

Standing Committee on Copyright and Related Rights

Forty-First Session
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STATEMENTS

compiled by the secretariat from statements submitted by participants

GENERAL STATEMENTS/ STATEMENTS ON MULTIPLE TOPICS

1. The Delegation of China. The Chinese delegation is very concerned about various issues. The issue of protecting broadcasting organizations has been discussed for a long time, but the positions of all parties are different, and consensus on some major issues has not been reached. We propose that this committee continue to maintain the spirit of “understanding, support, tolerance, and cooperation”, conduct constructive discussions and reach more consensus, To promote the early convening of the diplomatic conference. We very much agree that limitations and exceptions are important for promoting knowledge dissemination, cultural inheritance, and protecting the balance between the rights of authors and the public interest. Therefore, we call for determining the priority of related projects, formulating practical work plans, and advancing the discussion process through in-depth research. Regarding other matters, we are also willing to learn about the progress of related work.

2. The Delegation of the United Kingdom Speaking on behalf of Group B. Group B would like to thank you for your availability to continue serving as Acting Chair for SCCR/41. Our thanks goes also to your Vice-Chair. We look forward to working together under your guidance to explore the agenda items before us. We would also like to thank the Secretariat for its hard work in organising this session and preparing the relevant documents in light of the changing situation presented by the COVID-19 pandemic. We would like to thank Member State delegates who have joined us online for their commitment to making this session a success. The continued adaptability of all involved, including the Member States, is essential to ensuring that the important intergovernmental work of WIPO continues. We would like to reiterate that we continue to attach importance to the negotiation of a treaty on the protection of broadcasting organizations. We are committed to working towards a practical and meaningful solution, which fits with the overall broadcasting environment, takes into account a broad range of Member State and stakeholder views, and reflects technological developments. We are grateful to have an update from the Chair on ongoing informal work and the opportunity to provide our inputs on possible next steps. On limitations and exceptions, Group B welcomes the opportunity to continue discussions on the report setting out the outcomes of the Regional Seminars and International Conference on Limitations and Exceptions, which was presented at SCCR 40. We believe that evidence-based policy-making is essential. In light of our comments on building an evidence base on which to continue discussions, we welcome the contribution of experts to our discussions on copyright in the digital environment, artist’s resale right and theatre director’s rights. We acknowledge the value in further investigation in the area of Public Lending Right, we will need to balance this with the work that is already being pursued under the SCCR agenda. Chair, please rest assured that you can count on the continued and constructive engagement of all Group B Members in the work of this important Committee. Thank you, Chair.

3. The Delegation of Bangladesh speaking on behalf of the Asia and Pacific Group (APG) in the 41st Session of the Standing Committee on Copyright and Related Rights (SCCR). We are pleased to see you again chairing this Committee. We have confidence in your leadership to steer the session to a successful conclusion. Our group would also like to thank the WIPO Secretariat, DDG Ms. Sylvie Forbin, Ms. Michele Woods, and their team for the excellent preparation for this meeting. The APG supports the agenda and programme of this SCCR session, which well reflects the expectations of the Member States under current circumstances. We regret that the current circumstances do not allow us to engage in discussions at length on substantial issues like the textual discussion on broadcasting matters. At the same time, we are happy to see that the Member States are in a common understanding in terms of finalising the agenda and modalities of the meeting to advance the Committee’s works. We hope that with this spirit, Members would be able to achieve consensus on fundamental issues like concluding an international treaty on broadcasting issues through a diplomatic conference in due course. On the Broadcasting issue, we are looking forward to

hearing the update on your ongoing informal work. The members of the APG are keen to engage in discussion on your updates. The APG's position on Broadcasting Treaty is very well known. We firmly believe that the modality in which intellectual property rights should apply is a delicate developmental issue requiring careful balancing. We may recall here the mandate of the 2007 General Assembly to provide protection on the signal-based approach for cablecasting and broadcasting organizations in the traditional sense. Most members of the group would like to see the finalization of a balanced treaty on the protection of broadcasting organizations based on that mandate. However, some members of the group may have a different position based on their national policies. For the APG, limitations, and exceptions for libraries, archives, museums, educational and research institutions, as well as persons with other disabilities are of critical importance to individuals and the collective development of societies. While we appreciate the works that have so far been done, we believe that we have still a lot to do. COVID-19 has made a profound impact on the copyright ecosystem and its stakeholders; not only rights-holders, but users too, have had to respond to the pandemic's increased demands for creating, distributing, and accessing works remotely. Now is the time to begin our planning for finalizing a program of work to move forward on this particularly important matter. In this regard, we welcome the idea of holding regional consultations with the participation of member states and relevant stakeholders after SCCR/41. Our Group recognises the emergence of new and important issues such as artists' resale rights, copyright in the digital environment, and theatre directors' rights. We note the good work done by the Secretariat and Experts on these issues and look forward to further discussions at this session. We would also like to hear the update on the proposal for a study on public lending right from the key components. Let me stop here. I thank you once again, Mr. Chair.

4. The Delegation of Georgia speaking on behalf of Central European and Baltic States Group (CEBS). The Central European and Baltic States Group wishes to thank you for your able guidance of this Committee. Furthermore, we extend our gratitude to the Vice-chair and the Secretariat for the preparation of this meeting and the relevant documents. A treaty on the protection of broadcasting organizations remains a priority for us. We find discussions on the broadcasting treaty being the central element of this Committee. We are committed to working towards a solution, which would reflect the current needs of broadcasting organizations and would take into account the latest technological developments. We hope for further progress on issues like: definitions, object of protection, rights to be granted, and other matters. Constructive discussions on these topics might result in broader consensus on the complex issues of the protection of broadcasting organizations. The CEBS Group acknowledges the fundamental role played by the libraries, archives, and museums in social and cultural development. The CEBS also attach importance to the support of educational and research institutions and for people with other disabilities. At the same time, we would like to highlight the existing international frameworks on limitations and exceptions. We believe that the current international legal framework already allows the Member States to adopt or amend the national laws to ensure adequate protection. We express readiness to engage constructively in the discussions on these topics. We also would like to support the proposal of the delegations of Senegal and Congo to include the resale right in the agenda of the SCCR. Finally, Mr. Chair, let me reassure you of the constructive engagement of the group in all the discussions during the SCCR session.

5. The Delegation of Peru speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC). The Delegation of Peru has the honor to take the floor on behalf of the Group of Latin American and Caribbean Countries (GRULAC). First of all, GRULAC would like to congratulate you on your appointment, Chair, as well as your Vice-Presidents. The group would like also to thank the secretariat for its intense work on the preparation of the many documents that will be presented and discussed at this session, which has been organized at a time when local authorities have been adjusting the restrictions imposed by the COVID-19 pandemic. We hope that the health situation will gradually improve, and that the next session of

the Committee will be held as close as possible to the usual conditions, including, if possible, the participation of delegates from capitals. Mr. Chair, GRULAC reiterates its position on the importance of maintaining a balanced work program with regard to the issues of the protection of broadcasting organizations, and limitations and exceptions for libraries and archives, for educational and research institutions and persons with other disabilities. GRULAC believes that the presentation of the Consolidated and Revised Text on Definitions, Object of Protection, Rights to be Granted and Other Issues (document SCCR/39/7) would provide a better understanding of the formulations contained therein and could enhance further discussions under better conditions at the next session. GRULAC also considers relevant the information provided by WIPO on the regional seminars and the international conference on limitations and exceptions. GRULAC would also like to stress the special importance it attaches to the topic of copyright in the digital environment and would like to know in greater detail the results of the studies carried out on this subject by WIPO, in particular, those related to market and contracting conditions, as well as alternatives for achieving better protection of the rights of authors and creators. On this topic, GRULAC will submit a separate statement under the relevant agenda item. We also look forward to presentations on the issues of resale participation, the rights of theatre directors and the right to public lending. Finally, GRULAC reiterated its continued readiness to work with other Members to make progress on all the issues on the SCCR's agenda.

6. The Delegation of South Africa speaking on behalf of the African Group. Mr Chair, South Africa has the honour of delivering this statement on behalf of the Africa Group. The Africa Group is pleased to see you chairing this 41st session of the SCCR. We have no doubt that you will preside over this meeting with the utmost professionalism and skill with which you presided over the last session and you can count on the support of our Group. We also thank the Secretariat for its strenuous efforts in preparing for this 41st session of the SCCR, including through consultations with member states ahead of this session. The Africa Group is keen to see substantial progress being made during this session of the SCCR. The Group is acutely aware of the limitations that exist as a result of the Covid 19 pandemic which has altered the manner in which we conduct our meetings. Despite these limitations, our group views this meeting as an opportunity to find convergence among all delegations on the important issues that are on the agenda of the SCCR. Mr Chair, the work of the SCCR has not been spared from the devastating impact of the Covid 19 pandemic. Rights holders and users alike have encountered a myriad of challenges as a result of the pandemic. The Africa Group believes that the challenges brought about by the Covid 19 pandemic need to be examined thoroughly and therefore the Group supports the holding of an information session on the impact of Covid 19 on copyright, including on limitations and exceptions to be held in the 42nd session. Such an exchange of information would be of benefit to this Committee. The Africa Group has always maintained that a balanced copyright system is essential for the promotion of culture, science, education and for sustainable development. The Group believes that such a balanced copyright system, which affords the necessary protection to creators while allowing sufficient access to users, is indispensable and should inform the work of this Committee. Limitations and Exceptions are critical in ensuring the said balance and we welcome the extensive work that has gone into understanding the limitations and exceptions landscape better, including the regional conferences and the international conference on limitations and exceptions that took place in 2019 – the report of which was considered in the previous session of the SCCR and will be discussed again in this session. The Group believes that concrete progressive future work on limitations and exceptions should be a priority for this Committee. Mr Chair, the formal work on the Broadcasting Treaty has unfortunately not progressed as a result of not engaging in negotiations, as agreed to by all member states. We look forward to an update from the Chair on the informal work that has been undertaken through the Friends of the Chair process and how that work fits into the formal work of the Committee. The Africa Group remains committed to working constructively with all members to ensure the successful conclusion of the Broadcasting Treaty, in accordance with the mandate of the 2007 WIPO General Assembly.

The other matters that make up the agenda of this session are also important and we look forward to an update and presentation on the agenda item: copyright in the digital environment. We equally look forward to the presentation by the Task Force Representatives on the Resale Royalty Right as well as presentations by the authors of the *Study on the Rights of Stage Directors of Theatrical Productions*. The Group further hopes that the Committee will have productive deliberations on the proposal by the delegations of Sierra Leone, Malawi and Panama for a study on Public Lending Right (PLR) to be undertaken by WIPO. We hope that a way forward can be agreed on this proposal. Mr Chair, the Group is hopeful that member states and all other stakeholders will work hand in hand to deliver a successful session of the SCCR. Thank you.

7. Society of American Archivists (SAA). For ten years the Society of American Archivists has provided SCCR many examples of why archives need a clear legal path to make our rare and unique works available to the world by digital technologies. These non-commercial works should never have been swept into copyright's web. We've repeatedly told this body that limiting our ability to preserve archives invites disaster. Now, the pandemic has shown that the steam-age model of the Berne Convention no longer fits today's reality. It's time to recognize that the world has changed, perhaps forever. Like the mythological Cassandra, we seem destined to predict the future only to be ignored. We've pointed out repeatedly the unfairness caused by travel costs that impede people from access to their own heritage documents. With the pandemic, no one has access, whether poor or rich. And yet, archives, whose sole purpose is to preserve and facilitate use of rare works, are expected to fulfill their mission—a nearly impossible task in today's unbalanced copyright system. Likewise with climate change. The recent wildfire in Capetown that destroyed its university library should be a wake-up call to exclude preservation copying from an antiquated copyright framework. Surely, no one benefits if the one and only copy of something is burned to ashes because an archivist feared a lawsuit. The pandemic puts into stark relief the deprivation caused when people worldwide can't access unique works in archives. Students can't finish their degrees; citizens searching for their heritage can't reach it; and even governments can't access needed documents that may be held in foreign archives. The COVID and climate crises call for SCCR to create a pathway that empowers archives, libraries, and museums to make preservation copies and make them available across borders. The global need for the unique knowledge in archives requires an international solution that only WIPO's leadership can provide. If wildfires and pandemics don't prove the urgency for global action on preservation now, what will?

8. The International Authors Forum (IAF). The International Authors Forum (IAF) represents authors from the text, screenwriting and visual arts sectors and their interests in copyright. Its members are over 70 organisations representing well over 700,000 authors worldwide. IAF campaigns for authors in a variety of areas including fair contracts, remuneration rights and copyright issues. Article 27 of the Universal Declaration of Human Rights states that 'everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits'. Therefore, the ability of professional authors everywhere to make a living is vital if this participation in culture is to proliferate across the world. Article 27 further states that everyone 'has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he [or she] is the author'. Ultimately, it is authors' works is being considered in the matters discussed at the World Intellectual Property Organization (WIPO). There are individual authors whose rights are involved in all countries. Those rights must be given primary consideration to ensure the continued creation of the culture we value today. Authors must be rewarded for their contribution to society and maintain rights to control how their work is used. In recent years, we have seen growing pressure to devalue copyright and the mechanisms by which authors are remunerated for their work. This has been argued on the basis that the author will be somehow rewarded otherwise, having gone unpaid for their work. Such measures are also proposed simply as an easy cost to cut without consideration for the long-term consequences of not

compensating the author. This comes when multiple studies and surveys from around the world have found that the earnings of authors are in significant decline. It is more important than ever that we recognise the impact these policies can have on authors and a nation's culture and find ways to ensure that the work of WIPO helps authors share in the global growth of creative industries in the digital age. Authors around the world play an essential role in ensuring the prosperity of their societies. This makes it imperative that they have a conducive environment in which to work, are valued for their diverse creations, retain the right to make a decent living from their work, and are supported by a robust copyright framework. Yet, numerous studies and surveys from developed countries across the world have found that the earnings of authors are in significant decline, despite international growth in the creative industries that make use of their works. There is an urgent need for a better understanding of the issues authors worldwide currently face when it comes to earning a creative living. In many countries, authors have seen an overall decline in their earnings in recent years. It is hoped that opportunities can be taken to reverse the decline in authors' incomes and better remuneration rights can be established that ensure authors' earnings reflect the way their work is enjoyed. Potential measures for this include rights such as the Public Lending Right (PLR), Artist's Resale Right, also known as *droit de suite*, and a remuneration rights for online uses of work. Understanding the issue of authors' earnings will be an ongoing challenge, in many countries there are no in-depth studies on authors' earnings, and far more can be done to understand the international situation of the author. As the COVID-19 pandemic has an ongoing effect around the world there will be even more challenges to contend with. We hope the IAF study on authors' earnings will help to illustrate the need for action to ensure authors in every country can sustainably create and contribute to diverse cultures around the world. The IAF report, *Creating a Living: challenges for authors' incomes*, is available in English, French and Spanish. In the face of the COVID-19 pandemic authors earnings have struggled significantly through a huge range of opportunities to work, while society has continued to rely on the content that they have created. At this time it is more important than ever to consider ways to support creators around the world, it is good to see that this is being considered in areas such as Resale Right and Public Lending Right, which can both be important measures to reward and support the development of creators around the world.

AGENDA ITEM 5: PROTECTION OF BROADCASTING ORGANIZATIONS

9. The Delegation of Canada. Thank you, Mr. Chair. And thank to the Vice-Chair, Deputy Director General Forbin and the Secretariat for your continued leadership and hard work. The pandemic has brought unique challenges to this forum, and we commend everyone for their continued interest and engagement on this important agenda item. When possible and safe, we look forward to continuing in-person discussions with our international colleagues to find a mutually workable treaty solution. Canada maintains that broadcast signal protection is important to combat piracy. We believe that a flexible approach that takes into account the unique needs and circumstances of each Member State's domestic regime is the most appropriate and effective way to achieve this goal and ultimately reach consensus on an instrument. Each respective regime has been developed in response to different cultural and practical concerns, and Canada believes there is room to account for these differences while also ensuring that the level of protection granted is clear and sufficient. On this issue, we would like to help illustrate the diversity of Member States' regimes while emphasizing their common goals and outcomes by offering the Canadian example. Canadian law provides signal protection and combats piracy in numerous effective ways that do not include an exclusive right for broadcasters to authorize all retransmissions of their signals. Our model of protection has developed from many practical concerns, such as a need to facilitate the wide distribution of certain broadcasts across our large territory and its remote locations. It also helps our country to maintain its national identity, its diverse cultural and linguistic heritage and broad access to important information. Although Canadian law provides a relatively limited retransmission right compared to some other Member States, it is complemented by many other protections for

broadcasters, which are implemented through our national copyright legislation and other various statutes. Some examples of broadcaster protection include: other exclusive rights in respect of their signals; exclusive rights of content embodied in broadcasters' signals, such as compilations of their "broadcast flows", productions of live events, including live sporting events, and content that broadcasters own or license numerous anti-piracy prohibitions against the unauthorized decryption of satellite signals; prohibitions against technological protection measure circumvention and the removal or alteration of rights management information; and a robust regulatory scheme for retransmitters. Canada would welcome hearing more about other Member States' domestic regimes. We expect our goals and outcomes have more in common than the forms of our regimes may suggest. In addition, in order to agree on what constitutes sufficient protection, it is essential that we build a mutual understanding of the technical definitions and concepts under discussion. To facilitate this, Canada would like to repeat its request for an updated "terms and concepts" document, building upon the Committee's previous work in SCCR/8/INF/1. This update would be done best with participation and input from all members. We look forward to the discussion of these and related issues in future sessions. We hope to come to a greater mutual understanding of Member States' domestic protections and identify compromises where necessary in order to accommodate each other's various regimes. Thank you again.

10. The Delegation of France. Monsieur le président, je tiens d'abord à vous féliciter pour la présidence de cette session. Je félicite également le vice-président ainsi que le Secrétariat pour les travaux préparatoires de cette 41ème session du SCCR. Ma délégation apporte son soutien aux déclarations respectives effectuées au nom du Groupe B et au nom de l'Union européenne en ce qui concerne la protection des organes de radiodiffusion. La France formule tous ces vœux de réussite pour les travaux de cette session.

11. The Delegation of Indonesia. Thank you, to you Mr. Chair and the Secretariat for the preparation of today's meeting. As this is the first time we take the floor, Indonesia associates itself with the opening statement submitted in written form by Bangladesh on behalf of the APG. Indeed, we share the view that the Broadcasting Treaty is a delicate developmental issue requiring careful balance. We support the current signal-based approach and we hope that the Broadcasting Treaty could be completed in due course. In this regard, we thank you, Mr. Chair, and the Vice-Chair, for the briefing on the informal works undertaken within the Friends of the Chair mechanism. In light of the ongoing COVID-19 pandemic where Members have agreed not to have a text-based negotiation, Should there be any informal process, I hope that such process will be done in a transparent, open, and inclusive manner, without prejudice to any formal discussion within the SCCR session, especially if such informal process is done without any formal mandate from the committee. Hence, in the interest of transparency and inclusivity, we would like to urge that such future discussions should include all the regional coordinators and interested members. And, no formal agreements should be taken outside of the SCCR formal sessions. This is to ensure that concerns of all members are taken into consideration and there will be greater acceptability to the results of those informal sessions. With regard to area that is of interest for this delegation, we hope that one of the next steps in our deliberation on the broadcasting treaty would also address the Limitations and Exceptions provisions within the Chair's text. Limitations and Exceptions to broadcast rights are essential, including but not limited to, L&E for the purpose of digital preservation, online education and research. We hope that the treaty, as is the case with all WIPO copyright and related rights treaties would achieve a balance of exclusive rights and exceptions, taking into account the larger public interest, particularly on access to information. With this, I thank you Mr. Chair.

12. Innovarte. Thanks you Mr. Chair. We congratulate you and your Vice chairs, we are confident that your leadership will bring success to the work of the SCCR. We also thank the Secretariat for its work preparing the documents and this meeting. On behalf of Innovarte NGO, protecting the interest of the public, especially on the field of education, libraries, archives

museums, and research we would like to urge member states to carefully revise and improve the current provision needed to prevent that if adopted the broadcasters treaty creates a barrier to legitimate uses and access to information, works and performances in all formats that are communicated through signals to be covered by this treaty. The current Covid 19 emergency has shown us the need to be flexible when applying intellectual property obligations to protect public health and public interest in general. Only countries with a more balanced systems have been able to respond more effectively to the pandemic. Yet balance is also a need under normal times. The lack or uncertainty of interpretation with regard exceptions and limitations permitted in international treaties creates devastating effects on the public interest. For example what the blind union called the famine for accessible formats or the impediments for preservation or online digital education that for many years library and educators have shown us. Mr. Chairman and distinguish delegates, if we are going to adopt a new instrument that will create an additional lawyer of restriction for the access and use of information and knowledge transmitted in broadcast signals, we must include a robust set of protections for balance in the new treaty. But, on the contrary, the current "Revised Consolidated Text on Definitions, Object of Protection, Rights to be Granted and Other Issues" instead of assuring the needed flexibilities is creating more restrictions, even to those permitted by the Rome Convention and the TRIPS. Agreement. Mr. Chairman the neither the Rome Convention nor TRIPS subject exceptions and limitations to broadcasters rights to the 3 step test and on the contrary provides a list of permissible matters for exceptions without reference to such test. The experience of 17 years discussing the exception agenda at this Committee, including the success of the Marrakech treaty, has teach us that there is a need of mandatory exceptions to prevent undesired side effects of intellectual property. Also that to include obligations to provide balance is key for the legitimacy of the copyright system. Therefore we call member states, considering existing precedents of international and national law, to include the following provisions. 1.- Obligations to maintain balance among rightsholders and users, for example modeled from TPP11 provision of balance. 2.- Minimum mandatory exceptions including those in Rome plus other , like for text and data mining, preservation, machine learning, online education, to mention some. Also is essential, to include : 3.- Security Exception and public order, for example modeling for art. 73 TRIPS, Doha Declaration on Public Health or 18 Berne 4- Limitations for the use of Orphan signals. 5.-Reservations to provide remuneration rights instead exclusive rights, which while protecting economic interest will not prevent access. 6 Prohibition for Technological Protection Measures to override exceptions, modeling in the Marrakech Treaty. 7.- Prohibition of Contracts override exceptions and limitations. PROPOSAL OF MODEL PROVISIONS TO INCLUDE IN THE BROADCAST TREATY TEXT, TO PROVIDE BALANCE OF INTEREST AND PROTECT PUBLIC ORDER. 1.- Obligation to Maintain Balance of interest of rightsholders and users " When implementing this Treaty, each Party shall ensure the protection provided by this Convention, does not prejudice legitimate or normal uses of signals or other protected mater such, but not limited to: criticism; comment; news reporting; parody, teaching, scholarship, research, libraries, museums and archives services, access for persons with disabilities and other similar purposes"; 2.- Minimum exceptions mandatory exceptions. "For greater certainty, for the purposes of subparagraph (1) each Party shall provide for exceptions to the protection guaranteed by this Convention as regards: (a) private use. (b) use of short excerpts in connection with the reporting of current events; (c) ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts; (d) use for the purposes of teaching or research, including but not limited to data and text mining. e) use for the purpose of library, archives, museums services f)use for the purpose of providing access to persons with disabilities. g) use for legitimate transformative use, including parody. h) public order, national security, protection of competition or emergencies. i) climate change j) linking k) machine learning activities." 3 .- Security Exception. "Nothing in this Agreement shall be construed: A) to prevent a Member from taking any action which it considers necessary for the protection of its essential security interests, including but not limited to national health emergencies; (B) to prevent a Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security,

including international health emergencies.” 4.-Use Orphan Signals “The use of a public of orphan signals shall be permissible, if the signal have already been published, the rightsholder of which could not be established or traced despite a diligent search. The institution using the work shall document its diligent search according to national law”. 5.-Reservation to provide remuneration rights instead exclusive rights. Any Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it will apply all or some of the rights granted on this Treaty only as remuneration rights subject o an equitable remuneration, according with national law to protect the public interest. 6. Exception and Technological Protection Measures. Contracting Parties shall take appropriate measures, as necessary, to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, this legal protection does not prevent users enjoying the limitations and exceptions mandates or permitted in this Treaty 7.- Prohibition of Contracts override exceptions and limitations. Contractual provisions which are contrary to the exceptions and limitations provided in this Treaty shall be null and void according to national law. (Alternative a reservation modeled from provision 44.2 TRIPS.)

13. Program on Information Justice and Intellectual Property (PIJIP). These comments are made in my capacity as the Chair of the Global Expert Network on Copyright User Rights, an association of copyright experts from more than 30 countries. The Network provides technical assistance and disseminates research on the design of user rights in copyright and related rights to promote public interests, including to enable modern research practices. The WIPO SCCR 41 Agenda asks for comments on possible next steps on the discussion of the Broadcast Treaty proposed Chair’s text. One needed next step is to address the Limitations and Exceptions provision. This provision currently is more limited than the exceptions provided under the Rome Convention and fails to incorporate any of the priorities of the Action Plans on Limitations and Exceptions on preservation, online uses, and cross border uses for libraries, archives, museums, education, research, and people with disabilities. This provision requires significant expansion to ensure that the Broadcast Treaty is balanced and does not harm the public interest. A core goal of WIPO copyright and related rights treaties includes to achieve a balance of exclusive rights and exceptions to “serve the larger public interest, particularly education, research and access to information.” A special attention to limitations and exceptions needed to protect development-oriented policies and a rich public domain is called for in the Development Agenda Recommendations. The Broadcasting Treaty is one process where the Committee can develop provisions of “instruments (whether model law, joint recommendation, treaty and/or other forms)” to promote the needs of libraries, archives, museums, education and research. UN Doc. WO/GA/41/14 (Aug. 13, 2012). Exceptions to broadcast rights are essential for the priorities identified in the limitations and exceptions agenda, including for digital preservation, and online education and research. Broadcasts are used, for example, to help train speech translation tools, and to provide accessible content in different languages. Significantly, exceptions are needed to enable broadcasts to provide effective service to their customers. For example, one broadcaster might need to quote content created by another broadcaster for the purpose of conveying important news or healthcare information to the public. The current limitations and exceptions provision in the [Chair’s Consolidated Draft of the Broadcast Treaty](#) offers less protection for public interest purposes than the Rome Convention. The Chairs’ Text suggests that countries may have exceptions to broadcast only for matters reflected in a country’s copyright law. The Rome Convention explicitly authorizes exceptions beyond those contained in copyright. The Broadcast proposal also fails to include the Rome Convention’s explicit authorization of special exceptions for Broadcast, including “ephemeral fixation by a broadcasting organisation by means of its own facilities and for its own broadcasts,” and of “compulsory licenses ... to the extent to which they are compatible with this Convention.” The Broadcast Treaty presents an opportunity to *improve* the Rome Convention’s limitations and exceptions provision, including with lessons learned from the Action Plan on Limitations and Exceptions. First, it could solve the problem of broadcast rights blocking uses permitted by copyright by requiring that exceptions for copyright extend to

broadcast rights, including for quotation, news of the day, and providing accessible formats for people with visual impairments. Second, it could expressly require exceptions to exclusive rights in broadcast for the priorities of the Action Plans, i.e. for preservation, online uses, and cross border uses for libraries, archives, museums, education, research and to provide access to people with disabilities.

14. Education International (EI). I'm speaking on behalf of Education International, the global federation of education unions with more than 32 million members in about 400 organisations in 170 countries. We wish to congratulate the Chair Person for appointment to lead the SCCR and wish to assure, Chair, of the Educators and Researcher' availability and desire to work with you to advance the SCCR agenda on Limitations and Exceptions for use in education and research. We wish to share the perspectives of teachers, researchers and education support personnel who rely on works for teaching and learning. The use of copyrighted materials for teaching and learning is a fundamental part of the right to education and SDG4 on quality education. This also includes access to and the use of broadcasted signals and its content. According surveys organized by UNESCO and EI, during the lockdowns due to the C-19, TV and radio-based education was offered in most countries worldwide. This means that exceptions and limitations for educational and research purposes that apply to this type of subject matter are more important than ever. This Committee needs to adequately address them in the current discussions towards the creation of new exclusive rights for broadcasters. A positive proposal would, for instance, be to build upon the alternative text contained in the Revised Consolidated Text SCCR/36/6 and make the list of exceptions therein mandatory, while protecting countries' ability to adopt further limitations and exceptions as permitted in other international agreements. We hope that the voice of teachers and researchers will be heard and be taken into consideration by delegates in the negotiations ahead. Thank you very much!

15. COMMUNIA. Thank you, Mr. Chair. I'm speaking on behalf of COMMUNIA, an international association that works to protect and defend the public domain. Communia includes among its members Creative Commons, Wikimedia and the Internet Archive. First of all, we would like to support PIJIP's call for greater transparency. We understand that illegal streaming of broadcast signals is a serious issue, but the type of protection that is being discussed by this Committee poses serious obstacles to access to culture, knowledge and information. We recall that broadcasters in most countries already enjoy solid legal protection against signal piracy and other unauthorized uses. Broadcasters may invoke protection under copyright laws, unfair competition laws and criminal laws. We also recall that much of the content that broadcasters transmit is of cultural importance. In addition, radio and TV-based remote learning have re-emerged in the past year, in response to the pandemic. A treaty that creates an additional layer of rights and ignores the societal and cultural needs related with access and reuse of broadcasts fails the society as whole. No new rights should be mandated without the corresponding exceptions, and no perpetual rights should be given over public domain and freely licensed content.

16. ELAPI. Muchas gracias señor presidente por concedernos el uso de la palabra, al ser esta la primera intervención de ELAPI queremos felicitarlo a usted, al vicepresidente y a la secretaria por las gestiones en la organización del comité en estas circunstancias excepcionales. Desde ELAPI celebramos que se trabaje en pro de consolidar el derecho de los organismos de radiodifusión, Vemos este tratado como una oportunidad para asegurar el derecho de los autores y por sobre todo, la solución de la brecha digital. Debemos entender que la regulación y consolidación de estos derechos permite albergar el respeto al uso justo y equitativo de los derechos de autor. Uso justo significa justa retribución, retribución que se traduce en mejoras a los autores y demás integrantes de la cadena de entretenimiento que debemos preservar. Esta es una oportunidad para que tras 23 años de negociaciones se incorporen los avances tecnológicos que han crecido exponencialmente en estos tiempos y que deben contemplarse en este tratado. La ELAPI se ofrece como órgano académico a cooperar

con el comité y con el GRULAC al respeto. Muchas gracias.

17. CRIC. Thank you, Chairman. As to the protection of Broadcasting Organizations, 2019 General Assembly decided that the SCCR was invited “to continue its work towards convening a Diplomatic Conference for the adoption of a treaty on the protection of broadcasting organizations, aiming for the 2020/2021 biennium, subject to Member States reaching consensus in the SCCR on the fundamental issues”. Unfortunately, we have not been able to hold SCCR in the normal style since last year because of pandemic of COVID-19, which makes it almost impossible to have substantial discussion to finalize our text. But looking from different perspective, pandemic of COVID-19 has made us recognize the importance of broadcasting more than before because under this situation accurate information is all the more essential for people. Of course, during the past one and a half years, the internet has been spreading more, and huge amount of information has been transmitted to the people of the world through the internet, but its reliability has not been established on website. On the other hand, piracy of broadcasting over the internet is increasing rapidly. We need to establish a broadcasters’ treaty as a minimum international standard as soon as possible. I believe the momentum of member states is maintained. After the pandemic is over, we should hold special sessions for broadcasters’ treaty to finalize remaining issues swiftly. Thank you, Chairman.

18. International Council on Archives (ICA) and Society of American Archivists (SAA). Because the audio and visual content of broadcasts is often of long-term cultural and educational value to society, the International Council on Archives (ICA) and the Society of American Archivists (SAA) have important concerns with the current proposal for a Broadcasting Treaty as reflected in the chair’s Revised Consolidated Text on Definitions, Object of Protection, Rights to be Granted and Other Issues (SCCR/39/7). The holdings of many archives include fixations of the programs and newscasts of broadcasting organizations. These works provide important evidence of the social, cultural, political, and historical life of communities and nations. Thus, when a treaty to enhance the rights of broadcasting organizations extends to post-fixation rights, archives must take notice to ensure fair access to broadcast content. The SCCR41 agenda calls for possible next steps regarding the Broadcast Treaty. Top priority must be given to redrafting the Limitations and Exceptions provision. As it now stands, that provision is deeply flawed. It is notably weaker than the exceptions provided under the Rome Convention, which permits exemptions beyond those contained in copyright per se. Furthermore, it fails to incorporate any of the priorities identified in the SCCR’s Limitations and Exceptions agenda, i.e., preservation, online sharing, and cross border uses for libraries, archives, museums, education, research, and people with disabilities. Of particular concern is that the proposed Broadcasting Treaty leaves limitations and exceptions as optional, which reflects a lack of concern for the public’s enduring interest in the content of broadcasts. The preamble of the chair’s Revised Consolidated Text states the desire to protect broadcast rights “in a manner as balanced and effective as possible.” However, the current text does not achieve this balance. Thus, to ensure balanced access to broadcast content for public interest purposes, including long-term preservation, more substantial exceptions and limitations must be mandated in any new treaty. We look forward to open and transparent discussions going forward so that the negotiations will be open, and all stakeholders will be duly updated and informed.

19. Knowledge Ecology International (KEI). New measures to address signal theft are one thing. But granting durable post-fixation rights to entities that just retransmit works by authors, performers, and producers is a bad idea. Post-fixation rights are controversial because they create thickets of related rights that make it more costly and difficult to clear, lead to perpetual protection if assigned at the time of each broadcast, and create a massive expansion of rights to non-creative entities, if extended to webcasting. While some negotiators see the WIPO broadcasting treaty as a treaty that will benefit local broadcasters, that is likely to be true only in the short term. And even in the short term, the more ambitious versions of the treaty are also

designed to create economic rights for large foreign corporations that “schedule the content” for cable and satellite channels, such as Disney, Vivendi, and AT&T. In the longer run, the treaty would create a new legal regime that will establish rights for giant technology firms largely based in the United States or Europe, that are creating global platforms for video and sound recording content, including Amazon Prime, Netflix, Hulu, YouTube, Twitter, Facebook, Spotify, Apple Music, and Pandora, all companies that could qualify as broadcasters by owning a single broadcast station. The predictable outcome of any new intellectual property rights for broadcasting that includes transmissions, delivered at the time and choosing of the user, would be to give these companies intellectual property rights in someone else’s creative works. Regarding the work of the Friends of the Chair in relation to the broadcasting treaty, we request WIPO to provide further details of the textual proposals submitted thus far.

20. The International Federation of Library Associations and Institutions (IFLA). We welcome your openness to discussion and the exchange of views. I speak on behalf of the International Federation of Library Associations and Institutions. Among our members, we count many institutions working to ensure the long-term survival of broadcast content, as a vital component of the historical record of our societies. Many more draw on it in their work to support education, research, and the enjoyment of cultural rights, not least drawing on existing exceptions and limitations to copyright. It is therefore concerning that current texts do not even go as far as the Rome Convention in ensuring that libraries and others can carry out their public interest missions. At a minimum, it is vital to extend existing exceptions and limitations to any broadcasting rights, while the Committee can do better still by mandating core exceptions for public interest goals such as preservation and access for education and research purposes. We therefore welcome the contributions of South Africa, Indonesia, Pakistan, Iran, and Chile in calling for a stronger consideration of the need for balance, in order to avoid the work of libraries and other public interest institutions becoming collateral damage. We therefore strongly hope that, when the results of the work of the Friends of the Chair are presented, and the time comes for more formal discussion about broadcasting, we will see that due attention has been paid to exceptions. Thank you.

21. Electronic Information for Libraries (EIFL). Thank you the update on informal work on the broadcast treaty that has taken place this year. We have two brief comments. First, document SCCR/39/7, Revised Consolidated Text on Definitions, Object of Protection, Rights to be Granted and Other Issues, includes two issues of high importance to libraries that remain open for further discussion - term of protection and circumvention of technological protection measures. The outcome of discussions on these issues directly impacts education, research and community services provided by libraries, for example, university libraries provide access to broadcast films as primary research material for students, and public libraries show educational TV programmes to children. We do appreciate your assurances on transparency so that the negotiations will be open and all stakeholders will be kept duly updated and informed. Second, the Preamble states the desire to protect broadcast rights ‘in a manner as balanced and effective as possible’. However the current text does not achieve this balance. First, the article on Limitations and Exceptions is optional. Second, it doesn’t provide for specific exceptions such as teaching and research, like the Rome Convention. Third, it doesn’t include exceptions that are mandatory in other treaties, e.g. Berne quotation right, or Marrakesh disability provisions. And it limits policy space by setting a ceiling on exceptions that countries can have for broadcasting. Mr. Chair, to ensure balanced access to broadcast content for public interest purposes, including long-term preservation, exceptions and limitations must be properly addressed in any new treaty. Thank you.

AGENDA ITEM 6 AND AGENDA ITEM 7: LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES, FOR EDUCATIONAL AND RESEARCH INSTITUTIONS AND FOR PERSONS WITH OTHER DISABILITIES

22. The Delegation of Indonesia. Thank you, Mr. Chair. At the outset, Indonesia thanks the Secretariat for preparing the Report on Regional Seminars and International Conference. Furthermore, Indonesia associates itself with the statement made earlier by the Delegation Bangladesh on behalf of the APG. Indeed, we share the view that COVID-19 pandemic has disrupted all aspects of our lives. Even now, many parts of the world are still struggling with these new conditions. We have seen how libraries, archives, and museums have had to be closed or forced to adapt the way they deliver their services to the public, while educational and research institutions have had to adapt with online teaching and remote working. While putting public health and safety at the forefront, Governments need to ensure that all stakeholders have access to knowledge, education, research, and culture. With this in mind, we urge members to support the proposal to hold an information session on the impact of COVID-19 on the copyright framework, including rights, related rights, and limitations and exceptions at the 42nd Session of the SCCR. We believe that this theme is inherently balanced, as it approaches the issue in a holistic manner, well-within the mandate of the SCCR. We are sure that much can be learned from the Secretariat, experts, and relevant stakeholders, as we all strive to cope with this unprecedented challenge. Mr. Chair. Turning to the agenda of Limitations and Exceptions, Indonesia strongly believes that it is important that we continue our work on the L&E agendas in accordance with the GA mandate in 2012 for the SCCR to work towards an appropriate international legal instrument or instruments on the topic of limitations and exceptions. With the completion of the action plan, we must now define a new plan of work for advancing the issue on limitations and exceptions. In this regard, we need to build on the previous work plan, which has identified priority themes to work on at the international level towards harmonization, including on preservation, cross-border uses, and online uses. With regard to the possible next step of holding a number of regional consultations before the next session of the SCCR, Indonesia would like to highlight two important points: First, such regional consultations should involve all relevant stakeholders, this means including the Member States, Libraries, Museums, Archives, Education and Research Institutions, Teachers, and so on. Second, regional consultations should not be the only next step for this Committee's work plan on L&E. This delegation is of the view that it is important for us to commence concrete works to achieve the mandate of the 2012 General Assembly. This could be done by agreeing on a concrete work plan with appropriate outcome ranging from model laws, interpretations, declarations, or any other appropriate instrument or instruments. Furthermore, in addition, we would also welcome works in the forms of guidelines, toolkits or any other tools that could be use as reference by member states to fit international principles and conventions into their national practices. As such, rest assured that Indonesia will continue to engage positively in all future discussions at the SCCR for a new work plan on limitations and exceptions. Thank you, Mr. Chair.

23. The European Writers' Council (EWC). The EWC thanks for the opportunity to submit a written comment on the topic of Exceptions and Limitations (E&L) to be discussed in the SCCR 41. We refer in general to E&L for authors in the book sector, as well as in particular to the recorded comments of SCCR 40 (draft report), which we have studied carefully, and related to the uses of book and text works during the Pandemic. The European Writers' Council represents the interests of 160,000 authors in the book sector from 46 writers' and translators' organisations in the EU-, EEA- and non-EU countries including Belarus, Iceland, Montenegro, Norway, Switzerland, and Turkey, who write and publish in 31 languages and in all genres, including educational and academic works. With this in background, we note as follows: Playing off the right to education and culture, and the authors' right against each other harms a democracy. E&L are not the solution for a mutual sustainable future. Protecting the rights and living conditions of authors, bringing along quality, is the answer. We look with understanding, but also with great concern about the interpretations, at the various challenges and hardships that educational institutions in particular had to face during the pandemic in order to continue to provide pupils and students with knowledge and education through distance learning. At the same time, the pandemic has revealed where the predetermined breaking points of the respective national frameworks can be found: on the one hand, in a digital environment that is neither practically nor technically nor legally secure; on the other hand, in a partially neglected

education budget, which put the executive bodies in a bind. It should be noted that simplified licensing models were quickly offered worldwide by the book trade sector, on its own costs, and on the shoulders of authors, to support teachers, parents and children. This should not become mandatory. However, the solution cannot be to let writers, working at their own risk, and their publishing partners and their investments fill the gaps of a lack of digitisation policy or a weak state budget by introducing exceptions and limitations. Authors, as the EWC's monitoring shows, suffered the heaviest losses during the pandemic, along with the entire cultural sector. And this in the absence of consistent compensation. A further restriction of Authors' Rights in the form of further exceptions or limitations as a treaty, model law or soft law, as well as the resulting cut of income of authors would be a systematic mutilation of every existing, or still developing, culture- and knowledge nation. We are at what is probably the most sensitive and important point in the debate that has been going on for 15 years about further E&L in favor of libraries, archives, museums, educational institutions. We recommend that the SCCR explore existing licensing solutions and best practices within national frameworks, especially in the digital environment. In addition, we would like to encourage WIPO and the Member States to raise a most sustainable attitude: The right to access culture, books, and educational material, and the Authors' Rights, must not be played off against each other. This is detrimental to the values that are supposed to make up a democracy. Protecting the rights and living conditions of authors, bringing along quality, is the answer. EWC supports the diverse proposals to keep a holistic view instead of a hasty international binding of E&L, and, furthermore, to organize information sessions or / and conferences. The EWC is monitoring the impact of the Covid-19 crisis [frequently since March 2020](#), and will publish a second report in autumn, also with an in-depth part on the educational book sector, and including recommendations.

24. International Federation of Journalists (IFJ). The International Federation of Journalists congratulates the acting Chair on the smooth running of this meeting and thanks the members of the Secretariat for their tireless work under these difficult circumstances. The IFJ represents 600,000 media professionals from 187 trade unions and associations in more than 140 countries, North and South. This month marks the thirty-second birthday of the World Wide Web and September will be the fortieth anniversary of the underlying Internet Protocol. We hope that distinguished delegates can agree that "the internet" is no longer "new technology". If it were human, it would now be worrying about putting its offspring through law school – and, we accept, possibly complaining about the price of textbooks. In the real world the internet is now a *utility*. All of us know what that means: regulation. Among those who recognise this are the corporations that profit from the internet largely by distributing authors' work without permission. And they kick against it. The IFJ senses, too, that there is a sea-change toward recognition of this fact. We see it reflected in the European Union's Digital Services Act and in anti-trust proceedings worldwide. The Berne Convention for the Protection of Literary and Artistic Works was the culmination of efforts to regulate a technology that was then new, so that authors such as myself could support ourselves to supply the printing press with independent, professional works. Without that regulation, there would have been little to print apart from the musings of the wealthy, the obsessed and the self-interested. The IFJ suggests, with respect, that *particularly* in the Global South what societies urgently need to do is to support *their own* authors, including authors such as journalists who are sometimes inconvenient. We warn that a policy of chasing cheap access to works created elsewhere will leave societies reliant on works that fail to comprehend – and in some cases actively oppose – their best interests. This need for societies to support their own authors is *more* urgent in the context of the pandemic. Authors – myself included – have been hit hard by the economic effects of coronavirus and to claim that the pandemic is a reason to weaken our rights is bizarre. The world has sound models for the exceptions and limitations to copyright that authors and others need. The push for new international instruments on these serves the interests of those internet corporations and hardly anyone else. What this Committee needs to focus on now is to enable "innovation and creativity for the benefit of all," to quote WIPO's mission.

25. INNOVARTE. Gracias Señor Presidente. El mundo especialmente en desarrollo está en

una crisis social y económica con motivo de la pandemia, millones de muertes y ciudades paralizadas, escuelas y bibliotecas dependiendo de las actividades en línea, para proveer sus servicios a alumnos, y poblaciones encerradas. Investigadores dependiendo del llamado text and data mining para avanzar o confirmar investigaciones sobre la pandemia. Países, especialmente desarrollados, aprueban normas de emergencia para reducir las barreras de acceso a las tecnologías de covid; sin embargo, gran parte de los países de Latinoamérica y muchos otros alrededor del mundo siguen sin adoptar leyes que permitan reducir el riesgo de contagios y mantener funciones vitales, mediante la educación en línea, el préstamo digital controlado, la minería de textos y datos, o las actividades de acceso para machine learning, o excepciones a los derechos de autor por motivos de emergencia o salud pública, como, por ejemplo para permitir la copia de programas de software necesarios para replicar ventiladores mecánicos. Por su parte, la discusión de las flexibilidades necesarias, incluyendo la moratoria de derechos de propiedad intelectual a nivel internacional, son preocupación de la Organización Mundial del Comercio, de la Organización Mundial de la Salud, las escuchamos en la televisión y en la prensa, pero, paradójicamente en este tema, se ve la luz apagada en la Organización Mundial de la Propiedad Intelectual, la que naturalmente debió haber sido el faro mundial. Señor Presidente, es tiempo que este Comité sea un actor en la guerra contra la pandemia, vea el elefante en la casa, y que muestre liderazgo dentro de la OMPI y contribuya en los ámbitos de flexibilidades no cubiertos por las propuestas en discusión en la OMC relacionadas con el llamado TRIPS waiver. Para ello instamos a que este Comité liderados por Ud. Sr Presidente inicie de manera urgente un proceso, incluyendo consultas informales, con la participación de los estados miembros y expertos para producir una Declaración o recomendación conjunta, que, de manera análoga como lo hizo la Declaración de Doha con respecto a patentes y salud pública, aclare y fortalezca el uso de las flexibilidades de derechos de autor y conexos necesarias para responder a emergencias y salud pública. Dicha declaración debiera tener en considerando las excepciones y limitaciones con motivo de seguridad pública, orden público, contempladas en los artículo 73 y 44.2 ADPIC, el artículo 18 Berna y las excepciones y limitaciones implícitas de orden público del Convenio de Berna y otras que considere apropiado el Comité.; 2 Igualmente proponemos que de manera urgente la Secretaría de la OMPI: A) elabore un informe de mejores prácticas con base a la información recolectada en su observatorio de Covid, sobre las reformas y normativas adoptadas por los países miembros en el ámbito del derecho de autor y conexos para responder a la pandemia y otras emergencias. B) Prepare en consulta con el C – TAP de la Organización Mundial de la Salud, material y asistencia técnica para universidades, farmacéuticas y centros de investigación para que puedan participar en dicha iniciativa e implementar mediante licenciamiento abierto incluyendo derechos de autor, los objetivos del llamado a la solidaridad de la OMS, que dio origen al Covid Technology Access Pool o C- TAP. II.- trabajo regular del comité con relación a la agenda de excepciones y limitaciones. 1.- Con relación al trabajo regular del Comité con relación al mandato de la Asamblea General de adoptar un instrumento internacional con relación a las excepciones y limitaciones con relación a educación, bibliotecas archivos y museos, e investigación, proponemos que este Comité, constituya, al igual que lo ha hecho con relación a los derechos de los Radiodifusores, un grupo de amigos del Presidente para el desarrollo de disposiciones modelos de excepciones y limitaciones en torno a los usos digitales para la educación y la investigación, para la preservación y el acceso a los contenidos preservados, y los usos transfronterizos de las obras (que puedan ser consideradas en instrumentos de cualquier naturaleza); Dicho grupos de trabajo deberá incluir la participación de bibliotecas, docentes, instituciones educacionales e investigación. 2.- Con relación a la propuesta de nuevas reuniones regionales que se convoquen para continuar el análisis de la problemática de la falta de excepciones para fines de educación, bibliotecas, archivos y museos , e investigación, deberán tener en el centro de su trabajo la necesidad y utilidad de los instrumentos internacionales (incluidos los instrumentos vinculantes como los no vinculantes) para resolver las problemáticas identificadas con relación a bibliotecas, archivos, museos, establecimientos educacionales, e investigadores. Dichas reuniones deberían incluir de manera central la participación y opinión de dichos beneficiarios para efectos de dichos análisis,

aspecto que no se cumplió a cabalidad en las reuniones regionales ya realizadas. Las reuniones también deberán identificar las flexibilidades(excepciones, licencias obligatorias, reservas o moratorias en la ley de derechos de autor y conexos que son más útiles para permitir respuestas a emergencias como las de la pandemia de COVID 3 .- Finalmente, creemos que la Secretaria de la OMPI, podrá hacer un gran aporte mediante el desarrollo de conjuntos de herramientas (tool kits) incluyendo modelos de disposiciones sobre : a) excepciones y limitaciones sobre educación, investigación, bibliotecas y archivos en el entorno digital y en actividades transfronterizas, y b) para evitar que las disposiciones contractuales y las medidas tecnológicas de protección impidan el uso de las excepciones y limitaciones por parte de los beneficiarios de las mismas.

26. Program on Information Justice and Intellectual Property (PIJIP). This note provides analysis of the Limitations and Exceptions agenda item of the WIPO SCCR 41 Agenda, currently slated to be discussed on June 29-30. The Agenda calls for Members, IGOs and NGOs “to make general comments, with a focus on the Report on Regional Seminars and International Conference (SCCR/40/2), especially the sections on The Way Forward and Take-Away Considerations (pages 63-72).” It also invites “inputs on possible next steps, including the possibility of holding a number of regional consultations before the next session to further develop the understanding of the situation of the cultural and educational and research institutions at the local level, especially in light of the impact of the Covid-19 pandemic on them.” This note analyzes these two issues separately, and concludes with suggestions of elements that be included in a work plan for SCCR going forward. The Next Steps identified in the Secretariat’s Report on the Regional Seminars and International Conference do not record all the ideas for next steps identified by Member States, experts, and beneficiaries. In particular, the Report does not reflect the support for work international instruments on topics such as preservation, online and cross border uses to serve important purposes such as education and research. In the last SCCR, the Secretariat released a Report ([SCCR/40/2](#)) summarizing the year of work on the Action Plans on Limitations and Exceptions. The Report contains much useful discussion of priorities of member states, experts, and beneficiary organizations on priorities for SCCR, including for work on preservation, online uses, and cross-border uses for the purposes of promoting education, research and access for people with disabilities. The Agenda requests inputs especially on the Way Forward and Take Away Considerations, pages 63-73. Pages 63-72 are summaries of a panel discussion and appear to be accurate reflections of that discussion. Pages 72-73 (Paras 390-400) appear different. They are described as “next steps identified by the WIPO Secretariat.” The Next Steps proposed in by Secretariat are minimalist. There are just two proposals for action by WIPO: WIPO should ensure the provision of legislative and technical assistance and enhance the legislative capacity of Member States, in particular for cross-border uses and the establishment of balanced copyright laws. WIPO should develop a range of tools such as models, recommendations, guidance, handbooks, and toolkits, among others, containing information on licensing options and limitations and exceptions. The nature of this section is unclear. Is it to reflect the Secretariat’s views on what the next steps of the member states should be? If this is the purpose, the section could be deleted since it is for the Member States to decide for themselves what the next steps of the agenda should be. The last in-person SCCR was deliberating on a draft Work Programme for the SCCR. If completed, that document will define the next steps for SCCR on this topic. If the purpose is to summarize the next steps proposed by Member States, experts and stakeholders during the Action Plans, then the section should be amended to reflect the full range of those suggestions. The Report on the L&E Action Plans records numerous suggestions for WIPO action on the way forward, including work toward: binding international instruments with “flexibility in the implementation” and not “highly specific and highly tied to today’s technology,” such as a “reformulation of Article 10(2) of the Berne Convention,” “a proposed treaty on educational and research activities,” and an extension of “the provisions of the Marrakesh Treaty” on cross border uses; interpretations, declarations, resolutions or other instruments interpreting flexibilities in the current international instruments; “manuals, guidelines or ... practices”, “objectives and principles,” “tool kits,” and other forms of

guidance to help countries fit “international principles and conventions” to their specific countries. The Secretariat’s suggestions for WIPO mention only the third item – the production of non-binding and purely informative “tools” and “models.” While these efforts were indeed called for during the action Plans and could be useful, they do not exhaust the range of actions that the Action Plans suggested that the Committee could usefully pursue. Regional consultations in light of the impact of the Covid-19 pandemic should be designed to inform a possible Joint Recommendation on Emergency Uses of Copyrighted Works. The second part of the agenda on limitations and exceptions is the only place in the Agenda where the COVID Pandemic is mentioned. Civil Society groups have been calling for WIPO to focus its work on addressing intellectual property barriers to responding to COVID, including copyright issues. Access to copyright is needed to join critical research and development activities from tracking the virus to finding its cure. Copyrighted software is embedded in ventilators, testing equipment, and many other treatment devices - potentially blocking their repair. To make mRNA vaccines, one needs access to potentially copyrighted algorithms and other tools that identify vaccine targets. Permission to communicate copyrighted works is needed to promote distance education and access to libraries and other institutions of cultural heritage. Civil society and beneficiary communities are calling for a top priority of the SCCR to be to take urgent action on copyright and COVID. In statements at SCCR 40 and in a recent public declaration, these communities called for a joint recommendation or other document that would interpret and explain existing flexibilities that can and should be used by member states to respond to COVID: “Specifically, we call for urgent action to clarify that all copyright and related rights treaties ...: Can and should be interpreted and implemented to respect the primacy of human rights obligations during the pandemic and other emergencies, including the rights to seek, receive and impart information, to education, and to freely participate in cultural life and share in scientific advancement and its benefits, while protecting the moral and material interests of authors; Permit governments to protect and promote vital public interests during a health or other emergency; Permit governments to carry forward and appropriately extend into the digital environment limitations and exceptions that are appropriate in the digital network environment, particularly during a health or other emergency.” Any regional meetings could be designed to further these discussions. The meetings could follow the example of the Marrakesh Treaty preparation and explicitly invite reflections from beneficiaries on the potential need for and utility of international instruments (including non-binding instruments) that the SCCR could work on. First among those, from the position of civil society observers, is a Joint Recommendation on Emergency Uses of Copyrighted Works. Toward a work programme for SCCR. As noted above, the last in-person SCCR was deliberating on a work programme on the limitations and exceptions agenda. Useful elements of such a work programme could include: prioritization of a process to produce a joint recommendation or other instrument clarifying and promoting use of flexibilities needed to respond to emergencies; creation of a process, such as through working groups of experts, to develop model provisions for instruments in whatever form around digital uses for education and research, for preservation and access to preserved content, and to cross border uses of works; the development of tool kits, model legal provisions, or other forms of guidance, in particular for issues such as technological protection measures, protection of exceptions from contract override, and safe harbour protections for libraries, archives, museums, and educational and research institutions (and their agents); commissioning a study on research exceptions parallel to the other studies commissioned by the Secretariat.

27. The International Authors Forum (IAF). The International Authors Forum (IAF) is thankful for the opportunity to submit its statement on the topic of Exceptions and Limitations for discussion at SCCR41. Authors want the widest possible lawful access to their works. Authors welcome libraries, archives and educational institutions as vital points of access to their works, but there must be a balance of access and reward to ensure that they can continue to create the works that are enjoyed. Research in the UK, An economic analysis of education exceptions (2012, PriceWaterhouseCooper), identified that many authors, particularly of educational works, would potentially stop creating these works due to declining remuneration if a licensing scheme was not in place to fairly reward them for their efforts. Recent cases in Canada have shown that

the unregulated expansion of the educational exception in their Copyright Modernization Act (2012) has led to significant losses of income for Canadian authors: a likely unintended consequence but an unjust, detrimental effect on authors nonetheless, considering it is their work that is being used without compensation. In the context of the COVID-19 pandemic authors in many countries have suffered but have still made significant efforts to make their works accessible to users in these difficult times, conscious of the benefits their work can bring to so many people. The need to support authors is more urgent than ever and this should not be a time to weaken the rights of creators. In a recent webinar IAF hosted on the subject of exceptions and limitations we heard loud and clear messages that the creative industries need some certainty to invest in creators who take a significant risk in creating their work typically with no certainty of remuneration. We also heard how in some countries authors and publishing industries are struggling where there are poorly designed exceptions and limitations, in comparison to countries where copyright legislation is flexible and responsive to both enable use and pay authors. The panellists at this event made clear that overly broad exceptions and limitations can have a significantly negative impact. This discussion can be watched online and is important for considering the view of authors on this subject. Authors play an important role in rights to access education and culture, as the initial creators of the creative works that users around the world access. With their works forming the foundation of educational resources around the world, authors continue to create resources for people to learn throughout their lives. A good environment for authors ensures authors can create quality education, as well as inclusive education for their communities. It should not be the case that a country has to rely on the dominant creative industries of western countries for educational materials. Student should have some access to educational materials that reflect the diverse cultures and languages of the world and the student. Authors believe that existing provisions contain enough flexibility for countries represented at WIPO to continue to work towards national solutions, such as licensing frameworks, which can be developed according to local needs. Authors recognise that each country must aim to respond to its local needs. However, in no country are authors able to work and create effectively when they are entirely either denied remuneration or inadequately paid. While each country represented at WIPO has libraries, archives and educational institutions seeking to secure access to works, it must not be forgotten that there are authors in each of the WIPO Member State whose rights and property are affected. We support the request that in any investigation of the impact of COVID-19 the situation of creators can be included as further information in this area would be vital to the continued creation and sharing of culture. In many countries, there are already copyright provisions in place that establish licensing frameworks which enable access through libraries, archives and educational institutions while ensuring fair payment to authors and respect of their rights regarding their works. In An economic analysis of education exceptions (2012, PriceWaterhouseCooper) it was found that almost 25% of authors in the UK derived more than 60% of their income from secondary licensing income, while a 10% decline in authors' income would lead to a 20% drop in output. There is a clear case for fair licensing and collective management organisations as a means to efficiently ensure the balance of access to works and reward to authors. IAF opposes any blanket expansion of copyright exceptions and limitations that would not properly consider the needs of authors and would prefer to see the work focused on ensuring authors can sustainably generate creative and educational works for readers. Instead of any such approach that would threaten the sustainability of authors' ability to create, where possible IAF would encourage consideration for positive solutions that can ensure the ability of authors to create looking at best practices with considerations for the digital environment.

28. The International Publishers Association (IPA). The International Publishers Association is the world's largest federation of book publishers' associations. Established in 1896, our membership comprises 86 organisations from 71 countries. In the midst of COVID, the IPA highlights the time-tested importance of the global copyright framework provided by the WIPO treaties, which enables publishers everywhere to invest in authors and serve the public interest by making literature, peer-reviewed research, and educational learning solutions available to consumers, scientists, educators, students and other readers. In the past year, as people

adapted to home-working and home-schooling, and as states sought reliable scientific data on which to base policies to protect their citizens, the publishing community stepped up yet again to support governments, teachers, parents and the public. Many of our initiatives are presented on WIPO's COVID 19-policy tracker. Publishers also had to adapt. Despite many publishers' investments in digital books, a vast majority had to absorb significant financial losses due to the closure of bookshops and the disruption caused to school systems. The global copyright framework is the foundation of the publishing industry. These treaties and national laws incentivize authors and publishers to create, invest in, and make available original works which inspire, entertain and educate us, while contributing to local economies, jobs and authors' livelihoods. Copyright and its effective enforcement are vital to a sustainable publishing industry everywhere but are even more essential in developing countries where publishers and authors were hardest hit by the pandemic. In Africa, for example, publishers do not invest in digital formats for fear that the devastating physical piracy they already experience will be even worse if they transitioned to digital. Publishing requires constant innovation, investment and risk-taking. Publishers need a clear legal framework with appropriate exclusive rights and effective enforcement to enable them to do so with confidence. We invite Member States to enhance dialogues with their creative industries and reflect their priorities on the SCCR agenda. While limitations & exceptions might be necessary, they require careful calibration at national levels. Overbroad limitations & exceptions impair the investments required for continued cultural production and will inevitably have unintended destructive effects, undermining local creative industries and preventing authors, especially in developing countries, from bringing their creations to the world. The IPA remains committed to support publishers around the world to perform their important role of making books available to readers, ensuring the voices of local authors from every country continue to be heard.

29. ELAPI. Muchas gracias señor presidente por concedernos el uso de la palabra, agradecemos la elaboración del document. Por su intermedio La ELAPI expresa al comité que se reafirma en la posición adoptada en el SCCR40 en tanto estamos seguros que no es conveniente ni necesario avanzar sobre más limitaciones y excepciones al derecho de autor, muchos menos pensar en un tratado internacional al respecto. Se debe proteger la regla de los tres pasos como herramienta de interpretación y seguridad jurídica. Si algo hemos aprendido de los momentos en dónde la humanidad ha estado en la cornisa es que negar derechos humanos no es la respuesta, por el contrario sostenerlos es el camino para desarrollar cada una de las capacidades de las personas y no negarles a mujeres y hombres su sustento. El Derecho de Autor forma parte de los bienes humanos básicos del conocimiento y la creatividad. Negarlos es negar la naturaleza propia de la dignidad de las personas, destruir un sistema basado en la solidaridad, multiterritorialidad y colaboración mediante las sociedades de gestión colectiva que confluyen todos ellos a solucionar la brecha digital y de gestión de un derecho en tiempo aciagos y desolados de pandemia. En definitiva, ¿queremos hoy sucumbir y dejar de lado el motor de la creatividad mundial y de nuestras culturas? o por el contrario, dotarlo del ropaje para que crezca e ingrese al siglo XXI. Hoy no es tiempo de hablar se excepciones y limitaciones, Es tiempo de colaborar en más y mejor Derecho de Autor. Señor presidente, de darse las sesiones regionales o reuniones informativas se debe tener en cuenta el impacto negativo que ha causado la pandemia al derecho de autor y pensar si queremos agrandar la brecha que la pandemia puso de presente para nuestros autores y afectar aún más este derecho humano. la ELAPI ofrece toda su cooperación académica a este comité y al GRULAC para avanzar hacia esta meta de darle al Derecho de Autor el valor que se merece. Muchas gracias.

30. Karisma Foundation. Muchas gracias señor presidente por darnos la palabra para intervenir el día de hoy. Para la Fundación Karisma, organización de la sociedad civil colombiana que busca que las tecnologías digitales protejan y avancen los derechos humanos fundamentales y promuevan la justicia social, es muy importante participar en esta reunión para resaltar y hablar sobre la necesidad de balancear la protección al derecho de autor con la otra cara de la moneda, la del interés público, de modo que exista un real equilibrio entre los

derechos exclusivos de los titulares y las flexibilidades que benefician a la sociedad como un todo. En este sentido creemos importante que la SCCR continúe su trabajo en la agenda de excepciones y limitaciones, de modo que pueda seguir explorando soluciones internacionales, sobre todo, para que los países en desarrollo tengan la misma oportunidad de usar las excepciones y limitaciones en beneficio de su población, sobre todo para proteger las instituciones que amplían el acceso al conocimiento, la cultura y la ciencia, necesarias también para el proceso creativo. El trabajo prioritario de la OMPI debería ser para enfrentar los retos y desafíos que la pandemia ha generado a nivel mundial. Se requiere que la OMPI de claridad sobre la capacidad que tienen los estados para hacer uso de las flexibilidades reconocidas a nivel internacional con una recomendación u otro instrumento. La pandemia llevó a los límites los marcos legales de nuestros países para responder a los propósitos educativos, de investigación y otras actividades por las bibliotecas, archivos y museos, y encontramos que no estaban preparados. La disparidad en las normas de flexibilidades internacionales afectan especialmente a los países más pobres y a su capacidad de respuesta. Apoyamos y hacemos un llamado a la OMPI para la creación de un grupo de expertos al interior de la OMPI con el fin de que se hagan propuestas en beneficio de bibliotecas, archivos y museos, para temas como el de preservación, usos transfronterizos de contenidos protegidos y la necesidad de ampliar los usos en línea de materiales protegidos. Hay que hablar de uniformidad internacional ya que en muchos países los usos están limitados a las premisas de las mencionadas instituciones, algo que no se entiende en la era digital. Contar con evidencia para las políticas públicas, exige que se encarguen estudios para entender los retos y desafíos que enfrentamos, garantizando la participación de estas instituciones. Sin duda, el actual desequilibrio entre la protección de los derechos exclusivos y el reconocimiento y promoción legal de las flexibilidades afecta en forma particular y más fuerte a los países en desarrollo que se ven sobre todo presionados para ampliar los derechos exclusivos y no para decidir en forma autónoma los mecanismos de equilibrio.

31. COMMUNIA. Thank you, Mr. Chair. During the peak of the pandemic, 90 percent of all countries worldwide offered online learning. Yet, many of these remote uses made by your educational communities, made by your family, your friends, are not protected by law. By the vast majority of laws. The lack of fundamental exceptions to copyright that are fit for our current digital lives is a problem across the world. Yet many here claim this is a local issue, for each member state alone to solve. When a meeting (such as this one) takes place and the participants, joining from all over the world, cite others in their statements, they trigger the application of multiple laws. When universities in your countries invite students located in other countries to online programmes, and the teachers show copyrighted images in their live streamed classes, they also trigger the application of multiple laws. Yet many here claim that there is no cross-border dimension to these issues, and each member state alone can solve them. We honestly do not know how your country or any other country is supposed to solve these issues alone, when the works shown and shared in one country are seen and heard across multiple countries at the same time. So we urge you, work together to find a supranational solution to these pressing needs that affect education, research, and access to information. As a first measure, we ask you to pass a resolution now to assert the flexibilities that exist in the Treaties to conduct public interest activities online. Further, we ask you to develop a work programme for the Limitations and Exceptions agenda item to fix this issue and protect fundamental uses across borders. Finally, while we welcome the proposal for consultations and informational sessions, we ask that this time our constituencies are properly involved and represented.

32. International Council on Archives (ICA). Thank you, Sir, for your elegant chairing in difficult circumstances. I speak for the International Council on Archives, an organization dedicated to the preservation and use of the world's archival heritage. I was extremely disheartened to see that the annotated agenda proposed more regional consultations to further understand the need for exceptions for cultural heritage institutions, especially in light of the pandemic. Further consultations are will only delay progress on this longstanding agenda item.

Existing studies and the reports of the regional meetings and international conference held in 2019 provide ample evidence of the need for uniform exceptions that will enable archives to preserve their collections and provide access to them in a borderless digital world. The world's archives are a vast treasure of enormous research value. But archival material is often at great risk for many reasons, including climate change. Preservation invariably involves copying, but national copyright laws often stand in the way. A global exception that permits copying for preservation and sharing such copies across borders has emerged as a clear priority. Only WIPO can do this. WIPO's mission is to ensure that copyright works effectively internationally. Limitations and exceptions are a fundamental component of an appropriately balanced copyright system, which supports the growth of knowledge and culture by providing reasonable access to works for the benefit of society. The pandemic has already starkly exposed the urgent need for exceptions for libraries, archives, and museums. SCCR can build on the progress already made, starting with a concrete plan to work toward an instrument that permits copying for preservation and making copies of preserved works available across borders.

33. Canadian Federation of Library Associations (CFLA). Thank you, Mr. Chair. I am speaking on behalf of the Canadian Federation of Library Associations. CFLA represents libraries of all types, public, academic, specialized and school libraries, provincial, regional and national library associations, and libraries located in cultural heritage and memory institutions. It is well-documented that libraries, archives and museums have experienced - and continue to experience - barriers to access and preservation that have become ever more pressing as a result of the COVID pandemic and environmental catastrophes. Libraries, archives and museums perform the essential societal function of preserving and disseminating knowledge that underpins cultural heritage, lifelong education and research, and they require the requisite tools, adequate copyright laws, to fulfil their function. It is also well-documented that WIPO member states recognize the national value of libraries, archives and museums, as they have been commenting at length on studies and concrete proposals from member states for more than a decade. The time is now for engagement at the international level to advance the work on mandatory limitations and exceptions for libraries, archives and museums. We urge member states to consider the essential societal mandate that libraries, archives and museums are charged with, in relation to preservation and access, and to take action on an international instrument to sustain their roles in the ever-evolving digital environment. In particular, we urge member states to move forward on a model law focused on preservation and non-commercial uses of works nationally and across borders. Thank you, Mr. Chair.

34. Creative Commons (CC). Creative Commons (CC) is pleased to submit our statement in writing to the Standing Committee on Copyright and Related Rights, Forty-first Session, on the item of Limitations and Exceptions. Creative Commons is the world's leading non-profit organization that stewards the Creative Commons open copyright licenses and tools. However, CC licenses are not a substitute for limitations and exceptions (or "users' rights"), and CC supports efforts to reform copyright law to strengthen users' rights and expand the public domain. In particular, CC supports galleries, libraries, archives and museums (GLAMs) and their public interest mission by pushing for strong, clear, and effective limitations and exceptions for, among others, preservation, research and education, and text-and-data mining and, generally, to ensure the global copyright framework is apt for the digital environment. Central to CC's copyright policy is making sure GLAMs' needs are treated on equal footing with those of copyright owners, in a balanced and fair manner. The COVID-19 pandemic has created unprecedented challenges for GLAMs. It has forced many institutions to draw deep on their resources and to quickly pivot their activities into the digital environment to meet the needs of their users, including researchers, learners of all ages, and the general public. We cannot overstate the importance of copyright limitations and exceptions as the pillars on which GLAMs can rest to fulfill their mission of making the knowledge, information and cultural heritage that they care for available to the public. We thus urge Member States to take action and find solutions to the challenges raised in the international copyright framework by the COVID-19 pandemic and its consequences on GLAM institutions and their millions of users worldwide.

35. Knowledge Ecology International (KEI). Limitations and exceptions are important for individuals and society, particularly with regards to education, research and public access, which are key to development and economic growth as well as social issues, including the exchange of information and views. The current pandemic has disrupted education and in some cases, closed schools and libraries. The global norms for patent laws include provisions for extra flexibility with regards to inventions in cases of emergencies; the international copyright architecture does not contain these analogous flexibilities. WIPO should consider soft or hard norms to make it clear that controlled digital lending by libraries and schools during a pandemic are appropriate. The Committee should address two areas for global norms for limitations and exceptions in the current work program. First, there is an opportunity for an instrument on preservation and archiving. Preservation is an urgent global public good and many national laws are inadequate. Second, with regard to other disabilities, we propose that the SCCR use the language in Article 15, paragraph B of SCCR 18/5 as a basis for joint resolution to extend the benefits of the Marrakesh Treaty to persons with other disabilities who – due to their disabilities need an accessible format of a type that could be made which would allow them access to the same degree as a person without a disability. This would be consistent with the UN Convention on the rights of persons with disabilities. Finally, we support Brazil's proposal for WIPO to convene future regional seminars to address the issue of limitations and exceptions regarding people with other disabilities.

36. CISAC. Thank you, Mr. Chair. We thank the Secretariat for the comprehensive report on the regional seminars and international conference on limitations and exceptions for libraries, archives, museums, and educational and research institutions. We would like to reiterate some elements that have emerged during the intense days of the debates. First, when discussing about limitations and exceptions we shall have in mind the rights of creators, who are at the base of the process of preservation and dissemination of culture; without creative activity, there is no cultural heritage to preserve; without the creators, all this debate would have no reason to be. Second, the current system of collective management of copyright, offers solutions that respond to the need of museums, libraries, archives and educational & research institutions. And these solutions have been evolving under the pandemic crisis, in order to meet the specific challenges and difficulties of the users. Mr Chair, an international legal framework applicable to limitations and exceptions already exists, under the three-step test principle, established in article 9.2. of the Berne Convention. This legal framework provides sufficient flexibility for each member country, to apply the system of limitations and exceptions, that best fits its needs. We trust that the Committee will make the best decision regarding the best way to move forward with this item on the work agenda. For our part, CISAC supports the proposal launched in previous sessions by different delegates, to continue facilitating the exchange of information and develop an assistance program to which member states may rely upon to find the most appropriate solutions at the national level. In this regard, CISAC offers its help and support to the Committee. Let me add a few words about the proposal to conduct regional consultations on the impact of the pandemic on cultural and educational institutions. Well, The Covid pandemic has been a catastrophe for creators. It caused long term loss of income and jobs, damage to economies and devastation to communities built on culture and arts. The impact of the pandemic on creators is particularly severe because most of them are individuals or very small businesses who have little or no safety net to help them. It is not surprising that the OECD has identified the cultural and creative sector among the most affected by the current crisis, due to the impact of containment measures¹. According to a recent study published by E&Y², only in Europe, the creative sector as a whole experienced losses of over 30% of their turnover for 2020 – a cumulated loss of €199 billion. We count on the support of the SCCR to work on developing best ways to revive culture and creation during and post-pandemic period, with dedicated support and by strengthening the rights of creators. The value of creators' works –

¹ *Culture shock: COVID-19 and the cultural and creative sectors*, available at: <https://www.oecd.org/coronavirus/policy-responses/culture-shock-covid-19-and-the-cultural-and-creative-sectors-08da9e0e/#fnotea0z2>.

² *Rebuilding Europe – The cultural and creative economy before and after the COVID-19 crisis*, available at: <https://www.rebuilding-europe.eu>

for society, public health, culture and economy – has become clearer than ever as they have provided help and solace to the public during lockdown. We therefore recommend adopting a holistic approach in the organization of the regional consultations. Such consultation should cover the impact of the covid on copyright and the creative sector as a whole, including the devastating effect on creators, who are among the categories most affected by the pandemic. Thank you, mister Chair.

37. The International Federation of Library Associations and Institutions (IFLA). Thank you, Mr Chair. The International Federation of Library Associations and Institutions would like to highlight that exceptions and limitations are essential to enable libraries, archives, museums, educational and research institutions to continue their public service missions. Ahead of COP26, which will focus on how to limit the impacts of climate change, we believe that preservation of heritage is a priority. We encourage discussion towards the development of a model law or provisions that will allow heritage institutions to make copies of their collections for preservation purposes across borders, and allow access on similar terms to that given in analogue form today. In parallel, experts could be convened to design the contours of an international instrument that would deliver on the 2012 mandate. In the face of the COVID crisis, we have also seen the limits of a lack of legal flexibility in the context of exceptions and limitations for education and research purposes. We believe strongly that governments, and so libraries and their users, would benefit from a clear enunciation of the possibilities that exist under international law in the form of a recommendation. We cautiously welcome the suggestion of regional consultations on the impact of COVID for libraries, archives, museums and education and research institutions. This would certainly be a good way for SCCR to complement its work to date, and tackle issues related to this emergency in a timely manner. However, to be effective, such seminars will truly need to focus on the experience of libraries, archives, museums, educators and researchers, and ensure that organisations representing their interests are involved fully in the planning of such sessions. There could also be a report of such sessions at the next meeting of SCCR, or preferably a special session earlier to bring together the conclusions and explore implications and next steps. Sessions on the wider impact on copyright industries would be welcome, although would most logically represent a continuation of work on copyright in the digital environment under Item 8. We thank you, Mr Chair.

38. Electronic Information for Libraries (EIFL). Mr. Chair, work should begin on priority areas highlighted in document SCCR/40/2, Report on Regional Seminars and Conference: preservation of cultural heritage, online education, and cross-border uses. The Report sets out a number of actions that WIPO could take, starting with model laws or provisions to guide countries. On preservation, discussions on the Way Forward referred to 'oceans rising, fires raging and paper deteriorating'. Dr. Crews urged countries to act before it was too late. The recent fire at the University of Cape Town's Jagger Library is a stark reminder of what can happen. The unique African Studies collection, used by scholars from all over Africa and the world, was devastated in the fire - most of the printed publications were lost (70,000 items), as well as the entire Film Collection (3,500 items). Due to copyright barriers, some items had no digital backup copies. It is a reminder of the pressing and urgent need for robust preservation rights to mitigate against disasters. The WIPO study shows that only 102 member states, or 53%, explicitly address preservation in their copyright laws, and others do not permit preservation at all, even for print formats. This situation needs to change, and only WIPO can drive the change needed at a global level with international action, in line with the outcomes of the Regional Seminars, and the 2012 mandate. In addition, in the light of COVID-19, WIPO should develop a Recommendation to clarify and promote existing flexibilities that permit online uses for education, and access to library collections during an emergency. It would provide immediate guidance for governments, and support libraries who still face problems providing materials to students and teachers for study and exams. Thank you.

AGENDA ITEM 8: OTHER MATTERS

Digital Environment

39. The Delegation of Brazil. Thank you, Mr. Chair. Brazil aligns with the statement of Peru on behalf of GRULAC. We would like to thank the Secretariat for the work invested in this agenda item, preparing and organizing documents, and for making available the videos from the authors, an innovative way to inform our deliberations and to transmit the content of the studies in a more approachable manner to a larger audience. Brazil believes the digital revolution has important implications for the copyright system, implications for artists and consumers alike, which are most of the times still unknown to the stakeholders. We need to enhance our knowledge of the functioning of new tools used to commercialize content in the digital environment so that we can better assess the challenges and opportunities of technological trends to existing rules. The recently published studies offer us material to start a discussion. As we've stated in past SCCR sessions, "Copyright in the Digital Environment" is broad and mature enough to become a permanent agenda item in this Committee. It is our view that this topic should be maintained in the SCCR agenda so that we can delve deeper in the rich material provided to us by the five studies and reflect upon possible next steps for these discussions in the SCCR. [One issue that studies have highlighted and that we feel would deserve a more focused discussion by Members is the issue of remuneration of artists and performers.] We are ready to debate with Member possible areas for more focused discussions based on the issues raised by the studies. We also hope these studies may pave the way for later studies on audiovisual and literary markets, which would complement the current analysis of the music sector. Therefore, there are plenty of avenues to explore in these discussions. We invite Members views and look forward to a fruitful and constrictive debate.

40. The International Authors Forum (IAF). In the digital environment, creators' works are used more than ever and we would like to thank the members and speakers who have acknowledged the importance of appropriate remuneration to foster the work of creators. IAF hopes that analysis of Copyright Related to the Digital Environment propose by Group of Latin American and Caribbean Countries (GRULAC) could holistically consider the impact of the digital environment on authors and, in particular, the impact of business models in streaming on creators. We thank the GRULAC for its proposal on this important area of work and hope this issue will remain on the agenda. While the works of authors across the world are now being accessed online more than ever before, creators are not always fairly remunerated for such access. Screenwriters, for example, often remain unpaid for the use of their work online despite audio-visual works generating significant revenues for on-demand services. It is often difficult to resolve this lack of remuneration, given the huge inequality in the negotiating relationship between producer and screenwriter. Authors' organisations such as the Federation of Screenwriters in Europe (FSE) and the Federation of European Film Directors (FERA) have called for the need for an additional right as well as better creator contracts to resolve this. Therefore, authors urgently need remuneration rights that reflect the myriad uses of their works in the digital age. An Unwaivable Right to Remuneration (URR) for online uses would ensure that authors are properly rewarded for their contribution to the vast libraries of work now being made available by on-demand streaming services. At a webinar hosted by IAF earlier this year on URR we heard about the success of URR in Spain, Italy, France and Belgium. We would urge WIPO to consider the role of URR in the digital environment, particularly given the rising dominance of streaming platforms.

41. International Federation of the Phonographic Industry (IFPI). We express our grave concern regarding the paper prepared by Messrs Castle and Feijoo and distributed in the materials for the 41st session of the SCCR, under the agenda point "Copyright in the digital environment." Rather than being an objective and independent study on artists in the digital marketplace, the paper is a one-sided advocacy paper. It fails to provide an objective analysis of the developments and practices in the digital marketplace, contains a number of factual

errors, and accepts unsubstantiated claims and opinions as established facts. Instead of contributing to building a common knowledge base, on which all the stakeholders in the digital music market could have a meaningful discussion, the paper will make it more difficult for the parties to engage in constructive dialogue. IFPI is the organisation representing the recording industry worldwide. Through its network of National Groups IFPI represents over 8,000 record companies operating across the globe (www.ifpi.org). IFPI has a longstanding history working with WIPO on various matters, ranging from providing input to WIPO's normative work to participating in WIPO's technical assistance activities. IFPI's aim continues to be to work with WIPO and its Member States towards developing and implementing fair and effective copyright systems worldwide. We regard WIPO as the leading authority in the area, and the source of objective and impartial information on copyright and related matters. It is against this backdrop that we express our deep disappointment regarding the paper "Study on the artists in the digital music marketplace: economic and legal considerations" prepared by Messrs Castle and Feijoo, under the agenda point "Copyright in the digital environment", in the materials for the 41st session of the SCCR. Rather than being an objective and independent study, in line with WIPO's standards, the paper is a one-sided advocacy paper. It fails to provide a serious analysis of the development of industry practices in the digital marketplace and contains a number of factual errors and accepts unsubstantiated claims as established facts. IFPI comments on the "Study on the artists in the digital music marketplace: economic and legal considerations" by Chris Castle and Claudio Feijoo – June 2021 – For instance, the paper: claims, based on a sample of only 38 performers, that "there is little doubt that the problem of sustainability exists... broadly with performers throughout the world". Yet, there are recordings by up to seven million recording artists on the streaming services (<https://www.musicbusinessworldwide.com/over-60000-tracks-are-now-uploaded-to-spotify-daily-thats-nearly-one-per-second/>). In the circumstances, a sample of 38 performers does not entitle the authors to draw any conclusions about global developments; fails to consider the fact that not all of those millions of artists whose recordings are available on streaming services, can, as unfortunate as it is, make a living out of streaming, especially as the number of artists distributing their music on streaming platforms is increasing faster than streaming revenues (see. e.g. MiDIA <https://midia-research.com/blog/the-paradox-of-small/>); fails to consider the impact of the new digital distribution models and the increasing choice artists have today. Independent artists working directly with digital distributors are rapidly growing in numbers and increasing their share of total digital revenues. At the same time the competitive pressure has led incumbent record companies to constantly review the terms of their artist contracts (see e.g. In historic move, Sony Music is disregarding unrecouped balances for heritage catalog artist (musicbusinessworldwide.com); fails to mention let alone consider the contribution and role of record companies, as the artists' partners, who invest in and work with the artists; refers to, what it claims, is "the fundamental and potentially permanent collapse of performer sustainability" but fails to mention, let alone consider the impact of, the fact that "digital royalties" paid to artists tend to be higher than those paid for CDs, and as a result, artists' recorded music revenues have not only increased, but they have increased faster than overall recording industry sales revenues (see e.g. MMFDeals-Guide.pdf (themmf.net)); fails to mention that non-featured performers continue to be paid, in advance, their fees regardless of the success of the recordings just like they have been paid for the use of their performances recorded on CDs and other products; repeatedly refers to "per stream royalties" even though all the main streaming services pay right holders a share of their revenues, not a "per stream" royalty. There are no "per stream" royalties and referring to such non-existent rates is incorrect and misleading; claims that "communication to the public remuneration is being cannibalized by "lean back" enterprise playlists distributed by the dominant streaming platforms that are intended to directly compete with broadcast radio on a global scale". Such a claim is not backed up by any evidence. On the contrary global recorded music performance IFPI comments on the "Study on the artists in the digital music marketplace: economic and legal considerations" by Chris Castle and Claudio Feijoo – June 2021 – rights revenue grew by over US\$ 920 million between 2010 and 2020. There is no evidence of the alleged cannibalization; omits to mention the fact that

broadcasters pay right holders a fraction of what streaming services do; in 2020 global streaming revenues were around more than US \$12 billion, whereas radio revenues were US\$ 985 million. Applying a “broadcast model” to streaming would lead to a massive loss of revenues for artists and record labels alike. As a result of these and other errors, omissions, and selective use of data, the paper makes a misguided policy recommendation. The policy recommendation, an additional and collectively managed remuneration right, is untested (such a right only exists in one country, notably Spain), but would likely disrupt the industry practices and ultimately reduce the record companies’ investment in artists and their music. It would however certainly benefit the performers’ collective management organisations. We note that Mr Feijoo, one of authors of the report, cannot be considered an independent expert, on the grounds that he has acted as an expert adviser to the Spanish performers’ collecting society, a strong proponent of the proposed policy. Regrettably, it appears that some lobbying organisations have already misleadingly referred to the paper as representing the WIPO position in the matter. A letter addressed to the UK Prime Minister claims that: “[T]his week the World Intellectual Property Organisation (WIPO) produced a report concluding, in agreement with us, that a remuneration right for streaming is the correct approach to our problem.” In light of all the above we respectfully request that WIPO withdraw the paper from the meeting materials and its website to avoid any future misunderstanding and to ensure the integrity of WIPO.

42. ELAPI. Muchas gracias señor presidente por concedernos el uso de la palabra. Latinoamérica hoy en día genera un gran aporte al crecimiento de la Industria Musical en el entorno digital, desde las composiciones, la producción, la gestión artística y el talento humano. Incluso el género musical con más escuchas en las playlist de las plataformas digitales proviene de nuestra región. Los autores y artistas en Latinoamérica conocen de primera mano los efectos de la brecha de valor que hoy incrementaron por la pandemia, pues los conciertos eran la principal fuente de ingresos para el sector y ahora se vieron obligados a migrar a un entorno digital con un modelo de negocio que aún no compensa de forma justa su trabajo. La pandemia solo reafirmó la necesidad de combatir la brecha de valor y la gestión y respeto al Derecho de Autor juega un papel fundamental para que esto se logre. Estamos en un momento crucial que nos invita a ser facilitadores de un cambio que beneficie a los creadores. Por esa razón la ELAPI continúa con la postura presentada en el SCCR40, en la que expresamos nuestro interés de sumar a la gestión que adelanten los miembros de este comité que tengan como fin minimizar la brecha de valor en el entorno digital, sumado a ello ofrecemos nuestra cooperación académica al comité y al GRULAC. Muchas gracias.

43. Knowledge Ecology International (KEI). Our comment concerns the market for recorded music, the topic of several of the studies. Revenues paid to authors, performers, producers and copyright holders have increased sharply from streaming services, as illustrated by Figure 1 in study SCCR/41/3. IFPI estimates that music streaming revenues grew from \$1 billion in 2012 to \$11.3 billion in 2019. There is, however, widespread dissatisfaction with the royalties received by individual performers or authors, despite the fact that the leading streaming services distribute more than 70 percent of revenues to performers or other rights holders. The royalty payments from streaming are often based upon a division of streaming revenue, that is zero sum, in the sense that money paid to one group reduces the money available to others. In this sense, the greater the share of royalty revenue paid to a handful of popular artists reduces what is available for everyone else. But also, the amount of money paid to authors or producers reduces what is paid to performers, and visa versa. The same is true with money paid to holders of copyrights and related rights that exist long after the death of authors or performers. KEI has proposed allowing consumers of streaming services to choose, at least in part, the methods of allocating royalty payments to authors, performers and producers, by opt-ing into competing collection societies to distribute revenues. This is the so-called Blur-Banff model.

44. The International Federation of Musicians (FIM). Merci Monsieur le Président. La Fédération Internationale des Musiciens remercie le Secrétariat, qui a mis en œuvre le mandat

du SCCR de façon fidèle, rigoureuse et équilibrée. Le choix de confier à une étude spécifique l'examen de la situation des artistes interprètes dans le marché numérique est à la fois judicieux et conforme aux objectifs de la proposition du GRULAC « *pour un examen du droit d'auteur dans l'environnement numérique* » (SCCR/31/4). L'étude publiée sous la cote SCCR/41/3 offre une analyse précise et documentée qui confirme les problèmes décrits depuis longtemps par les organisations d'artistes interprètes. Elle montre que les revenus perçus par les artistes principaux pour les utilisations en ligne de leurs enregistrements sont le plus souvent dérisoires, les artistes non-principaux ne percevant aucune rémunération. Ce problème s'ajoute aux effets du modèle de distribution au prorata, qui conduit les consommateurs à payer pour de la musique qu'ils n'écoutent pas. Depuis le début de cette semaine, de nombreuses délégations ont rappelé la nécessité de faire en sorte que les droits des artistes sur les utilisations en ligne se traduisent en rémunérations. L'étude de Chris Castle et Claudio Feijóo offre une base de travail solide qui devrait permettre au SCCR d'avancer sur ce sujet en examinant toutes les options possibles, qui peuvent inclure l'introduction d'une rémunération équitable perçue directement auprès des plateformes et distribuée aux artistes via leurs organismes de gestion collective. La FIM soutient la proposition de plusieurs délégations gouvernementales d'organiser un véritable débat lors de la 42^e session du SCCR, en présence des auteurs des études, de façon à permettre questions, réponses et échanges de vues dans un cadre mieux adapté à l'importance de ces travaux, et d'inscrire le sujet en tant que point permanent de l'ordre du jour.

45. CISAC. Thank you, Mr. Chairman. We would like to thank all the rapporteurs for their informative studies and their brilliant presentations. CISAC welcomes the dialogue on copyright related to the digital environment undertaken by the SCCR. We share the view that the international community should engage in discussing the challenges posed by modern technologies to the different market players in the music field. You may know that one of the greater priorities for the global community of music creators is the need for fair remuneration in the digital market. This topic was addressed extensively in the reports presented today. At this regard, we suggest that the committee maintains constructive discussions on the best way forward to tackle the biggest challenges faced by music creators in the digital environment, and namely: The detrimental impact of the rules on liability exemption of the internet platforms, which exploit creative works but, in many cases don't share their benefits with the creators; The need for enhanced cooperation from internet platforms to ensure the unavailability of unauthorized content, by adopting measures such as prevention and notice & stay-down. The need for transparency and accuracy of information from internet platforms. Transparency and accuracy of information from online content sharing service providers are vital to ensure a more balanced allocation of revenues from those who make available, promote and monetize content, and those who create and invest in it. The importance of transparency and accuracy of information is enshrined in the 2019 EU Copyright Directive, under Article 17(8). The problem of the buy-out clauses, imposed by big VOD platforms, that force creators to surrender all their rights on their works in exchange of a lump-sum payment. This practice is becoming more and more frequent in the Video on demand market with harmful effects on creators, and particularly on young creators, who consent to buyout clauses because of their weak bargaining position when negotiating AV production contracts with big online services. The recent adoption of the EU Copyright Directive is an important step in the right direction. The Directive helps rebalance the unfair bargaining relationship between digital services and creators. Article 17 of the Directive clarifies that online content-sharing service providers perform an act of communication to the public when they give the public access to protected content uploaded by their users and therefore need to be licensed. Article 18 establishes the important principle that authors shall receive appropriate and proportionate remuneration where they transfer their exclusive rights. Moreover, it provides for the mandatory nature in the EU of certain rules relating to the remuneration of authors in copyright contracts. It applies to the provisions regarding transparency and best-seller clauses contract adjustment mechanisms when the remuneration originally agreed becomes too low, what is called the "best-seller clause" (arts. 19 and 20 and Recital 81). These provisions will play an essential part in ensuring that copyright can, in the

future, still play its role as an incentive and a reward for creativity. We are confident that the future work of this Committee will be inspired by the recent developments in the EU. Thank you, Mr. Chairman.

46. Federación Iberoamericana de Artistas Intérpretes y ejecutantes (**FILAIE**). En primer lugar, desde FILAIE nos gustaría agradecer a la secretaria de la OMPI los estudios que se han presentado en esta sesión de SCCR y hacer también un reconocimiento expreso al GRULAC, por su iniciativa en diciembre de 2015 y su apoyo a la defensa y desarrollo de los derechos de los artistas.

47.

48. FILAIE, quiere destacar las conclusiones de todos los estudios, pero especialmente quiere ensalzar el realizado por Chris Castle y Claudio Feijoó, el cual destaca y acredita dos verdades muy incómodas para todos: la primera es que mientras que la industria se enriquece con el streaming (13.400 millones de USD en 2020), los artistas perciben cantidades irrisorias o no perciben nada; y la segunda, y no menor, es que la industria de la música grabada no es transparente para los artistas. Pero estas verdades no sólo las dicen Chris Castle y Claudio Feijoó, también lo ha dicho la Unión Europea en la Directiva 2019/790; el ex Director General de OMPI, Mr. Francis Gurry; o más de 150 artistas británicos, encabezados por Paul McCartney, quienes firmaron recientemente una carta abierta al primer ministro británico, Boris Johnson, pidiendo al gobierno una remuneración más justa para los músicos en Internet. Esto nos lleva a solicitar enérgicamente a los Estados miembros de la OMPI que propongan modificaciones en el marco normativo actual, ya que el Tratado de la OMPI sobre Interpretación o Ejecución y Fonogramas (TOIEF) se ha vuelto ineficaz para proteger los derechos de los artistas en el entorno digital y proponer, como dice el estudio, que la música (y sus artistas) tenga una solución similar a la que se reconoce en el tratado de Beijing para las fijaciones audiovisuales, en su artículo 12-3, es decir, el reconocimiento de un derecho de remuneración por la puesta a disposición, con independencia de los derechos exclusivos que les corresponden a los artistas intérpretes o ejecutantes. Por último, y para ello, queremos subrayar la urgente necesidad de que el punto *Propuesta de análisis de los derechos de autor en el entorno digital* sea fijado como un punto permanente del orden del día en la agenda del Comité Permanente de y se pueda establecer un debate real y sólido sobre la falta de remuneración de los artistas en este ámbito. Por muy incómodo que sea para algunos, la situación de los músicos en el entorno digital es insostenible y, por ello, los artistas piden a la OMPI, a los estados miembros, que legislen para revertir esta situación.

Resale Right

49. The Delegation of France. Monsieur le président, Je remercie le secrétariat pour le travail réalisé sur le document SC/41/9. Ma délégation apporte son soutien aux déclarations du Groupe B et de l'Union européenne, en particulier en ce qu'elles soutiennent la demande portée par le Sénégal et le Congo sur le droit de suite. Ma délégation apporte son soutien à la demande d'une étude sur l'incidence de la pandémie sur le marché de l'art par le déplacement des ventes aux enchères en salle ou en galerie vers les ventes en ligne. Une telle étude permettrait en effet d'objectiver la situation et de mieux comprendre ce phénomène. Merci M. le président

50. European Visual Artists (EVA). Thank you Chair for allowing EVA-European Visual Artists to take the floor. The Artists' Resale Right is an irreplaceable part of artists' income and should be applied in all member countries. Only the resale right allows that visual artists benefit from the increase of value of their works selling in commercial secondary art markets, without causing market distortions of any sort. Visual Collective Management Organisations have agreements with thousands of art galleries and auction houses active in the secondary art

market and provide the legal certainty and administrative capacity to manage the right on artists' behalf through an international collective management network. We call on this committee to organize working groups and seminars to share the visual CMOs' know-how and expertise that facilitates the right's efficient application. The recent sudden increase of online sales and sales by private art dealers reacting on the pandemic made it possible that the upper end of the art market could continue selling virtually during the pandemic amid a broad shut down of all public sales and exhibition with 1 in 8 museums in the EU in risk to close permanently. However, online sales pose a new level of challenges to the management of the right, such as determination of applicable law and of tax status due to increased virtual border crossings. We call on this Committee to mandate the Resale Right Taskforce to study the situation and the impact of increased online sales on the application of the Resale Right. The Resale Right is still heavily fragmented requiring reciprocity to apply across borders - many Berne countries around the world do not apply it, including those with big art markets, like the US and China. Consequently, Artists continue to lose their fair share when their works are resold in those countries. Therefore, we call on this Committee to support and extend the work of the Resale Right Taskforces on the practical elements of the Artists' Resale Right, in particular regarding challenges in online sales and art galleries. Thank you.

51. The International Authors Forum (IAF). The International Authors Forum (IAF) is thankful for the opportunity to submit its statement on Resale Right for discussion at SCCR41. Resale Right, through its global application, not only helps authors receive fair payment for work that will be sold before its value is known to them but can also be a means of fairness to artists when their work is resold into an international market. Resale Right provides a fair contribution to artists from the proceeds of ongoing sales in the global art market, as well as an incentive to continue creating. Earlier this year IAF hosted a panel discussion on the Resale Right, speaking with artists, artists' representatives and experts on managing Resale Right from multiple countries. Together these panellists discussed the success of the Resale Right in honouring the work of artists where it exists, and the need for it in more countries. This discussion can be watched online and is important for considering the view of artists on this subject. IAF wishes to express its thanks and support to the proposal from Senegal and Congo to include Resale Right as a standing item on the future agenda of the SCCR. It is important that artists in all countries can benefit from the resale of their creations. This is a matter of equity with how creators of other works are respected and rewarded for the continued enjoyment of their creation. Resale Right can comprise a significant part of an artist's income. A survey of artists in the UK found that 81% spent payments from Resale Right on their living expenses (DACs, 2016. *Ten Years of the Artist's Resale Right: Giving artists their fair share*). The study in document SCCR/35/7 provides evidence that the Resale Right does not have a negative impact on arts markets, while better supporting artists so is a net positive to support the arts. It has been good to see reports from the Resale Right Task force at WIPO, the increase of information on this subject will be of benefit to all countries that already have or can establish Resale Right. Given the obvious benefits of the Resale Right to artists, IAF hopes that more countries will establish this right. As Resale Right acts as a matter of global fairness IAF hopes that the Task Force will be able to look at the opportunities reciprocity of Resale Right bring to achieve its intention of fairness. IAF strongly supports the inclusion of Resale Right on the SCCR agenda and the progress of the Resale Right Task Force at WIPO.

52. ELAPI. Muchas gracias Sr. Presidente por concedernos el uso de la palabra y por su intermedio nos dirigimos a este honorable comité. Conforme el tema que tratamos, la ELAPI afirma su posición próspera a la consagración del derecho de participación en las reventas en favor de los artistas visuales, especialmente en el caso de los creadores de obras plásticas. Cabe precisar que, en este campo del arte y más aún en el marco de la pandemia, se reafirma la dificultad de acceder a una relación comercial equilibrada entre el artista y los mercados de destino de su obra, situación que genera que el creador solo cuente con los instrumentos del ordenamiento jurídico y el vínculo con sus pares, expresado a través de las sociedades de gestión colectiva. Estos son los pilares que permiten nivelar aquella desproporción y ofrecer un

esquema de justicia al trabajo del artista, para que este se sostenga y perdure. ELAPI considera necesario incorporar al debate el rol de las últimas innovaciones tecnológicas vinculadas al blockchain y al desarrollo de los tokens no fungibles (NFT), sin perder de vista los principios rectores que estructuran el sistema de derecho de autor. Nuestra entidad se pone a disposición para colaborar con el trabajo que viene desarrollándose en el seno de este Comité, con el fin de superar las diferencias expresadas en las distintas posiciones vinculadas al tema, para confluir en un avance en favor del reconocimiento de las dificultades experimentadas por los creadores en el transcurso del proceso creativo, mejorando su sostenimiento. Muchas Gracias.

53. The International Federation of Journalists (IFJ). The International Federation of Journalists belatedly congratulates the acting Chair on the smooth running of this meeting and thanks the members of the Secretariat for their tireless work under these difficult circumstances. The IFJ represents 600,000 media professionals from 187 trade unions and associations in more than 140 countries, North and South. The IFJ wholeheartedly supports the proposal for an instrument on the *droit de suite*. A resale right giving artists a fair share of the proceeds of resale of their work - which we understand are typically far higher than the proceeds of first sale - is a simple matter of ensuring equitable treatment and is a necessity for a fair authors' rights system that promotes innovation and creativity for the benefit of all. Because the art market is inherently international, and because relatively few WIPO member states currently implement such a resale right, it is appropriate for WIPO to develop a binding Treaty, in order that the art market not be fragmented to operate under "flags of convenience" that permit intermediaries to evade their responsibilities to the artists whose work enriches all of our lives.

54. CISAC. Thank you, Mr. Chairman, We would like to thank Miss Ferry-Fall and Professor Ricketson for the comprehensive report on the activity of the taskforce on the Artists' Resale Right. In previous sessions, we have expressed our full supports for the initiative of a forum of experts to discuss and report on the practical elements of the resale right. Today, we are pleased to see that the work of the task force is progressing swiftly, addressing several topics that raised concern among some delegates at the latest sessions of the committee. As a next step, We fully endorse the proposals of the task force, and in particular: the setting up of workshops and regional seminars on the effective application of the resale right, in particular on aspects of transparency, traceability and dynamism of the art market; the establishment of a toolkit relating to the law applicable in Member States and to the legal and fiscal questions arising from international sales; We also suggest the commissioning of a study on the progressive shift, of the art market to digital sales and auctions, and its impact on visual artists. This shift has been emerging in response to the global pandemic, since auction houses and galleries adapted their business model to the new opportunities in the market. However, this practice has a relevant impact on artists since the jurisdiction applying to sales is less clear, including the exercise of the resale right. Further, the activity of sellers online is in many cases more difficult for CMOs to monitor and invoice; We are confident that this approach will bring added value to the discussions in the Committee and could shed more light on the different aspects of this issue.; We hope that the work of the task force will encourage Member States to include the resale right as a standing item in the agenda of the future work of the SCCR. We remain at disposal to provide the Committee with information, evidence and testimonials from artists. Thank you, Mr. Chairman.

Protection of the Rights of Theater Rights

55. Comité permanente de Derecho de Autor y Derechos Conexos: Cuadragésima primera sesión Lucio Adansa – Agregado Europeo, Federico Duret – Miembro ELAPI Directores de teatro Muchas gracias, señor presidente por concedernos la palabra, por su intermedio nos dirigimos a este honorable comité en el punto de la agenda que se desarrolla. Desde la Escuela Latinoamericana de Propiedad Intelectual (ELAPI), tras estudiar el magnífico informe compartido por la Delegación de Rusia, a quienes agradecemos su elaboración, no podemos

sino adherirnos a la propuesta de investigar en profundidad la situación jurídica de los directores de teatro. En este sentido, es necesario que, en el marco de este comité, se analice en profundidad la verdadera naturaleza de este grupo de titulares, pues la condición de derecho de autor o derecho conexo, según la legislación que se trate, implicará mayores o menores prerrogativas que, in fine, determinará el verdadero poder de negociación de estos creativos y su capacidad para vivir de su creación. Desde ELAPI, en concordancia con lo expresado por la delegación de Rusia, consideramos que el régimen más adecuado para los directores de teatro, dadas las características de la actividad creativa realizada, es el de considerarlos titulares de derecho de autor. En palabras de Stanislavski, el director de teatro interviene el texto de la pieza teatral, creando una versión que configura su percepción de ese material, dando lugar a un espectáculo propio y distinguible de cualquier otro. En el mismo sentido se interpreta la labor creativa del director como coautor en las obras audiovisuales, pues la obra audiovisual se configura como “un todo” único e inigualable, y no como una simple suma de partes. Además, el carácter de la fijación de la obra no debería ser óbice para considerar a los directores de teatro titulares de derecho de autor, pues el espectáculo teatral no es un conjunto de ideas, por muy efímeras que sean sus imágenes. No obstante, no es esta característica, ni si su naturaleza corresponde a un derecho de autor o conexo, aquello en lo que debiera centrarse el debate. Por el contrario, desde ELAPI, y siguiendo nuevamente los certeros comentarios de la delegación rusa, consideramos que más útil y pragmático resultaría para los directores de teatro distinguir qué alcances y límites tiene su derecho de propiedad intelectual, pues sólo así conseguiremos dar poder de negociación a estos creativos y tutelar de un modo adecuado el bien jurídico protegible. Desde ELAPI ofrecemos toda nuestra cooperación académica a este respecto. Muchas gracias.

Public Lending Right

56. The Delegation of Sierra Leone. Mr Chair, Excellencies, Distinguished Delegates, Good morning or good afternoon, depending on where you are. As you know, a proposal was put forward by Sierra Leone, Panama and Malawi to formally request the SCCR to commission to WIPO a study to provide detailed information on Public Lending Rights (PLR), their advantages and disadvantages, the different ways in which they may be implemented, and how countries can access the support and capacity building needed to take a PLR scheme forward, if they choose. Before turning to the proposal, we would like to clarify a few procedural and administrative points. First, we understand the SCCR has a number of items under consideration on its agenda. As such, we do not wish or intend for PLR to be added as a substantive item for discussion, and we are not asking for a legal instrument or a treaty under this topic. Our core objective is for countries, particularly developing countries, to learn about PLR and their potential. The study is a standalone project that would be carried out by WIPO and presented to Member States when it is ready at a future SCCR, in a similar way as the study on theatres' directors rights. There is therefore no risk of overburdening the agenda of the SCCR. The study will only provide an opportunity to learn more about an important element of the ecosystem that supports the creative industries across the world. Additionally, it is our understanding that the Secretariat has the resources available to undertake the study if requested by the Committee. Second, the aim of this study is to know more specifically about PLR – in a similar manner as the resale right agenda item which looks exclusively into the resale right, and not about other remuneration systems for visual authors. Broadening the scope of the study would be self-defeating and would not allow us to learn about PLR as we wish to. Other remuneration schemes can be explored by other similar studies, as needed. We would also like to highlight that we are not requesting a substantive discussion on the merits of PLR at this meeting, rather we are asking for a study on PLR as it would be better to have more information from the study first in order to take an informed position. The discussion is on the procedural point of requesting the WIPO Secretariat to prepare a study/factual mapping of PLR/ to provide the Committee with more information about PLR. Therefore, supporting this request will not amount to having taken any substantive position on PLR. Finally, it is important

to stress that while our Delegation believes that PLR has a real potential as one form of remuneration scheme to improve the situation of authors in developing countries, we do not wish to prejudge the outcomes of the study. The study will be comprehensive and consider all aspects of PLR schemes. Mr. Chair, At the 40th session of the SCCR, we presented the proposal and requested support from Committee members. The proposal enjoyed support from several Committee members and the African Regional Intellectual Property Organization (ARIPO) and was deferred for discussion at this session. PLR remunerations can be a serious boost to our creative industries as they help maintain creativity and strengthen and promote local languages, traditions, and cultures. Our African creators, and truly many creators all around the world, have waited too long to reap in the benefits from the works that they create, and our societies and economies need to incentivize and develop our creative sector. We hope that the study will show how PLR can be implemented and how it can benefit local creators. The flexibility and adaptability to local circumstances makes PLR a particularly good choice for us in developing countries seeking to support our poets, novelists, authors of academic books, and our libraries. As such, many African countries have expressed interest in PLR, including Malawi and Zanzibar that are actively working to implement PLR, and Burkina Faso, Ethiopia and Mozambique have an exclusive 'lending right' recognised in their copyright legislation. It is also included in the recently adopted ARIPO Model Law on Copyright and Related Rights. Our core objective is for Committee members to learn about PLR in order to decide with facts in hand whether introducing PLR is a good idea or not. This Committee was established, more than 20 years ago, with a mandate to "consider emerging issues" in the field of copyright and related rights. A Study on Public Lending Right, which is generating interest all across the world, will contribute to fulfill this mandate. Mr. Chair, Committee Members, we kindly invite you to join us in our request to mandate the Secretariat to carry out the study, without further delay. Too many projects and discussions have been stopped due to the pandemic. However, since the Secretariat is in a position to undertake this study if requested by the Committee, it is our sincere hope that by the next SCCR, we will have made great progress on exploring the benefits of PLR schemes. Thank you for your attention, we thank the two co-sponsors Malawi and Panama, and we look forward to a fruitful discussion on PLR.

57. The European Writers' Council (EWC). The EWC thanks for the opportunity to submit a written comment on the topic of Public Lending Right (PLR), related to the proposal prepared by the Republics of Sierra Leone, Panama, and Malawi. The core aim of the proposal is: "... a WIPO-sponsored study to provide a more detailed information on the different ways in which PLR can be introduced, on limitations and solutions, and how we can access the support and capacity building that we will need to take a PLR scheme forward." The European Writers' Council represents the interests of 160,000 authors in the book and text sector from 46 writers' and translators' organisations in the EU-, EEA- and non-EU countries including Belarus, Iceland, Montenegro, Norway, Switzerland, and Turkey, who write and publish in 31 languages and in all genres. The commitment to PLR in the sense of a sustainable future policy for writers and translators, the original sources of knowledge and literature, is one of our core tasks. The EWC is part of the PLR International Steering Committee, holds PLR seminars for its members, and has access to a large stock of experiences on PLR. With this in background, we note as follows: Investing in PLR is investing in Human Rights, in Democracy, and in a sustainable Economy. PLR implements the principle of 'every use must be remunerated' which is based on the Universal Declaration of Human Rights and by which writers and translators are entitled to receive remuneration from every use of their work. The EU has had a Lending Right Directive since 1992. Nearly all Member States have successfully implemented a PLR scheme, although in some countries, like Portugal, Romania or Bulgaria, it has either not been implemented or in disadvantage for authors. PLR payments intend to "recompense for the harm suffered by the author", and should be appropriate, not only symbolic. PLR is funded directly by the government. For the budgeting it requires the political will and the knowledge about the positive impact of a reasonably funded PLR-budget, from which libraries, readers, society and authors all benefit. The right to access culture, and the right to be remunerated for the usage of one's

cultural work must not be played off against each other in a democracy. Accordingly, PLR finds the necessary third way to both motivate the bright authors' minds from every financial background to take up this profession - and to ensure access to knowledge and "to the doors to the world" that a book always opens. We would like to encourage WIPO and its member states to approach the proposal positively. We would also like to make an important addition with regard to the proposal and its intention to "support (of) the linguistic and cultural diversity of translations": Especially for authors from developing countries and translated into other languages, PLR payment from strong markets is essential. Consequently, bilateral contracts between CMOs or governmental entities should be included in the study, and how PLR-reimbursed translated books benefit the local writers. Similarly, this needs to be put in the context of national environments where there are no CMOs or authors' organisations that can enter into negotiations, and how appropriate conditions can be created.

58. The International Authors Forum (IAF). IAF strongly supports the 'Proposal for a Study Focused on Public Lending Right in the Agenda and Future Work of the Standing Committee on Copyright and Related Rights of the World Intellectual Property Organization (WIPO)' put forward by Sierra Leone, Panama and Malawi. IAF wholeheartedly supports remuneration measures such as Public Lending Right (PLR), which fairly rewards authors and ensures they can keep creating, while helping to maintain indigenous arts, literature, language and culture. PLR is a positive mechanism that provides recognition for authors for the loans of their books from libraries. The scheme is greatly valuable to authors both as a connection to ongoing readers and enhancing literacy, as well as providing the seed of the authors' next creation. It can be a valuable way for governments to support authors writing in local languages and is a means to reward authors for the contribution they make to a vital public good; the availability of culture in public libraries. PLR can also be a valuable way for governments to protect authors' writing in local languages. It's a recognition of creators' contributions to culture and also supports the role of education, helps maintain psychological health and protects a country's cultural heritage by preserving literature and language. PLR makes it possible to ensure that public libraries ensure access to culture for all while ensuring the principle of payment for use to creators, to ensure the sustainability of culture. At the PLR International Conference in London in 2019, and the side event on PLR held at WIPO during the SCCR38, we had opportunities to hear about the successes of PLR systems around the world in supporting authors and cultural sectors. This has meant enabling more authors to continue to create while their work is enjoyed in libraries. At the end of last year IAF hosted an event "Creating a living; how PLR helps". At this event a range of speakers, being authors, authors' representatives and PLR experts discussed the positive impact it had on the ability of authors to make a living from their work. PLR experts at this event also detailed some of the technical challenges that PLR systems had faced and how these had been successfully overcome to the benefit of authors and users. This discussion can be watched online and is important for considering the view of authors and experts on this subject. IAF supports the development of centrally funded PLR schemes that are to the benefit of authors – writers and visual artists alike – readers and libraries, and hopes the committee can look to support international cooperation to this end. Government support for libraries remains as vital as ever, and goes hand in hand with PLR, but PLR encourages the surge of industry support for cultural goods from local creators in indigenous languages. IAF strongly supports the proposal for a study, outlined in SCCR/40/3. IAF particularly supports the intent to study the benefits of PLR for authors. It is particularly positive that the proposal considers opportunities for setting up PLR in developing countries, while considering the benefits for a nation's cultural and linguistic support. This proposal is a significant step to achieve support for authors and diverse cultures around the world.

59. Authors Guild. The Authors Guild is the oldest and largest professional nonprofit advocacy organization for writers in the United States. It was founded in 1912, and its more than 10,000 members include novelists in all genres and categories, nonfiction writers, journalists, historians, poets, and translators. The Authors Guild works to promote the rights and professional interests

of authors in various areas, including copyright, freedom of expression, and taxation. It also provides its members with certain forms of legal assistance (including contractual reviews and disputes, assistance in getting paid, obtaining reversion of their rights, and copyright and libel advice), as well as author website services and educational seminars and webinars relating to the writing profession. As part of its advocacy efforts, the Authors Guild conducts periodic income surveys of U.S. authors; these surveys have evidenced a steep decline in authors' income over the past 12 years. Its 2018 Income Survey showed a 42 % decline in median U.S. author incomes from 2009, down to \$6,080 in 2017. Authors make a vital contribution to education, to literacy, and to society. When author incomes fall too low, they can no longer afford to write as much, as well, or at all. Impoverishing authors therefore risks impoverishing our national and global culture. As the PLR International Network describes it, the "public lending right (PLR) is the legal right that allows authors and other rights holders to receive payment from governments to compensate for the free loan of their books by public and other libraries." Thus far, 35 countries—including the United Kingdom, every country in the EU, Canada, Israel, and Australia—have established Public Lending Right systems that support their nation's authors by creating a system of micro-payments for authors each time a free public library lends one of their books; these fees are usually paid by the national governments, rather than the libraries. PLR is an ideal means of ensuring that authors are compensated when readers engage with their books, and of supplementing author incomes at a time when it is becoming crucial to give authors greater financial support—that is, if we are to ensure that we have a future generation of great writers. The Authors Guild has advocated for a Public Lending Right in the United States for more than 40 years, initially inspired by the U.K.'s example, and encouraged by the other nations that have created their own PLR systems. At its core, PLR acknowledges two fundamental principles: the need for society to provide readers with free access to books, and the right of authors to be remunerated for their work. These principles need not be in conflict, and, as 35 other nations have shown, they can be reconciled to benefit both society and the author. We cannot forget that if the author cannot afford to write, everyone loses. Countries have dealt with PLR in differing ways, from individualized payments to more generalized state support for culture. The Authors Guild is trying to work with U.S. libraries to create a system that will benefit authors and libraries alike, and has proposed that the U.S. Congress adopt a PLR to be supported by federal funds and administered by the Institute of Library and Museum Services or another U.S. federal agency. Under such a system, a book's author would receive a small payment each time a user borrowed one of the author's books from a library as compensation for the public use of the author's work. As the Authors Guild has observed, the amounts paid out under other nations' PLR systems appear to be miniscule in proportion to their national spending—and yet, these relatively small amounts are hugely important to authors in allowing them to continue writing as a profession. The proposed PLR Study would provide much-needed information to enable the Authors Guild to more effectively advocate for a PLR in the U.S. Many of the issues confronting the members of the Authors Guild are affecting authors internationally, and many other countries, like the U.S., still do not have PLR systems of any kind. We believe PLR is a key part of the solution toward ensuring the future of books. That is why the Authors Guild is pleased to be an Observer to the SCCR, and to support the Proposal of Sierra Leone, Panama, and Malawi for a Study focused on the Public Lending Right.

60. ELAPI. Comité Permanente de Derecho de Autor y Derechos Conexos: Cuadragésima sesión Préstamo Público Señor presidente muchas gracias por conceder la palabra a ELAPI, por su intermedio queremos agradecerle a Panamá, Sierra Leona y Malawi por proponer el estudio, expresamos a este comité que conforme ha reseñado ELAPI en otras intervenciones, es necesario que la cooperación y el trabajo mancomunado de las delegaciones se haga en miras al respeto y promoción de los autores y artistas. Para ello, es fundamental señalar que ello implica el respeto a la regla de los tres pasos, el sistema de licencias y las sociedades de gestión colectiva que permiten la administración de los derechos de autor y que los ingresos lleguen a los autores. Es importante, avanzar en la protección de las personas que dan lugar al

derecho de autor y recordar que este comité debe actuar en defensa de los autores y de sus derechos., los cuales nos han acompañado con su creatividad en estos momentos de pandemia. La ELAPI se ofrece como colaborador en este estudio. Aprovechamos nuestra última intervención para agradecer al señor presidente y a la secretaria por la gestión en este comité híbrido. Queremos exaltar el impecable trabajo de los interpretes. Muchas gracias.

61. The Canadian Federation of Library Associations. Thank you, Mr. Chair. I am speaking on behalf of the Canadian Federation of Library Associations. The Public Lending Right program in Canada is a cultural heritage program outside of copyright that recognizes Canadian authors and permanent residents and is highly valued. It is national in scope, providing support for Canadian authors in an environment where the majority of material borrowed in libraries and sold in stores comes from outside of the country. However, we must note that Canada is a developed country with strong literacy and public library funding. It must be recognized that authors benefit from library lending and book promotion, and libraries legally purchase or license the content they lend. There is no right to payment for lending in WIPO international treaties. Libraries pre-existed our copyright systems, and creating a right to prevent lending when there is no payment can introduce a policy and financial threat to a well-established public institution. PLR can be a valuable cultural heritage program, however, there are many ways to support authors financially outside of this approach with its significant administrative burden. There are many items before SCCR, and we believe this item should not be a priority given its purpose is cultural support at the national level, and it is not intended to have an international or cross-border benefit. However, should this study be undertaken, CFLA suggests that the scope be limited to how this could impact developing countries, and consider the cost and efficiency of this approach to cultural support relative to other national funding supports for authors. Thank you, Mr. Chair.

62. The International Federation of Library Associations and Institutions (IFLA). Thank you, Mr Chair. The International Federation of Library Associations and Institutions notes that item 8 contains a significant program including the long-standing work on copyright in the digital environment, the rights of theatre directors and a proposal for work on Public Lending Right. Given the nature of the agenda currently, we believe that a focus on public lending right is not a priority, given that this is not a question for international copyright law, but rather a cultural policy. Furthermore, while IFLA has always been a strong supporter of fair remuneration of authors and creators, we note that the proposal as it stands is marked by a number of inaccuracies, and a failure to consider the costs and drawbacks of public lending right alongside its potential benefits. With tight fiscal times likely in future, including of course in developing countries, it is clear that any money to pay for PLR will need to come from budgets which would otherwise be used to promote reading and literacy, access to information and knowledge, the fight against misinformation, and access to research, or of course to provide more targeted support for culture. It risks therefore limiting the capacities of children, teenagers and adults and their educational and professional perspectives. Therefore, we consider that a credible effort to consider how better to support authors would involve a wider, more holistic, examination of the cost effectiveness of all potential tools available to governments, including direct support, stronger rights when (re)negotiating contracts, reversion rights, tax support and beyond. Thank you.

63. Electronic Information for Libraries (EIFL). Public Lending is the non-commercial lending of works by libraries to the public. Our concern is that Public Lending Right (PLR) poses a risk to free public lending services, to library budgets, and to government budgets that would bear the costs of the introduction of a lending right fee. In the 1990's, WIPO rejected PLR because it would interfere with the goals of governments of developing countries to support literacy, and implementation of PLR would strain already limited state support for public libraries. Mr. Chair, the COVID pandemic threatens to have devastating consequences on state budgets in developing countries. Global human development, as a measure of the world's education,

health and living standards, is on course to decline for the first time in 30 years. We urge caution on starting any work that would impact on the core services of libraries, institutions that will aid recovery of the education and research sectors in these countries. We also believe there are other, more efficient ways to support authors. However, if there is to be a study on PLR, it should be holistic. It should include all the ways that governments can support authors, such as direct grants and tax breaks, and issues such as rights reversion, unfair contracts with publishers, and transparency over revenue, particularly when it comes to digital works. Thank you.