were going down the road of negotiating rights when they acquired a piece of work. She stated that that was sensible. However, IP rights were not transferred with the physical object. If they anticipated by contract at least some of the issues that they had raised, for example in relation to preservation, it was sensible to discuss, or at least to clarify the issue, either with the seller of the work, who was not necessarily the copyright holder, or with the seller who was the copyright holder.

271. Dr. Lucie Guibault stated that they had not adopted an economic analysis approach to of the issue because they needed more specific data on how museums functioned and the exact transaction costs. The bottom line about licensing solutions was that they needed a very clear legal framework to base any licensing practices upon. If there were uncertainties about the scope of rights, or the exceptions applicable, that needed to be cleared up in order to allow parties to negotiate in a clear legal framework. In the European Union the laws may have been clearer than in other parts of the world, but the cross-border issues still remained, because there were very big differences in approach and in the legislation between the Member States. Licensing could certainly be a solution, but it demanded a clear legal background. She referred to the statement of the Delegation of Senegal and stated that she sympathized with the African artists who could not participate in the proceeds of resale rights and hoped that would be addressed in some way in the future.

272. Ms. Elisabeth Logeais stated that because one Member State did not have the resale right did not mean it did not have the opportunity to adopt one in the future. Resale rights applied to art professionals in the European Union Member States and there was a need for an organized art market. Economics played an important role in terms of identifying works of art, identifying the authors of the works, finding out to whom they were sold and the subsequent sales that would support the resale right.

273. Dr. Lucie Guibault referred to the question from the African Group, regarding the use of Creative Commons licenses for the promotion of, or broader access to and reuse of cultural heritage works. She stated that it was an interesting solution or suggestion, but to use Creative Commons licenses a museum had to make sure that it had the proper rights to do so, that is the proper permissions from the authors or the rights owners, and that was not always the case. The museum could not just release a work under a Creative Commons license without being entitled to do so by the original rights owner. If the rights owner

allowed that, then it may be for the greater good, because it allowed wider access and wider possibilities to reuse the works. In that sense, the use of Creative Commons licenses increased legal certainty for third parties and for users of cultural heritage. It was clear what could and could not be done, because Creative Commons licenses were so well understood and known, but the only caveat was that museums had to make sure they had the rights to do so by the authors and rights owners.

274. Ms. Elisabeth Logeais referred to the question from the Delegation of Chile regarding museums from Latin America and responded that a little less than a dozen museums in the region had responded to the survey, which had been translated into Spanish. The answers of the questionnaire had not been published because they needed consent from the museums surveyed.

275. Dr. Lucie Guibault referred to the statement of the Delegation of the United States of America and stated that the authors welcomed all comments on how to improve the study, for inclusion within the report.

276. Ms. Elisabeth Logeais referred to the question from the Delegation of Canada and stated that it was a *sui generis* situation in Canada, because she was not aware of any other countries that had the same right of exhibition challenge. Therefore, they could not expand on the challenges, which had been raised, because the case law was limited. She suggested that it might be worth finding out more from Canadian museums whether the right of display had to be authorized, even if it was a display by a museum that owned the work.

277. Dr. Lucie Guibault referred to the second question from the Delegation of Canada regarding the interpretation of the exception for communication to the public on the premises of cultural heritage institutions. That had been interpreted rather restrictively, as in the building and on the physical premises of the institution. At most, a patron could put a digital copy of a work on a USB stick, but the exception excluded any type of on-line or distance communication. That was also as a result of Article 4 in the EU Copyright Directive, which excluded the possibility for libraries, museums and other cultural heritage institutions to engage in on-line or distance communication of works. The interpretation was restrictive and was under review. The Delegation of Germany had highlighted some corrections that they would incorporate. In relation to the possibility of developing licensing models, as long as the legal framework was clear then parties could negotiate with better information. The authors did not have in mind that museums should get their own right. The Delegation of Germany had referred to a paragraph in the study, which stated that museums should cooperate with authors in the exploitation of works and that also referred to public private partnerships and dealing with financing.

278. Ms. Elisabeth Logeais referred to the fact that it was also important to work out the main terms of the options available to a museum negotiating with an artist, to find out whether licenses could accommodate the interests of both parties. It included sitting down and trying to work out what the museum needed, what the rights holder could accept or was willing to discuss and agree to, and whether that could be adjusted because there were specific needs for museums. Beginning the discussions on those issues with rights holders could be a good attempt to move forward.

279. Dr. Lucie Guibault referred to the statement from the Delegation of Sudan, which had highlighted the moral rights issues, issues relating to 3D printing, and also the need to acknowledge the elements and importance of traditional knowledge. She agreed that looking only at copyright law to deal with the activities of museums and cultural heritage was a limited view. They would need more time and resources to look into the whole landscape, including other relevant laws, but it was a very valid to point out that they should not lose sight of all of the other legislation that could apply.

280. The Vice-Chair thanked the authors for their contribution and the study. He opened the floor to NGOs.

281. The Representative of International Council of Museums (ICOM) thanked WIPO for the study as well as completing the important but difficult task of defining museums' needs in the course of discussing exceptions and limitations to copyright related to all cultural heritage institutions. ICOM thanked the representatives of the library and archives communities for their tireless commitment to the issue and endorsed their commitment to the proposed exceptions. ICOM was a non-governmental organization representing over 35,000 museum members in 137 countries. Its mission was to ensure the protection and conservation of the world's cultural heritage. It established standards of excellence in that field and harnessed a significant international network of talent that broached the subject of both tangible and intangible cultural heritage. After careful consultation with many of its members and experts and in keeping with its international purview, it had prepared its position on museum exceptions that in part responded to some of the recommendations made in the museum study. Its recommendations related to exceptions and limitations to copyright for museums were publicly available on its website, as part of its press release on the subject made in July 2015. Its position on exceptions and limitations to copyright for museums was inherently prescriptive in nature taking into account museums as places of discovery, preservation, and for the access to heritage that included scholarly pursuits. On that basis, it advocated for limited exceptions to copyright to assist museums in carrying out their scholarly, educational and exhibition related activities, in an environment where museums were expected to carry out such activities both in the on-line environment, in digital form and on their physical sites. In particular, given the sensitivities of established markets, it had developed a series of proposed exceptions that did not apply to museum activities related to the production and distribution of merchantable products. The proposed exceptions included exceptions for educational and scholarly pursuits, such as the development and publication of catalog résumés, whether on-line or in print, exceptions for exhibition purposes and other related programmatic educational activities, as well as an exception to allow museums to make copies, whether digital or in print for preservation purposes. Finally, it proposed an exception to copyright that would allow museums, libraries, and archives to internationally avail themselves to exceptions of copyright in each of their respective disciplines where their programmatic activities overlapped. In conclusion, it was pleased to have had the opportunity to add its voice to the ongoing discussions. As a tireless advocate and supporter of the need to protect and promote the world's cultural heritage, it viewed the discussion with grave importance. In a technology laden and driven environment, it was as important to communicate both in literary form and visually with the world, as it was to protect and preserve the physical artifact and objects that comprised museum collections. Exceptions to copyright for museums were an essential facilitator and enabler, so as to provide museums with the capacity to communicate their scholarship in the twenty-first century. ICOM added to the recent elements, the recommendation that was adopted at the UNESCO General Conference on November, 17, 2015, which had to do with the promotion and protection of museums and collections, as well as the diversity and the role that they played in society. The recommendation could be a very important element in the SCCR's work, which had started on the basis of the interesting study. The Representative underlined that to better understand the elements, it might be appropriate to improve the terminology that was being used, including the type of museums that would be covered. The Representative also reminded the Committee that it was important that they never forget that when they worked on case studies, those case studies needed to be very well documented.

282. The Representative of the Centre for International Intellectual Property Studies (CEIPI), stated that its organization attached great importance to the copyright system striking a balance in the attainment of its goals, i.e., promoting creativity and protecting creators, in a manner that ensured both broad access to works protected by copyright for all and the

enrichment of cultural diversity. Copyright was, however, confronted by a serious crisis of legitimacy, as it was viewed increasingly as an obstacle to access protected works. In 2013 the European Observatory on Infringements of Intellectual Property Rights, housed within the Office for Harmonization in the Internal Market, OHIM, had conducted a study showing that 49% of European Union citizens between the ages of 15 and 24 years considered that illegally accessing content protected by copyright was an act of protest. That observation should rouse anyone interested in copyright's prosperity and convince them of the urgency with which access and protection needed to be reconciled. With that in mind, the Representative recalled the critical role played by the limitations and exceptions to copyright referred to under the agenda of this session of the SCCR, i.e., for libraries and archives, on the one hand, and for education and research establishments, as well as disabled persons, on the other hand. Those limitations and exceptions ensured that works may be used lawfully for the purposes of education and research, which was essential to the creation of new works and hence to scientific and cultural development. They were also of benefit to authors during the creative process, allowing them to access existing works and thus to understand the prior "state of the art", be it for inspiration, information and/or critical purposes. Nevertheless, there had been harmonization of limitations and exceptions neither at the world level nor at the European level. In international settings, CEIPI had constantly highlighted the need to set up a flexible and ambitious legal framework for limitations and exceptions to copyright, and it had availed itself of a number of opportunities to express that view at the Committee. Within the European Union, CEIPI had also frequently expressed its support for harmonization: in 2008, in response to the European Commission's Green Paper; in 2014, in response to the consultations launched in 2013 on the review of copyright rules; and most recently in 2015, during the critical analysis of the resolution adopted by the European Parliament on July 9, 2015 on the implementation of Directive No. 2001/29/EC of May 22, 2001. Furthermore, CEIPI had held a conference-debate with Mr. Andrus Ansip, Vice-President of the European Commission, on November 24, 2015 entitled, "Is copyright in the EU fit for the 21st century?" The participants had underlined on several occasions the need to update EU provisions on limitations and exceptions, particularly with a view to allow and facilitate use for education and research. CEIPI firmly supported the continuation of work on limitations and exceptions to copyright and hoped that it would lead to harmonization, which in its view was key to regaining copyright's legitimacy, not only in the eyes of the younger generation but also more generally of society at large.

283. The Representative of the International Federation of Library Institutions (IFLA), speaking also on behalf of the International Council on Archives (ICA) and the numerous other archives and library organizations that were represented at the SCCR, said that those organizations had represented libraries and archives at the SCCR for more than a decade, discussing exceptions and limitations for archives and providing specific examples of areas where an international instrument was necessary to relieve barriers to access to knowledge and the public interest. Having invested so many years to discussing exceptions and limitations for libraries, it understood the need for clear definitions and examples to illustrate the need for international solutions. It recognized some of the commonalities in the objectives of libraries, archives and museums, as cultural heritage institutions that were mentioned previously. The Representative was particularly aware of that as he directed the libraries, archives and museums at his university. Most of the world's museums had libraries and archives, and many libraries and archives had exhibition galleries. They shared some common interests. Therefore, the Representative noted that among the existing topics already under discussion at the SCCR for libraries and archives - including those that addressed reproduction for preservation and research purposes- some could potentially be applied to museums with a non-profit mandate. The ICA and ICOM had a history of working collaboratively at an international level, for example when they shared objectives in the area of protection and preservation of cultural heritage, on the International Committee for the Blue Shield. The Representative suggested that IFLA and ICA had discussions with ICOM, to clarify the specific areas where it might be appropriate for museums to potentially be

included in the existing work of SCCR on exceptions and limitations for libraries and archives.

284. Dr. Lucie Guibault supported the statement put forward by the Representative of IFLA, noting that the organizations should get together to discuss in which cases museums could be included in the provisions that were suggested, in terms of exceptions and limitations, for libraries and archives. She applauded the initiative and hoped it would be fruitful.

285. The Vice-Chair thanked Dr. Lucie Guibault and informed Delegations of the mechanisms through which factual corrections could be made to the museums study via the Secretariat.

286. The Delegation of the European Union and its Member States referred to the reference in the study about the European Union having introduced two new exceptions and noted that it was only one exception that referred to two different rights in two different other points.

287. Dr. Lucie Guibault stated that she had counted A and B as two but would correct the study accordingly.

288. The Chair stated that they would continue to follow the topic agenda related to limitations and exceptions for libraries and archives. He opened the floor for introductory statements regarding the specific topic of exceptions and limitations for libraries and archives. Regional Groups were invited to give their views.

289. The Delegation of Greece, speaking on behalf of Group B, reiterated the important role that libraries and archives played in cultural and social development in particular. As the studies presented during the previous sessions had described, many Member States had already established their own exceptions and limitations for libraries and archives, which worked well, respecting domestic legal systems within the current international framework. It meant that the work of the SCCR should be shaped in a manner reflecting that reality and complimenting the well-functioning current situation. Group B appreciated the need to structure effective and efficient work at the SCCR, but had some concerns in relation to the way the SCCR's work was structured, with respect to the direction it ought to take. Group B understood that the aim of the exercise was to have a structured discussion to find a shared understanding. In that regard, the Group believed that the presentation by Professor Kenneth Crews could help inform the SCCR's discussions as to a way forward. Group B reiterated that they should build upon that considerable achievement. The discussion at an objectives and principles level, as proposed by the Delegation of the United States of America could compliment such work. Both of those approaches could also realize a structured discussion, which the Chair had underlined at the last session. The Committee should not turn their eyes away from the reality that no consensus existed within the SCCR for normative work and that reality should be duly taken into account in the considerations to find a consensual basis upon which all Member States could stand and work together. The Group would continue to engage in the discussions on the limitations and exceptions for libraries and archives in a constructive and faithful manner.

290. The Delegation of Nigeria, speaking on behalf of the African Group, stated that it had a general statement on exceptions and limitations that was not specific to libraries and archives. As it had done in previous sessions of the SCCR, the African Group continued to underscore the importance of the principles of exceptions and limitations in the IP system to meet specific objectives, especially in the context of facilitating information and knowledge, which was the SCCR's objective on exceptions and limitations for a great number of Member States. The advent of the digital environment magnified the need to include the widest percentage of the public in the information and knowledge space. The African Group appreciated the different levels of maturity of the SCCR Agenda Items. Nevertheless, it was



concerned by the lack of progress on exceptions and limitations. In that regard, the African Group reiterated the need for international legal instruments, for the two exceptions and limitations subject matters under the SCCR's consideration. The Group urged Member States to go to text-based work based on the 2012 mandate of the General Assembly on that subject. Under such a framework, the national experiences of Member States could significantly enhance the deliberations on those subjects. The African Group reiterated its readiness to engage constructively in the deliberations regarding exceptions and limitations and looked forward to supporting the work program for exceptions and limitations, both for libraries and archives and educational research institutions and for persons with other disabilities.

291. The Delegation of Brazil, speaking on behalf of GRULAC, supported an open and frank discussion on limitations and exceptions for libraries and archives that did not prejudice the nature of the outcome, in order to reach solutions for libraries and archives around the world. The Group was interested in discussing the proposal submitted by the Delegations of Brazil, Ecuador, India and the African Group regarding the treatment of that topic. In order to promote the work on exceptions and limitations, the Group supported the debate on the chart proposed by the Chair. GRULAC requested that the Secretariat distribute copies of the chart to the Delegations in order to facilitate discussions.

292. The Delegation of Romania, speaking on behalf of the CEBS Group, welcomed the presentation of the study on copyright, limitations and exceptions for museums and thanked the authors, both for their work and for engaging in discussion with the SCCR. The study tackled practical questions that museums were facing in their daily work and could serve as an inspiration for legislators in many countries. With regards to limitations and exceptions for libraries and archives, the CEBS Group was convinced that the substantive debates that took place during the previous SCCR sessions were beneficial to its Member States. It was interested in continuing such a process. International copyright treaties offered a wide framework for establishing exceptions and Member States might need more guidance about how to best craft specific exceptions, especially in the digital era. Yet the clear link that existed between exceptions and copyright and historical realities, as well as traditions in every Member State, would make a legally binding instrument inappropriate in its view. The CEBS Group strongly preferred the exchange of best practices in order to learn about examples from each Member State individually. That approach could be an adequate way forward. The SCCR's work should be based on the understanding that establishing a fair balance between the author's rights and the interests of society was essential for a viable copyright system.

293. The Delegation of China referred to the fact that libraries and archives, in terms of the preservation of cultural heritage, were playing a great role. The Delegation thanked the authors for the presentation of the study on limitations to copyright for museums. The Delegation was pleased to see that many Member States' IP laws provided limitations and exceptions for museums. China would continue to support the discussion and share experiences. The discussion was conducive to the balance of rights between rights holders and the public. The Delegation hoped the issue would make progress in the SCCR.

294. The Delegation of India, speaking on behalf of the Asia Pacific Group stated that limitations and exceptions were essential prerequisites for all norm-setting exercises and understanding in national and international fora. The provisions were vital for achieving the desired equilibrium between the interests of rights holders and the public welfare, in scientific, cultural and social progress, especially in developing and Least Developed Countries (LDCs). That balance of interest was reflected in the Article 7 of TRIPS Agreement, which stressed: "the need to maintain a balance between the right of authors and the larger public interest, particularly education, research, and access to information". Libraries and archives were two vital institutions in society, mostly operating on a non-

commercial basis. In most developing countries and LDCs, they were often the predominant, if not the only source of materials for students. In fact, people in all countries, irrespective of their level of development, had benefits from exceptions and limitations for libraries and archives. An international agreement on exceptions and limitations for libraries and archives that addressed specific cross-border barriers was critical to ensure equal access to information and to support research, education and development. Such an agreement would allow benefits to be realized for the good of all, instead of restricting them to individual Member States. The agreement would require uniformity and balance at the national level, including the harmonization of domestic laws and policies, which would also contribute to safeguarding and promoting the legitimate interest of all stakeholders. The Group reiterated its previous proposal of appointing a facilitator or friend of the Chair, like other WIPO Committees had done, to create a text as a full working text to ensure progress.

295. The Delegation of the European Union and its Member States stated that it believed in museums for cultural and social progress. Those institutions played an essential role in the dissemination of culture and helped to preserve history. There was merit in discussing how a balanced framework could enable those institutions to fulfill their public interest mission and the Delegation was willing to engage constructively in those discussions. At the same time, the SCCR should strive to use time and resources efficiently, and for a clear purpose. The current lack of clarity as to the goals and expected deliverables of the Agenda Item were not helpful. Clarity should be established in order for the SCCR to work towards meaningful results. Libraries, archives and other institutions served local, scholarly and other communities in very different ways. They worked with copyright systems through a variety of licensing mechanisms, as well as relying on the space provided by the exceptions and limitations that legislators across the world had provided. That was thanks to the space offered by the current international legal system for national policies to respond to specific needs and traditions. The Delegation prized that flexibility, and considered that Member States could make full use of it to devise, adopt and implement meaningful exceptions and limitations for libraries and archives. The European Union and its Member States considered that the role of the SCCR should be to focus on exceptions and limitations that could function efficiently within the framework of existing international treaties. As it had stated in past sessions of the SCCR, its favored approach was one where Member States took responsibility for their own legal frameworks, supported by an inclusive exchange of experiences and best practices, and where necessary with the assistance of WIPO. The need for further binding rules at the international level was far from conceptual for the SCCR. The importance of well-designed national systems of copyright rules, including with regard to exceptions and limitations, was supported by all delegations. In that respect, it could not support work towards legally binding instruments, but believed that a meaningful way forward could be to focus on a more thorough and systemic understanding of libraries' needs, followed by an investigation of possible solutions among those available under the current international framework. The Delegation suggested that the SCCR should work towards that general outcome and undertake to find a conceptual way to achieve it.

296. The Delegation of Colombia stated that while that the international framework did contain the necessary tools for implementing exceptions and limitations in the domestic legislation of each of the Member States, it was necessary to continue with open, sincere and productive discussions on exceptions and limitations for libraries and archives in the SCCR.

297. The Delegation of the Russian Federation supported the active work of the SCCR and the continuation of the discussion of those matters. There was already a unanimous view that there should be exceptions and limitations for certain categories and in certain limited areas. It would be advisable if those exceptions and limitations were discussed in a comprehensive way, not in stages, separately for libraries and archives and separately for educational institutions and scientific research. Then they would be able to bring together

those two areas. Both were aimed at developing culture and the need to provide the public with access to knowledge and education. It would be more effective if they discussed the issues in parallel. The Russian Federation had already provided for such exceptions and limitations in its Civil Code 2008 and it had adopted a number of amendments that came into force in 2014 for exceptions and limitations for libraries, archives, education institutions and scientific research. It was very important to note that in most Member States they had a single approach to those issues. Finally, it was very important to respect the limitations between the existing right systems provided for by the Berne Convention and other international treaties, and the new provisions that they were discussing on exceptions and limitations, so that they did not have a situation where copyright just consisted exclusively of exceptions and limitations. Otherwise, what then would they be protecting? The Delegation urged the Committee to be careful in examining and adopting norms and making these amendments, because they had to protect on the one hand the interests of the public, and on the other hand they should never forget that the creators of the subject matter were authors. One of the Committee's main tasks was to support authors' creativity and creativity in general throughout the world.

298. The Delegation of Ecuador stated that it was important to construct an international regime, which would allow them to address the rights of rights holders adequately. However, it was also important to design a legal framework, which allowed society to have access to knowledge on a legal basis and with legal instruments, which were balanced and in line with the requirements of libraries, archives, educational institutions and people who had other kinds of disabilities. In that fair balance, libraries, archives and repositories would be spaces to compile, maintain and provide information. They played a particularly important role in guaranteeing the right to access information and knowledge. As a consequence, there was a need to provide them with the necessary legal instruments to be able to truly comply with their important social function. The Delegation supported the statement by the Delegation of Brazil, speaking on behalf of GRULAC. The treatment of the Agenda Items linked to limitations and exceptions for education and research and people with disabilities was of particular importance. It was important to consider that libraries and archives conserved heritage, not only of a country or a specific sector, but of humanity as a whole. While each Member State had the possibility of generating its own limitations and exceptions, it was not merely logical but appropriate to seek to develop a global agreement, which would provide them with standards the world over. Therefore, Ecuador aligned itself with the statement made by the Delegation of the Republic of Colombia. The Delegation was particularly interested in the Agenda Item and stood ready to carry on with the necessary work to finalize the development of an international solution, which would provide general principles expressed in clear rules. Therefore, it reinforced the request made by GRULAC to work with the document prepared by the Chair.

299. The Delegation of Singapore stated that copyright included incentives for new work, and libraries and archives provided access to knowledge, promoting development and disseminating culture. The work of libraries and archives should be facilitated, while providing incentives for the creation of new works. It was in that light that Singapore already possessed a range of limitations and exceptions for the benefit of libraries and archives, consistent with the flexibilities built into the Berne Convention and the TRIPS Agreement. For instance, under Singapore law, libraries and archive could have electronic copies available within their premises, as long as users could not make copies for themselves or send copies to others. The harmonization of minimum standards, already enjoyed by many Member States could be an appropriate tool to address issues of cross-border access to works, as was done in the Marrakesh Treaty. The Delegation looked forward to the further development of that important topic.

300. The Delegation of the United States of America stated that work on copyright exceptions and limitations for libraries and archives had an important role to play in ensuring

the preservation and the dissemination of knowledge. The role played by those institutions was vital to achieving the copyright system's goal of creating and encouraging creativity. The Delegation's proposals had put forward high level principles and objectives for exceptions for libraries and archives at the international level. The United States of America believed that such a principles-based approach provided a good basis for moving forward and furthering the goal of improving national copyright exceptions and limitations. The Delegation looked forward to learning more about the experiences of other Member States regarding exceptions and limitations for libraries and archives.

301. The Delegation of Chile stated that exceptions and limitations were a topic of great interest for its Delegation. The foundation of the development of IP should be the constant search for a balance between rights and facilitating access to knowledge. It was a goal which was achievable through instruments like exceptions and limitations. The Delegation promoted the WIPO Development Agenda and its Recommendations 19 and 22, which established under the framework of WIPO's mandate, debates on how to facilitate access to technology for LDCs and developing countries, in order to increase innovation and creativity and facilitate their activities. The standard norm-setting activities of the SCCR should contribute to the Development Goals approved by the UN, including issues such as possible exceptions and limitations. In the SCCR, the right to access to culture - established as a human right by the UN- could be realized through those important tools. Developing countries knew how to use them. In the SCCR in 2004 the Delegation had proposed the introduction of the topic of limitations and exceptions and in 2013 they had witnessed the first results in the Marrakesh Treaty. In parallel, the work to keep the Agenda Item on the SCCR's agenda meant that they must avail themselves of the opportunity to have constructive debates on the objectives and the implications of exceptions and limitations. The Delegation acknowledged that it was hard work to find consensus on the 11 topics of exceptions and limitations for libraries and archives. That was why it was ready to explore alternatives and seek the power of consensus, to come to an international solution for those issues. With flexibility, the Delegation stood ready to continue to contribute to those debates, with the view that they could continue to work on the topic of limitations and exceptions.

302. The Delegation of Sudan stated that it had contributed greatly to, and benefited from, exceptions and limitations, when introduced into its legislation in 2013. The comprehensive study carried out by Professor Kenneth Crews had demonstrated that there were a number of countries, which had introduced exceptions and limitations into the national legislation, and that was already a development. Now they were living in a world where development was accelerating, and technology and the means of communication were developing at a great speed. The Committee needed to take into account the members of the new generation who adopted new technologies. Studies carried out and parallel meetings organized by WIPO to look at the SCCR's work had demonstrated the importance of opening up to art, because museums were not merely limited to heritage. All the workshops and seminars organized had allowed them to develop a shared view on the protection of knowledge. The way to address that was one of the key principles of the work of WIPO. In order to make progress they had the three-step test, which existed in a number of laws. They had adopted that process to give them new space to allow them to transmit knowledge, as it went beyond national borders. They needed to link it to the limitations already envisaged by the TRIPS Agreement. All of that together could assist the SCCR in coming to a common agreement and that was the basis from which the SCCR ought to work, on behalf of developing countries. Their effort was need to ensure that developing countries could participate, facilitate and contribute to the task of future generations, who were going to carry forward the new international understanding into the future. Creativity at the national level and its limited interests did not allow them to engage in a more widespread exchange. They needed a global international agreement and a legally binding international instrument, because they knew that in order to have the full effect, knowledge needed to be shared and not limited. The Committee needed to shed light on a number of issues. They needed to hear from

experts who allowed them to get to know what the practices were, to ensure that they could reach practical solutions. They also needed to consider in parallel the material repercussions, which had been indicated in the report by Professor Kenneth Crews and the study on museums. Additionally, they needed to consider future possibilities, in order to be able to have shared benefits for all in the digital environment.

303. The Delegation of Nigeria aligned itself with the statement of the African Group. The Delegation referred to the museum study as informative and believed that it would significantly contribute to the SCCR's discussions on the subject of exceptions and limitations. Those discussions were aimed at enabling libraries, archives, educational research institutions and persons with other disabilities to gain effective access to information and knowledge. It was a global issue that required an international solution. The Delegation shared the view of many developing countries and LDCs - especially those with a very high percentage of youth in their populations - that an international instrument governing exceptions and limitations, would be vital to ensuring the development of an international copyright system, which balanced the rights of both the rights holders and users and also satisfied the yearning for access to information and knowledge. The Delegation appreciated the rubric of exceptions and limitations in the SCCR. While acknowledging the different views, the Delegation was optimistic that they could progressively work towards a convergence of the varying views. Nigeria was ready to engage positively for a fair and balanced use of exceptions and limitations for libraries, archives, educational and research institutions and persons with disabilities.

304. The Delegation of Iran (Islamic Republic of) associated itself with the statement of the Delegation of India, speaking on behalf of the Asia Pacific Group. Limitations and exceptions were a key part of copyright law and played an essential role in creating a balance in the international copyright system, with a view of engendering creativity, increasing educational opportunities and promoting inclusion and access to cultural works. The existing limitations and exceptions envisioned in the current international copyright treaties did not sufficiently address emerging technology and cultural changes. Those shortcomings should be rectified. Therefore, the Delegation believed that pragmatic norm-setting solutions were essential to move towards a balanced international copyright law, for the benefit of rights holders and public policy issues. The Delegation strongly supported establishing a legally binding international instrument for limitations and exceptions for libraries and archives and also research and educational institutions, as those institutions were important in providing people with access to information and culture. Such a legally binding instrument would make it possible to meet the needs of all Member States, in terms of the legitimization of work. In the case of libraries and archives, the objective was strengthening the capacity of libraries and archives to provide access to and enable the preservation of library and archival material, to carry out their public service role. The SCCR should expect progress on the text-based work and in the discussions on each identified topic, contained in the Working Document. The Delegation supported the proposal made by the Delegation of India, speaking on behalf of the Asia Pacific Group that the SCCR should consider appointing facilitators or friends of the Chair to develop working text for exceptions and the limitations from the documents at hand.

305. The Delegation of India stated that the session was progressing at the desired pace. The progress achieved in the deliberations on the Broadcasting Treaty needed to be matched with that of the deliberations on exceptions and limitations for libraries, archives, museums and educational institutions. Libraries were spaces of knowledge for future generations and served as a social leveler for the poor and underprivileged. Knowledge and its dissemination had strong undercurrents. The historical library had been expanded to virtual libraries, accessed through information technology gadgets and smartphones. Virtual access was also transforming the way libraries were conceived and their uses. Nevertheless, at its core, that transformation still had the issue of access for billions of underprivileged in developing countries and the LDCs. India was accelerating its

development through a focus of education, skills, research and development. Many Member States were transforming their human resources for a life with dignity and progress. In such a context, exceptions and limitations for libraries needed to be prioritized and matched with the fast-paced digital information highway. That required an international framework, in a constructive way to consolidate and expand the purpose and the scope of libraries. Archives and museums similarly were the bedrock of cultural anthropological knowledge, and museum structures shifted the identity of the members in that space and therefore gave solidarity and unity. The limitations and exceptions framework was a legal and moral obligation of human kind, and required an appropriate international framework for its effective progress. Similarly, educational institutions needed an effective exceptions and limitations regime under an international framework, as the digital world was a bottomless phenomenon. The exceptions and limitations for persons with other disabilities were also looking forward to the successful conclusion of the Marrakesh Treaty and a repeat of such cooperation from the different parts of the world. The Delegation together with the African Group and the Delegations of Ecuador and Chile had proposed the 11 topic text for discussion. It was important to emphasize Article 7 of the TRIPS Agreement, which referred to the enforcement of IP contributing to the promotion of technological innovation, as well as the transfer and dissemination of technology for the mutual advantage of producers and users of technological knowledge, in a manner conducive to rights and obligations. In that spirit it was appropriate for the international framework to cast limitations and the exceptions in a non-ambiguous manner, for the progress of the human resources across the world.

306. The Delegation of Azerbaijan stressed that exceptions and limitations for libraries and archives was important. The point of libraries was to create varied and great resources, and to preserve them and facilitate access to their archives. In many countries, electronic libraries had been set up. There was little doubt that electronic libraries had changed the approach to copyright greatly and had added a number of challenges, related to digital technology, to the copyright system. Active work was underway to create ways of regulating copyright on the Internet. However, it would not be correct to approach exceptions and limitations to copyright only from the position of libraries and their contribution to society. First of all, they had to consider it as an integral part of copyright. Copyright contributed to open knowledge and the spread of knowledge. Libraries and archives were treasuries of that information and knowledge. Azerbaijan had more than 3,000 libraries according to data from 2013 and the number of users was about 150,000, together with even more virtual users. The number of libraries with electronic catalogs was more than 50 and in the archives of the libraries there were more than 170,000 works. The drafting of new recommendations on copyright in the sphere of electronic libraries was one of the very important issues discussed at an international seminar in Baku, on December, 1 2015, on exceptions for libraries and educational institutions, organized by the Copyright Institute of Azerbaijan and WIPO. There were also representatives of IFRA, IEPA and other governmental organizations and NGOs and representatives from Georgia, Russia, Kazakhstan and other neighboring countries. They had discussed practices related to exceptions and limitations to copyright for libraries and all of the representatives that took the floor expressed their support for the preparatory work by the SCCR on an international treaty on the subject. They had also pointed out that in the digital era they needed new international standards when they were transferring information from one medium to another, so that they could make available works from other libraries.

307. The Delegation of Japan stated that it attached great importance to the role of libraries and archives. They provided the public with better access to knowledge and they collected and preserved a variety of cultural properties and assets. Many Member States already had provisions on limitations and exceptions for library and archives in their national laws. Yet, reflecting upon social diversity, the definition of libraries and archives meant that the exceptions and limitations regarding libraries and archives were also different from country to country. The sharing of national practices would be useful to finding the best possible way to

make limitations and exceptions function within the international and national framework. In that sense, the discussion on objectives and principles, as proposed by the Delegation of the United States of America was appropriate. The Delegation of Japan would engage in the work in a constructive and faithful manner.

308. The Delegation of Indonesia stated that it had enacted a new revised copyright law, Number 28, in 2014, which incorporated an exception and limitation for libraries and archives for research purposes. However, it believed that exceptions and limitations should be further discussed in the international sphere, to create an international instrument that would regulate exceptions and the limitations, not only at the national level. Secondly, in its laws Indonesia mentioned traditional cultural expressions in the definition of copyright. They had a legal framework in which copyright covered traditional cultural expressions, and there were also limitations and exceptions for those items. Thirdly, after hearing the SCCR's discussion the Delegation supported the statement of the Delegation of India, speaking on behalf of the Asia Pacific Group. The Delegation also referred to the statement of the Delegation of Iran (Islamic Republic of) and supported its second proposal. The issue was not one only for developing countries. It was a proposal for humankind. There were so many challenges in the future. There were so many global issues that they needed to tackle and research globally. Therefore, exceptions and the limitations for libraries and archives and also research institutions were important issues for them to work together on, to find solutions for global challenges. It was important for all Member States. The Delegation could not agree with the view that it was only a request of the developing countries, rather it was for the benefit of all Member States. To provide legal certainty, they needed a legal instrument to regulate exception and limitations for libraries and archives and research institutions.

309. The Delegation of Cote d'Ivoire supported the statement of the Delegation of Nigeria, speaking on behalf of the African Group. In a global environment that had blurred boundaries, the best way to address limitations and exceptions for libraries and archives and teaching and research institutions and person with disabilities could only come from an international instrument, taking all into account, in a fair and equitable manner.

310. The Delegation of South Africa supported the statement of the Delegation of Nigeria, speaking on behalf of the African Group. The Delegation would like to work on exceptions and limitations both in libraries and archives and in research institutions. It appreciated the critical role that exceptions and limitations played in bridging the gap through the dissemination and diffusion of knowledge. The public remained the main medium through which education was promoted and human development took place. Restrictive copyright laws could hamper that resource and shrink the public domain. Research had shown that the stronger copyright, the higher the level of non-compliance. In that regard there needed to be a balance between private rights and public rights, through the adoption of appropriate exceptions and limitations. South Africa was implementing limitations in its Copyright Act. The Committee should be cognizant that the digital world had changed the way people accessed information and the current piecemeal approach to exceptions and limitations was not sustainable.

311. The Delegation of Armenia stated that the issue of limitations and exceptions for libraries and archives, and educational research institutions was of the greatest importance for the advancement of knowledge and access to information in the digital environment. It was necessary to develop an international instrument to deal with those new challenges. Armenia was in the process of improving its legislation and broadening the scope of limitations and exceptions. Those amendments to the law were aimed at supporting access to knowledge and satisfying the needs of libraries, archives and educational research institutions, in relation to the use of information in a digital environment. The new law would bring new limitations, allowing libraries and archives to digitize their collections, enabling Armenian users to access text in digital format, which was free of charge. The Delegation

strongly supported the development of international limitations and exceptions, as it believed that international regulation would grant a solution to the problems posed by the digital environment.

312. The Delegation of Argentina stated that the 1993 legislation in Argentina on copyright provided no limitations for libraries and archives and the system of exceptions did not allow for analog applications. However, the country was working on a reform of the copyright law, in order to contemplate exceptions for libraries and archives. The exceptions included in the draft were for the reproduction of intellectual works, with conservation or preservation for a work that was not available in the market, and partial reproductions provided that they were created at the user's request for research, such that the electronic reproduction of works in the collections were to be accessed through terminals in the networks of the libraries and archives. The digital copy of a work could also be used for its conservation, making it compatible with new technologies. The Culture Commission of the Chamber of Deputies in Argentina had participated in Parliamentary debates with library associations, the Argentinian Chamber of Books, the Argentinian Writers' Association, the Administration of Reproductive Rights and others. There had been discussions on the importance of including exceptions for libraries, which should not undermine the rights of publishers and authors. The exceptions provided for conservation, or for works that were not in circulation garnered the most support. There had been a debate on exceptions for education and interested sectors continued to work to try to bring their different positions closer together.

313. The Delegation of Algeria supported the statement made by the Delegation of Nigeria, speaking on behalf of the African Group. The Delegation attached great importance to the issue of limitations and exceptions to copyright. That importance had been increased as they needed to strengthen educational institutions in the public interest, so that they could fulfill their role of preserving cultural heritage, and extend their knowledge and information to others. That importance had been increased, particularly due to the digital environment. Great progress had been made, which had been multiplied by the number of methods in which knowledge could be communicated. That also applied to the circulation of science and cultural knowledge. That strengthened the need for broader access to knowledge, and the current regime for IP needed to take into account the importance of exceptions and limitations to copyright. That meant that there needed to be a balance in the international mechanisms on the issue. The Delegation wished to make great progress on the subject swiftly.

314. The Delegation of the Congo (The Republic of) supported the statement of the Delegation of Nigeria, speaking on behalf of the African Group. The Congo was currently revising its law on IP. It stood in solidarity with the request for the rapid development of the international framework in that regard.

315. The Delegation of Sudan stated that in the law of some Member States there were certain limitations imposed on the rights of the author, as well as his or her inheritors. That issue of the link back to the author was a legitimate concern. However, if the author had invented a vital medicine for human life, the Delegation wondered whether they could go back to the author himself or herself. If the author had died and they had developed such a medicine, then clearly he or she was the only one who knew the subject and not his or her successors. They needed to analyze the situation carefully in order to ensure that they did not need to go back to the author's successors. They needed to be clear, however, not to undermine their rights or the author's rights, when it infringed on the right to transfer property, because when it came to human life it was important to take into account the digital environment and the electronic transfer of knowledge.

316. The Chair referred to the Chair's chart and stated that they would follow that structure when they started the discussion on the first topic of the chart, preservation. He suggested



that NGOs could participate if they specifically engaged in the discussions topic by topic. The Chair recalled the previous interesting debate, which had taken place regarding the topic of preservation. He noted that they had heard interesting views regarding the need to ensure that libraries and archives carried out their public service mission, in order to completely fulfill that mission. In that regard, the exceptions and limitations for preservation would benefit them in complying with their public service mission. It was considered that in order to ensure that libraries and archives could carry out their public service responsibility for preservation - including in digital forms - of the cumulative knowledge and heritage of Member States, limitations and exceptions for the making of copies of works may be allowed, so as to preserve and replace works under certain circumstances. That basic point could be described in such a way to reflect consensus on the importance of the public service mission of libraries and archives, and the importance that the copyright system could collaborate with libraries, archives and museums in order to help them to fulfill their public service mission. In doing so, a number of exceptions and limitations could be extremely helpful in order to achieve that task. Exceptions and limitations were a very important tool. There were strong and legitimate differences regarding the desired outcome of the SCCR's discussions. As they worked in a consensus-based approach, no delegation would be pushed towards an undesired consequence. However, there was a common understanding that such exceptions and limitations could help libraries and museums. At the last SCCR they had exchanged different national experiences. The Secretariat had tried to capture the common elements and concerns that could be tackled when enacting such exceptions and limitations for preservation, and the ways that different national approaches had tackled those specific concerns topic by topic. There was a concern that preservation, which implied a right of reproduction in the digital environment, created issues regarding the digital reproduction of a work and the production of the digital work. The Chair referred to the obsolescence of some formats due to the development of new technologies, such that some works that were contained in previous formats became obsolete. The way to preserve such a work would require format shifting to tackle the problem of conversion. Another interesting topic discussed was that in enacting exceptions and limitations at the national level for preservation, the authorized uses of those preservation copies should also be dealt with. The unauthorized use of preserved copies occurred when a copy was made for preservation and used in a different way. The Chair referred to a number of issues that had come out of the rich discussions at the previous SCCR's. The first issue that had been highlighted pertained to the not-for-profit purpose, meaning that with some variations, the reproduction made for preservation itself was not made for direct or indirect economic or commercial advantage. Different formulations had been made regarding those specific elements, including that preservation could only be done by not-for-profit institutions. The second issue discussed was that of works and whether the exception and limitation for preservation was applicable to published works only, or if it was applicable to unpublished works, and whether there would be different treatment regarding those works. The third issue pertained to the source, meaning that if the copy was going to be made for preservation purposes, then the source work, that is, the work that was going to be copied, should have a lawful origin. The fourth issue addressed the number of preservation copies that could be made and whether that should be restricted to a specific number. The fifth issue related to the requirement that the copy of the work should be made from a work that belonged to the permanent collection of the library, not on loan or as a part of a temporary collection. The sixth issue addressed the format and whether a preservation copy could be made in any format. The seventh issue highlighted, related to the condition of the current work that needed to be preserved. The conditions of the current work to be preserved should be damaged, almost damaged, lost, or unusable in full or in part, or include cases when the format was out of date. There were different ways to express the common problems of the conditions of the current work. They had also discussed the problem of lost works, noting that if the work had already been lost, how could it be preserved? Some delegations had referred to a goal to replace works under certain circumstances. The final issue was the most contentious and referred to commercial availability. Commercial availability was frequently mentioned in different legislation and

different approaches had been taken. Some understood that the preservation copy could be made only if the work was not commercially available. The Chair referred to the three-step test as being referred to in a general or direct manner. He requested that they limit their comments to the topic under discussion despite the interconnections. On the topic of preservation there was agreement that they were discussing how a balanced framework could allow institutions to fulfil their public service mission. There was also consensus that they wished to reflect at a national level, meaningful exceptions for libraries and archives, recognizing the importance of well-designed national systems. He invited them to focus on the needs of libraries and archives and provide solutions, followed by an exchange of how best to identify the best solutions.

317. The Delegation of Brazil wished to receive more clarification on the process that the SCCR would follow. The Delegation understood that they would present views on the topics and hear the views of the other Member States on the topics, so that even in the face of an apparent disagreement, they could try to bridge gaps and find common solutions to problems that affected libraries and archives in the international realm.

318. The Chair confirmed that they were ready to start the discussion on the second topic and that they should try to find common solutions to the problems that they had identified related to each one of the topics.

319. The Delegation of Nigeria asked whether they would be hearing from the representatives of libraries and archives before they went into an in-depth discussion.

320. The Delegation of the European Union and its Member States stated that they were discussing exceptions for preservation purposes, and that as a part of that general landscape, they should consider that the institutions that they were referring to also carried out preservation by resorting to the market, irrespective of the fact that commercial availability could be a condition for the application of an exception. They should also take into account the possibility that making preservation copies could be included in licenses.

321. The Chair opened the discussion on the right of reproduction and safeguarding of copies, Topic Number 2 in the chart. It read: "as to the topic of the right of reproduction and safeguarding copies, concern was expressed regarding the scope of the concepts under consideration, and the possible overlap with other topics. Suggestions were made to modify the title of the topic. The Committee considered that the arrangements such as limitations and exceptions for libraries and archives, among others, played an important role in allowing the reproduction of works for certain purposes, including research. Further, discussion took place concerning the supply and the production of these reproduced works." He opened the floor to the NGOs.

322. The Representative of the International Council on Archives (ICA) stated that it represented the cultural heritage organizations dedicated to the preservation, care and use of the world's archival heritage, through archival professionals across the globe. The archival mission was to acquire, preserve and make available the world's documentary heritage. It consisted of information by-products of society, very little of which was created for commercial purposes. Therefore, archival materials were largely unpublished and rarely existed in multiple copies. In other words, they were for the most part unique and irreplaceable. For those reasons, archives did not lend their holdings. Things such as the Magna Charta or Charles Darwin's notebooks or Anne Frank's diaries would not be lent out. Since lending was not possible, archives provided researchers with copies of items in their holdings. Such copies may consist of a few letters or photographs documenting family history. In other cases, researchers working on books or dissertation required copies many of items. If the archives could not make copies, the researchers would have to spend long hours in their reading rooms, making notes or copying entire items by hand, and before the

advent of copying technologies such as microfilm, photocopiers and scanners, that was what researchers did. They traveled to the archives and settled in for weeks, particularly for a large project. Copying technologies now provided a more efficient option for accessing their selections. Researchers could search the archives, review the holdings of interest, request copies of items relevant to their research and study the copies in detail at home. Thus, if archives were to serve the researchers effectively and provide access to their holdings, a technology neutral exception to reproduce archival holdings for limited purposes, such as scholarship or personal use was essential. Such an exception would not be a blank check. It was reasonable to impose a number of conditions. For example, only a single copy could be provided and the copy must be used for specified non-commercial purposes such as research, scholarship, personal use, or education. The user must be informed that it was the user's responsibility to obtain any necessary permissions from rights holders, should the copies be used for purposes other than those specified. Without such an exception appropriately limited, archives would find it impossible to carry out their mission to make their holdings available. In conclusion, the matter of the safeguarding of copies more appropriately belonged with the preservation topic.

323. The Chair noted that they had a list of NGOs who were submitting their views regarding the topic on the reproduction and safeguarding of copies.

324. The Representative of the International Publishers Association (IPA), speaking also on behalf of the International Association of Scientific Technical and Medical Publishers (STM), stated that the publishing industry depended on copyright protection to produce works and innovate, even more so in the digital world. The Representative stated that many publishers provided for preservation and archiving in their license or subscription access agreements. The Representative had taken note of the different views expressed during the SCCR session, and had also observed that all delegations subscribed to the existing flexible standards for copyright protection. Therefore, the Representative reiterated that the SCCR should focus its work where consensus already existed; first, on the exchange and sharing of information and best practices, to which many NGOs had offered to contribute, second, on demand-driven technical assistance programs coordinated and led by WIPO with coordination at regional levels by organizations such as ARIPO, CERNLALC and OAPI, with which many NGOs continued to cooperate as required and appropriate, and third, on government cooperation and legislative efforts, which could be possibly coordinated regionally by organizations such as those previously mentioned. The Representative suggested that the best way to enable uses falling under Topic Number 2, dealing with the safeguarding of copies, was to enter into licensing agreements between publishers and libraries. That was done very frequently around the world. Licensing enabled access to historic collections and back files as archival copies, sometimes with long term or so-called perpetual access guarantees. License agreements also allowed for backup copies, some more explicitly than others, and provided for preservation, either by the library or by joint publisher library initiatives, such as in case of catastrophic events or bankruptcies.

325. The Representative of Knowledge Ecology International, Inc. (KEI) was supportive of the SCCR's work on the access and preservation of knowledge, which was important for every Member State. Preservation and safeguarding the copies of works was to some degree a global public good. They all wanted and needed works to be preserved and copyright and reproduction rights, coupled with limitations and exceptions were essential. Most experts were seeking to balance access, preservation and exclusive rights. With respect to the 11 Topics, the chart presented easily achievable topics, as well as complex and very difficult topics. Regarding Topic Number 2, the right of reproduction and safeguarding copies, the libraries and archives had made it very clear that one of the issues they faced was the difference between countries, especially depending on the purpose of the reproduction. Reproduction for the purpose of preservation seemed to be quite common and useful among countries that actually had working libraries. That should not be controversial.

On that topic, libraries and archives needed clear and easy to interpret exceptions and limitations for reproduction, which had the flexibility of including future progress in technology. Topic Number 2, as with Topic Number 1, preservation could go further in terms of its conclusion. The Representative believed that the SCCR could work on a binding instrument solving the problems associated with reproduction for the safeguarding of works.

326. The Representative of the International Federation of Library Associations and Institutions (IFLA) stated that on that day, after the European Union's historic announcement that it acknowledged the fundamental importance of exceptions to increase cross-border accessibility to content, it was pleased to focus on exceptions and limitations that encompassed reproduction, which was critical to enable libraries and archives to carry out their core public service roles of providing access for research and private use and for the restoration of copies. Exceptions and limitations for reproduction enabled libraries and archives to make copies for two different but related reasons. The first was reproduction for use. Within a library and within a country, such reproduction could be and often was covered by national law, however, since no library in the world regardless of how large it was could possibly have every item a user might need, libraries must collaborate to support a global network of access to information. When a library did not have the journal Article or a book chapter requested by its user, it used a global database to identify another library that did, and requested a copy for individual use. Those works often had no commercial value and even more often were not available on the market, but they may have content of great importance to an individual, scholar or user, who would be producing new scholarly works. Exceptions and limitations were necessary at an international level in that arena to permit that kind of production and making available. Specifically, the two exceptions must include first, the creation and delivery or making available of a reproduction across borders by the library that had the content on behalf of the user in another country, and second, the receipt and distribution or making available to the user by the receiving library. In the digital environment, the exceptions must also permit the reproduction and use in whatever format was appropriate whether through physical distribution or making available a digital copy. The second kind of reproduction they needed to refer to was with regard to repairing damaged works. For example, when pages from an out of print item that was unique in a country were torn or missing, that library may need to seek replacement pages from another country's library. Exceptions to permit copying, delivery, receipt and use across borders in those limited cases were necessary for libraries to make those works whole. While that activity could be considered a special form of preservation, librarians typically thought of them as complimentary but different activities. In the limited situations it had described, exceptions were the means by which balance was maintained for the public good within both national and international copyright regimes.

327. The Chair stated that it was interesting when they tried to understand the boundaries of a topic to see if they were trying to include one specific type of activity or other related activities. For example, in the case of repairing damaged works, which could be considered a way to preserve a work, or even to replace works if they had been lost. In that case, it would not be possible to preserve the work, because it had already been lost. The intervention highlighted that librarians considered that even if it was related to the first one it was a different activity than preservation.

328. The Representative of the International Federation of Reproduction Rights Organizations (IFRRO) stated that it understood the right of reproduction as referring to the supply of copies by libraries and librarians of copyright protected works in the library's collections to the users, and safeguarding copies as being backup copies. The Representative acknowledged that exceptions and limitations to the exclusive rights in national legislation may be appropriate to enable defined libraries and archives to reproduce copyright protected works including for safeguarding purposes. That required that they were based on clearly defined appropriate conditions, which observed the three-step test of the

Berne Convention. It must also be ensured that safeguarding copies made under an exception did not lead to the copies being used to increase the number of works to be made available for access by the users. Libraries as well as authors and publishers played a particular role in providing sustainable access to cumulative knowledge and cultural heritage in both developed and Developing Countries. A library should be permitted to reproduce a copy for its users when they were eligible to receive it under a copyright exception compatible with the three-step test of the Berne Convention. In particular, it must be ensured that the copy did not conflict with the selling or other commercial exploitation of the work. Where possible, such reproduction should be subject to remuneration to authors and publishers, for instance, through collective licensing schemes, which had been successfully implemented in a number of Member States. Otherwise, it was important that rights holders facilitate the reproduction of works by libraries, through licensing mechanisms, both on the basis of individual direct licensing by publishers and authors and through collective licensing by collective management organizations, such as reproduction rights organizations (RROs). In a fast changing world where technologies moved with an unprecedented speed, regulations did not have the ability to offer the required flexibility. Licensing agreements offered comprehensive tailor made solutions to access scientific and literary works to meet the libraries' and the users' needs.

329. The Representative of the International Federation of Journalists (IFJ) referred to the matter of unintended consequences or attempts to support the essential functions of libraries, archives and museums. The Representative referred to a warning from his professional life, which involved writing and editing material about science and technology, and stated that if you picked the first metaphor you come across you would probably misunderstand the problem and perpetuate a misunderstanding. The study represented museums as collections of paintings. As the Delegation of Sudan had pointed out, they also contained musical works. Many documents lived in museums, including unpublished documents, which presented particular problems. Equally, libraries and archives maintained important collections of works other than books, and the variety of their collections would only increase with the growth of digital media. It was tempting to deal with some of the problems that were raised by invoking the concept of a museum without walls or a library without walls - an infinite digital expanse that anybody in the world could access - but these institutions effectively became publishers or broadcasters. The Representative thanked the Delegation of Germany for raising the question of the financial interest of the museum itself. Perhaps as a result of the necessary work of producing archival copies and records, in the near future someone in Brazil could make a three dimensional print of their own, and hold in their hands their own Benin Bronze, wherever the original ended up. Or they could make a 3D print of a Sarah Lucas sculpture, or a four dimensional version, as the Delegation of Sudan had mentioned, of the animated artwork with Bjork's latest album. The proposal in front of them to restrict the distribution of archived copies for non-commercial purposes did not deal with the issue of the interference with the normal exploitation of any of those works, be it for folkloric value, or the traditional value of the works or an individual's writing. At the very least, the damage was greater than that of the private copying of a work, when the work was distributed and made available outside the premises of the library. The issue of public private partnerships also changed the discussion completely. Many libraries were working with Californian corporations that had contributed a lot of money to the important work of preservation and digitization, but retained work rights in the copies that were made. Very detailed discussions had to be had about that and they needed to be aware of overextending the metaphor of the library when they were discussing the activities that were in fact under discussion. The most effective route in dealing with those necessary questions was through licensing.

330. The Representative of the German Library Association (DBV) stated that it represented 10,000 libraries in Germany. It aligned itself with the statement of the Representative of IFLA and emphasized that reproductions were the basis of making use of the other exceptions.

The Representative referred to electronic resources and stated that they simply could not be used without copying them. The circumstances under which copying was permitted could only be defined in connection with the corresponding purpose. The Representative was concerned that as long as there was a patchwork of 180 different exceptions in the world on every library service which required reproduction, they could not be sure they would be able to provide the services across borders, because the condition for that would be that the service was allowed in the jurisdiction of the receiving country, and the transaction costs and uncertainties were simply too high. The bottom line was that libraries did not provide their services cross-border. When they referred to sending archives for non-commercial educational use cross-border, they referred to reproduction and transmission. When they spoke about preservation copies, they spoke of reproduction and storing it across borders, because foreign services might be used to keep the archives safe. Large services for secure storing were not provided in every country, so the reproductions might have to be sent across borders. Additionally, in many cases cloud services were imminently international because safe copies could be stored in data centers around the world. The Representative reminded the delegates of the Marrakesh Treaty, which allowed the sending of copies for visually impaired people to other countries after producing the respective reproductions. What instrument did they need to solve the problem? Flexibility without a certain international minimum or improved national exceptions did not help with cross-border situations. Libraries and especially their users, for example, researchers, would be very grateful for any solution that really helped. They were observing carefully what European Union organizations were doing with respect to certain laws. The Representative referred to the statement of the Representative of IFLA that the European Commission had announced its objective to improve cross-border uses in the Digital Single Market, for access to knowledge and research, among others. That meant that there would be harmonized exceptions across the European Union and its Member States. The international harmonization of reproduction exceptions for library services would also be the instrument it proposed for Member States, through an international instrument like mandatory exceptions introduced in a treaty.

331. The Chair reminded the Representative that they would discuss cross-border issues under Topic Number 6.

332. The Representative of the TransAtlantic Consumer Dialogue (TACD) stated that it represented millions of consumers on both sides of the Atlantic, both in Europe and the United States of America, and it supported international instruments to allow libraries to carry out their public service. Recently, they had commemorated 800 years of the Magna Carta and the Charter of the Forest that safeguarded the use and access of the common good from unreasonable private enclosure. That landmark agreement limited the power of the monarchy to exercise complete power over its properties. Today they faced many attempts to enclose the digital and cultural sphere to prevent access to what should be the knowledge commons. International instruments for exceptions and limitations could prevent that. The world's cultural heritage should be a global public good and a part of the global knowledge commons. Archives provided researchers with copies, aided scientific endeavors and preserved cultural legacy. To ignore that they were in a digital age that could reinforce and enrich common knowledge was neither rational nor morally acceptable. It was not an alternative to impose cumbersome and expensive unrealistic licensing schemes. The right to reproduction was also needed to supply copies for use, repair, lending and sharing between libraries across borders and for individuals. Why deny exceptions and create unnecessary barriers to the public for non-profit services that helped many and hurt no one? There was no empirical objective evidence of substantial negative unintended consequences by libraries and their activities. Moreover, it was quite surprising that the European Union, which had recently launched a proposal to reform European copyright laws, with clear proposals for exceptions and limitations for data mining, disabilities and other areas, was not willing in parallel to enter a discussion to extend that to the rest of the world. That was not coherent.

The European Union's new copyright proposal spoke about exceptions authorizing libraries and other institutions to not just have on-screen consultation of works, but for those to be extended to terminals outside the library's premises. The proposal also addressed text and data mining, as well as an exception for preservation activities of cultural heritage. There were many other exceptions in the European Union framework addressing knowledge, education and research. The ideas on preservation, illustration for teaching and remote consultation reinforced the need to enter into discussions beyond the European Union, because what was good for its Member States needed to be extended to the rest of the world for universal access to culture, education and science.

333. The Representative of the Canadian Library Association (CLA) stated that it had represented individuals and libraries of all types in Canada, including public, academic, specialized government and school libraries, since 1946. Reproduction was fundamental to the mission of libraries so that they could serve their users' needs. Libraries' set collection policies and budgets ensured that they were purchasing the materials that met the needs of most of their users most of the time. However, it was impossible for any library to purchase all of the materials that could one day be demanded by a user. Libraries depended on each other to fill gaps in their collections by providing a copy of an article or a chapter of a book when it had been requested by a specific user. In small towns in Canada, retired senior citizens undertook genealogy projects and their family histories could take them to records elsewhere in Canada, in the United Kingdom, Colombia, India and all around the world. Canadian libraries in those small towns would not own those newspapers, but clear exceptions and limitations for cross-border use could help those researchers explore histories no matter where their journeys took them. The ability to trace their past and explore their unique interests depended on exceptions that permitted document supply both within and across borders from one library to another. As another example, an academic working in specialized areas would often discover that there was an article on their area of interest by a scholar in another country. If their home university's library did not subscribe to the journal that contained that article and it was not included in one of their paid licensed subscription databases, the only way to access it was by contacting another library for a copy and hoping that digital delivery was permitted. Many requests of that type were for specialist materials that were out of print or not available under a license, or commercially available. Those activities occurred every day in libraries around the world. In 2014, libraries worldwide denied more than 125,000 requests from other libraries because they were not licensed to fill those requests for information. In a print environment, copyright exceptions were clear and further acknowledged, yet in the digital environment, they were losing ground and access to knowledge was being curtailed. For those countries that had introduced amendments since 2008, digital copying was barred in more than 30 per cent of cases even in some cases for preservation. Libraries needed clear exceptions and limitations for reproduction that had the flexibility to encompass progress and technology. To address cross-border research, libraries needed exceptions and limitations, as identified by the Representative of IFLA, for the creation and delivery, or making available of copies on behalf of users between libraries and between countries. The Representative referred to the positive direction of the European Union in recognizing the need for cross-border access for European libraries and archives. Without exceptions and limitations for reproduction that considered cross-border applications, libraries were placed in an intolerable position where they could either operate outside the law or deny their users access to information. As a result, they would miss economic opportunities, as well as opportunities to improve the health and wellbeing of societies. They would continue to face inequalities in knowledge and the gaps between countries would grow ever wider.

334. The Representative of the Society of American Archivists (SAA) stated that it was North America's largest professional archival organization. Its members managed billions of primary source works throughout the world. As a result, they cared about copyright system incentives, but were equally concerned about the strong disincentives the system provided

for use of their collections to create new works. If the objective was to safeguard copies by backing up, from an archival perspective that would probably be solved by text-based work on Topic 1, Preservation. However, the proposed topic to text-based work, 26.3 and 29.4 related more to providing copies for users, for which it noted the following principles, concerns and solutions. Most fundamentally, because archives contained items that were unique or exceedingly rare, each of their documents had a global audience, but only a tiny portion of that audience could ever visit the archives. Therefore, they must be able to make copies on behalf of the users. The Berne Convention assumed that everything committed to a fixed medium of expression was a commercial object and that copyright applied to every scrap of paper they might hold in an archive. There was another universe of intellectual material that had always existed almost entirely outside the commercial world, the unpublished material whose creation had no commercial intent. To put that in perspective, the top 108 North American academic libraries held more than 420 million books, but their archives held more than 6 billion unpublished works. Only by contemplating the vastness of that disparity could the SCCR begin to understand why archives were desperate for modern international systems of exceptions and why the chaos of separate national laws would not work. The Representative referred to two examples to partially respond to the Representative of IFJ's comments. A university archive held the papers of a world famous Iranian architect who was a leading advocate of modernism in Paris from the 1920s through the 1940s. A Dutch-based biographer required images from the architect's projects plus information on classes that he had conducted in occupied Germany and the United States of America. Unfortunately, the archive could not know who held the copyrights for some of the materials requested. If the researcher were in the United States of America then copying would be no problem, but sending across borders raised barriers. The second example was the papers of a prominent chemist from the United States of America who had led a 1920's effort to reconcile leading scientists both on sides of World War I. A Canadian researcher needed scanned copies of his papers and most likely the same from European archives holding the papers of other scientists involved in the interwar effort. The archive could provide those from the United States of America but why should European scientists be excluded from the research? The Representative suggested that perhaps it was time to reopen the Berne Convention and create a modern system of formalities that recognized the creative world no longer operated by means of physical books and train travel. Alternatively, the SCCR could recognize that archives had never been about commerce and thus create an international binding instrument that provided an exception to allow archives' copying for users. The study by Professor Kenneth Crews showed why the current jumble of separate national laws created a problem. The solution was to provide predictable copyright exceptions for archives across all borders through an international treaty.

335. The Representative of Electronic Information for Libraries (eIFL.net) stated that it was an organization that worked with libraries in developing and transitioning countries. An exception to the right of reproduction was a fundamental exception that enabled libraries to carry out a public service role of advancing research and knowledge. The proposals by Member States facilitated three situations in which libraries made copies. First, a library made a copy for an end user in response to a simple request for a material in the library's collection for the purposes of education, research or private study. For example, the library may make the copy when the item was not available on the open shelves because of its age, size, format, value or condition or the library could not offer public copying facilities because the equipment was too expensive to maintain and running costs such as ink and paper were too high. The second reason libraries made copies was in response to requests from another library on behalf of an end user. That had been described by other representatives and interventions at the Twenty-Seventh Session of the SCCR to demonstrate the clear cross-border dimension of document supply. The third reason a library may need to make a copy was for backup purposes to safeguard against loss or damage. For example, the library had bought an expensive handbook that was in much demand by students. To avoid page tearing, where pages were literally torn from the book, or to avoid losing the book



altogether, the library may wish to make a safeguarding copy to use in place of the original. What were the conditions attached to making of such copies by libraries? Copies must be possible in analog and digital forms. The exceptions should apply to related rights to allow for different types of materials including audiovisual materials. Requests by end users were usually for the purpose of education, research or private study. In all cases, the uses were non-commercial. The copies were made in accordance with international obligations including the Berne Convention. The proposal from the African Group used a standard of fair practice. The WIPO Guide to the Berne Convention explained that fair practice implied an objective appreciation of what was normally considered admissible and was ultimately a matter for the courts. Reference to fair practice could be found in several national copyright laws as well as the Berne Convention. What was the international dimension of the problem? According to the study by Professor Kenneth Crews study, just 11 per cent of countries had an exception for document supply in their national laws and almost no countries had addressed the issue of cross-border transfers of content. Consequently, libraries often had to refuse requests for information on copyright or licensing grounds. An international treaty was required to ensure that libraries could legally undertake document supply both within a country and cross-borders. In the two other situations, an international approach was required to ensure that libraries everywhere could perform those basic functions using digital technologies. The study showed that 48 per cent of the countries surveyed did not explicitly allow libraries to make copies for research or study, and that exceptions in many countries applied only to print formats. The Representative welcomed the European Commission's communication on modernizing copyright, which proposed that the European Union and its Member States would work towards removing obstacles to cross-border access to content and to the circulation of works. Such work was important not only within the European Union and its Member States but needed to be undertaken internationally as well.

336. The Representative of the Independent Association of Library Information and Documentation Associations (IALIDA) supported the statement of the Representative of IFLA. The Representative provided two concrete examples why a right to reproduction and safeguarding copies was much needed. The first example related to the Scott Polar Institute in the 1920s as part of the University of Cambridge, United Kingdom's Centre of Excellence and Study of Arctic and Antarctic. The Institute was a resource of national importance consulted by government, industry, scientists and scholars. It offered a collection developed since the 1920s with over 700 journals and over 140,000 volumes covering all subjects relating to the Arctic, Antarctic and to ice and snow wherever found. The user community of the Institute was the polar research community, therefore, geographically disparate and scattered all over the globe that could hardly be expected to travel thousands of miles to consult or read a book or an Article of a specialized magazine only available in the Institute's library. At a time of global warming and climate change, where new technologies offered opportunity for efficient communication, allowing the library an exception for reproduction would help the research community to obtain a copy of the content including via digital means and help in advancing their research to find solutions beneficial to the world's population. The second example came from the public library of Lyon, France, which was one of the biggest public libraries in Europe. Its collections included 3.8 million items excluding magazine and legal documents. Since 2009 the library gradually constituted a heritage fund called Lyon's Music Memory, guarding all of the musical productions that had a link with the City of Lyon. The collection was comprehensive and included more than 5,000 discs. Eventually it must extend to digital music to enrich the fund. The documents must be kept in a sustainable manner, made accessible and were therefore, systematically scanned, i.e., copied. One of the direct effects of the fund was to develop a mission of supporting musical creation. Without a right of free production and safeguarding copies, the library would risk losing a unique music collection that was a public good and memory of contemporary importance. To conclude, it quoted the European Commission communication toward a more modern copyright framework which stated: "The fragmentation of copyright

rules in the EU is particularly visible in the area of exceptions. The situation seems to be posing problems in particular for those exceptions that are closely related to education, research, and access to knowledge. The Commission will take action to insure that the EU framework on exceptions that is relevant for access to education and research is effective in the digital age and across borders.” Problems that were mentioned in the European Commission communication were equivalent to the ones they were discussing at the SCCR. Therefore, an international solution providing a minimum level of international standards in reproduction and safeguarding copies exception, regardless of the format of publication would support greater access to knowledge worldwide.

337. The Representative of the Third World Network (TWN) referred to a memorandum from the Library of Harvard University urging faculty members to publish their research work through freely available open access journals. Further, the same memorandum also requested faculty members to resign from the editorial boards of publications, which had an exorbitant subscription fee. The memorandum from Harvard's Faculty Advisory Council said major publishers had created an untenable situation at the university by making scholarly interaction physically unsustainable and academically destitute, while drawing profits of 35 per cent or more. Prices for on-line access to articles from two major publishers had increased 145 per cent over the past six years, with some journals costing as much as \$40,000. The memorandum stated that the Guardian newspaper also reported that more than 10,000 academics had already joined a boycott of a huge publisher in protest at its pricing and access policies. Those publishing houses used copyright to keep academic work away from students and scholars in the name of protecting authors' right. So often the publishing industry used copyright for its commercial interest at the cost of access to knowledge. Those examples clearly showed that libraries needed to depend on each other's collection to facilitate access to users. Further, it was also important to keep archival copies and use the exceptions and limitations in the copyright to further access. From a development perspective, the excessive price of academic works created a knowledge debate and often prevented technology absorption capacities in developing countries. Thus the access price of academic work retarded the technological catching up process in developing countries. Further, it also violated the right to science guaranteed under Article 15.1C of the Covenant on Economic, Social and Cultural Rights, according to the report of Special Rapporteur for the Twenty-Eighth Session of the Human Rights Council. Copyright law should place no limitations upon the right to science and culture, unless it could demonstrate that the limitations pursued a legitimate gain that was compatible with the nature of that right and was strictly necessary for the promotion of the general welfare in a democratic society. The situation clearly called for reform of the international copyright regime by creating limitations and exceptions. Limitations and exceptions for libraries and archives were important steps to ensure access to knowledge.

338. The Representative of the Scottish Council on Archives (SCA) stated that it was the advocacy body for the archive sector in Scotland. The Representative referred to the study by Professor Kenneth Crews, which stated that 104 out of 188 countries had exceptions for archive preservation and 61 out of 188 countries had an exception for research and private study using archive collections. That meant that less than 33 per cent of countries had exceptions for archives to make copies across the areas of research, private study, preservation and replacement, all of which fell within the reproduction right. Providing access to archived material, especially where users could not travel to the physical location of an archive, or where the material in question was too fragile to be produced in a search room was only possible through the creation of an analog or digital copy. For example, in 2014 the National Archives of the United Kingdom provided almost 200 million documents to on-line users up from 130 million in 2010. That level of service would be impossible without an exception to the right of reproduction. Another example was provided by the Scottish Archive, the largest of its kind stored at University of Glasgow archive services. The archive was an essential resource for social, economic and industrial history. It had international

significance because many of Scotland's industrial outputs from shipbuilding to locomotive and aeronautical engineering had been exported all over the world. Almost 1200 researchers visited the archive in person in 2013. However, the archivists received thousands more inquiries on-line, many from international users. Archivists assessed inquiries for risk depending on the type of material requested, how it might be used and where it was being sent. It was a minefield that would only be resolved by an international instrument that allowed them to provide copies of records across borders for research and private study. That would remove much of the uncertainty and risk associated with cross-border copy requests. Archive collections were rich, varied and crucially they were unique. Users could not go elsewhere to have their information needs met. Archives built up gradually and naturally over time, providing evidence of the everyday actions and deeds of individuals, organizations and governments and they were unpublished and non-commercial in nature. If they held only original documents, they were placed in the unacceptable position of either abandoning compliance with the law or refusing legitimate and reasonable requests of their users. The European Commission had released a communication on copyright towards a modern European Union copyright framework. That stated that their objective: "is to increase the level of harmonization, make relevant exceptions mandatory for Member States to implement, and ensure that the function across borders within the EU." The Representative stated that the objective of harmonization and allowing cross-border uses would be beneficial for the SCCR. Limitations and exceptions were essential for safeguarding and providing access to archival collections, while balancing the interests of rights holders. Licensing laws were not appropriate for the unpublished and non-commercial works held in archive collections. The SCA supported a text-based discussion on an international legal instrument for libraries and archives.

339. The Delegation of Brazil stated that it had listened carefully to the interventions from NGOs, especially those that were working with libraries to safeguard copies of recordings and other works, which could generate high economic costs when lost and damaged. The Delegation understood that the situation was shared by other Member States. In order to avoid that and allow the institutions to develop their work, the Delegation understood that libraries and archives should be allowed to reproduce and supply by any means, any works or materials protected by related rights, lawfully acquired or accessed by the library or archive, to another library or archive for subsequent supply to their users, for the purpose of education, private study, research or interlibrary document supply, provided that such uses were compatible with fair practice as determined by national law. The Delegation also understood that libraries and archives should be permitted to reproduce and supply a copy of a work, or offer materials protected by related rights, to library or archive users in any other case where a limitation or exception in national legislation would allow the user to make such a copy. That was the position of the Delegation regarding the topic, Right of Reproduction and Safeguarding Copies.

340. The Delegation of the European Union and its Member States stated that in the European Union there was a possibility for its Member States to introduce exceptions that allowed specific unauthorized acts of reproduction by publicly accessible libraries, educational establishments, museums or by archives. That was one of the exceptions in the European Union laws that explicitly referred to museums. Those acts were not for indirect or direct commercial advantage. It was a separate self-standing exception in the EU Copyright Directive and it was a general provision in the sense that it did not specify the purpose of the reproduction, although it was largely used in practice for preservation purposes. Its Member States had implemented it often for preservation purposes. The exception in the new European Union law was explicit, in that it did not openly refer to blanket type exceptions. The exception could not be used for any economic advantage and it was also specific as to the beneficiaries. Most of the organizations that were listed as beneficiaries must be publicly accessible and that included museums and archives. The European Union's legal framework was not specific as to reproductions for inter-library document supply or for

documents supplied to individual users, which were recognized in exceptions in some of its Member States. That reflected a certain degree of flexibility, which was present in the international framework and in the EU framework, as it had previously stated. In providing for exceptions, national exceptions in Member States could provide for compensation obligations for rights holders.

341. The Delegation of Nigeria, speaking on behalf of the African Group thanked the representatives from libraries and archives for enhancing their knowledge and specifying the various challenges they faced in fulfilling their objective of facilitating access to information and knowledge. The Delegation noted that many of them had supported the need for an international legal instrument to facilitate cross-border uses and the right to reproduce and preserve. They had highlighted many reasons and instances where they needed to reproduce works, particularly in the digital environment. The Delegation referred to the announcement by the European Commission and the statement by the Delegation of the European Union and its Member States. It hoped that the European Union would have the courage to close the gap that they thought should be filled in the European Union space, and to recognize the need to expand the scope of persons that were allowed into the information space internationally.

342. The Delegation of the United States of America stated that it had attempted to apply its exceptions for libraries and archives in the digital age and was confronted by a number of issues relating to the digital environment. It had considered a number of changes to the exceptions, such as adding museums, allowing more usage of digital formats and in some cases, broadening the application of the exception. Many of those proposals were formally considered during an in-depth review of Section 108 of the U.S. Copyright Act undertaken by a Study Group convened by the U.S. Copyright Office and Library of Congress. The Study Group issued a report and recommendations on potential updates that were needed to improve the functioning of Section 108 in the digital environment. The Delegation wished to learn how other Member States had dealt with those issues, particularly the application of exceptions or limitations for libraries to digital works in digital formats. More specifically, under the objective of enabling libraries and archives to carry out their public service mission in the digital environment, it had enumerated the principle that limitations and exceptions should appropriately ensure that libraries and archives could preserve and provide access to information developed and or disseminated in digital form and through network technologies. Its question was that when implementing or updating library and archive exceptions, had other Member States reflected that principle? If so, how had other Member States ensured that digital reproduction and distribution activities were addressed in a manner that did not introduce or perpetuate unreasonably different standards for digital media than for physical media? Further, since digital works were more easily reproduced and distributed, what mechanisms had other Member States put into place to safeguard digital copies and to ensure that copies were used for legitimate purposes?

343. The Delegation of Greece, speaking on behalf of Group B reiterated what it had stated in its opening statement under the Agenda Item, namely that it believed that the current framework was functioning well and that there was no consensus in the SCCR with regard to normative work.

344. The Delegation of the European Union and its Member States referred to the question from the Delegation of the United States of America regarding how digital or reproduction in digital forms or digital environments was taken into account in existing laws. Its legislation on exceptions for reproduction for institutions, mentioned earlier, did not state anything regarding whether the copy was to be just analog or analogic. The Delegation's intention was to describe what it had, not to prescribe or indicate that that should be something taken up by others necessarily or by the SCCR as such.

345. The Chair referred to the rich information that they had received from NGOs. There was a challenge to set the boundaries of the topic if they were only talking about reproduction for the safeguarding of copies.

346. The Representative of IFLA stated that legal deposit was the original limitation on copyright. It was intended to ensure the preservation of works at a national level, by mandating that at least one copy of every work, in every format published in the country was delivered to a designated trusted institution, typically a national library or national university library, deposited there by the publisher or the rights holder. Legal deposit systems were critical for the preservation of a nation's culture. It was also critical that they apply to all forms of creation, including digital. That requirement in turn necessitated an exception to the communication to the public or making available to the public right. Another important requirement of legal deposit was that the depository library must have the right to reproduce protected works for the purpose of preservation, thus tying the topic to Topic 1, Preservation. An international instrument could provide models for implementing legal deposit at the national level, including digital legal deposit and web harvesting also for the legal deposit collection. Legal deposit libraries were a nation's most trusted repository. Therefore, robust legal deposit requirements were the best insurance that a nation's cultural heritage would be preserved in all formats, ensuring its potential to be made available when it entered the public domain. Those requirements and all Member States were the best tools for ensuring persistence of the world's cultural heritage.

347. The Representative of the SAA stated that its comments about legal deposit would bleed into cross-border issues, as they were talking about an international issue. The principle behind it was the preservation of a nation's intellect and acquiring and preserving works completed by its inhabitants. That presumed, however, that the world still operated primarily on the published world, but that was not really true anymore. The current world was filled with works of expression and learning that was no longer solely mass produced, commercially marketed material. There was pervasive use and distribution by citizens themselves. Archivists knew that truth intimately. Archives held not just obscure materials or old documents but also Twitter, Facebook, blogs and social media and any other form of fleeting digital content. That was the future of knowledge, to ignore that was to pretend that the world of the Internet did not exist and it was merely an unimportant passing fad. The U.S. Library of Congress recognized that the legal deposit of published works could no longer fulfill the function of the national cultural preservation. It had tried, for instance, to become the repository for all Twitter activity, but even it could not afford to make it accessible to researchers. Fulfilling the aims of legal deposit in today's world was beyond the capacity of any single one national institution. Archives could and did provide a similar function, making Topic 1, on the preservation exception essential. Capturing content from the Internet was inherently international, that was a problem that had to be solved through a uniform international exception embodied in a treaty. The Representative's own institution had created an international firestorm in 2014 when it canceled a professor's employment contract after he used Twitter to post political comments about Israel and Gaza. To fulfill its archival mission of preserving the institution's history, the archive spent 14 months capturing an international array of fleeting blogs, pronouncements, reports and postings on the Internet, where documents disappeared within days if not sometimes hours. The European Union's refugee crisis posed a similar documentary challenge for that kind of material. None of that would fit into the conventional concept of legal deposit, however, archives had to provide a similar function, and even if they were only looking at single institutions, it inevitably went beyond content created just by that institution. To fulfill that, archives could not rely on a confusion of different national laws to conduct their business. They must either have consistent copyright exceptions to capture such primary source material, or ignore copyright strictures so that they could capture the ephemeral web and social media content before it disappeared. Archives were not on the margins of the SCCR's concerns regarding legal deposit but really on the cutting edge. They were the proverbial canary in the coal mine,

warning of a danger that was much greater than that of their own vitality. Legal deposit if it was to have any meaning, meant that archives needed to have an international exception to capture and preserve the vast array of the current content that existed outside of traditional published forms.

348. The Representative of the Chartered Institute of Library and Information Professionals (CILIP) emphasized, with regard to reproducing copies, that it was clear there were different purposes for reproducing copies. It was not about reproducing copies only for safeguarding. It was also for document supply in response to requests made by individuals under exceptions for private study, for research and other non-commercial purposes. Those were the main reasons. However, as the Representative of IFLA had stated, legal deposit had a vital role to play in the preservation and access of materials published and produced in all countries. As a consequence, each country needed to have legislation requiring publishers and multimedia producers to deposit their output with the designated libraries responsible for collecting materials in all formats, as published or released in their countries. However, publishing multimedia production had changed exponentially due to digital technology, particularly on the Internet, as referred to by the Representative of SAA. Self-publishing, the use of user generated content and social media had become integral to people's everyday lives worldwide. Not only was there far more material available on-line than ever before, but information was much more transient. The British Library's web harvesting data from 2013 to 2014 showed after two years that about 60 per cent of the content had gone or was unrecognizable. In 2014, they lost half of the website addresses in the United Kingdom in one year. Unless material from websites was harvested regularly, systematically and substantively by legal deposit libraries and in relation to on-line government information by national archives, it would be lost for good. Only half of the world's countries had implemented a legal framework of some kind for the legal deposit of non-print materials and web harvesting. The copyright aspects of electronic legal deposit gave rise to an urgent need for an international agreement on the copyright issues involved to, one, recognize the links from the country's harvested websites led all over the world to materials created in other countries, and, two, ensure that legally deposited copies of electronic materials that had entered the public domain, or whose rights holders had waived their copyright, or made them available under Creative Commons licenses, did not remain in dark archives permanently inaccessible on-line from around the world. For example, a perverse effect of the United Kingdom's Legal Deposit Libraries Regulations of 2013 was that not only were any copyright waivers or Creative Commons licensing that rights holders had put in place ignored, but far worse, in contribution to the European Union Directive and the United Kingdom's Copyright Act, the Legal Deposit Libraries Regulations created a dark archive for deposited electronic works while they were in copyright. In the United Kingdom all of the content of the dark archive was practically subject to perpetual copyright in all legally deposited digital materials, including harvested websites. Few people could see the material other than on the premises of the United Kingdom's legal deposit libraries, even long after any rights had expired and were no longer owned by anyone. Thus, a website may contain public domain materials such as a seventeenth century text, but if the primary website was discontinued, a harvested legal deposit copy of the whole website with its embedded documents and links may be the only available digital source for that seventeenth century content. Despite being public domain content on the Internet, users may never be able to see more than an image of the home page and in a United Kingdom legal deposit library they would not be able to get more than a printout, not a digital copy from its content. The copyright issues surrounding cross-border on-line access to and usability of legally deposited e-materials would have a significant impact on the value of the preserved collections in the national deposit libraries and national archives in years to come. The Representative referred to the conclusions of the Twenty-Sixth Session of the SCCR, where delegations had expressed differing views on the need to include legal deposit with limitations and exceptions. The Representative suggested that it would make sense for cross-border on-line communication to the public and hyperlinking aspects of electronic legal deposit and web harvesting to become a sub topic of

the preservation topic, with a view to finding an international solution, meeting a common, fair practice copyright standard, consistent with existing copyright law. Finally, CLIP welcomed the European Commission's intention to ensure that the European Union framework on exceptions was relevant to the access to knowledge, education and research and was effective in the digital age and across border, as expressed in the communication on modernizing copyright. The Representative wished to see such intentions adopted at an international level by the SCCR.

349. The Representative of KEI questioned whether designated deposit systems, national archives or libraries should be mandated or encouraged, as described in the United States of America's principles. It was not sure whether it was a copyright issue and to what extent that was essential for libraries. However, as the Representative of IFLA had underlined, legal deposit was the original limitation on copyright embedded in the statute and it was an example of something that could be discussed in the form of a model law intended to ensure the preservation of works at a national level.

350. The Representative of the ICA referred to the issue of legal deposit related to archives. Legal deposit had traditionally supported a country's desire to build a national collection of every work published in or about the country. Archival holdings consisted largely of unpublished materials. Traditionally, publication had involved technologies that related to a tangible object and copyright was not an issue in requiring the publisher to deposit one or two copies in a national library. However, works and materials protected by related rights were now disseminated in other ways that brought archives into the picture. The dissemination by communication to the public raised two important issues. First of all, what was a publication? Copyright had traditionally been based on a distinction between published and unpublished materials, but the definition of publication became increasingly fuzzy in the digital environment. Was a website a publication? A blog? Flickr? Tweets? For example, Canada's legal deposit statute included on-line publications although not specifically about what was included. Library and Archives Canada was harvesting a variety of on-line content. In that grey area many archives regarded websites not necessarily as publications to be retained only by national or depository libraries, but as evidence of the activities of an organization or individual. The definition of publication in the Berne Convention was woefully outdated and the Representative suggested that the outcome of the SCCR discussions could be to look at a more modern definition of publication. The second issue was that acquiring on-line content required copying. One might argue that that could be dealt with on a national basis if an archivist tried to capture the website or blog entries of its parent organization. It was, however, a broader issue for archives that were capturing content that went beyond what was produced by their parent organization. In its twenty-year existence, the Internet Archives Wayback Machine had archived more than 445 billion web pages, but the collection was incomplete, idiosyncratic and not ready for robust and reliable scholarly research. They could not leave something as important as the preservation of the on-line world to the Wayback Machine. Libraries and archives had established practices for making acquisition and collection decisions and must take an active role in the capture and preservation of the on-line world. On-line source material was clearly in the mandate of archives around the world and they needed a clear international exception that would permit archives and libraries to acquire and preserve rich on-line content.

351. The Chair summarized the discussion including the underlying concerns and ways in which to tackle them with a set of conditions. There were different approaches coming not only from the limitations and exceptions section but from public-private partnerships and licensing efforts.

352. The Delegation of the European Unions and its Member States referred to its specific copyright related provisions, which could relate to legal deposit obligations, for example, when copyright exceptions in national law applied to designated legal deposit institutions, so

that they could fulfill their legal deposit mandate properly. In that respect, legal deposit legislation in the European Union was national. However, they did not have any specific legal deposit provision at the European Union level, as legal deposit remained something related to the preservation of national culture. In some cases, national law foresaw legal deposit obligations for designated institutions, notably national libraries, but not only regarding what was commonly referred to as web harvesting of content of national interest. Institutions responsible for and designated for that kind of activity varied, reflecting great diversity at the national level. In some cases, provisions were included in legal deposit or added to protection laws, in some other cases copyright laws and in some other cases both. The European Union corporate law generally recognized that copyright and legal deposit legislation could go along with other issues such as, for example, data protection, privacy or contract law. They could be part of the landscape in which the work of the cultural heritage institutions and more broadly the dissemination of creative work and culture took place. For example, the EU Copyright Directive stated that they should be without prejudice to provisions concerning inter alia legal deposit.

353. The Delegation of Italy referred to the statement of the European Union and its Member States and confirmed that in its legislation it provided for legal deposit at the National Library, but in certain cases, there were also other possibilities. For example, in relation to legal textbooks the legal deposit needed to be done at the Ministry of Justice or the National Library for all of the legal text. Legal deposit was not an exception or a limitation. It was an obligation under public law and it arose from the fact that the protection of national culture was important and there was need to maintain and protect all of the works which were produced on a national level. It was for those reasons that it believed that it fell outside what the SCCR was discussing, because it was not an exception and there was no kind of relevance at an international level, because it was something which was regulated under national legislation alone. The Delegation referred to the problems that Italy had encountered with regards to legal deposit, following the development of the Internet. For example, the National Library in Italy had problems with the deposit of works generated by users on the Internet. It was a difficult problem because it was hard to find the works on the Internet and it was hard to find out whether or not they were works or something else. That was beginning to pose a number of problems, and apart from the other considerations that they had highlighted, it was a complicated subject for the SCCR. In relation to reproduction for the purpose of preservation, the Delegation believed that was a problem which was within the purview of national legislation only. There were no aspects that fell under an international purview because it was in the interests of the libraries in each country to maintain and preserve what they already had in their deposits.

354. The Delegation of Brazil referred to the topic of legal deposit and stated that it had a specific law regarding that topic, for the national safe keeping of intellectual works. Without legal certainty in the norms that ruled safe keeping, it was not clear what kind of uses could be carried out with the works deposited. In order to clarify that, they had proposed language to see whether they could reach a consensus on the work of the archives and libraries as legal deposits. The Delegation understood that the national authorities should determine and allow specific libraries and archives, or any other institutions, to serve as designated repositories, with at least one copy of every work published in the country, regardless of the form to be deposited and permanently retained. The Delegation also understood that a designated repository or repositories should demand deposit of published copyright works, or copies of published material protected by copyright or copyright related rights. It should be permitted that the designated legal repository or repositories could reproduce, for the purpose of preservation, publicly available content, and demand the deposit of reproduction of copyright work or works protected by related rights, which had been communicated to the public or have been made available to the public. That would bring more certainty to how the works would be used. That was a big part of the legal deposit discussion and it would be



interesting to hear from other delegations in terms of their experience and the relationship with copyright and related rights.

355. The Delegation of Nigeria thanked the Representative of FIAB for reminding them of the historical antecedent of the legal deposit practice, which was a statute of 1710. The statute was meant not only to invest rights with authors but also to encourage lending for the public interest. It was replicated in the 1700s by the European Union Member States and in the United States of America. The Delegation welcomed a provision on legal deposit, which interlinked with preservation, reproduction and the ability of libraries and archives to carry out cross-border activities, all in the effort of fostering learning and facilitating access to knowledge. The Delegation would be flexible at the time of text-based discussions to see if it could be fit under other provisions, as some of the representatives had highlighted that it was under preservation. The Delegation underscored that it saw utility in legal deposit because that was a provision that existed in many Member States, but not all countries of the world. Perhaps the idea was to ensure that it was a practice that was an obligation and that the libraries that had the legal deposit made them available for the purposes of facilitating learning, when they had the copies of all works.

356. The Delegation of Chile underlined the importance of legal deposit, as carried out by libraries. The scope of that in the debate was that legal deposit was carried out by national institutions, which were allowed to legitimately hold works. In the case of Chile, the law covered the obligation of depositing in the National Library, the biggest library in the Member State, all audiovisual, sound or electronic work produced in Chile and aimed for the market. That fed into the collections of the National Library. All of the national library networks in Chile had free access to works and people could access the information. It was important to note that together that was relevant in the context of limitations and exceptions.

357. The Chair suggested that as there were no further comments, they could move to Topic 4, Library Lending.

358. The Secretariat confirmed that Topic 4 in the Chart stated: "As to the topic of library lending, the Committee recognized the importance of addressing this issue and various delegations suggested different alternatives for providing the service, including the use of limitations and exceptions, the exhaustion of rights or licensing schemes. The Committee expressed different views on digital distribution in the scope of library lending."

359. The Representative of IFRRO stated that libraries should be allowed to lend out copyright works in tangible formats, which were returned to the library after the expiry of the lending period. Rights holders should have the right to receive some remuneration for such lending. The Representative noted that at least 54 countries, possibly more, had adopted public lending library schemes in their legislation. Libraries should also be enabled to provide access for their users to works in their collections, with the permission and under a license from the rights holders or their representatives, such as Reproduction Rights Organizations (RROs). Digital lending was a part of many publishers' business models. Any library lending of works in digital format under an exception must ensure that it did not conflict with the commercialization or other normal exploitation of the work, or unreasonably prejudice the author's legitimate interest. It was therefore difficult to see that there was much scope to allow digital lending under an exception. Document delivery was substantially different from lending. It was the reproduction and delivery or communication of a work to a remote client on his request. Any document delivery of copyright works should be conducted with the permission of the rights holder or his authorized representative, or, if performed under an exception in national legislation, which complies with the three-step test, then with the conditions agreed to and accepted by the rights holder in the territory or by his authorized representatives.

360. The Representative of the CLA referred to the lending of e-books by public libraries, which had an international dimension. The lending of e-books in many Canadian public libraries had increased by more than 300 per cent from 2011 to 2012. The use continued to increase with e-books representing more than 10 per cent of materials circulated in many public libraries in Canada. Canada's largest academic libraries' purchases of digital content could represent more than 80 per cent of the library's annual collection spending. Library spending on print and digital materials exceeded CAD 550 million annually in Canada. Globally, libraries spent more than \$US 24 billion annually. Libraries in Canada and around the world faced serious challenges related to meeting the public's demand for e-books. Libraries may lend print books because of the legal concept of exhaustion or first sale doctrine, the same principle that allowed individuals to lend back to friends and family. For digital works, they did not have the same rights. Courts in different jurisdictions around the world were reaching differing conclusions concerning the exhaustion of digital works. Without first sale doctrine, libraries must rely on licenses. License terms varied substantially from one publisher to another and the rights holder controlled the use of an e-book after its sale. Academic digital content was most often licensed one year at a time. E-books and public libraries may be restricted by licenses to use onsite at the library premises. They may be unusable after one year of purchase and they may be unusable after a certain number of loans. Pricing may or may not reflect those realities and terms were rarely negotiable. For libraries to meet their goals of providing access, the challenges of licenses were secondary to the problem of content that publishers refused to license to libraries at all. Canadian libraries had access to e-books from multinational publishers, but the same publishers did not license to libraries in the United Kingdom and Australia. That compromised the library's ability to meet the needs of scholars, entrepreneurs, explorers of cultural heritage and children learning to read. Libraries were losing the ability to provide content that they were able to lend in print. In Canada, they had been successful in working with local publishers to improve the situation nationally, but the majority of the English language market was controlled by multinational publishers. Local libraries could not negotiate with multinational publishers and were at a severe disadvantage in accessing content from publishers. An international solution was needed because it was the only means of providing a minimum level of international standards in lending exceptions and solving problems that could not be solved at the national level, to enable the flow of information essential for research, education, literacy and participation in culture.

361. The Representative of the European Bureau of Library, Information and Documentation Associations (EBLIDA) spoke on behalf of the Independent Association of Library, Information and Documentation Associations in Europe. The principle of exhaustion set down in the Treaty of 1996 was implemented in the national legislation of all Contracting Parties, thus the library that acquired it could do with the media as it saw fit. For instance, the library could lend the material to its patrons, since the transfer of ownership with the consent of the author had exhausted the author's distribution rights. Lending did not apply to the lending of e-books in the European Union and its Member States. Libraries were not able to acquire digital files themselves, but must subscribe under license to publishers' on-line platforms or databases containing e-books or other types of digital works. Under the current legal framework in the European Union's Member States, the purchase of, access to and subsequent on-line lending of the files was a communication to the public requiring authorization by the author or other rights holders and was not subject to an exception. As a result, European access through public libraries to e-books from multinationals was more than in the United States of America, Canada and Australia. It was comparable to access in South Africa. In Austria, of all the e-books available to individual consumers to buy directly, only 60 per cent were available for libraries to acquire for e-lending. In Germany, public libraries were permitted to license e-books from three international publishers but only English language titles published in the United States of America and not the German imprints. In that context, libraries were losing their ability to provide content to the population they served because their experience was refusal by providers to include certain e-book titles

in packages, removal of certain e-book titles from subscription packages and non-negotiable terms of access. Several changes suggested that exhaustion could apply to digital files. The Court of Justice had suggested making various books available for users to download in such a way that the downloaded copy became unusable after a certain period. It had also suggested that, during that period, the original copy could not be downloaded by others. To mitigate legal uncertainty, an international solution providing a minimum level of international standards in lending exceptions, including e-lending exceptions, would help to create a true society.

362. The Representative of DBV stated that the proportion of electronic resources in libraries was increasing constantly. The topic of physical lending may seem antiquated, but it remained important because libraries still purchased books to be part of all of the resources published and bought by libraries, before e-books existed, through international analog lending. The international lending of books to foreign libraries that were not important in a country was a specialized task of research libraries. How else could a researcher have access to a certain book or library in his or her country if they could not buy it, or the rights holder did not deliver them there, or if they were out of print, which applied to the biggest part of libraries' holdings? Libraries, especially those of universities or research institutions, needed to purchase books from around the world. Libraries that bought books from other countries were also libraries of cultural institutions, which had branches in various parts of the world. Examples were the German Goethe Institute, the French Alliance Française, the British Council, the Spanish Institution Cervantes and the American Kennedy Institute. Those institutions were popular and people learned about culture and language in the countries that those institutions represented. The users expected them to lend books and other media, but, for example, the German Goethe Institute in many countries outside the European Union needed a license to lend media that was only distributed within Germany. The Representative's concerns were as follows: The problem would exist as long as there was no international exhaustion, as libraries may not be allowed to lend books to their users. Should lending in those cases depend on licenses with publishing companies? Exhaustion corresponding to the first sale doctrine meant that if a physical copy of a work had been physically distributed with the rights holder's approval, the physical copy could be sold, lent or just given to other persons as a present. International exhaustion meant that if the work had been distributed with rights holders' agreement anywhere in the world, it could be lent to library patrons. In the Article referring to lending, it should state that lending was permitted once copies were made available to the public, with the consent of the rights holders in any country of the world. Corresponding to that language, they would have to analyze if the topic of parallel importation was already included, so that they would not need to address it additionally. The European Union already had the doctrine of exhaustion for all of its Member States. It was a regional exhaustion and there were good reasons for introducing it. An international agreement on international exhaustion only for non-commercial libraries and archives serving the public in every Member State would help. Every institute that sent books to loan libraries could be sure that it could be used.

363. The Representative of CILIP stated that lending books had always been a core service of the modern publicly accessible library. That was a fundamental component to libraries' role in the development and maintenance of a reading culture and in supporting research and education. The advent of e-books should have meant that libraries could meet their users' expectations in the digital age by extending lending services beyond the confines of bricks and mortar, so the registered borrower could borrow an e-book at any time from a place of their choosing. Many libraries were finding that publishers were using licensing to curtail their ability to independently choose books to lend to their patrons, because they feared that library e-lending might affect direct sales to the public, ignoring the major spending that libraries themselves place with publishers and book sellers. The difference between the legal treatment of print and e-books had led to uncertainty. If a hard copy book or tangible material was offered for sale, publishers could not control who bought it or what

they did with the physical object, since the first sale or exhaustion doctrine applied at the point of sale. However, with digital objects, publishers may license e-content rather than sell it outright. E-books were communicated to the public rather than distributed, so they became a service and exhaustion did not apply to services. That interpretation meant libraries must enter license agreements with the e-books' rights holders, who completely controlled whether to give access and on what terms. Unlike print media, libraries could not loan digital media without permission from the rights holders. As a result, publishers were able to discriminate against libraries as purchasers of e-books for lending. The situation that had emerged in developed countries including those in Europe and North America, especially with regard to libraries, and trade in e-books particularly affected public libraries. As more and more textbooks went digital, like research journals, the danger was that research institutions, national and university libraries, colleges and schools would become affected. A number of publishers, including major international publishers, were refusing to sell digital content to libraries, imposing or limiting which titles they may acquire, prohibiting or unfairly restricting library e-lending, imposing disadvantageous license terms or charging unreasonable non-market related prices as a deterrent. As a result, independent and professional library collection development policies for e-books were being severely distorted by the widely varying business strategies of individual publishers. 2014 figures from the United Kingdom suggested that 90 per cent of the 50 most borrowed print books, i.e., 45 titles, were available as e-books for direct sale to consumers. However, only three of those popular titles, 7 per cent, had been made available to libraries for e-lending. A year earlier, 15 per cent of e-books had been available to libraries for e-lending. Availability had decreased by 8 per cent. The top international publishers, Macmillan, Penguin and Simon & Schuster would not make e-titles available for the United Kingdom library market. The framework needed to be adapted to the digital reality, so that the reading culture propagated through libraries was maintained, and in turn the continuance of public library services, as well as the livelihoods of authors, publishers and book sellers, through direct book sales, since not only libraries bought books. It represented a big market for publishers but also library users because they were readers. Publishing was international. The e-book purchase and lending programs were adversely affecting libraries in several countries and would spread like a virus from the developed world to more countries, as their library services became more digitally focused, since library users would increasingly have access to electronic devices and wish to borrow e-books. The solution should, therefore, be international, such as a new international level right to acquire, at normal market prices, any work that would be made available to the public, whether published or released, including the right to acquire digital files whenever relevant. A new international level exception granting libraries a right to lend, including to e-lend remotely to their patrons, books in any format for a limited period of time, and not for direct or indirect economic advantage, and extending the first sale or exhaustion doctrine to e-books.

364. The Representative of KEI stated that if preservation and reproduction for safeguarding were easy topics on the to-do list of the SCCR's topics, then library lending was an interesting but very difficult topic. Whatever form an instrument on library lending took, mandatory as a model law or not, it would have to start the discussion dealing with the ever-increasing portion of digital resources that were and would be distributed. The Representative referred to the figures provided by the Representative of CLA. They could not forget how much physical lending remained essential for many users and uses. That was clearly the core of libraries' missions. It was one of the most controversial topics for some Member States and for it. The Representative suggested that they may benefit from a discussion relating to a model law rather than a binding instrument. Users were getting more and more familiar with e-books and publishers themselves must adapt business models and not prevent libraries from fulfilling their mission.

365. The Representative of IFJ aligned itself with the comments of the Representative of IFLA. IFJ acknowledged that it would not be there but for the love of libraries and words.

Yet, at the same time, it had to make a living by licensing the use of words. Having reached that point, the Representative noted the discussion on the lending of copies of e-books, which were supposed to have a limited life span and the ability to break video encryption protection schemes. The Internet was awash with pirate copies of e-books, therefore, it had an effect on livelihoods. The piracy of e-books was going to be greater than with the lending of physical books because it was a pain to photocopy a physical book, and therefore if e-lending was to occur, and the creation of new books by professional authors was to be economic, there needed to be something analogous to the public lending rights scheme that the Representative of IFLA had mentioned. The Representative referred to the fact that libraries were lending audio and audio-visual works and with the merger of media in the digital sphere. Any discussion at the SCCR should not be related only to books, but to the lending of the creative works of authors and of performers in whatever form.

366. The Representative of STM aligned itself with the statement of the Representative of KEI, stating that the topic of e-lending was complex and did not lend itself to discussion in that format without more facts. In particular, the discussions were not helped by maximalist claims, as levelled by previous interventions. Remote access to e-books and licensing models of e-books were often compared to the lending of traditional print books that formed part of a library's collection. In some countries, notably in the European Union, the lending of print books by public libraries fell under a copyright exception. For that reason, the opinion was sometimes expressed that "e-lending" and the "lending of e-books" should similarly be allowed under a copyright exception designed for digital works. STM's publisher members believed that all types of publicly-funded libraries (for example, the national libraries, public libraries, research libraries) had an important mission in providing access to books to the wider public, both in the print and digital world. However, remote access to e-books and licensing provided a great diversity of options to facilitate access. These options would be undermined, rather than enhanced, by a "one-size-fits all" exception to copyright. A lot of experimentation with lending models had been undertaken by publishers and also by trade publishers, contrary to what had been alleged. The Representative urged the Committee to ensure that the debate was supplemented by more study, to highlight distinctions and differences that needed to be made, as well as set out principles to inform further exchanges of views and fact-finding on the question of lending and remote access to e-books. If broad exceptions allowing "e-lending" were to be introduced, which allowed indiscriminate remote access to e-books, it would not only erode the market for the purchase of books, but would also see libraries compete for patrons across traditionally established geographic catchment areas and boundaries. The ubiquity of an e-book stored in the cloud also meant that lending remotely for libraries, without reference to the geographic location of the libraries' natural patrons, posed new challenges for both libraries and publishers.

367. The Delegation of Brazil stated that after listening to the observers and specifically the library organizations, there were a number of questions to be dealt with by Member States. The first question related to how individuals could lawfully access works held by libraries in other countries. The view on library lending seemed to be a good way forward. It was clear that lending confined to national borders hindered the progress of science and knowledge sharing. To provide solutions for that issue, the Delegation understood that the international legal instrument should make international library lending possible. The second question related to how libraries could make use of digital books or e-books. They had heard from libraries in previous SCCR sessions, the difficulties they had to deal with regarding licenses and the exhaustion doctrine in the digital environment. It was especially difficult for them to deal with the negotiation of licenses. In the changing context of new technologies, without balanced international treatment on the subject, libraries would not be able to adapt and they might become museums of books instead of fulfilling their goal, their mission of sharing knowledge. The Delegation had also heard of examples in Brazil where libraries had experienced difficulties in obtaining specific licenses from publishers. That needed to be taken into account in the changing environment. The Delegation had provided a request or

proposal to allow libraries and archives to lend copyright works, materials protected by rights, lawfully accessed by the library or archive, to a user or another library or archive for subsequent supply to any of its users, by any means including digital transmission, provided that such use was compatible with fair practices as determined in national law. Expressly providing for a public lending right would rectify that. The suggestion was to tackle the problem and to solve the two issues that they faced on how to spread the access to works internationally and how to allow libraries to continue to deliver and fulfill their mission

368. The Delegation of the European Union and its Member States stated that its legal framework concerning library lending had been set in the Council Directive 92/100/EEC of November 19, 1992, on Rental Right and Lending Right and on Certain Rights Related to Copyright in the Field of Intellectual Property (the EU Lending Directive). The EU Lending Directive established a public lending right for performers, producers and for the producers of the first fixation of a film, irrespective of original end copies of the film. The public lending right in the EU Lending Directive was not to be confused with the remuneration right, which was also commonly referred to as the public lending right. The EU Lending Directive also introduced the possibility for Member States of the European Union to delegate the right. In practice, an exception or limitation to the public lending right provided that public libraries could lend physical copies of works without the authorization of the rights holders. It was largely implemented in that way in the European Union so that there was effectively an exception for lending. When that occurred across the European Union's Member States, it required that remuneration was paid to authors, although Member States may exempt certain categories of establishments from the payment of that remuneration. That was the current framework in the European Union. There were also license-based models being tested, experimented with, or implemented, for electronic lending in various Member States of the European Union. The Delegations had heard the difficulties from libraries about the issue, but it had also heard that solutions were being tested through cooperation between rights holders and also book sellers and libraries. The Delegation suggested that it would be useful to learn about the experiments or business models across the world, which would help them to better understand the issue beyond a pure limitation and exception.

369. The Delegation of the United States of America thanked the Delegation of the European Union and its Member States for the description of its public lending scheme. It asked about other Member States' experiences with a different aspect of the topic. Under laws in the United States of America, specific contractual provisions could supersede copyright provisions including limitations and exceptions for libraries and archives. It asked whether other Member States had similar rules under their local laws and if so, how they had dealt with conflicts between contract terms and limitations and exceptions with regards to digital content.

370. The Delegation of Chile referred to library lending in the digital environment. The national system for public libraries in Chile and the Directorate of Museums and Libraries had had a digital library for some years. It allowed lending on-line for protected works and those in the public domain. That useful tool allowed for thousands of Chileans to have access to text on a free basis, in a digital format, both inside Chile and outside. There were some 8,000 downloadable works and in the last year there was a 35.4 per cent increase in new users. The National Library of Chile had a National Center for Digital Resources called the Memory of Chile and those digital works were on the topics, which formed part of its cultural identity. The portal provided access to everyone on a free basis to the collections of the National Library of Chile and to other institutions, with the aim of allowing the community to access them through information technology. The project in virtual space, which spread access and visibility to heritage collections at the Map Library Center, had begun in 2001. There was also a program for creating digital content launched in 2003. It was a pioneering experience in circulating content via the Internet and was awarded the Stockholm Challenge Award, considered the Nobel Prize of the Internet, which was awarded to those who used

information technology to improve the quality of life for the least advantaged or most disadvantaged parts of the world. That was an example of library lending in the digital environment and the existing need for developing countries to create platforms that provided direct free access to all kinds of works. Given that a large number of those works were protected by copyright, there was a need to obtain the licenses for their corresponding electronic reproduction and communication to the public. In that context, it was interesting to find out about experiences for possible exceptions vis-a-vis that important work for libraries and institutions.

371. The Chair referred to the fact that in the case of reproduction and for “safeguarding copies” as titled, it had been mentioned that the ability of libraries to reproduce works for an end user of its own collection was one aspect to be considered. Another aspect was the ability of libraries to reproduce works in response to requests from end users from other libraries, but it had been recognized that that could clash with the Topic 6 on cross-border uses, if those libraries were situated in a cross-border situation, and with the ability of libraries to repair works for backup purposes, which may also overlap with Topic 1 on Preservation. The exercise could help them to separate the specific boundaries under which reproduction could be considered, under Topic 2. Regarding the possible uses for reproduction for research and for private study that were mentioned, different approaches had been considered. For example, some licensing schemes had been mentioned. Additionally, if some limitations and exceptions were to be granted, they needed to have special consideration of the three-step test in order to not to conflict with the normal exploitation of work, or to have the legitimate interest of rights holders. Some additional conditions had been expressed by different views. One of them was for possible remuneration to be added when that sort of reproduction was allowed and the use of collective management as well. He suggested that they needed to separate what was specifically related to the topic of reproduction, being careful not to overlap with other topics. Regarding the Topic 3, Legal Deposits, there were concerns about how to recognize the relationship with IP, or more specifically with limitations and exceptions. Despite the fact that it was recognized that legal deposit was critical for the preservation of national heritage, it was suggested that it could be tackled as a sub-topic of Topic 1, Preservation. One concern was that in order to ensure that the legal deposit was implemented the situation of digital legal deposits should be kept in mind, which posed some challenges. Regarding Topic 4, they had received some information about library lending, including some views on how to tackle it. There were more questions than statements on that topic, as it had been recognized as complex. The e-lending issues had taken them to examine how the exceptions had been concentrated on the public lending of paper-based text or physical goods. When they looked at the e-learning situation there were some concerns about unauthorized use and how to avoid it. In order to tackle those concerns some suggestions were that lending should not be used for commercial advantage and to clarify that some formats could be considered among others. Efforts were still ongoing in respect of understanding the last three topics. The Chair thanked the delegations for their efforts to try to set the boundaries of the topics, to understand the principles that were there concerning the related topics, as well as the concerns that had arisen when they were discussing limitations and exceptions. He also thanked them for their efforts to find ways to address those concerns, either by some conditions or by other schemes, after analyzing whether they were efficient enough or not to cover all of the situations. The Chair would attempt to clarify the discussion, taking into account the different legitimate views and differences that still remained, without implying or pushing anyone to any undesired consequences.

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

372. The Vice-Chair stated that they would move to Agenda Item 7, Limitations and Exceptions for Educational and Research Institutions and for Persons with other Disabilities. It was also necessary to take into account what had happened with the topic of Limitations and Exceptions for Libraries and Archives. The Vice-Chair outlined the proposed order for the discussions. He referred to document SCCR/26/4/prov., which could also be found in the attachment to 27/8, as a reference for the discussions. He invited the Secretariat to give the delegations an update on the questions that had been developed in greater depth since the last session, particularly on limitations and exceptions for educational and research institutions and for persons with other disabilities.

373. The Secretariat stated that the SCCR had asked the Secretariat to update the regional studies it had done previously on regional limitations and exceptions for educational and research institutions. The Secretariat had commissioned the study and one of the original study authors, Professor Daniel Seng was taking the lead. It was expected that the study would be available for presentation at the Thirty-Second Session of the SCCR, which was scheduled to take place in May 2016. In the following year, the Secretariat planned to commission the other study that had been requested, which was a scoping study on Limitations and Exceptions for Persons with Disabilities other than Print Disabilities. It was expected that the study would be ready for presentation and discussion at the Thirty-Third Session of the SCCR scheduled for November 2016.

374. The Delegation of Greece, speaking on behalf of Group B stated that it continued to recognize the importance of the exchange of their experiences on limitations and exceptions for educational and research institutions. It also believed that the discussion on the objectives and principles, as proposed by the Delegation of the United States of America could compliment such work. The Group observed a similar lack of consensus on the Agenda Item, as had been the case on the previous Agenda Item, namely limitations and exceptions for libraries and archives. As with the previous Agenda Item, the same considerations, should guide the way forward and be duly taken into account on further work on that item. The Group would continue to engage on the topic in a positive spirit.

375. The Delegation of Nigeria, speaking on behalf of the African Group referred to the Agenda Item on, Exceptions and Limitation on Libraries and Archives, and Educational and Research Institutions and for Persons with other Disabilities. It reiterated and underscored its position that there was a gap to be filled with an international instrument that would focus on limitations and exceptions. The Delegation welcomed the update by the Chair on copyright limitations and exceptions for the educational and research institutions. The Delegation also hoped that they would be able to do the scoping study on persons with other disabilities other than print disabilities. It requested that the Secretariat and the Chair prepare a consolidated document on the areas that had been discussed and the principles and elements highlighted in SCCR/33/4/prov., so that they could have the same focused discussions for the limitations and exceptions for libraries and archives. The Delegation found that having a smaller document, perhaps without all the notes in the longer document in SCCR/26/4 might be more useful for the SCCR's discussions.

376. The Secretariat confirmed that a scoping study on disabilities other than print disabilities would be commissioned in January 2016.

377. The Delegation of Romania, speaking on behalf of the CEBS Group restated the interest of the Group in the sharing of experiences and best practices with regard to copyright limitations and exceptions for educational and research institutions and for persons with other disabilities. The flexibility provided by the existing international system provided ample possibilities that the Delegation was willing to discuss in depth, so that Member States would be better equipped in their efforts of drafting of limitations and exceptions. As the



Delegation had already stated in previous sessions, it believed that would facilitate progress on the issues, if the SCCR could agree on the common objectives.

378. The Delegation of China thanked the Chair and Secretariat for their work on the limitations and exceptions for educational and research institutions and persons with other disabilities. It was awaiting further studies on the issue and paid great attention to equal access to education by the public and expected further discussion on the issue. It hoped that the issue could win more attention from all sides.

379. The Delegation of Brazil, speaking on behalf of GRULAC stated that it had outlined the Group's position in its general statement. The Group had great interest in the discussions on limitations and exceptions for educational and research institutions and persons with other disabilities. It welcomed the information from the Secretariat regarding the studies for persons with other print disabilities and looked forward to guidance from the Chair on how to move the issue forward, since it was a matter of great priority for many members of the Group.

380. The Delegation of India, speaking on behalf of the Asia Pacific Group, stated that limitations and exceptions for educational institutions and persons with other disabilities were of crucial importance and required serious consideration by the Member States, for an appropriate international framework. The developing countries and the LDCs had an important mission of uplifting the worst populations out of poverty and knowledge resources through educational institutions were a crucial avenue. An appropriate international regime on limitations and exceptions was a way off. The Marrakesh Treaty was a milestone for the visually impaired and for the completion of its mission it must be extended to other disabled persons. The Delegation strongly urged the Member States to give a serious consideration to the issue and to arrive at a consensus on the important topic.

381. The Delegation of the European Union and its Member States had looked at how it could properly support the education and research institutions for persons with other disabilities in the analog and the digital world. It was willing to engage constructively in the discussions and believed the objective was to enable Member States to draft and adopt meaningful limitations and exceptions in those areas within the current international legal framework. It did not think that working towards legally binding instruments was appropriate. It was important that Member States maintained a certain degree of flexibility, which was relevant in view of the different legal systems across the Member States. In many Member States, licensing played an important role, including alongside the application of exceptions. The Delegation believed that exchanging best practices could be a useful exercise, particularly if conducted in an inclusive and structured way to find efficient solutions to address any specific issues that were identified, for example, whether national limitations and exceptions or licensing solutions existed within the current international treaties. The work undertaken by the SCCR on that subject could have a meaningful outcome if the SCCR shared the same understanding of the starting point and objectives of the exercise. Clarity on that aspect was important and should be pursued having in mind the need for an efficient use of time and resources, in the same way as for other subjects discussed by the SCCR.

382. The Delegation of Singapore extended its thanks to the Chair and the Secretariat on the important issue of limitations and exceptions for the benefit of educational and research institutions and for persons with disabilities. The Delegation looked forward to the results of studies commissioned by the Secretariat. One of the common themes cutting across the various issues they were discussing was the cross-border transfer of knowledge. Singapore, like other Member States, found that a useful framework for the discussions of content in the digital environment were cross-border and that had tremendously facilitated learning, understanding and communication across societies and cultures. It wished to pause there and note that sufficient information and knowledge sharing was even more important for the

disadvantaged communities, who faced challenges in accessing materials that were easily available to others. In that regard, it saw the Marrakesh Treaty as addressing that gap and giving the visually handicapped community better cross-border access to knowledge. It was pleased to share with other Member States that it was one of the first ten members to do so earlier that year. However, there were still many Member States which had yet to do so and it urged and encouraged other Member States to implement the important Treaty. The discussions on limitations and exceptions were an opportunity for them to share their national experiences, which may be useful for other Member States. Like many Member States, Singapore had put in place limitations and exceptions which benefited educational and research institutions, as well as institutions that supported persons with disabilities. Earlier that year it had brought into force laws which allowed bodies administering institutions for reading disabilities to make accessible format copies of copyrighted work. It had received feedback from its disabled community that the law was welcomed as it did away with an unduly long process to approve an institution's request to make an accessible format copy of a book. The Marrakesh Treaty made a difference to their lives. The Delegation supported bringing into the discussion the use of technology to give people greater access to knowledge education. Alongside millions of users, its community had benefited from international platforms such as Coursera which provided courses from esteemed universities, Duke University and Johns Hopkins, and the University of Singapore provided consent to Coursera. It was undeniable that the world they lived in was a global interconnected one. Cross-border transfer of knowledge when reasonably balanced with the rights of copyright holders would certainly benefit countries from both a society and cultural perspective.

383. The Delegation of the United States of America stated that the objectives and principles for limitations and exceptions for education, teaching and research institutions submitted by it in SCCR/27/8 were based on the general principle that appropriate limitations and exceptions for copyright or certain uses were an integral part of any balanced copyright system. Appropriate limitations and exceptions that were consistent with international obligations, such as the three-step test could facilitate access to knowledge, learning and scholarship. At the same time, access to the materials was important to the copyright industries. The print publishing business for the educational market was estimated to be worth \$USD12 to \$USD14 billion annually in North America and publishers had responded to the increased need for broader and more flexible access to learning materials through new and innovative licensing models and increased access to digital content. It was of the view that further work on limitations for educational purposes should be focused on finding common ground in high level objectives and principles and examining the full range of educational exceptions by nations around the world. To that end, it was interested in learning more about how other Member States had implemented such limitations and exceptions into their own national laws, particularly with respect to educational activities in the digital avenue and how those Member States had worked to facilitate and support the commercial educational market.

384. The Delegation of Chile aligned itself with the statement of the Delegation of Brazil, speaking on behalf of GRULAC regarding the importance of that type of limitations and exceptions. It was something that needed to be discussed at the SCCR, especially digital distance educational tools which were useful in countries like Chile. The Delegation thanked the Secretariat for preparing the regional studies that it knew would contribute greatly to the debate.

385. The Delegation of Ecuador stated that within its National Assembly it was establishing a new standard for innovation, research and IP and it had taken as a starting point the search for a balance between the rights holders, the users and society in general. The bill, which had been worked on by its government, was an organic knowledge, creativity and innovation tool, which sought to restructure the institutional and conceptual approach to IP. It sought to promote a change in the paradigm on that subject, in order to look at it as an

instrument, to ensure that they could ensure the wellbeing and the good living in developing science, technology, innovation and culture. The Delegation believed that the SCCR should be drawing up international solutions that could guarantee a fair balance and thus ensure the promotion of creativity, but without forgetting other rights such as health, education and guaranteeing access to culture and knowledge. It was wise and appropriate to ensure that the Secretariat's study went forward and it would be awaiting the results. However, it was also important to continue to think and work on the subject and in that regard Ecuador supported the statements of the Delegation of Brazil, speaking on behalf of GRULAC and the Delegation of Chile.

386. The Delegation of India stated that the limitations and the exceptions for educational institutions and persons with other disabilities were of crucial importance in an increasingly bottomless world. Though some Member States could have progressed with appropriate national legislation, many were yet to catch on those standards. One way out was setting up an international framework, which would shape up local legislation, as further differences in national legislations was bound to block the flow of knowledge exchange. Therefore an international framework was required to overcome any such blocks. The world was caught with the issue of "haves and have-nots" in the last few decades, which was yet to be resolved and they had the "knows and know-nots", which needed to be addressed. As in the case with every IP incentive, they had to be matched with the appropriate access policy. The legitimacy of copyright was squarely dependent on the rightful access to the public at large. It urged Member States to work towards the goal of limitations and exceptions in an international framework.

387. The Vice-Chair stated that the point had been made by several delegations and the Delegation of Nigeria, speaking on behalf of the African Group of trying to concentrate the discussions on limitations and exceptions for educational and research institutions and for persons with other disabilities through the development of principles. He referred to document SCCR/27/8 which referred to the objectives and principles. He opened the floor to NGOs so that they could put forward their opinions with regard to the Agenda Item.

388. The Delegation of Brazil, speaking on behalf of GRULAC stated that it supported the debate on limitations and exceptions for education, research institutions and persons with other disabilities other than the print disabled persons, but it supported frank and open discussions without prejudging the outcome of the exercise. They had heard some interesting views about the exchange of experiences on principles and objectives, and suggested that a possible way forward on the issue had been presented by the African Group, regarding the preparation of a new chart. They also had heard different views presented regarding limitations and exceptions. A few delegations had mentioned merging those topics into limitations and exceptions. GRULAC was interested in hearing those delegations explain their view on the way forward. The Group was open to those new ideas and open to ways that would help them move the issues forward. GRULAC understood that it was important to have the inputs from the new study, especially from persons with other disabilities. While they were without that input, it would be important to hear the views of the other Member States regarding how to move the discussion forward. GRULAC requested more information from those delegations that had requested the merger.

389. The Delegation of Greece stated that they were in the hands of the Secretariat with regards to the time constraints. The Delegation also sought clarification on whether that was a new proposal or whether it had been previously proposed.

390. The Delegation of Nigeria stated that it had referred to a consolidated version of the 61-page document that they were currently discussing, as had been provided for libraries and archives. It referred to document SCCR/26/4/prov. and noted that there were different elements where the African Group and other delegations, including GRULAC and the Asia

Pacific Group, had made proposals for agenda topics. Those were elements to be discussed under the desired instrument on limitations and exceptions for libraries and archives. If they could pull those elements and have them in a text like the Chair had provided for libraries and archives and could conduct their work in the same way that they had done with respect to libraries and archives, it would be more effective and efficient for the use of time.

391. The Vice-Chair agreed that the limitations and exceptions for libraries and archives document had been very useful in helping the discussions. He suggested that to help the discussion on educational research institutions and persons with other disabilities, a table could be drawn up by the Secretariat, in an attempt to consolidate the documents that they had. The Committee could then use those in the best way possible, so that they could actually clarify the topics, in terms of what needed to be discussed on the issue of limitations and exceptions for educational and research institutions and for persons with other disabilities.

392. The Delegation of the Russian Federation stated that there had been an interesting proposal made by the Delegation of Brazil, speaking on behalf of GRULAC that overlapped with the position put forward by the Delegation of Nigeria, speaking on behalf of the African Group. It was very important to create a consolidated document bringing together all positions around the topics they were discussing. They could do the same with educational research institutions. The approaches and the principles that they were talking about were exactly the same. What was a library? What was a library for? A library was not just a cultural center. It was also a center of study and research and it was necessary for the organization of education. It did not see any point in having two separate points and positions because they were wasting time when they separated them artificially. The Delegation had come forward with that proposal and no doubt the Secretariat could, for the next session, provide such a draft document. They would be able to very productively and significantly achieve more in the time if they had one single document on limitations and exceptions including libraries and archives and educational and research institutions, all together in one document. It was very important and may help them to make a breakthrough in the work of the SCCR. The most important thing to be highlighted was that they would be able to significantly shorten the time that they spent discussing what were essentially the same issues.

393. The Delegation of Brazil referred to the statement of the Delegation of Nigeria, speaking on behalf of the African Group. It understood that the approach that was provided by the Chair to the libraries and archives could be applied to education, as discussed by the African Group. It did not dismiss the proposal of the Delegation of the Russian Federation, but wished to clearly understand what the impact on both issues would be. With respect to the idea of having the Secretariat producing the document, it understood that the best approach was to allow Member States to continue to be guided for their discussions. When they referred to the document presented by the Chair, for libraries and archives they understood that a similar document that encompassed and served as a guidance to Member States and what the discussion was about would be the best way forward. The Delegation supported the proposal by the Delegation of Nigeria, speaking on behalf of the African Group.

394. The Delegation of Greece, speaking on behalf of Group B stated that the Group was in favor of enriching the discussion of the SCCR. The discussion was useful, yet having said that, it was satisfied with the Agenda as it stood.

395. The Vice-Chair stated that given the interventions it was necessary to raise certain issues. Some delegations had mentioned the usefulness of the preparation of a table similar to the one they had on limitations and exceptions for libraries and archives, by the Secretariat, for future discussions on limitations and exceptions for educational and research

institutions and persons with other disabilities. They had also heard the suggestion of an open discussion on the issues involved with the topic, limitations and exceptions for educational and research institutions. It was necessary also to state that they were at a time when there may be some convergence with regards to the topics, on the one hand limitations and exceptions for libraries and archives and on the other hand, educational and research institutions and persons with other disabilities. There may be some overlap. With regard to the proposal made by the African Group for the preparation of a condensed document on the Agenda Items, analogous to the table that had been made for limitations and exceptions for library and archives, it could help delegations to have clarity with regard to some of the topics and issues, and would also enable them to clear up some issues that were put forward in the document SCCR/26/4 prov. It would enable them to make progress in the discussions on the Agenda Item and create a better format to discuss it. The Chair opened the floor to NGOs on Agenda Item 7.

396. The Representative of KEI stated that in the context of the discussions on education, it wished to draw the SCCR's attention to an initiative in 1976 by UNESCO and WIPO. The 1976 model law that had been drafted by experts at the behest of Member States and UNESCO sought to provide a Berne consistent template for developing countries that could accommodate both common law and civil law traditions. While the 1976 model law was useful, much had happened in the last 39 years and it seemed appropriate to consider an update of the soft law instrument. KEI had proposed that the study conducted by Professor Daniel Seng include a scoping study to ascertain the feasibility of producing an update adapted to the digital environment. In considering possible revisions of the 1976 model law, there was an opportunity to draft model provisions that would address copyright limitations and exceptions for education and research, including exceptions for distance education delivered cross-border, orphaned copyrighted works and more timely exceptions for translation and systems liability rules, to address a variety of concerns in regard to access to cultural works, consistent with addressing the legitimate interests of suppliers and cultural works. The model Tunis law could provide the SCCR with a way forward, as requested by the African Group, to secure an international copyright system appropriate to all nations and directed at achieving the benefits of accessible product of culture, sciences and the arts.

397. The Representative of the Program on Information Justice and Intellectual Property (PIJIP) stated that it was from the American University of Washington College of Law. It was also the coordinator of the global expert network on copyright user rights, which was a collection of academics and copyright academics from over 30 countries, who were interested in doing research on both norms and empirical research on the impact of user rights throughout the world. The Representative spoke in favor of the merger of educational institutions within the discussions on library issues, at least where those two issues intersected. It was helpful to think of the useful products for education in two categories. One was a set of norms, whether in the form of nonbinding principles or binding texts, and second, a set of soft law technical guidance materials. In those categories, the norms should be more abstract. They should accommodate multiple legal systems in different ways of approaching those norms and the guidance should be more specific but less prescriptive. It should present different ways of meeting the more abstract norms and that could be done through model laws, like the model Tunis law for developing countries, or also collection and classification of options for meeting the norms. The norms for education could be included within the library norms being discussed in the SCCR. Towards the same goal, three norms were paramount: First, the requirement for balance. The most important thing that Member States could do to protect both the interests of educators and the interests of libraries was to have sufficient flexibility within their laws to meet the needs of changing times. A good model for balance was contained in the IP chapter of the Trans-Pacific Partnership Agreement (TPP), which was an agreement between a cross-section of Member States. Article 18.66 required balance in copyright and related rights systems and required that each party at least endeavor to achieve an appropriate balance in its copyright and related rights systems,

among other things, by means of limitations or exceptions that were consistent with the three-step test, including those for the digital environment, giving due consideration to legitimate purposes, such as but not limited to, criticism, comment, news reporting, teaching, scholarship, research and other similar purposes. The Article was relatively abstract and open. It did not confine the number of purposes or the types of purposes which the flexibility could propose but rather kept that standard open to other similar purposes and purposes such as those. That was appropriate for an international instrument, which sought to retain a degree of flexibility with regards to how norms were implemented and still requiring a binding norm to achieve balance. The first clause of document SCCR/26/3 - the consolidation of the proposed text by the Delegation of Nigeria, speaking on behalf of the African Group and the Delegations of Brazil, Uruguay and Ecuador- included similar language, allowing them to make the copies for the preservation of cultural heritage. That language could be a good start, especially with the TPP language, for defining and including the purposes of both education institutions and libraries. Two other aspects that should be included in the discussion on education that had also been in the library discussion was first, a limitation on liability. That would include for libraries and educational institutions and other public service institutions. Secondly, exceptions for technical protection measures. It was paramount that technical protection measures not be used to impede the effectiveness of limitations and exceptions that were provided for other purposes and educational institutions; providing materials for their students had the same interests and same needs as libraries providing access for their patrons. PIJIP remained committed to helping the SCCR, including through the sharing the studies, to provide evidence for the deliberations as they went forward.

398. The Representative of IFRRO stated that educational institutions, students, teachers, researchers, needed resources for access to copyright works that eliminated hurdles and enabled fast, convenient and seamless access to copyright works. At the same time, the publishers and the creators of those works needed safe and effective means for the dissemination of their works. In terms of copyright works, a nation should not depend on the creation of others through import of published works, with the obvious cultural and other influences that implied. They needed to enable the local creation and publishing of material created in the context with which they were familiar and on the premises they established by themselves. Textbook publishing was also the motor in the publishing sector, accounting in some countries, for instance, in South Africa, for up to 90 per cent of the sector's production. The creation and the publishing of new quality works nationally required that the creator and the publisher were protected from infringement and rewarded for their efforts. Copyright was what enabled the creator to make a living and a wire to develop a viable wire system. There were three main components, primary markets, secondary markets and copyright exceptions. Each of those components was important but they were not equally important. The secondary market included users authorized through collective rights by RROs. It was best able to respond to local conditions, user needs, copying practices, domestic laws, as well as deal with technological changes while at the same time, delivering benefits to all stakeholders in the value chain. The secondary market complimented the primary market but it was never meant to supplant it. Income from secondary users was thus retail to authors and publishers. A survey by PWC in the United Kingdom showed that some 25 per cent of others derive more than 60 per cent of the income from secondary uses of their work and the United Kingdom's publishers depended on secondary income for some 12 per cent of their earnings, which equated to around 19 per cent of the investment in new works. Studies in the United Kingdom further indicated that a 10 per cent decline in income from the United Kingdom, for creators would result in 20 per cent less output while a 20 per cent decline would mean a drop of 29 per cent in output or the equivalent of 2,870 works per year. Experience from changes to legislation, which had led to interpretation that more fair use would be allowed under exceptions, such as in Canada, had had a strong negative impact on the national publishing sector, especially for educational material. Copying, making available and distribution of works under licensing under RROs would generally comprise a portion of works, chapter or articles. That included Internet downloads or digitalization of works and

storing on international networks or virtual learning environments such as TDM and MOOCs (massive open online courses). Educational institutions form a part of the ecosystem of published works. It was important that they were allowed and offered solutions to allow legal access to copyright works. The best way to arrange that was through direct licensing agreements with authors and publishers combined with collective rights management by RROs. That was the only solution, which could meet dynamic user requests to easy, seamless legal excess while at the same time creating a balance between local creation and import of IP, also in education and research.

399. The Representative of the International Publishers Association (IPA) supported the statement made by the Representative of IFRRO. It was an umbrella association of national publisher associations. It noted that anyone who had been at the side-event of the International Authors Forum would have seen how authors of educational materials felt about seemingly innocuous changes to the Copyright Act of Canada, and would agree that things could go really wrong and cause enormous damage, most of all to the detriment of local authors, publishers and quality education. The reality was, as was observed by Per Gedin, a prominent Swedish publisher, that at the end of the day “nobody else but the local publisher will invest in the creation of a national literature so important for one’s home country as it is to the rest of the world.” The Representative urged them as decision makers to keep that in mind. Educational publishing was perhaps where the need for localized content was greatest and where the right content had to be made accessible in the right format at the right time. Great expertise and knowledge of the education sector were required. That was not something they could do in an afternoon on the back of a matchbox. It was a detailed task undertaken by people with a love for learning, teaching and books, and if done well, it gave maximum support to educators and facilitators of education. Copyright was the backbone of the knowledge economy. It was the levelling field that made competition by a small contender with something to say, i.e. with a good idea or product powerful. Essentially, copyright was the mechanism by which readers paid for the creation, production and dissemination of information. “Free-access” models, were in truth “author-pays” models. If they chose to do so, that was admirable. But that could not be expected from everyone. Also, as a result, intermediaries and electronic platforms often profited disproportionately from that. Who within the education sector would want to work for free? If they wanted to, how long could they sustain it? The same went for publishers. Publishers were both users and creators of copyrighted works. They often created works together with their authors by closely adapting and structuring the work to national curricula. Why would they be in favor of copyright? They were in fact in favor of a balanced copyright that did allow for some exceptions, like the right to quote somebody else’s work, parody and others. They also understood that some exceptions were necessary where the use in question did not interfere with the market of publishers. That was really all the “famous” three-step test says: Do not onto others what you did not wish to have done to yourself.

400. The Representative of the IFJ stated that delegations may be surprised to know that secondary licensing was a significant source of financial support for journalists, and not just for those journalists who wrote books, but for those who contributed articles to newspapers. Journalists did suffer from their image being tainted by the celebrities who made an awful lot of money, and many were dedicated to reporting to the public and depended on income from secondary licensing to survive. The Representative requested the delegations to think carefully about the nature of exceptions. The clause in the TPP which had been referred to was being used to encourage Member States to adopt the fair use principle from the United States of America, which was a license to those would have the money to decide what was fair. The copyright system in the United States of America cost about \$USD1 million to litigate, whether or not the use was fair in the United States of America. In the Representative’s own country, the government had considered and rejected calls to introduce the fair use system and decided instead that the national legislation should specify clearly what was and was not permitted. Journalists depended on certain exceptions for

purposes of reporting news and current affairs, but they did not accept that their work should be made available for free because education and libraries were a public good.

401. The Representative of TACD stated that public investment in research, education and scientific endeavors needed to revert to the public good. Very often the production of academic articles and educational textbooks were produced as a result of public investment in the salaries of teachers that were supposed to be teaching and researching. A great deal of academic articles and textbooks resulted in that kind of production. Even the European Union in its multi-annual research program, Horizon 2120, had adopted a mandatory open access policy, where scientific articles that were produced as a result of European Union investment and research must be, after a one year or a period of moratorium, published online and accessible free of charge. That was because the European Union believed that the public should not pay twice. Given the public investment in education it was not appropriate to have a world where millions of students at universities and high schools around the world could not pay for the price of textbooks or were using very poor digital copies, which were not legal. They should recognize the reality in the digital world, where those kinds of productions, especially when public funds were involved, should become a public good. That was especially the case in Asia, Latin America and Africa. It was a question of justice. It was a proposal that hurt nobody and benefitted the majority.

402. The Representative of FIAB stated that it was speaking on behalf of IFLA, regarding the suggestion from the Delegation of the Russian Federation that the discussion of limitations and exceptions for libraries and archives be joined. It opposed such a merger for several reasons. Many countries' libraries operated very independently and were funded by separate levels of government. They were separately legislated and governed and had different broader missions and user bases. That was the reason that the original proposal of the African Group had treated libraries and archives separately from educational and research institutions. Furthermore, they had achieved a more advanced level of maturity and needed to maintain the level of momentum achieved in that session of SCCR. Having said that, it believed that there may be specific defined areas where the interests and the needs of libraries and education were sufficiently aligned that they could be considered in tandem without reducing progress for users and libraries. It was open to such possibilities to encourage Member States to advance discussions on limitations and exceptions for libraries and archives.

403. The Delegation of Iran (Islamic Republic of) referred to the situation of limitations and exceptions for education and the research institutions and persons with disabilities in Iranian law and possible near future developments. Article 8 of Iranian Copyright Act of 1970 provided that public libraries, documentation centers and educational establishments, which were non-commercial, may reproduce protected works by photographic or similar processes, in the number and accessory, for the purpose of their activities, according to the declaration issued by the Board of Ministries. A new law had been drafted by the Minister of Culture and was to be finalized in the near future. According to Article 18 of the new draft law, educational institutions could reproduce published copyrighted works for non-commercial educational purposes, without rights holders' permission, provided that the act of reproduction was an isolated one, and if repeated, on separate and unrelated occasions. Article 23 of the draft law provided that reproduction of published works by persons with mental and physical disabilities was permitted, provided that using the work in original format was not possible, or difficult for them, and the work be reproduced to a format, which was easily accessible for them and the reproduction be for non-commercial purposes. The Delegation supported current initiatives to draft an appropriate legally binding instrument on limitations and exceptions for educational teaching and research institutions and persons with disabilities at the international level.



404. The Vice-Chair stated that during the break he had been able to speak to a number of delegations and there had been some coordination work on the further development of the subject of limitations and exceptions for educational research institutions and for persons with other disabilities. Some delegations had raised the possibility of there being a tool like the one that was prepared on limitations and exceptions for libraries and archives, a chart that would be drawn up by the Secretariat, to compile important points from the documents that they had in the SCCR. Other delegations had suggested that there should be an open ended discussion on document SCCR/26/4/prov., which contained the information that had been gleaned from the discussions on the subject. The Vice-Chair and the Secretariat were quite ready to draft the tools that might contribute, in a constructive way, to the development of the discussions on all of the different subjects. The suggestion made by some delegations of having an open-ended discussion of the subjects was another option. There was no doubt that each of the thematic discussions that they had had, and each of the positions that had been described on limitations and exceptions for educational and research institutions and for persons with other disabilities, would be of use when continuing the SCCR's discussions. The Chair had referred to the fact that the study was being updated and would contain more information, which was useful for the continuing discussions. They could therefore close that Agenda Item 7, since there was no consensus on whether to prepare a document that could serve as a tool, or have an open-ended discussion because there were still studies being prepared.

405. The Delegation of Nigeria, speaking on behalf of the African Group requested clarity on how they were moving forward on limitations and exceptions for education and research institutions and for persons with other disabilities, given that there was no consensus on having a consolidated text of the Chair. The African Group did not think that there was a conflict presented by the scoping study on persons with other disabilities other than print disabilities. They also had a long text in document SCCR/29/4 and other proposals on the Agenda Item. The proposal was meant to focus and facilitate the discussion, while also using the information contained in document SCCR/29/4. The African Group requested the support of Member States to use their time better and to be more effective in the SCCR.

406. The Vice-Chair confirmed that a chart would enable them to continue with the discussion and on the other hand, an open-ended discussion based on the document that the Delegation of Nigeria, speaking on behalf of the African Group had referred to. In respect of the preparation of the chart, the Secretariat and the Vice-Chair were ready to prepare not only that tool, but any other tool that might be necessary that would contribute to developing the discussions in the SCCR.

407. The Delegation of Romania, speaking on behalf of the CEBS Group thanked the Delegation of Nigeria, speaking on behalf of the African Group for its proposal. The CEBS Group had concluded that so far they had not discussed specific topics related to the limitations and exceptions for educational and research purposes, as had been the case for limitations and exceptions for library and archives. They had not achieved the same level of maturity with respect to those types of limitations and exceptions. Therefore, it could not support the same approach with regard to limitations and exceptions for libraries and archives at that time.

408. The Delegation of the European Union and its Member States referred to the comment made by the Delegation of Romania, speaking on behalf of the CEBS Group and stated that it also believed that more time was required for them to scope out the nature of the proposals that had been made. It looked forward to the reflection period between the SCCR session and the next SCCR in order to refine its thinking on the proposals.

409. The Delegation of Greece stated that as it was a Member State of the European Union, Group B had not had time to consider the issue.

410. The Delegation of Senegal supported the position stated by the Delegation of Nigeria, speaking on behalf of the African Group. The proposal could help them to make progress in their reflections and help the discussion to progress. The Delegation stated that the tool was not contradictory with other procedures, even if groups had not had time to discuss it, there should be no opposition.

411. The Vice-Chair stated that the preparation of documents that could serve as tools for the development of the discussion, undoubtedly could contribute to the discussions at a certain time, after delegations had reflected on the use of such tools. The Chair and Secretariat were able to prepare any document that might help the SCCR's discussion. The Vice-Chair believed that it would be very constructive. Agenda Item 7 was closed by the Chair on the basis that they were looking at options to progress the issue.

412. The Chair stated that they would start the presentation of Marrakesh Treaty ratification instrument by Brazil on that day, December, 11 2015. He invited His Excellency, the Ambassador of Brazil, Mr. Marcos Galvao and the Head of the Copyright Office, Mr. De Souza to the podium, together with the Director General.

413. The Director General stated that it was a great occasion. The Marrakesh Treaty was one of the fruits of the SCCR's hard work and one of the great successes of the Member States. They needed 20 ratifications to bring the Treaty into force. As of the previous day, with the deposit of the instrument of accession by Australia and with the deposit of the instrument of accession or ratification by Brazil, they had 13 ratifications. The prospect of the entry into the force of the Marrakesh Treaty in 2016 was a real one and it was one of the principle objectives of the Secretariat. The Director General was grateful to Brazil for its action and thanked the Ambassador and the Head of the Copyright Office for their presence. One of the important things with bringing the Treaty into force was that they had a good distribution in the composition of the initial Contracting Parties. They did not just have Member States that would benefit the most from the trans-border flows of published works in accessible formats but also Member States that had considerable collections of works in accessible formats. In that respect they particularly welcomed the accession of Brazil, a very big country, that would be of great benefit to all the Lusophone countries. Brazil's importance in that respect, as a generator of published works, made the deposit of the instrument of accession particularly important.

414. The Ambassador of Brazil, Mr. Marcos Galvao stated that it was an honor to represent Brazil in the ceremony of deposit, of its instrument of ratification of the Marrakesh Treaty to Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled. The instrument had a special meaning for his country. It was the Delegation of Brazil that together with the Delegations of Paraguay and Ecuador that had responded to the call made from the associations for the blind in 2009 and presented the initial proposal on the matter. Clear evidence of the importance of the Treaty was the fact that in the second time in its history, a treaty was incorporated into national legislation with the level of a constitutional amendment. That was no trivial achievement. The ratification in such a short time would not have been possible without a strong partnership between the Ministry of Foreign Affairs and the Ministry of Culture, represented by Mr. De Souza, Head of the Copyright Office. The process in Congress included approval of a constitutional level amendment, which involved four votes of a three fifths majority, two in the House and two in the Senate. That was no small achievement. It was time for the international community to write a new chapter on the institution of people with disabilities. A chapter with versions in Braille, large print, DAISY or other accessible formats. Seven other ratifications were needed for the Treaty to enter into force and he called on other Member States to join them. He called on those Member States that hosted large collections of accessible books, since access to those works could make the Treaty more interesting to blind associations and

developing countries. He was confident they could reach the goal of 20 ratifications before the next General Assembly, so that the Marrakesh Member States could meet for the first time in 2016. He stated that above all, the multilateral IP system could be a tool for social development as long as they could strengthen their international ties and work together towards that goal.

415. The Director General encouraged all Member States to speed up the process of ratification so that they could attain the goal of the entry into force of the Marrakesh Treaty before they met at the Member States Assemblies in 2016.

## **AGENDA ITEM 8: OTHER MATTERS**

416. The Chair opened Agenda Item 8, Other Matters and referred to the fact that they had received two new proposals under Agenda Item 8, including GRULAC's Proposal for Analysis of Copyright Related to the Digital Environment, document SCCR/31/4, and the Proposal from the Delegations of Senegal and the Congo (The Republic of), to include the resale right in the future work of the SCCR, document SCCR/31/5. Regional Coordinators had agreed that each document would be presented by its proponents and that Member States would be given the opportunity to comment, ask questions and provide initial reactions. The Chair invited the Delegation of Brazil, speaking on behalf of GRULAC to present document SCCR/31/4.

417. The Delegation of Brazil, speaking on behalf of GRULAC stated that the Group attached great importance to progress and discussions on broadcasting, exceptions and limitations for libraries and archives and exceptions and limitations for education, research institutions and people with other disabilities. That was the reason why the Group had requested to place the proposal on Agenda Item 8, Other Matters. The Delegation wished to present its initial views on its proposal so that the Committee could have a full exchange of views and ideas in the next SCCR session. The Group supported the view of the Director General, when he stated that discussion of the proposal would benefit from a synergy with the recently announced Conference on the Global Digital Marketplace. The document entitled, "Analysis of Copyright Related to the Digital environment," proposed a discussion within the SCCR of new challenges arising from the use of protected IP rights and the digital environment. In brief, the proposal sought to identify common solutions to deal with new digital services and technologies that had emerged since the adoption of the WCT and WPPT treaties. Both traditional IP rights and the right of making available to the public, provided for in the WCT and WPPT were not conceived to legally frame the new works and users of protected works in the digital environment. In addition, a growing number of companies developing new business models based on the use of copyrighted works on digital platforms, raised concerns at both national and international levels, particularly regarding transparency in the business and in the remuneration of authors and performers around the world. Another challenge was the difficulty in applying limitations or exceptions to copyright in the digital environment and the possible impact to fundamental rights such as freedom of expression and access to culture, knowledge, and information, in places where the user was in the position of potential violator. That justified the discussion of the topic within the SCCR, to look for a consensual solution to make regulations on digital issues more effective at a multilateral level, to achieve a fairer, balanced use of intellectual works in the digital environment and favor the development of the digital market of protected IP. The document proposed three areas of work for the SCCR: first, to analyze and discuss how Member States legally framed the use of protected works in new digital services, second, to analyze and discuss the role of businesses and corporations that made use of copyrighted works in the digital environment and their modes of operation, including the verification of the degree of transparency in business and the remuneration of copyright related rights of the

various rights holders involved, third, consensus on copyright management in the digital environment, in order to deal with the associated problems, including low remuneration of authors and performers to the limitations and exceptions to copyright in digital environment. The Group saw value in an open debate on the subject that could shed light on the areas of discussion. It had not prejudged the issue and it was open to analyze any further suggestions in the interests of other Member States.

418. The Delegation of Singapore stated that it had one of the highest Internet penetration rates in the world. 88 per cent of its households enjoyed Broadband access. Mobile penetration rates were at 152 per cent with approximately 8.3 million active mobile subscriptions. That made it one of the countries where mobile phones outnumbered its population. Its experience was that the digital environment was a source of tremendous innovation and creativity and a significant driver of economic growth. A well designed copyright framework was essential to prevent outdated legislation from stifling economic and social progress. To take into account the issues that the digital environment had raised in the past few decades, Singapore had engaged in two major copyright review exercises since 1995 and Singapore had ratified the Internet Treaty of WIPO in 2005. However, despite its efforts to keep pace with technology, the digital environment continued to raise fundamental challenges to the basic structure of copyright law. The global nature of the Internet sat uncomfortably with the territorial nature of copyright law. The fact that digital goods were almost always licensed rather than sold raised challenges for the traditional principle of exhaustion and the existence of secondhand markets. The shift from download to streaming distribution meant that the copy was no longer the central object of copyright law and practice. The ease of putting content on the Internet blurred the distinction between published and unpublished works. Singapore viewed the topic with positive interest, the proposal was a good basis for further development and elaboration, ideally into a concrete set of issues to be addressed for the benefit of society and business.

419. The Delegation of Senegal referred to the issue of the SCCR's time. The issues raised related to huge changes caused by the digital economy. The Delegation referred to the example of music, its production method, distribution method and consumption, which had always evolved with time. First it was virtual, then functional and then it changed into an economy of representation. The document proposed by GRULAC noted that in the digital economy there was something that existed between broadcasting and the way in which music was sold by shops. There was something that could not be reduced to a simple case of reproduction. The existing international treaties did not sufficiently cover that. Without prejudging the results of its considerations, it believed that those questions ought to be asked. It referred to the series of concerns covered in the GRULAC proposal. One was the principle of equity. Who gained what from the digital economy in music? That was a question of transparency and that was the second series of concerns. What did they understand about the new economy? The third series of concerns were linked to the reality of exceptions in the digital economy. In particular the Delegate referred to the exception of private copying and how the exception of private copying could be enjoyed, while operators had even greater means to almost completely control the uses of the data files that they distributed. Without prejudging the results of the considerations, the Delegation stated that the issues and questions related to equity were a reality. In discussions with a great number of artists in Africa, the overwhelming perception was that they earned very little from the streaming economy. That was the perception. Reality was perhaps another thing. The other issue was the details of the reality itself, which needed to be taken into account. Artists were ever more present on streaming sites, sometimes without even being aware of it. Some earned very little, others could expect to earn nothing. The majority of them would say that they did not understand anything. They knew it was good to be present there but they did not know how it functioned. The issue of private copying was also an important one to consider. It was a very important source of revenue for authors, artists and producers and some countries in Africa, such as Burkina Faso had developed laws for further remuneration.

The question to be asked was what was going to happen to private copying with the digital economy and with streaming? All of those issues meant that the Delegation strongly supported the proposal by GRULAC for multilateral dialogue between the government and multilateral actors concerned and connected to the proposal. The Delegation was in favor of a wide-ranging study by WIPO, so that they could better understand what mechanisms were at play, in order to be able to respond to the question as to whether the law should adapt to the situation. It was really a question of their time. They needed to respond to the questions of their time. They needed to be consistent and that was why its Delegation had also put an issue related to the resale right on the table, which would be discussed later.

420. The Delegation of Ecuador stated that the proposal by GRULAC was of great value in relation to science, communication, telecommunications and culture. As it had previously mentioned, Ecuador was involved in two legal reforms relating to science, technology, innovation and culture. Throughout the development of the consultation of its draft bills, which were at the National Assembly, the creators of the different forms of creation had submitted their concerns in a very serious manner, regarding the management of rights in the digital environment. It was a good time to discuss the topic in the SCCR. The Delegation would closely follow the development of the topic and its discussion within the SCCR.

421. The Delegation of Romania, speaking on behalf of the CEBS Group thanked GRULAC for the introduction of the proposal for, An Analysis of Copyright Related to the Digital Environment. The Delegation appreciated GRULAC's initiative, but noted that it was an extensive, comprehensive proposal and it needed more time to carefully analyze the document. It would be also useful to better understand the focus or the target of the initiative, so that it could provide its views at the next session of the SCCR. Nevertheless, the Delegation considered that the proposal should be examined under other matters at the future SCCR session.

422. The Delegation of the United States of America thanked GRULAC for its proposal for, An Analysis of Copyright Related issues in the Digital Environment and thanked the Delegation of Brazil for its clear presentation of the proposal. At the outset, the Delegation placed its comments to the particular proposal in a broader context. The Delegation agreed that it would be useful to broaden the list of topics on the SCCR's Agenda without derailing the current work. Like other delegations, it agreed that there was a need to ensure that the SCCR's discussions remained relevant and timely. With respect to the GRULAC proposal, as other delegations had noted, it was extensive and its Delegation was still reviewing the document. On an initial reading, the Delegation saw value in looking at the issue of copyright in the digital environment. The proposal contained a large number of issues, and its sense was that some were more likely to lead to productive conversations in the SCCR context than others. The Delegation had a specific suggestion with respect to the broader issue of enriching the discussions within the SCCR. It would be important to put on the Agenda for future SCCR sessions a discussion on what issues could be added to the Agenda going forward. That would involve all delegations having the opportunity to put forward a specific topic that they would like to have discussed. It would be away to start a conversation as to which ones would be most useful to address, or most useful to address first. There was an important caveat to the conversation. They would proceed with the understanding that it would not be a norm-setting exercise. That was not to say that any particular topic might not ripen to a point of a decision to initiate norm-setting process sometime in the future. The intention initially would be focused on a rich substantive discussion. More broadly, the SCCR should focus on substance rather than disagreeing over what form was appropriate, worrying about process and politics, which so often interfered with a robust discussion of the most important issues of the day.

423. The Delegation of Algeria stated that legislation in the digital environment involved many important questions, for which the creators and performers in Algeria had large complaints. Therefore, Algeria had decided to propagate laws and conclude several agreements to try to address those legitimate concerns. Dealing with the issues highlighted the territorial nature of laws and legislation regarding copyright, as well as the fact that the adequate treatment of the concerns should go through the SCCR. It was important to try to provide a universal dimension to the regulatory issues, which should govern those activities. The Delegation considered that GRULAC's proposal was a good basis for the discussion of that important subject.

424. The Delegation of the European Union and its Member States thanked GRULAC for its proposal. Its first reaction was that the document had a very broad scope, as other delegations had stated. Therefore the Delegation welcomed a better understanding of the focus and objective of the paper. The Delegation recalled the proposal stated by the Director General to host a conference on the digital marketplace the following year. That event could also shed light on many of the relevant topics. Generally, the UN and its Member States would naturally share the objective of a well-functioning copyright system, which delivered a fair deal for authors, performers, all rights holders and creative industries in the digital environment, as that was a good basis for a strong, diverse creative sector. However, the document had only been received the previous week and it was too early for the SCCR to engage on a substantive discussion, which could take place in the future.

425. The Delegation of Chile stated that the discussions on copyright in the digital environment were welcomed and important. New technologies and forms of communication presented them with opportunities and challenges for all of those who were taking part in the creation process of works and in the value chain, which was necessary for the dissemination of works. The Delegation referred to the statement by the Delegation of Senegal and stated that it could assess the usefulness of the proposal if the Secretariat drew up studies to enable them to better understand the different legal frameworks and the practical experiences regarding copyright and the new reality which was in a constant development in the digital environment. Chile was looking at different internal consultations and participatory procedures to be able to include the visions of all of the different stakeholders concerned.

426. The Delegation of Nigeria thanked the Delegation of Brazil for its presentation of the GRULAC proposal and also for sharing the expectation that the new proposal would not negatively impact the SCCR's work. The digital environment had merit for consideration, but the Delegation looked forward to discussing the subject in context of a collective, shared idea about the future work of the SCCR.

427. The Delegation of Sudan stated that it supported the GRULAC proposal. The proposal clarified that social media and media in general had undeniably become an open scene for committing crimes against rights holders and other people that were concerned with the creation process. Therefore, they should do what was necessary to protect those works. Any works that were being published on-line could be subject to violation. The rate of violations against IP had increased around the world and whenever they looked into the cyber sphere or any other electronic media they could see that there was the spread of publishing without the agreement of the copyright holders. Therefore, the SCCR had to undertake a role to address the problem. There was not sufficient protection, and prevention was far better than having to subsequently provide treatment after a crime had been committed. Electronic crimes against copyright and against rights holders should be prohibited through legal provisions that were internationally recognized. Protection should be upheld first and foremost before any other electronic transactions could be allowed in terms of the electronic exchange of information. Therefore, they should acknowledge the fast pace of the spread of content electronically and take that into consideration.

428. The Representative of Latin Artis expressed its support for the proposal put forward by GRULAC. The proposal addressed an issue that audiovisual artists had fought for over the last 20 years, and now was a perfect opportunity to adjust the regulatory framework to the changing reality. Copyright was first recognized in the 19<sup>th</sup> century. Since then, there had been growing support for certain dogmas, which, although still prevalent, had not shown any efficacy in actually protecting creators. The underlying basis of copyright and related rights was the guarantee of economic and moral rights to creators, generally in the form of exclusive rights. Nevertheless, the twentieth century had shown them that performing artists did not actually enjoy these exclusive rights. In fact, it was more accurate to say that they were deprived of the exercise and content of those rights. They were creating legislation with their backs turned away from reality. The right to remuneration had many qualities. Firstly, it had led to the creation of numerous companies in the digital environment. Secondly, in no way did it create an obstacle to the development of the market, as had been shown. Thirdly, it validated collective management, which would ultimately guarantee that rights holders received economic incentives with dignity. Legislation must not be limited to the recognition of substantive rights that could not be made effective in a manner that fit with the reality of the market. Experience in the European Union and a number of its Member States highlighted that, in certain circumstances, the right to remuneration was a good solution to those situations in which the exclusive rights holder lacked the real and effective ability to exercise those rights, therefore making it an innovative source of law for creators. That was the case with communication to the public and rental, and even with compensation for private copying, as referred to by the Delegation of Senegal. Therefore, the Representative was not only in favor of GRULAC's proposal, but was also prepared to cooperate actively. It was prepared to provide practical solutions and ideas, particularly in relation to audiovisual media, upon which new technology was having a large impact. Ultimately, it supported the document and the development of the right to remuneration, in the knowledge that it was comparable and compatible with exclusive rights, which, regardless of their initial ownership, always ended up in the hands of the producers. Producers needed the exclusive rights to a work, but creators needed a right to remuneration. Latin Artis welcomed GRULAC's efforts and offered to work together to find an optimal solution to meet the needs of the twenty-first century.

429. The Representative of the Ibero-Latin-American Federation of Performers (FILAIÉ) thanked GRULAC for its submission of the proposal for the SCCR to study the disquieting realities and precarious situation of performers. In the digital environment, there was a making of digital rights and unjust remuneration for performances used commercially. FILAIÉ represented 350,000 artists in Latin America, Spain and Portugal, who were asking for a change in the configuration of making available rights and the way of making that effective. The proposal by GRULAC was highly timely and necessary. The current situation of artists' rights in the digital environment was limited and would become catastrophic in the near future if they did not take the necessary measures. The Representative stated that FILAIÉ would be analyzing a possible way ahead to solve the situation, referring to an exclusive right or alternative remuneration rights regarding the making available rights. FILAIÉ would also like to have a better reference to the greater role played by collective management organizations of performance artists, in making the rights effective. The Representative understood that the proposal was just an initial step for further examination and analysis and that it was necessary to establish a proper balance within content, access and benefits. The service providers in the digital environment were the users and the property belonged to creators and performance artists. The benefits should be handed out and distributed in an equal balance, with no one taking advantage of anyone else and reducing their rights. The Representative agreed that the WPPT, which included the act of making available as a principle exhaustion of rights, should be extended not just to performances and phonograms, but to individuals. The implementation of that legislation had not been effective, and too frequently record companies had a free reign to be able to give any economic rights to performances and artists, when using audiovisual sound and

performances through the Internet. In many countries the statutory provisions meant that artists were expected to renounce their rights to future use without significant remuneration. Of 34 million streams, an artist may receive \$700. The recorded music industry was making millions of dollars from downloading and the streaming of songs and the services were moving ahead tirelessly. On-line streaming and downloads were occurring indiscriminately. Yet the most popular platforms did not pay very much to the performers and the artists. Those figures did not correspond to the very small amounts that the performance artists received related to Internet exploitation. A study had concluded that out of a \$10 subscription fee to a streaming platform, \$2.90 went to taxes, \$1 went to publishing, \$6.50 or 70 per cent went to producers, 30 per cent went to the streaming platform and only 0.46 cents went to the artists. They could judge the proportionality of that. They also had to add the 20 per cent of Internet users who downloaded music illegally, and in many countries it was as high as 40 per cent. The Representative thanked GRULAC for its proposal. The campaign for a fairer Internet for artists and performers was still ongoing. The Representative urged them to ensure that IP rights were effective and defended, to ensure the ongoing existence of creators of performances. That was vital for the present and the future of artists, because each and every time the wages of the artists and performers were at stake it was unjust. It went against the rights and the business of artists and performers who made creative contents possible and music, films and other creativity available. They had to look at the reality of the facts and analyze them. They had to look for a simple solution, which provided an answer to a tremendous imbalance, which existed in the digital environment. The Representative appealed to the SCCR on behalf of the artists and performers, 750,000 in total, for a fair Internet, in order to address the imbalance, which was so prejudicial to artists and performers throughout the world.

430. The Representative of Actors, Interpreting Artists Committee (CSAI) thanked the Delegation of Brazil, speaking on behalf of GRULAC for the proposal submitted to the SCCR. The proposal very accurately portrayed the worrying situation faced by actors and other audiovisual performers, with regard to the exploitation of their performances in the digital environment. It was a situation of extreme vulnerability, generated principally by the contractual conditions to which they were subject, such as the automatic, and even the presumptive transfer to producers of all of their exclusive rights (including the right of making available). They must heed the reality described by GRULAC in its proposal, which was that artists did not receive any economic benefit in return for that transfer, except on a handful of occasions, and even then in insignificant amounts. Having transferred their exclusive rights, artists lost control over fixed performances, particularly in the digital environment, resulting in them losing the possibility of receiving a share in the economic returns gained from the on-line exploitation of their performances. It therefore seemed necessary to articulate a formula to guarantee to artists the economic component of their exclusive rights. CSAI understood that the formula shown to be the most successful, at least in the countries where it had already been implemented, was the recognition of artists' inalienable right to fair remuneration for acts of exploitation in cases where exclusive rights had been transferred to the producer. As the Spanish actor Javier Bardem had stated: "an industry without economic and legal balances cannot last for very long" and that was the bearing charted in GRULAC's proposal. CSAI hoped the SCCR would be able to continue working and debating along those lines in the future, never overlooking that the Beijing Treaty already explicitly provided for the formula now being proposed, and with a view to the inclusion within Article 12, concerning the transfer of exclusive rights, a safeguard clause for the right of remuneration, and also making available.

431. The Delegation of India complemented the Delegation of Brazil for the ratification of the Marrakesh Treaty. India had been the first country to ratify the Treaty and it urged all other Member States to recognize the need for the important Treaty to be entered into force. The Delegation appreciated the GRULAC proposal that brought a different dimension related to the digital environment, which had not been discussed, and underlined the need for an



international framework. The Delegation was studying the document and would be in a better position to give appropriate inputs in the coming SCCR sessions.

432. The Representative of AFM thanked GRULAC for presenting the proposal for a discussion on issues regarding digital on demand streaming and other digital services. The Representative referred to the statements of other NGOs that the document was an accurate summary of the concerns of performers, regarding the disproportionately low level of remuneration to performers by digital services such as Pandora and Spotify, which were controlled by the major record labels. It was an imbalance of economic power between producers and performers that was inequitable. AFM hoped that a substantive discussion of the topic could be undertaken by the SCCR.

433. The Representative of the Asociación Argentina de Intérpretes (AADI) congratulated GRULAC for its document. It was a proposal for, An Analysis of Copyright Related to the Digital Environment. AADI was interested in the submissions made by other NGOs regarding the need to address the problem of proper remuneration in the digital environment for artists, which was very important and should be addressed at an international level. Those NGOs defended sustainable creativity and believed that artists needed a right to remuneration in light of the expanding making available or public communication right in streaming.

434. The Representative of the Program on Information Justice and Intellectual Property (PIJIP), inquired whether it would be possible to include researchers in the next SCCR meeting and if so, it could supply suggestions.

435. The Chair suggested the proposal be placed in writing.

436. The Representative of the International Confederation of Societies for Authors and Composers (CISAC) stated that it represented 230 author societies from 120 countries around the world. Through those societies it was the voice of around 4 million creators from all artistic fields, including music, audiovisual, drama and others. With regards to the GRULAC proposal, it welcomed an initiative aimed at the addressing the imbalance that existed in the digital market, between the weak position of creators and the strong power of those who exploited their works and commercially benefited from the exploration. Creators were not being paid fairly for the use of their works. They had a transfer of value, which took place when on-line intermediaries captured enormous value of the use of creative works without proper compensation for the rights holders. Many on-line intermediaries generated huge profits from using creative works and refused to share the profits with the creator of the works. Unfortunately, that situation existed because of outdated laws. Many intermediaries relied on safe harbor laws that were never meant to protect them, or allow them to avoid paying or underpaying royalties to creators. That was not only unfair to the creators but resulted in unfair competition with the legal services that respected the right of creators and paid them royalties. Another major problem in the digital market was the lack of transparency about how revenues were shared and with whom. In order to secure a viable future in the digital market they needed to ensure that the market was built on proper monetization of the creative works and a sustainable business model, offering a financial return for all stakeholders. That was an issue that the SCCR could usefully address and explore possible ways to guarantee that creators' rights were protected, and creators were remunerated fairly for all commercial use of the works in the digital environment. CISAC would undertake a detailed analysis to develop a position and present it in the next SCCR.

437. The Representative of KEI welcomed the opportunity to talk about the positions of artists and more precisely about the right of fair remuneration for creative individuals and not just producers. Its initial comments regarding the proposal for, An Analysis of Copyright Related to the Digital Environment, were that the proposal's main premise was that the WCT

and other treaties were ill-suited and inefficient for modern times. Music was being listened to in completely different ways than five years ago, let alone 20 years ago. Spotify, Pandora, other streaming music were well-known examples of the new technologies. Examples of the existing rights were not well-suited and were lagging behind, including the reproduction right. It quoted the proposal: "which seems to be least suited to cover many digital services, many times against the interest of authors and performers". According to the proposal, which it supported, there should be discussion on the territoriality and the interpretation of the copyright three-step test in the digital environment. The proposal focused on business models in the streaming age including premium pay and freemium funded by advertising, both of which were familiar to users of streaming services. They all knew there were problems with artists' remuneration when works were used on those platforms. It was time to address the lack of transparency, how revenue was shared and the amount of payments to artists, as well as how the lack of effective regulation enabled intermediaries to benefit at the artists' expense. The proposal suggested several interesting ways to address the problem, including the creation of a global database of rights holders, works, phonograms, interpretations and performances, with compulsory sharing by the government, rights holders and collective management associations. KEI supported the proposal to discuss how equitable remuneration would better be placed in an exclusive right of authorization. GRULAC's proposal acknowledged that there were challenges in the approach and it believed that was worth discussing at the international level, with the view to find a real way, to ensure a fair payment to artists. In conclusion, KEI welcomed the proposal to hold discussions at the SCCR regarding ways to balance the rights of artists and users and the various remuneration models for artists in the new digital environment. The Representative noted that WIPO would convene an international conference on the global digital content market and asked the Secretariat to provide more details on that important event, including an agenda and list of speakers.

438. The Chair stated that the GRULAC document had raised several comments and noted that it was an invitation to think about the need to analyze and discuss legal frameworks used to protect works in digital services, and to analyze and discuss the role of companies and corporations that participated in the digital environment, in relation to the exploitation of works and legal transparency. Finally, the proposal had suggested discussions on the management of copyright in the digital environment, in order to deal with the problems that had been expressed in relation to the low remuneration of authors and limitations and exceptions to copyright in the digital environment. The topic would be closed, as the time allocated had expired.

439. The Delegation of Brazil, speaking on behalf of GRULAC thanked the Delegations and stated it would take note of the comments and the initial views, which GRULAC would come back to at the next SCCR under the Agenda Item of, Other Matters.

440. The Chair turned to the proposal submitted by the Delegations of Senegal and the Congo (The Republic of) and invited the proponents to present document SCCR/31/5.

441. The Delegation of Senegal stated that the resale right was recognized in the Berne Convention, however not on a mandatory basis. More than 80 countries had the right in their legislation and a large number of countries were preparing to integrate it into their legislation. There were issues of reciprocity. The benefit of the resale right could not be fully enjoyed unless there was universal recognition, which meant that the issue was an urgent one. The SCCR had been discussing some very difficult topics for a long time on broadcasting and limitations and exceptions. While the resale right could seem to be a diversion from very important issues it was a very urgent one. It was an important issue for those who had the ability to decide and the power to do so. There were Member States who had that power. The art market, like anything else, was a living thing. It had moments of prosperity and moments which were hard times. At that moment they were witnessing an explosion in the

art market, with works achieving prices that had never been seen before in the history of humanity. At the same time, artists died in obscurity while their works enriched other people and provided happiness for others. It was a great injustice. In Africa, the talented creative artist who died in poverty while his or her works enriched someone else was a very recurring situation. That was why there was a pressing need to act, especially since the resale right was not a complicated measure to implement. The legitimacy of the right was not subject to discussion. The only issue that could be put forward was that it would cause changes in the art market. Studies which were already available showed that that idea was erroneous. At a time when the SCCR was spending a great deal of time, months and years discussing important issues and making difficult progress on them, the fact that one could take small measures, which would have a great scope, would strengthen the credibility of the SCCR and also strengthen the credibility of what they did. The Delegation hoped that African artists and artists in developing countries would be able to benefit from the current explosion in the art market.

442. The Delegation of Nigeria, speaking on behalf of the African Group thanked the Delegations of Senegal and the Congo (The Republic of) for their presentation on the important subject of resale royalty rights. The African Group appreciated the relevance of the topic but did not have adequate time to analyze the text and the proposal and therefore could not share a regional view at that point. It invited Member States of the Group to share their views in their national capacity.

443. The Delegation of Romania, speaking on behalf of the CEBS Group thanked the Delegations of Senegal and the Congo (The Republic of) for having presented their proposal on the resale right, a key right for artists. It was drawn up to strengthen their creativity and safeguard it. The Berne Convention was applied in a number of Member States but it was omitted in some legislation and its Delegation believed that resale rights needed a comprehensive examination. CEBS supported the sharing of experiences on the resale right and supported its inclusion on the agenda of the next SCCR.

444. The Delegation of the European Union and its Member States thanked the Delegation of Senegal for its presentation, and the Delegations of Senegal and the Congo (The Republic of) for their proposal. The Delegation reiterated its support for the discussion on the resale right at international level. The resale right was recognized in the European Union's legal framework through the Directive 2001/84/EC of the European Parliament and of the Council of September 27 2001, on the resale right for the benefit of the author of an original work of art (the EU Resale Right Directive), which came into force on January 1, 2006. The right was present in all European Union Member States. It attached importance to the resale right as a tool to, as stated in the EU Resale Right Directive: "ensure that authors of graphic and plastic works of art share in the economic success of their original works of art." The Delegation looked forward to future discussions on that matter, where it could contribute its experience and information on the implementation and effect of the EU Resale Right Directive and the merits of those rights.

445. The Delegation of the United States of America thanked the Delegations of Senegal and the Congo (The Republic of) for their proposal. The Delegation stated that at the domestic level, it was clear that any number of countries had the resale royalty right. It was not among those. At the international level as the proposal from the Delegations of Senegal and the Congo (The Republic of) had pointed out, there was Article 14ter of the Berne Convention. The existence and level of protection at the domestic level with regards to the resale royalty right varied from country to country. It was not prepared to add the resale right as a regular Agenda Item for the SCCR. Rather, in its view a better approach, with the divergence in national laws, was to have the Secretariat conduct a study. The study would cover issues such as what laws existed on the subject around the world, what were their similarities and differences, importantly, how much were they used and what had been their

impact on both artists and art sales, sellers of works and museums and auction houses. That rich body of evidence would help inform the discussions in the SCCR on that important and worthwhile topic.

446. The Representative of KEI welcomed the proposal tabled by the Delegations of Senegal and the Congo (The Republic of) to include the artist resale right into the SCCR's agenda for future work. The report regarding the EU Resale Right Directive stated: "the European Commission has today adopted a report on the implementation and effect of that directive, the report finds that while there are pressures on the European art markets, no conclusive patterns can be currently established to directly attribute the loss of the E.U.'s share in the global market for modern and contemporary art to the harmonization of provisions relating to the application of the resale right." KEI supported a binding instrument on the resale right with certain optional protocols to be determined within the existing legislation found in 65 countries. An international instrument on the resale right was fundamental to provide fair and equitable remuneration to visual and graphic artists.

447. The Delegation of Brazil thanked the Delegations of Senegal and the Congo (The Republic of) for presenting the very interesting proposal on the inclusion of the resale rights. As it had stated in previous sessions, the Delegation had concerns regarding the inclusion of the new item in light of the discussion of exceptions and limitations in broadcasting. It understood that the discussion had benefits and it was in a position to support the continuing discussions as requested by the Delegations of Senegal and the Congo (The Republic of).

448. The Delegation of Côte d'Ivoire thanked the Delegations of Senegal and the Congo (The Republic of) for the presentation on resale rights and gave them full support. The reality described in the document reflected that which the creators and artists were witnessing in Côte d'Ivoire in spite of their talents. It was well-recognized that they were living in precarious conditions. The item should be put on the agenda of the forthcoming SCCR for more in-depth discussion of the issue.

449. The Delegation of Algeria thanked the Delegations of Senegal and the Congo (The Republic of) for the very important proposal. The Delegation did not have time to look at the proposal in depth, but in principle Algeria supported the proposal. The Delegation also highlighted that resale rights already existed in Algeria's national legislation. The problem deserved careful attention on the SCCR's part and adequate discussion, because if the resale right existed in many Member States, then its scope was limited because of the transfer and the globalization of the art market. The issues deserved international attention including a study and a review.

450. The Delegation of the Congo (The Republic of) supported the proposal as put forward by itself and the Delegation of Senegal. The Congo was a big country and the issue of taking care of its artists was an acute problem. It was in the artistic domain where they saw that the owners of the works lived in very hard conditions, because people did not take care of their rights and, therefore, they requested that the issue be put on the Agenda for future work.

451. The Delegation of Canada stated that like the Delegation of the United States of America had stated, it was not among the countries with an artist resale right. It supported the proposal that the Secretariat undertake a study on the topic. Such a study would help inform the Member States about the similarities, differences and the impact of the right.

452. The Delegation of the Ukraine stated that the right of resale was recognized in its legislation. Despite the fact that it was present in its law it was working on a further reform of the legislation and introducing future changes and amendments to the law regarding resale

rights. The draft for reform was linked to the EU Resale Rights Directive and it planned to further implement it. It supported the proposal.

453. The Representative of CISAC stated that on behalf of the global community of creators and on behalf of the visual artists it represented over the world, it very much welcomed and strongly supported the joint proposal of Senegal and the Congo (The Republic of) to start discussions in the SCCR on the resale right. It expressed its thanks to the Delegation of Sudan and others for their support of that important initiative. The resale right was a fundamental right for visual artists. It ensured that the artist would receive the remuneration from the resale of their works. For many of the visual artists, the remuneration was a vital part of their income, but to all of the visual artists, the right was about respect. It was about the connection they had with their works. It was about bringing more transparency to the art market. It was about allowing visual artists to know where their works were in the world. It was, above all, about fairness. When a work of art increased in value, it increased in value because of the artist. It was the artist's growing reputation and popularity that led to an increase in the value of his or her work and it was only fair that the artist himself or herself would be able to share in that. Ultimately, it was the artist's growing reputation that underlined the value of their work. Therefore, it was only just and equitable that the artists and his or her family benefited from the work's appreciation. The resale right royalties normally represented only insignificant sums to the sellers and others, but to the creators, it was much more than that. The resale right was not only about royalties. It was the only instrument that allowed visual artists to maintain a connection with unique artworks that they had created. It forced the art market to be more transparent and, therefore, helped visual artists to know where their works were and who owned them. The right was recognized under international copyright law, but in a manner that was basic and insufficient. It was included in Article 14ter of the Berne Convention, which remained the principle blueprint for global rights, however it was not compulsory and it was subject to the requirement of reciprocity to the extent of the country where the protection was claimed. The particular nature of the right in the Berne Convention represented a major hardship for visual artists worldwide. It meant that artists did not have the right even in countries that recognized it, if the right did not exist in the artists' own country. The situation was, therefore, that the availability of the right and the level of protection varied from one country to another and depended upon the nationality of where they were located. Some had not incorporated the rights, impeding the right to a considerable number of artworks. The right was recognized by more than 80 countries worldwide, where it had proven to be an important tool to foster creativity in visual arts. There was important progress to be made in order to achieve an effective harmonization of the resale right and secure the availability around the world. The SCCR has been invited to decide whether or not that issue deserved to be analyzed in greater detail. CISAC believed that it was. CISAC also strongly believed that the SCCR should not miss the opportunity to discuss the issue, identify the problems and find solutions that needed to be found at an international level, for the sake of the visual artists worldwide, a fragile community that represented the creativity and the cultural heritage of each country around the world. The Representative invited the SCCR to include the resale right on the Agenda and in the future work plan of the SCCR.

454. The Delegation of Colombia thanked the Delegations of the Congo (The Republic of) and Senegal for their proposal. It was worth considering that right, because despite its mention in Article 14ter of the Berne Convention, as they had heard in the SCCR, it had not been put into law in all of the Member States. Additionally, Member States that had implemented the right in their legislation had not implemented it in a way to ensure that it became a real source of income for creators. For that reason, conducting a study was almost a historical duty and they needed to initiate that process of discussion.

455. The Delegation of Japan thanked the Delegations of Senegal and the Congo (The Republic of) for their proposal. Japan did not have the resale right for artists and did not

have a plan to introduce the right. Yet any information regarding the resale right or its mechanism may be useful, in order to objectively analyze the situation. In that regard, Japan supported the proposal by the Delegation of the United States of America to conduct a study on the issue.

456. The Representative of the IFJ supported the right and noted that it must be an international right if it was to work at all, given the nature of the markets.

457. The Chair stated that they had received interesting comments from different Member States and NGOs, and the initial reaction on the topic included some suggestions to further analyze it and to keep on discussing it. With that rich exchange, they would finish the discussion regarding the document and continue the discussion in future sessions to share a deeper understanding of the document. He opened the floor to other matters broadly.

458. The Delegation of Brazil, speaking on behalf of GRULAC stated that they had had formal discussions with the Regional Coordinators, the Chair and the Vice-Chair regarding a proposal on the future work plan and discussions. It was agreed that it would be beneficial for Member States to also have the opportunity to hear from the Chair on the proposal for a future work plan, so that every Member State could understand the proposal.

459. The Chair stated that the future work plan of the SCCR was a decision that should be taken by the SCCR. In that regard, the Chair could only make some suggestions in order to help them reach a decision on the future work to be undertaken. That need had increased because of the interesting topics proposed. He noted that they needed time to have productive sessions on the topics that were currently on the Agenda and that would become harder due to the suggestions regarding new topics and the legitimate proposals to discuss them. It would be impossible to have a session of the SCCR discussing five, six, seven or eight topics. The idea that he had shared with the Regional Coordinators was a helpful tool that could be used to more efficiently administrate the time and the challenges that the requests being made presented. The tool he had found to be analyzed by the Committee was an invitation to think that the first two topics on the Agenda, which had been discussed in so many sessions, had had a long road. He suggested that regarding the topic of broadcasting, the proposal by the broadcasting organizations was to have an extraordinary session during the following year exclusively dedicated to the analysis of that topic. Regarding the important topic of limitations and exceptions for libraries and archives, several steps had been taken in the recent sessions of the SCCR, especially after the large impact of the updated study by Professor Kenneth Cruz, which had given them not only a broad view of the current situation of exceptions and limitations related to libraries worldwide, but also an invitation to get deep into discussion. The Secretariat had made an effort to give them some tools in order to digest that rich information and the processes were still ongoing in doing so. One way was to analyze, at a regional level, the findings on the current situation on exceptions and limitations for libraries and archives, region by region, on the understanding that they could exchange the particular views regarding that topic, considering the differences in regions. In that regard, it may be helpful to ask the Secretariat to hold regional seminars for the topic of exceptions and limitations for libraries and archives, in order to analyze the rich information contained in the studies that had been presented in the SCCR session, with a view of exchanging views regarding the regional exceptions and receiving comments on the way to understand the topics. An extraordinary session for one topic and regional sessions for the second topic could be very helpful, because when they returned to the SCCR there could be a more efficient use of time. In summary, the Chair invited them to consider one extraordinary session for broadcasting and regional sessions for libraries and archives.

460. The Delegation of Brazil, speaking on behalf of GRULAC supported the proposal.

461. The Delegation of India, speaking on behalf of the Asia Pacific Group supported the proposal.
462. The Delegation of Nigeria, speaking on behalf of the African Group supported the proposal and suggested that the regional seminars on exceptions and limitations also include education and research institutions.
463. The Delegation of Romania, speaking on behalf of the CEBS Group stated that it had reservations about the need to have additional meetings to the formal SCCR sessions. With respect to the draft Treaty on the protection of broadcasting organizations, more discussions were needed in the framework of regular SCCR sessions in order to assess whether they could achieve a meaningful legally binding instrument, adapted to the technological developments of their times. It was their duty to ensure that the Treaty was not outdated before it even entered into force. As for the subjected of exceptions and limitations, all Member States would benefit from the continued progress of discussions within ordinary SCCR sessions. It suggested the SCCR reassess the Chair's proposal at the next SCCR session.
464. The Delegation of Greece, speaking on behalf of Group B suggested that as no agreement had been reached between the Regional Coordinators on the issue it did not see any usefulness of having any discussions outside the SCCR framework. Nevertheless, Group B would consider the work program at the next session of the SCCR.
465. The Chair stated that it was up to the SCCR to consider the proposal. He suggested that the proposal would be further analyzed at the next SCCR session, as only reservations had been expressed and the views were not to reject the proposal. He suggested that at the level of Regional Coordinators some work needed to be done to prepare for the next session of the SCCR. He concluded the discussion on other matters. The Chair stated that he had decided to prepare a Summary by the Chair, as it had been helpful previously. It was not a joint exercise of drafting and it did not need to be approved by the SCCR. In a meeting with Regional Coordinators, he had received inputs, comments and views regarding the Summary by the Chair. He explained the process of the Chair's summary.
466. The Chair stated that they had prepared the Chair's summary, which had been distributed to the Delegations. He gave the floor to the Secretariat to read the summary.
467. The Secretariat stated: "Standing Committee on Copyright and Related Rights, Thirty-First Session, Geneva, December 7 to 11, 2015. Summary by the Chair. Agenda Item 1: Opening of the session. The Thirty-First session of the Standing Committee on Copyright and Related Rights (SCCR) or Committee was opened by Mr. Francis Gurry, Director General, who welcomed the participants and opened Agenda Item 2. Ms. Michele Woods, WIPO, acted as Secretary. Agenda Item 2: Adoption of the Agenda of the Thirty-First Session. The Committee adopted the Draft Agenda, document SCCR/31/1/prov. Agenda Item 3: Accreditation of new Non-Governmental Organizations. The Committee approved the accreditation, as an SCCR observer, of the non-governmental organization referred to in the annex to document SCCR/31/2, namely the African Public Broadcasting Foundation (APFB). Agenda Item 4: Adoption of the Draft Report of the Thirtieth Session. The Committee approved the draft report of its Thirtieth Session, document SCCR/30/6, as proposed. Delegations and observers were invited to send any comments on their statements to the Secretariat at [copyright.mail@WIPO.int](mailto:copyright.mail@WIPO.int) by January 15, 2016. Agenda Item 5: Protection of Broadcasting Organizations. The documents related to this agenda item were SCCR/27/2/Rev, SCCR/27/6, SCCR/30/5 and SCCR/31/3. The Committee welcomed and considered document SCCR/31/3, prepared by the Chair entitled, Consolidated Text on Definitions, Object of Protection and Rights to be Granted. Some Delegations requested further clarification on the document, and others suggested textual proposals for the text.

The discussions contributed to progress with a view to reaching a common understanding on the protection of broadcasting organizations. The Committee decided to continue discussions on this document and on a revised document that will be prepared by the Chair for the next session of the Committee, taking into account the proposals and clarifications discussed. Members of the Committee may submit to the Secretariat by January 20, 2016, those specific textual proposals that were made during this session for document SCCR/31/3, for consideration by the Chair. This item will be maintained on the agenda of the Thirty-Second Session of the SCCR. Agenda Item 6: Limitations and Exceptions for Libraries and Archives. The documents related to this agenda item were SCCR/26/3, SCCR/26/8, SCCR/29/3, SCCR/30/2 and SCCR/30/3. The Committee heard the presentation by Professor Lucie Guibault and Ms. Elisabeth Logeais on, the Study on Copyright Limitations and Exceptions for Museums, contained in document SCCR/30/2. The Committee welcomed the presentation, and delegations and observers participated in a question and answer session with the experts. Amendments and clarifications should be sent to the Secretariat at [copyright.mail@WIPO.int](mailto:copyright.mail@WIPO.int) by January 20, 2016. Discussions were based on the chart introduced by the Chair on exceptions and limitations for libraries and archives. This chart was designed to serve as a useful tool to provide structure to discuss the substance of each topic, drawing on the many resources before the Committee. This will allow the Committee to have an evidence based discussion, respecting differing views and understanding that the goal is not to guide the discussion toward any particular or undesired outcome, but instead to lead to a better understanding of the topics and of their actual relevance to the discussions and the intended outcome. The Chair highlighted some of the elements that were drawn from the views expressed in the comments and submissions of the members of the Committee on the topic of preservation during the previous SCCR session. Members of the Committee also exchanged views regarding the topics listed in the Chair's chart, namely, reproduction and safeguarding copies, legal deposit and library lending. In addition, concerns that could arise when considering limitations and exceptions related to these topics and possible measures to address such concerns were expressed. Suggestions were also made for alternative approaches. This item will be maintained on the agenda of the Thirty-Second Session of the SCCR. Agenda Item 7: Limitations and Exceptions for Educational and Research Institutions and for Persons with Other Disabilities. The documents related to this agenda item were SCCR/26/4/prov and SCCR/27/8. The Secretariat informed the Committee about the progress made in response to the requests made at SCCR 30 to update the various studies on limitations and exceptions for educational, teaching and research institutions, published for the Nineteenth Session of the SCCR in 2009, and to aim to cover all WIPO Member States, as well as to prepare a scoping study on limitations and exceptions for persons other than persons with print disabilities. The updated study has been commissioned and is expected to be presented at SCCR 32. The scoping study will be commissioned in early 2016 and is expected to be presented at SCCR 33. The Committee held discussions on the topic of limitations and exceptions for educational, teaching and research institutions and their relationship with the fundamental role of education in society, with reference to the existing documents. Some members requested preparation by the Chair of a chart, like the limitations and exceptions chart, to be used as a tool to focus discussions on this topic. Some other members asked for more time to consider this suggestion. Other delegations suggested having an open ended discussion on Document SCCR 26/4prov. This item will be maintained on the agenda of the Thirty-Second Session of the SCCR. Agenda Item 8: Other matters. The documents related to this agenda item were SCCR/31/4 and SCCR/31/5. The Delegation of Brazil introduced Document SCCR/31/4 entitled, Proposal for Analysis of Copyright Related to the Digital Environment. Members of the Committee and observers offered initial comments and reactions to the proposal. The Delegation of Senegal introduced Document SCCR/31/5 entitled, Proposal from Senegal and the Congo (The Republic of) to include the Resale Right in the Agenda of Future Work by the Standing Committee on Copyright and Related Rights of the World Intellectual Property Organization. Members of the Committee and observers offered initial comments and reactions to the proposal. These topics will be maintained on



the agenda of the Thirty-Second Session of the SCCR under the agenda item for other matters. The Chair presented a proposal to hold an extraordinary session of the Committee on protection for broadcasting organizations and to hold regional meetings on the subject of limitations and exceptions for libraries and archives. Some Regional Groups supported the proposal. Other Regional Groups considered it unnecessary or premature to hold sessions in addition to the ordinary sessions of the Committee. However, those groups would consider the proposal again at the next session of the Committee. The Chair announced that in the absence of consensus, the proposal would be discussed again at SCCR 32. Summary of the Chair. The Committee took note of the contents of this summary by the Chair. The Chair clarified that this summary reflected the Chair's views on the results of the Thirty-First Session of the SCCR and that as a consequence, it was not subject to approval by the Committee. Agenda Item 9: Closing of the Session. The next session of the Committee will take place from May 9 to 13, 2016."

468. The Chair stated that it was his view of what had happened in the Session. Only factual corrections could be admitted and they were not going to enter into a comment or joint exercise in order to reflect the delegations' particular views or concerns, because he had taken in account the different views expressed by the Regional Coordinators.

469. The Delegation of Brazil referred to Paragraph 24 and stated that the Delegation of Brazil had introduced the document on behalf of GRULAC.

470. The Chair asked the Secretariat to take note of that factual change.

471. The Delegation of Nigeria, speaking on behalf of the African Group referred to Paragraph 27 and inquired if the Chair had noted that one Regional Group had supported the Chair's proposal and had expressed a preference for regional seminars encompassing both exceptions and limitations agenda items of the SCCR. In the second sentence of that paragraph, Paragraph 27 he had noted that some Regional Groups supported the proposal, and other Regional Groups considered it unnecessary or premature to hold sessions in addition to ordinary sessions. The Group asked that he indicate that one Regional Group expressed a preference for regional seminars to encompass both exceptions and limitations agenda items of the SCCR. That was factual as well.

472. The Chair confirmed that was a factual correction. He opened the floor for final statements.

#### **AGENDA ITEM 9: CLOSING OF THE SESSION**

473. The Delegation of Romania, speaking on behalf of the CEBS Group thanked the Chair and the Secretariat. The Delegate stated that as it was his last meeting as Regional Coordinator he would make remarks in his national capacity, highlighting the great honor it had been to serve the Group. The Delegate thanked the other Regional Coordinators for their cooperation, and for also making the mission more challenging at times.

474. The Delegation of Nigeria, speaking on behalf of the African Group thanked the Chair and the Secretariat. The African Group had considered it to be a very informative and engaging session of the SCCR and hoped that the level of engagement was further enhanced at future sessions, irrespective of their differences in opinion and desired outcomes. Indeed, only meaningful and effective engagement could lead them to a common understanding and shared objective for the issues before them for consideration in the SCCR. The African Group welcomed the discussions held on broadcasting organizations and thanked the Chair for his consolidated Document SCCR/31/4, which immensely facilitated the work on the broadcasting agenda. The Group looked forward to the next

session of the SCCR. The African Group was confident the Chair's revised text would reflect the views expressed by Member States and above all, remain within the limits of the signal-based protection of broadcasting organizations, as envisioned by the 2007 mandate. The Group hoped that the text would avoid the layering of rights beyond the objective of the 2007 mandate. It believed that neutrality in the text would facilitate the negotiations. The African Group welcomed the discussions on exceptions and limitations, the studies considered and/or referenced, as well as input from IGOs and NGOs had been very helpful for the exchange of views by Member States. The discussions held provided clear and relatable insight into the barriers encountered by libraries and archives, educational and research institutions and persons with other disabilities in adequately accessing information and knowledge. Acknowledgment of the utility of the principle of exceptions and limitations advanced such knowledge and information based objectives. It had been interesting to listen to and appreciate the views exchanged on the Agenda Item. The African Group hoped for the translation of that understanding into real results, for the immense number of persons in developed and developing countries, especially the youth in the latter, who were unjustifiably excluded from the information and knowledge base, due to technicalities related to IP rights. Indeed, there was a reason why the international IP system was a quid pro quo system, specifically the right to rent for investments in material and intellectual resources, in exchange for serving the public interest. The African Group remained optimistic that the ongoing evolution on that subject around the world could positively impact SCCR negotiations, and enable demonstration of the requisite political will and good faith needed to take necessary steps that would facilitate access to information and knowledge, to a wider membership of the global community, for human and societal development. In that regard, the Group reminded the Committee of the commitment made by all Member States for 2030 UN Sustainable Development Goals. In particular, the Delegate referred to Sustainable Development Goal 4, where Member States committed to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all. The African Group reiterated a request for the preparation of a consolidated text by the Chair, which provided a chart of the elements of exceptions to be discussed, in the same vein as the chart prepared by the Chair for discussions on exceptions and limitations for libraries and archives. Such a step would be of immense help to their deliberations on the subject. The Group took note of the Chair's presentations of the proposals contained in Documents SCCR/31/4 and SCCR/31/5 by the Delegations of Brazil, Senegal and the Congo (The Republic of) respectively and their responses to both proposals. Not having adequate time to analyze the proposals, by the next session, the Group may be in a better position to share a regional view on both proposals. Nevertheless, the African Group appreciated the relevance of both subjects for further discussion in the SCCR. The Group noted the heavy agenda of the SCCR, especially with the introduction of those two new agenda items. It would therefore be necessary and practical to devise an effective means of advancing the SCCR's work, if the Committee was committed to meaningfully considering the topics on the Agenda. In that regard, the African Group strongly supported the Chair's proposal for an inter-sessional extraordinary session on broadcasting organizations and regional seminars on exceptions and limitations, though its preference was for both exceptions subject before the SCCR. It encouraged pragmatic reflection on that potential in order to enable consensus on the most functional way forward. The African Group would remain constructive and retained its confidence in the Chair's leadership.

475. The Delegation of Greece, speaking on behalf of Group B thanked the Chair and the Secretariat. The SCCR had had rich discussions with regard to the protection of broadcasting organizations. On the issue of exceptions and limitations, Group B reiterated that no consensus existed with regards to the normative work of the SCCR, something that should duly be taken into account within the discussions.

476. The Delegation of China thanked the Chair and the Secretariat for the excellent and pragmatic work. The Delegation expressed its appreciation of the work of the Regional

Coordinators and thanked all Member States for their constructive and flexible approach and for the sharing of information. The Delegation had taken note of the fact that in terms of broadcasting organizations and limitations and exceptions, there were divergent practices. However, enhancing protection and promoting development was a common objective. The Delegation supported deepened discussions on those subjects. The Delegation also supported the proposal by the Chair to hold regional seminars as well as an extraordinary session on the protection of broadcasting organizations, in order to advance the SCCR's work.

477. The Delegation of India, speaking on behalf of the Asia Pacific Group thanked the Chair, the Secretariat and the interpreters for their constant support during the meeting. The Group welcomed the contribution made by delegations and observers during the discussions on the protection of broadcasting organizations. Their contributions had helped the Committee to achieve some clarity on the topic and a better understanding of different positions. The Asia Pacific Group supported the attempts to reach an understanding and agreement, based on the signal-based approach for broadcasting and cablecasting organizations in a traditional sense. The Group also welcomed and supported the Chair's suggestion to have an inter-sessional, exclusive session on the protection of broadcasting organizations. Not all Groups could agree to the proposal and it understood the concerns. The Group hoped that they would be able to arrive at a consensus, so that they could have an inter-sessional meeting on that particular topic. The Delegate stated that the agenda items on exceptions and limitations for libraries and archives, and exceptions and limitations for educational and research institutions and persons with other disabilities, were very important issues for the Group. The Asia Pacific Group hoped that all Member States would engage sincerely and constructively in the next session, based on discussions in that session, so that they could have the text to discuss and work with. The Group reiterated its request that the Chair consider appointing a facilitator during SCCR 32, to shape the text into a full working document, so that there would be definite progress on the issues of exceptions and limitations.

478. The Delegation of Brazil, speaking on behalf of GRULAC thanked the Chair and the Secretariat. The Group considered that there had been good discussions during the week towards advancing the agenda of the SCCR. The three topics under discussions were of interest to the Group, namely the protection of broadcasting organizations, limitations and exceptions for libraries and archives, and limitations and exceptions for educational and research institutions and persons with other disabilities. The Group supported and encouraged positive results on those three issues. GRULAC expressed its support of the Chair's proposal to convene an extraordinary session and hold regional seminars to make the discussions move forward. Beyond those three elements and topics that were being discussed, the Group had presented a new document for discussion under Agenda Item 8. The document SCCR/31/4, entitled Proposal for Analysis of Copyright Related to the Digital Environment, had been well received. GRULAC appreciated the readiness of many delegations and observers to engage in discussions, and looked forward to continuing the exercise in the next session.

479. The Chair thanked the Delegations for their commitment, hard work, ideas and the environment in which they had exchanged views. He thanked the Secretariat, the Vice-Chair and the interpreters.

480. The Secretariat thanked those that had worked behind the scenes.

481. The Chair closed the session.

## **SUMMARY BY THE CHAIR**

### **AGENDA ITEM 1: OPENING OF THE SESSION**

1. The Thirty-First Session of the Standing Committee on Copyright and Related Rights (SCCR or Committee) was opened by Mr. Francis Gurry, Director General, who welcomed the participants and opened Agenda Item 2. Ms. Michele Woods (WIPO) acted as Secretary.

### **AGENDA ITEM 2: ADOPTION OF THE AGENDA OF THE THIRTY-FIRST SESSION**

2. The Committee adopted the draft agenda (document SCCR/31/1 PROV.).

### **AGENDA ITEM 3: ACCREDITATION OF NEW NON GOVERNMENTAL ORGANIZATIONS**

3. The Committee approved the accreditation as an SCCR observer of the non-governmental organization referred to in the Annex to document SCCR/31/2, namely the African Public Broadcasting Foundation (APBF).

### **AGENDA ITEM 4: ADOPTION OF THE DRAFT REPORT OF THE THIRTIETH SESSION**

4. The Committee approved the draft report of its thirtieth session (document SCCR/30/6) as proposed. Delegations and observers were invited to send any comments on their statements to the Secretariat at [copyright.mail@wipo.int](mailto:copyright.mail@wipo.int) by January 15, 2016.

### **AGENDA ITEM 5: PROTECTION OF BROADCASTING ORGANIZATIONS**

5. The documents related to this agenda item were SCCR/27/2 REV., SCCR/27/6, SCCR/30/5 and SCCR/31/3.

6. The Committee welcomed and considered document SCCR/31/3 prepared by the Chair, entitled Consolidated Text on Definitions, Object of Protection, and Rights to be Granted.

7. Some delegations requested further clarification on the document and others suggested textual proposals for the text.

8. The discussions contributed to progress with a view to reaching a common understanding on the protection of broadcasting organizations.

9. The Committee decided to continue discussions on this document and on a revised document that will be prepared by the Chair for the next session of the Committee taking into account the proposals and clarifications discussed.

10. Members of the Committee may submit to the Secretariat, by January 20, 2016, those specific textual proposals that were made during this session for document SCCR/31/3, for consideration by the Chair.

11. This item will be maintained on the agenda of the thirty-second session of the SCCR.

## **AGENDA ITEM 6: LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES**

12. The documents related to this agenda item were SCCR/26/3, SCCR/26/8, SCCR/29/3, SCCR/30/2 and SCCR/30/3.

13. The Committee heard the presentation by Professor Lucie Guibault and Ms. Elisabeth Logeais on the Study on Copyright Limitations and Exceptions for Museums, contained in document SCCR/30/2. The Committee welcomed the presentation and delegations and observers participated in a question-and-answer session with the experts. Amendments and clarifications should be sent to the Secretariat (copyright.mail@wipo.int) by January 20, 2016.

14. Discussions were based on the chart introduced by the Chair on “exceptions and limitations for libraries and archives”. This chart /was designed to serve as a useful tool to provide structure to discuss the substance of each topic, drawing on the many resources before the Committee. This will allow the Committee to have an evidence-based discussion respecting differing views and understanding that the goal is not to guide the discussion toward any particular or undesired outcome, but instead to lead to a better understanding of the topics and of their actual relevance to the discussions and the intended outcome.

15. The Chair highlighted some of the elements that were drawn from the views expressed in comments and submissions of Members of the Committee on the topic of preservation during the previous SCCR session.

16. Members of the Committee also exchanged views regarding the topics listed on the Chair’s chart, namely reproduction and safeguard copies, legal deposit and library lending. In addition, concerns that could arise when considering limitations and exceptions related to these topics and possible measures to address such concerns were expressed. Suggestions were also made for alternative approaches.

17. This item will be maintained on the agenda of the thirty-second session of the SCCR.

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

18. The documents related to this agenda item were SCCR/26/4 PROV. and SCCR/27/8.

19. The Secretariat informed the Committee about the progress made in response to the request made at SCCR/30 to update the various studies on limitations and exceptions for educational, teaching and research institutions published for the nineteenth session of the SCCR in 2009 and to aim to cover all WIPO Member States, as well as to prepare a scoping study on limitations and exceptions for persons other than persons with print disabilities. The update study has been commissioned and is expected to be presented at SCCR/32. The scoping study will be commissioned in early 2016 and is expected to be presented at SCCR/33.

20. The Committee held discussions on the topic of limitations and exceptions for educational, teaching and research institutions and their relationship with the fundamental role of education in society, with reference to the existing documents.

21. Some Members requested the preparation by the Chair of a chart like the limitations and exceptions chart for libraries and archives to be used as a tool to focus discussions on this topic. Some other Members asked for more time to consider this suggestion. Other delegations suggested having an open-ended discussion on document SCCR/26/4 Prov.

22. This item will be maintained on the agenda of the thirty-second session of the SCCR.

#### **AGENDA ITEM 8: OTHER MATTERS**

23. The documents related to this agenda item were SCCR/31/4 and SCCR/31/5.

24. The Delegation of Brazil introduced document SCCR/31/4, entitled Proposal for Analysis of Copyright Related to the Digital Environment, on behalf of the Group of Latin American and Caribbean Countries (GRULAC). Members of the Committee and observers offered initial comments and reactions to the proposal.

25. The Delegation of Senegal introduced document SCCR/31/5, entitled Proposal from Senegal and Congo to include the Resale Right (droit de suite) in the Agenda of Future work by the Standing Committee on Copyright and Related Rights of the World Intellectual Property Organization. Members of the Committee and observers offered initial comments and reactions to the proposal.

26. These topics will be maintained on the agenda of the thirty-second session of the SCCR under the agenda item for other matters.

27. The Chair presented a proposal to hold an extraordinary session of the Committee on protection for broadcasting organizations and to hold regional meetings on the subject of limitations and exceptions for libraries and archives. Some regional groups supported the proposal. One of these groups expressed a preference for the regional meetings to include the subject of limitations and exceptions for educational and research institutions and persons with other disabilities. Other regional groups considered it unnecessary or premature to hold sessions in addition to the ordinary sessions of the Committee. However those groups could consider the proposal again at the next session of the Committee. The Chair announced that in the absence of consensus the proposal would be discussed again at SCCR/32.

#### **SUMMARY OF THE CHAIR**

28. The Committee took note of the contents of this Summary by the Chair. The Chair clarified that this summary reflected the Chair's views on the results of the 31th session of the SCCR and that, in consequence, it was not subject to approval by the Committee.

#### **AGENDA ITEM 9: CLOSING OF THE SESSION**

29. The next session of the Committee will take place from May 9 to 13, 2016.

[Annex follows]

## **ANNEXE/ANNEX**

### **LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS**

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Nazir Ahmad FOSHANJI, Third Secretary, Permanent Mission, Geneva

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ÎLES SALOMON/SOLOMON ISLANDS

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TRINITÉ-ET-TOBAGO/TRINIDAD AND TOBAGO

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VIET NAM

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YÉMEN/YEMEN

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ZIMBABWE

Rhoda Tafadzwa NGARANDE (Ms.), Counsellor, Permanent Mission, Geneva

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### UNION EUROPÉENNE (UE)\*/EUROPEAN UNION (EU)\*

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Giorgio MONGIAT, Policy Officer, Copyright Unit, Directorate General Connect, European Commission, Brussels

Antonella ZAPPIA (Ms.), Intern, Permanent Delegation, Geneva

## III. ORGANISATIONS INTERGOUVERNEMENTALES/ INTERGOVERNMENTAL ORGANIZATIONS

### CENTRE SUD (CS)/SOUTH CENTRE (SC)

Carlos M. CORREA, Special Adviser, Trade and Intellectual Property, Geneva

German VELASQUEZ, Special Adviser, Health and Development, Geneva

Viviana MUÑOZ TELLEZ (Ms.), Coordinator, Development, Innovation and Intellectual Property Programme, Geneva

Nirmalya SYAM, Programme Officer, Innovation and Access to Knowledge Programme, Geneva

Neha JUNEJA (Ms.), Intern, Development, Innovation and Intellectual Property Programme, Geneva

### OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL/EUROPEAN AUDIOVISUAL OBSERVATORY

Sophie VALAIS (Ms.), Legal Analyst, Strasbourg

### ORGANISATION MONDIALE DU COMMERCE (OMC)/WORLD TRADE ORGANIZATION (WTO)

Hannu WAGER, Counselor, Intellectual Property Division, Geneva

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\* Sur une décision du Comité permanent, la Communauté européenne a obtenu le statut de membre sans droit de vote.

\* Based on a decision of the Standing Committee, the European Community was accorded member status without a right to vote.

ORGANISATION RÉGIONALE AFRICAINE DE LA PROPRIÉTÉ INTELLECTUELLE  
(ARIPO)/AFRICAN REGIONAL INTELLECTUAL PROPERTY ORGANIZATION (ARIPO)

Makhetha Wencislas MONYANE, Copyright Registrar, Registrar General - Copyright Section,  
Ministry of Law & Constitutional Affairs, Maseru

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UNION AFRICAINE (UA)/AFRICAN UNION (AU)

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Georges-Rémi NAMEKONG, ministre conseiller, Délégation permanente, Genève

Susan ISIKO STRBA (Mme), consultant, Genève

Claude KANA, expert, Genève

IV. ORGANISATIONS NON GOUVERNEMENTALES/  
NON-GOVERNMENTAL ORGANIZATIONS

Agence pour la protection des programmes (APP)  
Didier ADDA, conseil en propriété industrielle, Paris

Alianza de Radiodifusores Iberoamericanos para la Propiedad Intelectual (ARIPI)  
Felipe SAONA, Delegado, Zug  
José Manuel GÓMEZ BRAVO, Delegado, Madrid  
Armando MARTÍNEZ, Delegado, México, D.F.  
Esther PEREZ BARRIOS (Sra.), Delegada, Madrid  
Edmundo REBORA, Delegado, Buenos Aires

Asociación Argentina de Intérpretes (AADI)  
Susana RINALDI (Sra.), Directora de Relaciones Internacionales, Relaciones  
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Association des télévisions commerciales européennes (ACT)/Association of Commercial  
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Association européenne des étudiants en droit (ELSA international)/European Law Students'  
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Enrico CESTARI, Delegate, Brussels  
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Maria Rosaria MISERENDINO (Ms.), Delegate, Brussels

Asociación internacional de radiodifusión (AIR) /International Association of Broadcasting (IAB)

Juan ANDRÉS LERENA, Director General, Montevideo  
Nicolás NOVOA, Miembro, Montevideo  
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Association internationale des éditeurs scientifiques, techniques et médicaux (STM)/International Association of Scientific Technical and Medical Publishers (STM)

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Association internationale pour la protection de la propriété intellectuelle (AIPPI)/International Association for the Protection of Intellectual Property (AIPPI)

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Association internationale pour le développement de la propriété intellectuelle (ADALPI)/International Society for the Development of Intellectual Property (ADALPI)

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Association littéraire et artistique internationale (ALAI)/International Literary and Artistic Association (ALAI)

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Association mondiale des journaux (AMJ)/World Association of Newspapers (WAN)

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Canadian Library Association (CLA)

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Central and Eastern European Copyright Alliance (CEECA)

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Comité acteurs, interprètes (CSAI)/Actors, Interpreting Artists Committee (CSAI)  
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Confédération internationale des éditeurs de musique (CIEM)/International Confederation of Music Publishers (ICMP)

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Confédération internationale des sociétés d'auteurs et compositeurs (CISAC)/International Confederation of Societies of Authors and Composers (CISAC)

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Conseil international des archives (CIA)/International Council on Archives (ICA)

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Conseil international des créateurs des arts graphiques, plastiques et photographiques (CIAGP)/International Council of Authors of Graphic, Plastic and Photographic Arts (CIAGP)

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European Visual Artists (EVA)

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Katie WEBB (Ms.), Administrator London  
John DEGEN, Author, London  
Barbara HAYES (Ms.), Company Secretary, London  
Elisam MAGARA, Author, London  
Gee MAGGIE (Ms.), Author, London  
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Knowledge Ecology International, Inc. (KEI)

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VI. BUREAU INTERNATIONAL DE L'ORGANISATION MONDIALE DE LA  
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