

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

### **Twenty-third Session**

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

### **REPORT**

*adopted by the Committee*

1. The Standing Committee on Copyright and Related Rights (hereinafter referred to as the “Standing Committee”, or “the SCCR”) held its twenty-third session in Geneva from November 21 to 25, 28, 29 and December 2, 2011.
2. The following Member States of the World Intellectual Property Organization (WIPO) and/or members of the Berne Union for the Protection of Literary and Artistic Works were represented in the meeting: Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Barbados, Belarus, Belgium, Botswana, Brazil, Burkina Faso, Canada, Chile, China, Colombia, Congo, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Democratic Republic of Korea, Denmark, Ecuador, Egypt, Ethiopia, Finland, France, Georgia, Germany, Greece, Haiti, Holy See, Honduras, Hungary, India, Iran (Islamic Republic of), Ireland, Israel, Italy, Jamaica, Japan, Kenya, Kuwait, Lithuania, Madagascar, Malawi, Malaysia, Mexico, Monaco, Morocco, Nepal, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Russian Federation, Senegal, Serbia, Singapore, Slovenia, South Africa, Spain, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, The Former Yugoslav Republic of Macedonia, Trinidad and Tobago, Ukraine, United Kingdom, United States of America, Uruguay, Venezuela (Bolivarian Republic of), Viet Nam, Yemen (89).
3. The European Union (EU) participated in the meeting in a member capacity.
4. The following intergovernmental organizations took part in the meeting in an observer capacity: African Union (AU), International Labour Organization (ILO), South Centre, World Trade Organization (WTO) (4).
5. The following non-governmental organizations took part in the meeting in an observer capacity: Actors Interpreting Artists Committee (CSAI), *Agence pour la protection des programmes (APP)*, American Council of the Blind (ACB), Asia-Pacific Broadcasting Union (ABU), *Asociación Internacional de Radiodifusión (AIR)*, *Association IQSensato (IQSensato)*, Association of Commercial Television in Europe (ACT), British Copyright Council (BCC), Central and Eastern European Copyright Alliance (CEECA), Centre for International Intellectual Property Studies (CEIPI), *Comité national pour la promotion sociale des aveugles et amblyopes (CNPSAA)*, Computer and Communication Industry Association, Co-ordinating Council of Audiovisual Archives Association (CCAAA), Copyright Research Information Center (CRIC), Electronic Information for Libraries (eIFL.net), European Broadcasting Union (EBU), European Federation of Joint Management Societies of Producers for Private Audiovisual Copying (EUROCOPYA), European Law Students’ Association (ELSA International), European Visual Artists (EVA), European Writers’ Council (EWC), Free Software Foundation Europe (FSFE), Ibero-Latin-American Federation of Performers (FILAIE), Inclusive Planet Foundation, International Association for the Protection of Intellectual Property (AIPPI), International Bar Association (IBA), International Center for Trade and Sustainable Development (ICTSD), International Chamber of Commerce (ICC), International Confederation of Music Publishers (ICMP), International Council on Archives, International Federation of Actors (FIA), International Federation of Associations of Film Distributors (FIAD), International Federation of Film Producers Associations (FIAPF), International Federation of Journalists, International Federation of Library Associations and Institutions (IFLA), International Federation of Reproduction Rights Organizations (IFRRO), International Federation of the Phonographic Industry (IFPI), International Group of Scientific, Technical and Medical Publishers (STM), International Literary and Artistic Association (ALAI), International Publishers Association (IPA), International Video Federation (IVF), Internet Society, Knowledge Ecology International, Inc. (KEI), Library Copyright Alliance (LCA), Motion Picture Association (MPA), National Association of Commercial Broadcasters in Japan (NAB-Japan), National Federation of the Blind (NFB), North American Broadcasters Association (NABA), *Organização Nacional de Cegos do Brasil (ONCB)*, *Organización Nacional de Cegos Españoles (ONCE)*, *Organización de Asociaciones y Empresas de Telecomunicaciones para America Latina (TEPAL)*, Public Knowledge, Royal

National Institute of Blind People (RNIB), Software and Information Industry Association (SIIA), South African National Council for the Blind (SANCB), Third World Network (TWN), Transatlantic Consumer Dialogue (TACD), *Union Africaine de Radiodiffusion (UAR-URTNA)*, *Unión Latinoamericana de Ciegos (ULAC)*, World Blind Union (WBU) (59).

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

6. The Chair of the SCCR welcomed the delegations to the 23rd session, and expressed hope that the meeting would achieve core agreements and understandings with the active participation of each and every one of them. The Chair further called for a frank and open dialogue with the spirit of transparency and impartiality. He also thanked the Secretariat for the timely presentation of the relevant documents. The Chair opened the session.

7. Mr. Francis Gurry, Director General of WIPO, joined the Chair in welcoming delegations to the SCCR and briefed them on the schedule of the session for the following two weeks. He highlighted the holding on Thursday, December 1, 2011, of the Preparatory Committee to make the arrangements for the Diplomatic Conference on the Protection of Audiovisual Performances, which was expected to take place in 2012. He recalled that at the previous SCCR meeting exceptional progress had been made owing to the constructive engagement of the Member States, and urged the delegations to maintain that same result-oriented spirit. Mr. Gurry also expressed hope that some agreement would be reached in the area of the limitations and exceptions for persons with print disabilities. Apart from the discussions on libraries and archives, he hoped some discussions would also take place on the issue of educational and research institutions. He also hoped some considerable progress would be achieved on the issue of protection of broadcasting organizations as, at the previous meeting of the SCCR, the delegations had demonstrated a collective way forward that indicated the possibility of a diplomatic conference in the year 2013.

## **ITEM 2: ADOPTION OF THE AGENDA OF THE TWENTY-THIRD SESSION**

8. The Chair thanked Mr. Francis Gurry and opened the floor to adopt the agenda of the 23rd session of the SCCR.

9. The Delegation of the United States of America, speaking on behalf of Group B, expressed great pleasure with the agreement on the 20 articles at the previous SCCR meeting, and the agreement by the General Assembly meeting held the previous month to reconvene the 2000 diplomatic conference with a desire to move forward. The Delegation said that Group B had come together to resolve the issue of the 2000 conference on the transfer of rights with the film producers. Group B looked forward to finalizing the work on the agreed statements and the preamble, and engaging the following week in the Committee making the arrangements to reconvene. The Delegation stressed that the important issue the Committee had embarked upon in recent years was the work on exceptions and limitations for the benefit of persons with print disabilities. The Delegation further reminded the meeting that during the previous two years there had been a convergence of WIPO members to establish norms for safeguarding the integrity of the intellectual property system. The Delegation believed that an international system could protect authors and enable full participation by the visually impaired in civic and cultural life. It was important for those persons with print disabilities to have access to educational, cultural and informational materials. Group B thanked the Chair for its efforts on Document SCCR/22/16 and looked forward to discussing it in greater detail over the course of the session. The Delegation said Group B remained committed to working with other Member States on the question of a treaty for broadcasting organizations, and hoped progress would be achieved towards the adoption of the treaty. The Delegation also hoped the two-day consultations on November 26 and 27 would make progress towards that goal, and committed

itself to constructive discussions on the subject of limitations and exceptions for libraries and archives.

10. The Chair then announced the adoption of the agenda in line with the proposed work methods suggested by the Secretariat.

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

11. The Chair announced the accreditation of the new non-governmental organizations, namely: European Dyslexia Association (EDA), Genetic Resources, Traditional Knowledge and Folklore International (GRTKF Int.), Indigenous People (Bethechilokono) of Saint Lucia Governing Council (BGC), Society of American Archivists (SAA) and the French-Speaking Union of the Blind (UFA).

### **ITEM 4: ADOPTION OF THE REPORT OF THE TWENTY-SECOND SESSION OF THE STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS**

12. The Chair called for the adoption of the draft report of the 22nd session of the SCCR.

13. The Delegation of India regretted that its lengthy intervention on the broadcasting issue had been shortened in the report by which it had lost its meaning. The Delegation proposed giving the language for inclusion in the report, to which the Chair agreed.

14. The Delegation from the Islamic Republic of Iran also pointed out a minor revision which it proposed to convey to the Secretariat.

### **General Statements**

15. The Chair then opened the floor for making of general statements.

16. The Delegation of South Africa, speaking on behalf of the African Group, commended the work on the treaty for the protection of audiovisual performances, and further hoped that the informal consultations scheduled for that weekend would accelerate the work towards text-based negotiations on the treaty for the protection of broadcasting organizations. The African Group maintained the view that exceptions and limitations were a fundamental aspect of copyrights and related rights. The Group stressed that the accessibility of exceptions and limitations varied among countries because countries that were party to various international copyright instruments had reached different stages of development and those countries had dissimilar law traditions. Hence the African Group believed that there was a need to have a minimum standard of international harmonization for exceptions and limitations, but radically departing from the broad principles of existing international obligations. Document SCCR/22/16 provided a good basis for negotiating and concluding a text for a treaty on exceptions and limitations for the visually impaired persons. In line with the program of the 21st session of the SCCR, the African Group looked forward to undertaking text-based work for libraries and archives and for educational and research institutions as well other persons with disabilities with a view to work towards an international instrument. The African Group's approach was based on the need for striking a balance between rightsholders and the public interest, and it hoped the Committee would consider that balance.

17. The Delegation of Slovenia, speaking on behalf of the Group of Central European and Baltic States, expressed hope that the Committee would work constructively during the two weeks in order to move forward on all pending issues. The Group commended all WIPO

members and other actively involved stakeholders for reaching agreement after more than 11 years of negotiations on the protection of audiovisual performances. On the protection of broadcasting organizations the Group called for adequate protection at the national level. The Group pointed out that during the previous SCCR sessions the strongest emphasis was placed on the improvement of access to copyrighted works by persons with print disabilities.

18. The Delegation of Panama, speaking on behalf of the Group of Latin American and Caribbean States (GRULAC), expressed its willingness to work closely on the issues on the table for the meeting. In the area of copyright exceptions and limitations, GRULAC commended the good progress that had been achieved. In the previous meeting of the SCCR, agreements were reached on almost all the technical aspects for an instrument. During the current session GRULAC expected the work to move towards the adoption of a treaty for the visually impaired and other persons with print disabilities. GRULAC appealed to all stakeholders to conclude that treaty in order to have a positive impact at the educational level for the visually impaired, thus opening the way for their personal development and the development of communities. GRULAC reiterated that document SCCR/23/16 constituted a solid basis for completing the work during the session. GRULAC proposed the discussion of that text in small groups involving all interested members and later presenting the findings to the plenary session, which would allow for making greater progress. GRULAC said it was open to all discussions on the issue of limitations and exceptions for libraries and archives, and pointed out that a document had been circulated by the delegation of Brazil on that item. On the issue of the protection of broadcasting organizations, GRULAC hoped the Committee would continue its work to achieve greater progress. GRULAC reminded delegates of the statement made on the holding of a diplomatic conference on the protection of broadcasting organizations, and called upon Member States to intensify the dialogue and have the political will to progress on those issues.

19. The Delegation of Pakistan, speaking on behalf of the Asian Group, said the Group recognized the progress being made on the long pending treaties for the protection of audiovisual performances and broadcasting organizations. It further welcomed the decision of the General Assembly earlier that year to resume the diplomatic conference for the protection of audio visual performances, and looked forward to preparatory work on that subject during the SCCR session. The Group called for the maintenance of the momentum regarding the work on the protection of broadcasting organizations and cablecasting organizations in the traditional sense, and hoped the Committee would continue discussions on a signal-based approach consistent with the 2007 General Assembly mandate. The Group looked forward to the two-day informal consultations on the protection of broadcasting organizations and cablecasting organizations during that session with the aim of making progress on that issue. The Asian Group attached great importance to ensuring a balance between rightsholders and the larger public interest, for which exceptions and limitations to copyright were crucial. It reminded the meeting that it was important that norm-setting in WIPO should not be seen as limited to IP rights and protection, but should reflect a broader social and development context. If WIPO is to remain the principal international body responsible for IP, its norm-setting activities should reflect the broader context of the prevailing IP debates, and if possible, try to address some ramifications of IP that would spill over into other sectors, especially those concerning the common good. With a view to bringing greater balance, the Asian Group considered it important to have a framework for safeguarding the public interest which was being dealt with as exceptions and limitations clauses. In that regard, the Asian Group welcomed the work plan with a time-frame that was adopted at the 21st session of SCCR for evolving an automatic framework for providing exceptions and limitations to make copyright protected works accessible to the visually impaired persons, libraries, archives, educational institutions and research institutions. Under the same work plan the Asian Group looked forward to a comprehensive and substantial discussion on the issue of libraries and archives during that session of the SCCR. With regard to limitations and exceptions for persons with print and other reading disabilities, the Asian Group was encouraged by the progress made so far, and looked forward to an early finalization and adoption of the international instrument for the visually

impaired and persons with reading disabilities.

20. The Delegation of Algeria, speaking on behalf of the Development Agenda Group (DAG), hoped that the good understanding that had recently prevailed in WIPO would continue to prevail in the course of the meetings. DAG was convinced that greater progress could be achieved on significant issues representing the common interest of countries. DAG welcomed the SCCR report on the coordination mechanism with the CDIP, as it enhanced transparency. DAG also welcomed the fresh impetus given to progress in that area at recent meetings, and encouraged Member States to continue to contribute to the ongoing efforts. DAG also pointed out that the decision taken by the Assemblies to convene a diplomatic conference on the treaty for the protection of audiovisual performances was extremely important. It pointed out that it was important to strike the right balance between the public interest and rightsholders, by looking closely at appropriate limitations and exceptions for libraries, archives, educational establishments and research institutions. DAG further commended the efforts that had been taken in moving forward the work on limitations and exceptions for persons with print disabilities. It stressed that a legal instrument should ensure that all countries appropriately included limitations and exceptions in their domestic legislation while ensuring the sharing of all works across borders.

21. The Delegation of Morocco, speaking on behalf of the countries in the Arab Group, said the Group stood ready to further cooperate with all parties in order to achieve the goals that had been set and to accomplish all the work set forth in the agenda for that session. The Arab Group welcomed the progress that had been made on limitations and exceptions with reference to persons with print disabilities. The Group also expressed hope to make further headway at that session on limitations and exceptions for libraries, archives and for persons with print disabilities. It stressed that it was very important that persons with print disabilities be able to enjoy access to information, especially in poor and fragile countries where those people were easily vulnerable. On the issue of broadcasting organizations, the Arab Group fully supported all the discussions that had been held and welcomed the progress that had been made. The Group acknowledged the serious problems faced with piracy, especially in developing countries, and called for applying an international instrument ensuring protection for broadcasting organizations. It also acknowledged that signal piracy was a particular problem for many Member States, and there was a clear need for further progress to be made. On the issue of audiovisual performances, the Arab Group fully supported the agreement that was reached at the previous session. The Group invited all Member States to take the last steps required in order to have such an international instrument in the form of a treaty for the protection of audiovisual performances.

22. The Delegation of the Islamic Republic of Iran associated itself with the statements made by the Delegations of Pakistan and Algeria on behalf of the Asian Group and DAG, respectively. The Delegation also welcomed the decision of the WIPO General Assembly to hold a diplomatic conference on the protection of audiovisual performances. On limitations and exceptions and broadcasting organizations, the Committee had already shown its commitment to develop a comprehensive and inclusive framework in the area of limitations and exceptions by approving a specific work program with a well-defined time frame and devoting three extra days to sessions in 2011 to 2012. The object of that process was to move towards a balanced international copyright instrument for the benefit of rightsholders and public policy concerns. It was the common responsibility of all to find an effective solution to the challenges of visually impaired persons and ensure their access to educational, cultural and informational materials. The Delegation maintained that only a binding legal framework could maintain the access of those persons to copyrighted works. On the issue of broadcasting organizations, the Delegation welcomed the progress, in particular the program agreed to during the previous session of the SCCR. It believed that there was an urgent need to protect broadcasting organizations and prevent broadcast piracy. The Delegation supported the establishment of a new treaty to protect broadcasting organizations as mandated by the General Assembly in 2007. However,

the Delegation did not agree with the extension of protection to webcasting organizations at that stage, and the protection should not extend to organizations other than broadcasting organizations that use the web as a service provider for their activities, such as universities or research centers.

23. The Delegation of China said that on the issues of protection of broadcasting organizations, the diplomatic conference on the treaty for the protection of audiovisual performances, and limitations and exceptions it maintained a flexible attitude, and welcomed constructive proposals. The Delegation hoped that more positive and substantive progress would be made on the work on the protection of broadcasting organizations, and hoped due consideration would be given to some specific longstanding issues so that substantive progress would be made during that meeting.

24. The Delegation of the European Union and its Member States stated that all the issues on the agenda for the SCCR were important, and it looked forward to a constructive discussion on the issues relating to libraries and archives and the exchange of national experiences in that area. It hoped to achieve further convergence in the discussions on a possible international instrument on limitations for people with print disabilities and looked forward to the work of the Preparatory Committee for reconvening a diplomatic conference on the protection of audiovisual performances.

25. The Delegation of Brazil expressed pleasure in knowing that negotiations in the SCCR had advanced, and noted that the engagement and flexibility shown by delegations during the previous sessions and consultations made it possible to achieve agreement on substantive issues. The Delegation highlighted the progress made in the area of limitations and exceptions following the approval at the SCCR 21 session of the detailed work program which provided for the negotiation of appropriate international legal instruments and would benefit persons with print disabilities, libraries, archives, educational and research institutions, and persons with other disabilities as a significant result. The presentation at the SCCR 22 session of the joint proposal on an international instrument on limitations and exceptions for persons with print disabilities reflected a growing consensus around substantive provisions of future legal instruments, although agreement was still pending on the legal format of that instrument. Brazil did not agree with the second class solution to address the questions of the access of the reading disabled to copyright protected works. This was a unique opportunity for WIPO to demonstrate its commitment to the major objectives of the United Nations and to help Member States to implement Article 30 of the United Nations Convention on the Rights of Persons with Disabilities. It was also an opportunity to show that members could find solutions to harmonize commercial interests with social and humanitarian demands. The Delegation had circulated a background paper prepared by IFLA that contained elements to be taken into account in the next few days. That background paper was a contribution that was intended only to help discussions evolve smoothly. The Delegation felt that the proposal from the African Group was an excellent basis for discussion. The Delegation also highlighted the reconvening of the 2000 Diplomatic Conference on the protection of audiovisual performances as approved by the previous General Assembly. The Delegation further clarified that it was not a demandeur of the treaty on audiovisual performances but was ready to give its contribution and cooperate with other Member States in advancing that debate. Brazil expressed its willingness to collaborate with other Member States on the discussions on the protection of broadcasting organizations and hoped that the debate would increase the common understanding among Member States regarding the outstanding issues as mandated by the WIPO General Assembly in 2007. Brazil reiterated its commitment to a strong and balanced copyright system, and emphasized that the protection of copyright was safeguarded by its constitution. Brazil was one of the largest publishing markets in the world, with Brazilian music being the fourth most played music around the world. Its national broadcasting organizations were growing and increasing their presence in other countries. Brazil did not see the discussions on limitations and exceptions in WIPO as a threat to the integrity of the copyright system but as an opportunity to improve it by

maintaining in the digital environment the balance between the rights of authors and the larger public interest. WIPO, it said, should play a central role in establishing global standards for the legitimate exercise of exceptions and limitations.

26. The Delegation of India welcomed the positive approach taken on limitations and exceptions for the visually impaired and other print disabled persons by agreeing to the consensus document in the previous SCCR, and hoped the same spirit would continue in finalizing a treaty. India believed that there was a need to move beyond that agreement and bring in positive international obligations to facilitate access to copyrighted material in all accessible formats to the disabled groups. In that context India reiterated its commitment to developing an international binding document. In view of the challenges posed to libraries and archives by the digital environment, the role of education, and the role of libraries in education and research, it was imperative that limitations and exceptions to copyright should be more generous towards libraries and archives without damaging the interest of rightsholders. On the proposed WIPO treaty on the protection of broadcasting organizations, India reiterated its commitment to comply with the signal-based approach towards developing an international treaty to update the protection of broadcasting and cablecasting organizations in the traditional sense, consistent with the 2007 General Assembly mandate which was agreed during the 22nd session of the SCCR. India opposed any attempt to amend the above mandate of the 2007 mandate of the General Assembly to include retransmission over computer networks or retransmission over any other platforms, because those activities were not broadcasting at all in the traditional sense. India however appreciated the initiative of the WIPO Secretariat to hold two-day informal consultations on the protection of broadcasting organizations on November 26 and 27. India looked forward to participating in meaningful technical consultations to resolve the outstanding issues and find a reasonable scope of protection for the proposed treaty on protection of broadcasting organizations. India expected that the discussions during the preparatory committee of the diplomatic conference on the protection of audiovisual performances, to be held from 30 November to 1 December, would pave the way towards finalizing the proposed WIPO treaty on the protection of audiovisual performances, especially pertaining to rules of procedure, including for agreed statements which were being discussed.

27. The Delegation of the Russian Federation stressed that an agreement or treaty on the protection of audiovisual performances was something for which people all over the world had been waiting a long time. That was an important achievement for the work that had been undertaken on ensuring that authors and other rightsholders could indeed have their rights properly upheld. The Delegation also expressed satisfaction at the progress on limitations and exceptions. The Delegation called for viewing the issues not merely from the point of view of persons with print disabilities but also in a broader sense, as they were important for libraries, archives, research institutions and educational establishments. Having a document on limitations and exceptions would significantly improve the way that copyright operated in the new technological environment. The Delegation expressed its willingness to be involved in the work that was going on with reference to the rights of broadcasting organizations.

28. The Delegation of Senegal endorsed the statement made by the Delegation from South Africa on behalf of the African Group. Senegal welcomed the historical recommendation made to the General Assembly at the 22nd session of the SCCR for convening a diplomatic conference in 2012. With reference to the protection of broadcasting organizations the Delegation of Senegal hoped to see a signal-based approach. On the other issue of limitations and exceptions Senegal believed that the subjects to be dealt with should be considered holistically.

29. The Delegation of the United States of America said it was pleased that the General Assembly had accepted the recommendation of the Committee to resume the diplomatic conference on the protection of audiovisual performances, and to resolve the final outstanding issues in the text. More importantly the Delegation was tremendously pleased at the goodwill of



all Member States in working on that project. Concerning persons with print disabilities, like other delegations the Delegation of the United States of America believed that the book famine faced by the blind could be addressed in a reasonable and balanced manner that safeguarded the integrity of the copyright system. It looked forward to making further progress based on the Chair's text as the Committee worked towards an instrument to establish clear norms for copyright exceptions for persons with print disabilities. Exceptions and limitations for libraries and archives was a topic that was very important to the United States of America. The United States of America had extensively developed its own national exceptions in that area and was frequently reflecting and studying its national exceptions to ensure that they met the needs of the prevailing technological environment. The Delegation looked forward to a discussion on the limitations and exceptions of national laws that enabled libraries and archives to carry out their public mission. The United States of America was also committed to working with other Member States on the question of a treaty for broadcasting organizations and hoped progress would be achieved towards the adoption of a treaty with a signal-based approach within the parameters established by the General Assemblies in 2006 and 2007.

30. The Delegation of Chile endorsed the statements made by the Delegations of Panama and GRULAC. Exceptions and limitations to copyright were a key element in achieving a balance in the intellectual property system. The importance given to that issue was something that Chile had always recognized, and had suggested should be a standing item on the SCCR agenda for some time. Chile was pleased to see it maintained on the agenda. Chile welcomed the significant progress made in the past two sessions of the SCCR, where the SCCR was able to reach agreement on a work plan, and in particular on issues relating to a treaty for the visually impaired. The broad-based consensus was very welcome for achieving concrete and specific outcomes during that session of the SCCR. Chile committed itself to paying close attention to the discussions on limitations and exceptions for libraries and archives, as well as engaging in the informal discussions on the possible treaty for the protection of broadcasting organizations and the discussions for the diplomatic conference on the protection of audiovisual performances. The Delegation said that the progress on those issues had to be balanced, taking into account different countries with different needs.

31. The Delegation of Ecuador endorsed the statements made by GRULAC and the Development Agenda Group, and committed itself to continue to work closely in partnership with the Committee on all the agenda items. Ecuador, as a developing country, attached great importance to the development of exceptions and limitations in the field of intellectual property and hoped to continue with that work. Ecuador reiterated its commitment on the issue of limitations and exceptions for libraries and archives, and hoped to see substantial progress.

32. The Delegation of Paraguay aligned itself with the statement made by the Delegation of Panama on behalf of GRULAC. On the issue of limitations and exceptions for libraries and archives, the Delegation hoped there would be a productive debate to find common ground that would enable greater progress. The Delegation believed that an international treaty would be the most appropriate approach to be taken.

33. The Delegation of Egypt stressed that libraries must enjoy extended limitations and exceptions for the rights of publishers on one hand and society on the other. Electronic transfer of documents should also be allowed for the interests of the beneficiaries of libraries. The purpose of making copies must not be limited to a request of a natural person for the use of a document for reasons of research. The purpose must also cover the requests of educational and teaching institutions and remote education requirements. The Delegation drew attention to important legislation issued by the United States of America on 4 October 2002, known as the TEACH Act, whereby Article 110, paragraph 2 of the American copyright legislation was to provide and facilitate that kind of service. The exception should also include the possibility of transferring the format of the document from one format to another, and take into account persons with special needs; that is to transfer it from a readable document to, for example, one

where the sense of touch was being used. Another exception must be taken into account for certain categories of persons attending libraries, for example, the Library of Alexandria in Egypt and the Library of Congress, as well as parliamentarians. Limitations and exceptions were not meant to exceed or to infringe on a publisher's rights.

34. The Delegation of Australia said that the first priority for the Committee should be delivering an outcome on exceptions and limitations for people with a print disability, and that the Committee should also take important steps to reach consensus on a treaty for the protection of broadcasting organizations. It remained optimistic that members would be able to demonstrate a commitment to ensuring progress in the Committee's work during those two weeks. Australia remained open to advancing discussions on other exceptions and limitations for libraries, archives and educational institutions. Australia urged flexibility among Member States in achieving an outcome for the print disabled, and also urged parties to resume the WIPO Stakeholders' Platform. On the protection of broadcasting organizations, Australia remained convinced that an international instrument was needed to address emerging technical issues and appreciated the work done by the proponents. It was ready to show flexibility and called on other members to do the same so that real progress could be made during the Committee meeting.

35. The Delegation of Angola echoed that a diplomatic conference should be convened in 2012 to work on the treaty for the protection of audiovisual performances. On the issue of persons with print disabilities the Delegation commended the progress that had been made at the previous session, and welcomed a proper balance for persons with disabilities and exceptions and limitations for libraries and archives. On the issues of libraries, archives and educational establishments, focus should be on the African proposal as it outlined the way to proceed further.

36. The Delegation of Kenya identified itself with the Delegation of South Africa which spoke on behalf of the Africa Group, and took cognizance of the interventions made by the Delegations of Senegal and Angola in relation to exceptions and limitations as well as the protection of broadcasting organizations. The Delegation welcomed the approval for the convening of a diplomatic conference.

### **General Statements of Inter-Governmental and Non-Governmental Organizations**

37. The representative of the World Blind Union (WBU) hoped the meeting would progress not only on the text but on the decision on a binding international instrument to make sure that access across and around the world could immediately take place. The representative drew the attention of all Member States to an interesting piece of research released the previous week by Yale Law School in which they looked at the whole question of the instrument as to whether it should be a binding or non-binding. That research paper was available online, and the representative was willing to provide the URL to anyone who wished to read it.

38. The representative of the International Publishers Association (IPA) congratulated the Chair and SCCR on the advancements made in the previous meeting of the Committee. The creative industries that IPA represented were mostly affected by two items on that session's agenda -- exceptions for libraries and archives and exceptions for the benefit of persons with print disabilities. On the issue of exceptions for libraries, the representative said IPA had one draft legal instrument on the table that addressed that issue. That proposal contained at least five different exceptions. Each of those exceptions came with a different set of circumstances, and each such exception existed in legislation and proposed relationships with libraries and customers. The representative noted further changes made to the single text in Document SCCR/22/16, and believed that the text could be supported by the rightsholder community subject to some changes in substance. The representative said all those dealing with the book

famine understood that it could only be overcome if publishers and libraries serving persons with print disabilities worked together. The representative pointed out that the Stakeholders' Platform was not on the agenda although it had made much progress in recent months.

39. The representative of the Internet Society (ISOC) recalled releasing earlier that year a discussion paper examining internet-focused strategies to address online copyright infringement, and the organizing of workshops concerning online copyright issues. The Internet Society had also participated in part in the 33rd APEC Intellectual Property Rights meeting. The Internet Society looked forward to the discussion on exceptions and limitations for libraries and archives which served an important role as public repositories and access points for cultural, scientific, economic and other categories of information heritage. The Internet Society encouraged WIPO to include development issues in its agenda, and looked forward to working with WIPO and stakeholders concerning internet-related intellectual property issues.

40. The representative of the International Federation of Reproduction Rights Organizations (IFRRO) mentioned that there were limitations in some legislation to enable libraries and archives to reproduce works, including in electronic formats. It further noted that national legislation also allowed making work available. Such exceptions in national legislation were based on clearly defined appropriate conditions and met the three-step test of the Berne Convention. The Berne Convention allowed an equitable and sufficiently flexible legal framework for its members to introduce exceptions to exclusive rights in favor of libraries and archives in national copyright legislation, and balanced all rights of publishers and the opportunity to offer public access to copyright works with exceptions or limitations for defined uses. IFRRO supported developing practical solutions on the basis of existing legal frameworks whenever possible, and aimed to be a strong supporter and an active participant in the stakeholder dialogues. It further believed that constructive dialogues had resulted in good practical solutions and enhanced understanding between stakeholders concerned in relation to libraries and archives and their uses and users. It was commonly acknowledged that copyright works that were commercially available must not be reproduced, made available to the public or distributed in a way that conflicted with the selling or other normal exploitation of works. Such works were made available by the stakeholders through ordinary sales channels. A stakeholder dialogue involving representatives of libraries, archives, authors, publishers and the collectives had jointly developed solutions which enabled libraries and other publicly accessible cultural institutions to digitize and make available works that were out of commerce and collective licensing schemes. Those licensing solutions had the potential of addressing the inclusion of works. IFRRO acknowledged the challenges that libraries faced when moving into a digital environment and those challenges should be addressed individually.

41. The representative of Knowledge Ecology International (KEI) said it had long supported a treaty for persons who were blind or who had other disabilities, and had opposed proposals for a two-step process following years of inaction. On the issue of substance the representative said it should clarify the status of digital works and expand rather than restrict the freedom to implement exceptions. KEI looked forward to providing comments on the new proposal by Brazil regarding libraries and archives, and was committed to supporting a diplomatic conference for a treaty for audiovisual performances. KEI opposed further work on a treaty for broadcasting organizations.

42. The representative of the Centre for International Intellectual Property Studies (CEIPI) welcomed the work that was undertaken on the issue of limitations and exceptions. The representative welcomed the striking of a balance in the copyright system, with limitations and exceptions forming a key element of that. At the international level the copyright system had not really taken much notice of the problem. But the issue was already on WIPO's agenda and it was a significant step forward. Progress on persons with print disabilities was undoubtedly significant but the needs went far beyond persons with print disabilities. If it was not possible to have an international consensus then at the very least there should be assurances to preserve

the flexibility that existed within national legislation. Some thirty very well thought of academics under the auspices of the Max Planck Institute and Queen Mary had issued a statement calling for a balanced three-step approach to be taken in order to allow a certain amount of flexibility to be afforded at an international level when addressing works done in that area.

43. The representative of the Motion Picture Association (MPA) supported the reconvening of the diplomatic conference of 2000. MPA reiterated the importance of the 19 Articles agreed in 2000 and in particular supported the new provision on Article 12 that was agreed by the Standing Committee and endorsed by the General Assemblies. MPA understood that the break-through in June included an agreement to reach consensus on agreed statements related to Articles 1, 2 and 15 and a statement about the Development Agenda in the preamble. On the other general work on exceptions and limitations, MPA stressed the importance of an approach based on minimum exceptions underpinned by the three-step test. The approach had served the international community for a long way and for a long time by allowing Member States of WIPO to introduce flexible models that were specifically tailored to specific concerns within each country. MPA hoped that system could continue and it looked forward to further dialogue on those issues.

44. The representative of the Ibero-Latin American Federation of Performers (FILAIIE) fully supported the points made by WBU. FILAIIE also fully supported the work being done on that line by WIPO and looked forward to the diplomatic conference on the protection of audiovisual performances. It called for caution on a possible treaty on the protection of broadcasters, and supported the position of the United States of America which aimed as much as possible to try and root out piracy.

45. The representative of the International Federation of Library Associations (IFLA) thanked the Standing Committee for adopting a work plan that included libraries and archives during SCCR/23, and welcomed the comments made by many delegations recognizing the important role copyright limitations and exceptions for libraries and archives played in implementing important public policy goals, most critically around literacy, education, research, employability, health awareness and access for the disabled. Libraries enable and encourage creativity and innovation. By collecting, organizing, preserving and provide access to information, libraries support society in general and the cultural and scientific sector in particular. They foster the sharing of knowledge and ideas, while stimulating creativity and innovation around the world. They are distinctive guardians of the public trust. Without adequate access to information, authors and creators would not be able to create new works, innovate and expand local and global knowledge. Libraries also play a key role in educating the public about the rights of authors and creators. The ability to obtain and use knowledge had become a major factor in development and was critical to a nation's comparative advantage. But for libraries to fulfill their public interest mission, they need adequate copyright limitations and exceptions to provide balance between the rights of users and creators of protected works. Unfortunately, libraries and archives worked under a patchwork of provisions that differed in scope and effect from country to country. Those provisions increasingly failed to address the legal and policy challenges and opportunities of the global digital environment. More than ever, libraries needed copyright frameworks that recognized the importance and legitimate expectation and rights of libraries and their users in the digital era. The draft WIPO treaty on exceptions and limitations for persons with disabilities, educational and research institutions, libraries and archives, as proposed by the African Group marked a visionary step forward in outlining ways to establish that balance. IFLA was proud to have worked with the African Group, as well as with representatives of other Member States, on text-based proposals to ensure the needs and rights of library users everywhere were fulfilled. Those needs identified in focused dialogue between IFLA and librarians from nearly 100 countries over the past six years were articulated in a proposal which was available to delegates on the table outside that room. That document was intended to complement the African Group proposal, providing additional information to guide Member States in their important discussion of library and archive issues during SCCR 23

and beyond. IFLA believed that universal and equitable access to information and the preservation of the world's cultural heritage were vital for the social, educational, cultural and economic well-being of people, communities and nations in the global digital environment. IFLA looked forward to a positive dialogue with all Member States on ways to enhance human, social and economic development and to encourage creativity and innovation by bringing balance to the international copyright system in the 21st century for the benefit of all members of society. Libraries and archives had been concerned for some time about the need for new international norms to enable accomplishment of the mission of ensuring equitable access to information in the digital age in which knowledge was increasingly becoming borderless. In 2004, when several GRULAC countries introduced limitations and exceptions as an important part of the focus of SCCR's work, IFLA recognized the need for more intentional analysis of the needs of libraries within that framework. Based on Professor Crews' report to the SCCR in November of 2008, IFLA had developed a set of principles to guide the development of international norms for libraries and archives. IFLA had appreciated its dialogue with the African Group on those issues during the previous two years. IFLA's text complemented their proposal and was intended to further enrich the discussion among Member States of exceptions and limitations to libraries and archives at that SCCR. IFLA tried to ensure that authors' rights were safeguarded and dealt with in a fair way. Libraries respected authors' rights and IFLA sought to ensure a fair balance between the rights of authors and the public interest. Authors as users and creators of information benefited also from a rich public domain and a robust system of exceptions and limitations in order to create new works. The provisions applied to specific library and archive activities in pursuit of public policy objectives. The provisions applied to non-commercial purposes only, as commercial purposes were excluded and there was a definition of a library and archive which meant an organization that systematically collected, preserved and facilitated access to published and unpublished sources for non-commercial purposes. It did not affect in any way the existing provisions of the Berne Convention with respect to moral rights. The proposal set out the relationship with other agreements and was consistent with the major international copyright treaties. It set out a special agreement within the meaning of article 12 of the Berne Convention. Each exception and limitation complied with the requirements for exceptions included in such treaties, particularly the three-step test when needed, or it referred to rights that were not included in existing multilateral agreements such as, for example, lending. IFLA highlighted some of the substantive provisions which set out the rights for libraries and archives that were mandatory exceptions and limitations, and some of those provisions could be recognized from national laws: preservation, library lending, interlibrary document supply, reproduction by libraries, access to orphaned and withdrawn works, and cross-border production under one of the fore-mentioned exceptions and limitations. In addition, there were obligations to respect exceptions and limitations in contracts and technological protection measures. Reproduction and supply of copies enabled, for example, an activity called interlibrary document supply. Interlibrary document supply occurred between two institutions to provide access to specific materials on request; for example, a copy of a journal article that was not available in the user's home institution. That well-established practice could occur between libraries in a country or cross-border. International requests were on the rise, especially among libraries assisting researchers where collaboration was increasingly interdisciplinary and global. With the shift from copyright law to license agreements to establishing user permissions, it was essential to reaffirm that important channel of access in support of research, teaching and learning. The second example was preservation of library and archive materials. Preserving the memory of the world and holding it in trust for future generations is a unique responsibility held by libraries and archives. That exception would enable a library or archive to copy, format shift and migrate to different platforms as part of the technical preservation process. IFLA believed that an international solution was needed to enable libraries to function effectively both in the global digital environment and also at a national level.

## ITEM 5: LIMITATIONS AND EXCEPTIONS: LIBRARIES AND ARCHIVES

46. The Chair invited delegations to discuss item 5 of the agenda on limitations and exceptions regarding libraries and archives.

47. The Delegation of South Africa pointed out that the document SCCR/22/12 was the document to be presented as a basis for facilitating the discussions.

48. The Delegation of Brazil said it intended to present document SCCR/23/3 on a treaty on exceptions and limitation for libraries and archives. It was a background paper prepared by the International Federation of Library Associations (IFLA). Brazil supported the background paper to foster the discussions in the following three days. The first part of the background paper recalled the important role played by libraries and archives in societies. The second part made the case for exceptions and limitations so that libraries and archives could fulfill their public interest missions through exceptions and limitations that allowed them to preserve their collections, support education and research, and help people with disabilities exercise their right to access content. That part of the background paper included a reference to a recent WIPO study which emphasized that 21 countries worldwide had no specific exceptions for libraries and archives; 27 countries had only a general exception, and those provisions, exceptions and limitations increasingly failed to address the legal and policy challenges of the global digital environment. The third part of the background paper gave five concrete examples of the problems faced by libraries and archives, which could be addressed by giving libraries and archives legal security to exercise a certain number of exceptions and limitations to copyrights. The first one was the absence in many countries of exceptions to copyright for preservation even for print materials, which meant that documentary heritage would disappear and may not be available to future generations. Libraries and archives contain a wide variety of print materials often not available anywhere else in the world but which are important as historical, political and cultural documents. They are important collections, of which the background paper mentioned that newspaper collections were not available worldwide. Without an appropriate exception a library or archive could not copy or digitize the newspaper, for example, in order to preserve it. The second example referred to the need for libraries and archives to count on exceptions and limitations to preserve and make available works which had not been updated to the digital age. For example, libraries and archives provided access to large quantities of important digital works that were not available in print format. Without the legal certainty to preserve that material for future access the world faced a so-called digital black hole of 21st century material. A third example of a problem faced by libraries and archives was that imposed licenses for the provision of digital information such as electronic journals were often used to undermine limitations and exceptions to copyright designed to support education, learning and creativity. A fourth example showed that technological protection measures were used by rightholders to control access and use of content such as to restrict copying. The importance of technological protection measures was not being questioned, but the paper was merely focusing on the need for libraries and archives to have the rights in some special cases to circumvent TPMs so that they could fulfill such purposes as preservation of material. The fifth example made a general observation that the Internet had opened new opportunities for information and communication. The discoverability of published materials had become easier and the collaboration between researchers, citizens and students was increasingly global. Yet those increasingly established practices of resource-sharing among libraries to advance knowledge were not addressed by exceptions and limitations to ensure that libraries and archives could or may operate with legal certainty. The Delegation said that the background paper also included a comment on a proposed treaty for libraries and archives as elaborated by IFLA. Brazil said it was not tabling that draft treaty, but thought it was an important contribution to the discussions to be held in the following few days. With that presentation the Delegation said Brazil was making the case for an international instrument which addressed the needs of libraries and archives.

49. The Delegation of Uruguay mentioned that studies had shown that libraries and archives worked in very different legal framework from one country to another. Uruguay shared the view that there was a need to improve, update and give greater legal certainty to the prevailing exceptions and limitations for libraries and archives and then a need to adapt that to the digital world of the 21st century.

50. The Delegation of India welcomed the background presentation of Brazil and the document of IFLA on proposed limitations and exceptions for libraries and archives. Libraries were viewed as repositories of written material, particularly books. But for several years, they had been adding audiovisual material to their collections. More recently, provisioning of books in the form of e-books had increased due to phenomenal growth of technology and access to knowledge through electronic means, including accessible formats for visually impaired and other print disabled persons. It was important to acknowledge that libraries play a key role in the dissemination and preservation of knowledge, culture and heritage. The libraries and archives sections officially sanctioned persons to make copies of the work in appropriate circumstances and also supply those copies to other institutions and to individuals. Therefore, libraries and archives had a distinctive role within society that justified their special treatment within the copyright law. Copyright laws should recognize the role of non-profit and non-commercial libraries to access copyrighted works for the general public, for non-profit and non-commercial purposes. It made reference to the recommendations of the Development Agenda as relevant for proceeding to internationally binding agreements on limitations and exceptions for libraries and archives.

51. The Delegation of Argentina supported the process to strike the right balance between rights to access to information, knowledge and education and scientific research and culture, human creativity, and on the other hand, copyright and related rights. Argentina was one of the countries that did not have an exception or limitation for libraries and archives. Nevertheless, consultations were taking place at the domestic level and it already had a draft law which was being submitted to the Congress. There were a number of very useful ideas in the proposals presented by Brazil and the African Group. It underscored the conservation of material for posterity, circumvention of technological protection measures in order to permit fair use of works, and limitation of the liability of libraries and archives concerning orphaned works.

52. The Delegation of Ecuador mentioned that the objective of the discussions on limitations and exceptions for libraries and archives was to promote the public interest, in particular to provide adequate protection for the rights of the weakest in society. Ecuador was committed to achieving protection for the work of libraries and archives, which are pillars of the system of democracy and free access to information and culture. The Delegation expressed gratitude to WIPO for the discussions on the work of libraries and archives, and the studies that had been undertaken. The Delegation also welcomed the initiative of IFLA and other organizations which were representing libraries and archives in supporting the treaty proposal. The Delegation also welcomed the effort and initiative taken by the African Group and its proposal on exceptions and limitations for libraries contained in document SCCR/23/12, as well as the document provided by Brazil which was very informative for the discussion.

53. The Delegation of Mexico highlighted two elements in the discussions for libraries and archives and educational institutions. First was the social aspect, by which works were disseminated and made public by the author, and allowing any person to benefit and use such works. The key was striking the right balance within the three-step test of the Berne Convention. The objective was to identify and describe the specific cases within the framework of those three steps. It would be extremely useful to analyze that issue of libraries in particular, especially where there were already specific laws regulating the functions and activities of libraries. The Delegation sought to know from IFLA what would be the best solutions for conventional materials, digital formats, multimedia, and works protected by related rights. The representative of IFLA mentioned that the British Library had estimated that many of the works

in its collection were orphaned works, and IFLA was asking for an exception for libraries and archives to use those orphaned works when unable to identify or locate the rightsholder after a reasonable inquiry. IFLA recognized that there were discussions going on at national level on that issue for which an international solution was required.

54. The Delegation of Chile thanked the Delegation of Brazil for having introduced the document and also thanked the proponents of the treaty proposal on copyright limitations and exceptions. The Delegation said it was holding internal consultations on the issue and had been working directly with the Organization of Libraries and Archives of Chile, which had expressed its interest in the discussion taking place in the Standing Committee. The Delegation reported that the Organization of Libraries and Archives of Chile had asked to include not for profit institutions in the coverage of those limitations or exceptions. Therefore the provision of works should be a free service without contractual or legal limitations, and the treaty proposal should guarantee the existence of those exceptions without the possibility of restrictions on the exceptions.

55. The Delegation of Jamaica confirmed its ongoing interest in the discussions and expressed its appreciation for the documents circulated by Brazil, IFLA and the African Group. Jamaica expressed its hope to reach consensus on the discussions. It underscored the comments made by Argentina and looked forward to discussions on technological protection measures, orphan works and parallel importation of works.

56. The Delegation of Pakistan joined other Delegations in emphasizing the role that libraries play with regard to dissemination of knowledge, supporting scientific research and development, and providing access to creative works for the public interest. The Delegation further expressed appreciation for the work that was undertaken in the Standing Committee and looked forward to concrete discussion. It thanked IFLA and its associate members and the Delegation of Brazil for presenting the proposal. The Delegation also thanked the African Group that tabled the document in the earlier session.

57. The Delegation of Nigeria stressed that the flexibility and the spirit of constructive engagement demonstrated at the SCCR would help in finding common grounds and points of convergence on the various proposals. The Delegation welcomed the presentation made by the Delegation of Brazil on the treaty on limitation for libraries and archives as well as the modified proposals of IFLA and other like-minded organizations. The Delegation noted that the proposal shared common features with the African Group's proposal, although there were divisions in scope or depth. Both had touched on issues like making available works to persons with disabilities. The Delegation was pleased with the general support on the basic principles and discussions. It said that the proposal by the African Group was complementary and could enrich the outcome of the work of the Committee in finding a flexible, effective and functional framework for the use of exceptions and limitations of copyright. In its view a copyright system was only useful to the extent to which it advanced not only economic interests of authors but also the dissemination of information and knowledge for the facilitation of use and access by society. To benefit rightowners, it had been found to be burdensome, expensive and often too cumbersome to have any real meaning to the perceived beneficiaries. That was one reason why the Group had also proposed in document SCCR/22/12 a section on libraries and archives. The Delegation further stressed that for many of the developing countries and least developed countries libraries and archives play a crucial role as they offered the last hope of bridging the knowledge gap between developed and developing countries. The Delegation said it was aware most libraries were not able to benefit from some special treatment.



## Statements of Inter-Governmental and Non-Governmental Organizations

58. The representative of the International Group of Scientific, Technical and Medical Publishers Association (STM) said it had great interest in the study that WIPO commissioned from Professor Cruz. STM published, prepared and distributed its materials into the research and education communities worldwide. It was often stated that because education and research were part of the larger public interest, they constituted a certain special case for the purposes of the three-step test of the Berne Convention. However, the activities that were cited there were indeed the main focus of the publishers within STM, as educational materials were the main focus of educational publishers. Therefore the usage was not a special case; they were the normal exploitation of a copyright-protected work. The underlying copyright had not changed in the digital environment. What had changed were technologies, management of rights and production of resources. To bridge the digital divide, STM believed adequate funding for the provision of books and research materials was more needed than exceptions as such. As far as least developed countries were concerned, on many occasions STM had highlighted the Research for Life program which brought 6,000 journals, free of charge, to qualifying institutions in developing countries all around the world. It was amazing what use was being made and what innovation could be made by the use of those journals. STM agreed that libraries were key players in ensuring long-term preservation and archiving of electronic information through appropriate arrangements with publishers, and STM thought that where concrete and specific difficulties were pinpointed, publishers had in various national scenarios shown their willingness and preparedness to find appropriate and reasonable solutions.

59. The representative of the International Council on Archives mentioned that archives held the unique materials that recorded the history of the peoples of the world, decisions made on their behalf by their leaders and the reasons for those decisions, and the history of the activities of governments, organizations of all kinds and individuals. Archives deal primarily with public materials that are provided with no commercial motivation, similar to libraries. Some archival materials present no copyright problems, either because copyright had expired or copyright was owned by the parent organization. However, archival materials inevitably contained many works in third-party copyright. Every letter received by an organization that ended up in its archive was copyrighted work of the sender, not the recipient. The International Council on Archives was grateful to the African Group for proposing a treaty containing limitations and exceptions in favor of libraries and archives, and also thanked the Delegation of Brazil for putting forward further issues for consideration as presented by IFLA. The International Council of Archives had worked closely with IFLA in the drafting of its proposal for a treaty, and looked forward to real progress at the meeting. He pointed out that the preservation of the copying exception which was the subject of Article 14 of the African Group proposal was vital. Without that all over the world paper records were decaying, films and sound recordings were becoming unplayable and in some cases becoming dangerous, while digital materials were becoming worthless as technology advanced. The absence of exceptions permitting copying for users and transmission of those electronically across frontiers which were the subject of Articles 11, 12, 13 and 15 of the African Group's proposal was hindering research for academic learning because many researchers, especially in developing countries, could not afford to travel to visit archival institutions. Orphan works were a major problem for archives and were the subject of Article 21 of the African Group's proposal. Papers such as unpublished letters and diaries written by private individuals were almost inevitably orphan works. There was no commercial interest in such works but there was immense cultural value in them. Archivists around the world were looking forward to the SCCR to make possible the preservation of the world's memory as represented by archives and the use of that memory to stimulate the creation of new works for the advancement of mankind.

60. The representative of the Society of American Archivists (SAA) said that the problem for archivists was that the collections were rarely created by professional writers for public dissemination. They were mostly unpublished letters, diaries, e-mails and photos that were

simply the by-products of their creators' daily lives; sometimes even the author's identities were a mystery. Those works were square pegs being pushed into the round hole of copyright, but they were invaluable to society. For example, the unpublished letters that Ken Burns used in his American Civil War documentary showed archival holdings were not for obscure studies; rather, they were the threads needed to weave an authentic picture of society. Clearly knowledge, culture and education required copying and use of archives. Copyright had adapted to new technologies including digital materials. Archivists found that essential to maintain society's heritage and to hold governments accountable. But without appropriate exemptions, archivists could not make digital documents available for use. Digital technology held the promise of liberating our collections from their physical location. The remote schools, satellite university students and the public worldwide could use those primary sources by digitization if copyright did not stand in the way. That limited research to only those wealthy enough to travel widely. Archival materials did not fit within any market structures but copyright treated them like commercial enterprises. Thus they were prevented from serving researchers which was the public's medium of choice. Without specific archive and library exceptions, they lacked the means to pursue their research and educational mission. SAA commended the African Group for proposing the draft treaty on exceptions and limitations, and appreciated Brazil for presenting the IFLA document.

61. The representative of the International Federation of Producers Associations (FIAPF) hoped that in the course of the discussions, pragmatism would prevail over doctrine as part of the commitment to a balanced copyright framework. Whatever decisions the institution would make, it should lead to effective preservation of our cultural heritage without generating adverse effects on those who create, produce and disseminate the artifacts. He cautioned Member States to guard against establishing an artificial track line in their minds between respective roles of the professional industry and the libraries and archives. It was important, therefore, that no decision should result in the weakening of incentives for the commercial sectors in the cultural industries to continue to play their part in the preservation and development of the relationship between the general public and its cultural heritage. FIAPF believed in the exchange of views between Member States on best practices in the area of relevant exceptions and limitations.

62. The representative of the Canadian Library Association (CLA) expressed its desire to join colleagues from other organizations represented there in focusing on exceptions and limitations for libraries and archives, and supported Member States for including the background paper presented by Brazil. CLA recognized that the provisions were essential to enable libraries around the world to facilitate access to information in the public interest, and also acknowledged that within the Canadian context different sectors of the library community would have different priorities for the provisions in the treaty, based on the types of users they served and the content they provided. CLA thanked the African Group for its proposal on the draft WIPO treaty on exceptions and limitations, as in document SCCR/22/12 that specifically included language allowing circumvention of technological protection measures for non-infringing uses. CLA believed that without the ability to override protection measures, information policy was reduced, thus permitting owner's rights to overreach legitimate limits and impinging on the library or archive's right to use and preserve works. A second priority concerned the obligations to respect exceptions to copyright and related rights as found in Article 13 of the treaty draft, and as also mentioned by the African Group's proposal. CLA believed that those treaty provisions provided by contracts made by private parties would endanger the holdings of most libraries in the digital age. Already in excess of 70% of the collections in academic libraries in Canada were acquired through contracts for access rather than outright purchases. CLA also believed in and supported library lending. While Canadians enjoyed the right to loan, all libraries required the right to lend works or other materials to their users. Lending was essential for facilitating access and dissemination of knowledge and was the cornerstone to library principles. CLA said a treaty on limitations and exceptions as applied to libraries and archives was vital in

establishing a set of basic requirements within the international copyright regime to support the essential services and activities that libraries and archives provide around the world.

63. The representative of the Motion Picture Association (MPA) said that technological measures or digital rights management were an enabling technology that allowed making works available on demand in ways that had never been done before. In the film sector, sometimes such works could be made available using those tools very early in the life of a film. If there was a requirement to accommodate exceptions for every instance, it will not be possible to make certain business models work, for example, video on demand. A right to circumvent technological measures would be inconsistent with the framework already established and would allow the exceptions to swallow the rule. WCT and WPPT leave Member States considerable room to maneuver to fashion solutions to the relationship between exceptions and technological measures. MPA recognized the importance of archives, particularly on the preservation of films. The members of MPA deposit films in archives around the world either through voluntary schemes or sometimes through mandatory deposit schemes.

64. The representative of Library Copyright Alliance (LCA) emphasized that limitations and exceptions were needed to allow libraries to carry out their public mission of providing access to their collections regardless of format for the purpose of the advancement of knowledge and creative activity. Digital technology allowed libraries to carry out their core missions more efficiently and effectively, and copyright laws should include appropriate limitations and exceptions to allow libraries to utilize the opportunities afforded by digital technology. Contractual licensing of information was not always a viable solution as it often prevented lawful uses of copyrighted works, undermining the services of libraries and impeding intellectual and creative activity. To advance knowledge and creativity, libraries and archives should be permitted to make copies of works for preservation for all categories of works in all media and formats, to migrate content away from obsolete storage formats, to import works to build their collections, to lend materials in their collections, to supply copies to users directly or through intermediary libraries regardless of format and communication, to make copies of individual items for individual users for research, study and other private purposes and to provide users with the facilities to make such copies for themselves and to make available to the public works whose rights holder cannot be identified or located. There was a need for limitations on the liability of libraries and archives and their employees that acted in good faith, believing or having reasonable grounds to believe they had acted in accordance with copyright law.

65. The representative of Electronic Information for Libraries (eIFL.net) mentioned that libraries in Africa and other parts of the world invested a great deal of money in facilitating access to knowledge and disseminating knowledge, all of that promoting education and development. Article 12 of the African Group proposal referred to a kind of interlibrary facility, which had already been explained. But copyright should be granted through various licensing procedures and some publishers should be involved in disseminating and sharing international resources in that area. Article 14, which talked about preserving documents in libraries and archives, should be a stand-alone article.

66. The representative of the International Publishers Association (IPA) commented that the IFLA treaty introduced ten exceptions, two of which were international, eight of which were national. Nine of those 10 would be mandatory and only one was optional. The treaty would restrict policy space further by allowing no further remuneration clauses and exceptions, and the proposal sought to give libraries and librarians special privileges not accorded to other copyright users that included limited liability, no restriction on territorial rights, and unrestricted right to lend books in digital formats. Libraries were important customers for local and international publishers. IPA believed the issues enumerated in that proposal merited careful consideration, each on its own merits. Such consideration should take into account existing best practice at national, regional and international levels and should also take into account technology and business models that were still being developed. IPA said it was therefore premature to

consider any regulation. The Committee should take into account where actual consensus had been achieved or where at the national level there were projects which were seeking to address the particular circumstances that were being addressed through a copyright exception. Overall it appeared that there was much fact-finding and comparison of the reality to be done at the ground level. Publishers are not exploiters of copyright but are custodians of the works of the writers and creators. IPA therefore felt a responsibility for those works beyond their commercial use. IPA looked forward to discussing each and every one of those copyright exceptions on their own merits and did not see the IFLA treaty as much as a treaty proposal but as a list of different issues and grievances where current circumstances required careful consideration on how best the interests of users, rightsholders, publishers and libraries could be brought together in harmony.

67. The Delegation from South Africa reiterated the importance of focusing on the text, and certain other issues as highlighted by NGOs and Member States could be seen in terms of text discussions. The Delegation said that for the African Group libraries and archives were important in facilitating access to teaching and material. Most African countries were members of WIPO and other relevant entities on copyright, and ascribed to minimum protection as provided for in the treaties and agreements. Exceptions and limitations were a fundamental aspect of copyright and there was a need to harmonize the same due to the creation and use of copyright works taking into account the digital platform. The Berne Convention provided for an option as contained in the three-step test as in Article 9(2) apart from the mandatory ones, and Article 2H on the use for reporting and Article 10 on illustrations for teaching. Exceptions were also reflected in Article 10 of the WIPO Copyright Treaty, Article 16 of the WIPO Performances and Phonograms Treaty, Article 15 of the Rome Convention, and Article 10 of the Berne Convention. Countries were free to have limitations in their national laws. Article 10 of WCT provided for countries to extend limitations in their national laws appropriate for the digital environment. Libraries and archives played a very crucial role in providing information to the public, including serving as a conduit for education and research and creativity among others. They therefore preserved the fundamental user rights concerning individuals including freedom of expression, dissemination of knowledge and information and the public interest. Further, libraries and archives enabled intellectual freedom and facilitated healthy exchange by providing access to information, ideas and works of the mind in any medium to all members of society. Above all, they provided services to people with reading disabilities. A set of limitations and exceptions for libraries and archives was therefore considered necessary to uphold rights and freedom to promote dissemination of information and limitations and exception for libraries and archives.

68. The Delegation of Nigeria reiterated that it supported much of what had been presented in the earlier sessions concerning the African Group's proposal. The Delegation said different countries had different principles of exhaustion and there was no common international harmonized position on that. It was important to assure that those various treatments were addressed in the document so that countries would know where works were supposed to be coming from. The provision of the African Group took cognizance of the existence of permissible users and existence of instruments in that particular area. That kind of provision would be helpful in ensuring that limitations were totally beneficial to the intended beneficiaries under that treaty. The Delegation said the issue of orphaned works was indeed a very sensitive issue, but there was a need to find a solution on how to treat such works. On the issue of circumvention, in Article 18, it had often been queried whether or not those provisions would apply only to works that had already been lawfully acquired by the library or the concerned archive. Works had also been lawfully acquired, but there were cases where a library or archive needed to circumvent a work even before its acquisition. In such cases it could be borrowed from other jurisdictions where the library was allowed to have such circumvention. The Delegation said the idea behind the African Group was to look for a benchmark of exceptions that should be available. The Delegation further said that drawing from the experience of developing countries there was a great concern in the case of libraries and archives, as libraries

were often the last point where most countries and institutions or communities could have access to information and knowledge.

69. The Delegation from the United States of America anticipated introducing the next morning a paper on objectives and principles based on its own internal discussions in the United States of America. It was a government based document reflecting many of the ideas made in the statements of the United States of America at the previous SCCR meeting.

70. The Delegation of Angola called for focusing on the future direction in the light of what had been spoken in the Committee by various delegations and representatives. It did not support going through article-by-article, but to work on norms and find a solution to the overall problem. The African Group's position took into account the issue of licensing, the way in which licenses could be used, free licensing or other types of licensing arrangements.

71. The Delegation of Ecuador said it would join Brazil in presenting precise texts on exceptions and limitations which would complement the documents already provided by the African Group, once authorization was received from the capital.

72. The Delegation of Pakistan mentioned the need to cluster around the areas upon which there had been discussions, such as parallel importation or purchase of works; library lending and supply of works; cross-border uses; preservation of library and archival materials; right of reproduction and supply of copies by libraries and archives; and orphaned works.

73. The Delegation of South Africa saw the need to focus on six of the issues taken from general statements, which were library lending; preservation of library and archival material; parallel importation; technological protection measures; orphaned works and cross-border uses. There was also a need to look at the documents of the African Group and the documents which would be made available the following day by Brazil, Ecuador, and the United States of America.

74. The Delegation of the United States of America suggested that, apart from considering the clusters and topics presented by the Delegations of Pakistan and South Africa, an additional topic on legal deposit as raised by IFLA could be included as a subject for discussion.

75. The Chair then requested the Secretariat to draw up a list of those issues proposed by Pakistan, South Africa and the United States of America to be read out the following day at the plenary session.

76. The Delegation of the United States of America believed the principles it was proposing applied broadly and would be useful to other countries working on exceptions and limitations in their respective national laws for libraries and archives, adding that the proposal also reflected the thoughts of the United States of America as to what constituted the core importance of exceptions and limitations for libraries and archives. To begin with, the Delegation explained that the proposal had been arranged in a series of objectives and principles which could help the Committee focus on the specific areas or clusters of issues under consideration. The Delegation noted that the first objective was the overarching objective and goal Member States could adopt on exceptions and limitations in national laws. It was the principle to facilitate the public service roles of libraries and archives in maintaining the balance between the rights of authors and the larger public interest, particularly education, research and access to information. Specific and reasonable exceptions and limitations for libraries and archives could help the institutions involved in assisting individuals seeking, receiving, and imparting information to participate meaningfully in public life. The Delegation noted that it was also important for the SCCR to take into account both affirmative protections for authors on the one hand and exceptions and limitations on the other as part of a balanced copyright system with the goals of encouraging creativity, innovation and learning. The broad role for exceptions and

limitations was to advance knowledge by preserving and providing access to the world's cultural, artistic and scientific heritage; a role in which libraries play a major part. Libraries and archives undertook the important role of preservation activities utilizing specialized training and techniques with scarce resources and sophisticated technologies. It also highlighted the important public service role museums played as the same enumerated as the roles of libraries and archives and suggested any possible exceptions and limitation for libraries and archives should be extended to museums to ensure adequate safeguard measures were in place to allow them to exercise their lawful duties. It reminded the Committee to acknowledge other exceptions and limitations within national copyright systems that played important roles in facilitating the public services of libraries and archives and said that those national systems could use provisions which enabled libraries and archives to meet the needs of their communities by granting them limited liability protection for their employees and agents that acted in good faith or were believed to have acted in accordance with copyright law. The Delegation called on the Committee to also examine existing national systems on exceptions and limitations for libraries and archives to determine whether they required updating for the digital era to enable the institutions to continue to carry out their public service roles. Rightsholders had a critical role to ensure sustainable access to copyrighted works in developed and developing countries where rapidly changing technology required flexible solutions. The Delegation stated that the next objective was the need for the Member States to adopt national legal deposit laws and systems, explaining that legal deposit systems within the copyright environment would help in developing national collections and would supplement the other goals enumerated including that of preservation, particularly if they included many categories of works published in multiple formats. To this end the Delegation called on Member States to recognize the roles of libraries and archives in providing access to government information which helps individuals to understand and participate within their communities. The final objective that the Delegation proposed was the need to encourage the adoption of national legal deposit laws and systems which to the United States would support and complement the role of libraries and archives of national institutions which develop national collections for preservation at the national level. The Delegation apologized for omitting that paragraph on legal deposit and promised to make a copy available to Delegations as an addendum after the presentation. Explaining further the Delegation stated that legal deposit system provisions in United States law required publishers or other authors to submit certain numbers of copies of works to a national institution which often was a national library but did not necessarily have to be the national library. It noted it was important for countries to maintain access to essential government information. Libraries and archives played an important role and function, and copyright restrictions on government materials should not limit the ability of libraries and archives to receive, preserve and disseminate government works.

77. The Delegation of the European Union and its Member States acknowledged that libraries and archives are essential institutions for the dissemination of knowledge, culture and information for all countries and that the copyright system had always been mindful of that fact, adding that limitations and exceptions to the benefit of those institutions were a possibility and already existed in international conventions; the reality of which could be found through the provisions in national laws of 128 States. The copyright system had also always been mindful of the fact that legal systems differ, so do legal traditions as well as the functionalities of those institutions hence the flexibilities; flexibilities which in some countries are translated into the fair use doctrine whilst in other countries they are specific limitations and exceptions, or are found in a system of licenses. The Delegation indicated there were a range of exceptions and limitations for the benefit of libraries and archives permitted in the European law and that the framework for those exceptions and limitations was largely provided by Directive 2001/29/EC under Harmonization of Certain Aspects of Copyright and Related Rights in the Information Society; adding that those exceptions had an optional character and allowed for a degree of flexibility, which was particularly important in view of the different legal systems and traditions of the 27 Member States. The Delegation pointed out that all EU Member States had adapted their national laws to provide exceptions and limitations of this type and that those laws allowed

libraries and archives to make copies and to make works accessible under certain conditions for many different purposes, including private study, research, and cultural preservation.

78. The Delegation of the United States of America, speaking on behalf of Group B, was interested in identifying and discussing broad themes or clusters of topics related to limitations and exceptions for libraries and archives through sharing of national experiences and thought that the proposal circulated by the United States Delegation was a positive step in that direction. While acknowledging the proposals respectively by the Delegations of South Africa and Pakistan, the Delegation stated that Group B believed engaging in any drafting exercise at that stage was premature and that Group B remained committed to work in that area by taking a pragmatic approach and exchanging information on these important topics.

79. The Delegation of South Africa, commenting on the proposal by the United States of America, thanked the Delegation but said that Delegations would need sufficient time to look at the detailed document to make meaningful comments. The Delegation reemphasized its position in previous sessions that it was committed to text-based work, promising to study the objectives and principles based proposal by the United States of America but indicating that that did not mean it was moving away from text-based work, and it looked forward to the presentation by Brazil and Ecuador on the text.

80. The Delegation of Japan, referring to document SCCR/17/2, indicated that a total of 128 out of 149 countries had agreed on exceptions based on the three-step test as a general provision for maintaining a fair balance between protecting copyright and ensuring the public interest. The Delegation took the opportunity to highlight how Japan treated exceptions and limitations with regard to libraries and archives in its copyright system, stating that it was permissible for libraries to reproduce a work included in the library's materials such as books, documents and other materials held in the collection of libraries for some limited cases and purposes. It could be done under some strict conditions and uses allowed by the above test. Following those strict conditions on exceptions for libraries under the Japanese copyright law, the libraries concerned must be either the national library or those established and maintained by the copyright order, and the original works must belong to the libraries; the production should not be for the purpose of a profit-making business. The Delegation indicated that based on the above conditions, the reproduction should be at the request of users who conducted research and only a single copy of the original could be made. In addition, the production should be necessary for the purpose of preserving library materials and only if the original was not available through normal channels at other libraries because it was out of print. Finally Japan allowed digitalization of materials by the national library for purposes of replacing destruction or damage of the original; in instances such as this, the electronic copy could be made available for public use instead of the original. On norm-setting the Delegation urged the Committee to focus on identification of the best options of limitations and exceptions with effective implementation and operational systems, and that had provisions that would facilitate relationships between rightsholders and users to ensure access to knowledge. This must be done taking into account the diversity and function of libraries in each country.

81. The Delegation of Pakistan reminded Member States that the SCCR agreed to the work program on exceptions and limitations for a two-year period, 2011-2012, by undertaking text-based work on appropriate exceptions and limitations for libraries, archives, educational and teaching institutions, and persons with other disabilities; hence as agreed the Committee needed to focus on text-based work.

82. The Delegation of India enquired whether the proposal of the United States implied that there was no need for a new international binding agreement to be discussed at the SCCR. It hoped the Committee would proceed on text-based negotiations as had already been agreed.

83. The Delegation of Austria associated itself with the Statement of the European Union and other delegations on the need to share national experience and stated that the present Austrian limitations for libraries and archives were like any of the examples found within the European Union. The Austrian Copyright Act addressed libraries and archives generally under Section 42 of the Act, which also dealt with copying for own or private use thus not only for the benefit of libraries and archives but rather in a broader approach that explicitly addressed all institutions which were open to the public and which collected works. The Act also allowed for the reproduction and distribution of works for archival, preservation and replacement purposes under two options: firstly, any work whether published or unpublished may be copied if the original was in the possession of the collection but only a single copy could be made in such circumstance, and secondly, the published work may be copied in several copies on condition that the work was out-of-print or had not been distributed in a sufficient number of copies. Additionally, all copies might be digitalized provided such copies were reproduced only for non-commercial ends; such legitimate copy may be executed, lent and displayed on single workstations in the premises of the establishment, however, the preservation copy must not be used as an addition to the original work in the collection but must be used in place of the original work. In a situation where the copy had been made of the published work which was not part of the collection as a result of the original being out of print then the copy might be used in such condition. Explaining further the preservation provision, the Delegation said any work may be copied if the original was in the possession of the collection but only a single copy may be made and that the preservation copy would typically be made when an item was not available for public access due to conservation or security reasons, or for documentation when the object was for example lent to third parties. Again preservation copies may also be made for safeguarding digital assets; this was usually referred to as the archival copy and serves the purpose of allowing public access to out-of-print works and could only be used when a published work was out-of-print or had not been distributed in sufficient number of copies. On reproduction by libraries and archives, the Delegation underscored that the Act permitted reproduction for private and own use and did not explicitly address the reproduction for libraries and archive uses but provided a general framework relevant for the needs of those institutions under Section 42 which permitted reproduction for private and own use. As a general rule digital copies could only be made for private use; reproduction for patron's private use was not enough. Also provisions of the Act regarding analog format had been translated into the digital format which permitted reproduction in both analog and digital formats. In both cases authors were remunerated by the private copy levy provided by the Austrian Copyright Act as is the case regarding lending in general in Austria rather than an exclusive right. Elaborating further, the Delegation acknowledged that digital preservation had brought new challenges for the existing system and that Austria amended its Act dealing with copyright issues of legal deposit of digital works and web harvesting, nevertheless the Delegation believed Austrian libraries and archives could work effectively under the current regime of limitations, but conceded that the scope of limitations was constantly being discussed and evolving, archives and libraries stood to demand broader limitations in the near future. In the view of Austria, the first step in this was for authors and publishers to provide adequate copies to the public of their works and legislators should only intervene in cases where the market itself failed to provide for adequate solutions; the existence of a market failure depended on the individual circumstances of the market concerned and the national legislature needed flexibility for its exceptions and limitations to permanently change the environment.

84. The Delegation of Canada said that Canada had adequate provisions and policies in other legislation which dealt with issues such as legal deposit, preservation and digitalization in addition to the current copyright law of Canada which recognized a number of exceptions for libraries and archives as well as museums to serve their patrons directly and also to share materials through interlibrary loans for the benefit of patrons of other libraries, archives and museums. It indicated that some of those measures were currently being revised through a legislative process in Canada's copyright modernization legislation which was pending in Parliament to address more clearly the new challenges of the digital environment. The



Delegation pointed out that whilst the provisions were tailored to address domestic needs, Canada would support further work and discussion on measures for the international community, for which reason Canada would prefer the SCCR not to crystallize discussion into any specific text but would rather welcome those documents being proposed as useful contributions. Citing an example, the Delegation stated that libraries, archives, and museums were treated as similar institutions in Canada and Canada would want to ensure continued consistency of policy for those three institutions rather than acting prematurely. The Delegation expressed the desire that Canada would prefer to explore more concrete issues involved to develop a more accurate basis of understanding. As to some other circumstances under which the Canadian Copyright Law permitted libraries, archives and museums to make copies, the Delegation stated this was allowed if the work had become obsolete or if the technology was unavailable or becoming unavailable; also exceptionally for interlibrary loans, making a copy of the work for a patron, for another library, archive or museum. The Delegation concluded that even though the current Canadian law excluded the possibility of making a digital copy, the provision was being revised as part of the legislative process to allow digital copies with some form of restrictions. On unpublished works, the Delegation indicated that the law allowed archives to make copies of unpublished works with certain restrictions which included: if copying had not been expressly prohibited by the copyright owner, if only one copy was made for the patron and if the archive informed the patron that the copy must be used solely for the purpose of research or private study. Finally the Delegation stated that Canada also had a regime which addressed unlocatable copyright owners among others which was based on licensing rather than on an exception and would be willing to share further experiences in the course of the meeting underway, reiterating its pledge to engage in discussions with other delegations in relation to concrete issues important to the work of the Committee on limitations and exceptions for libraries and archives.

85. The Delegation of the United States of America, in response to the question posed by the Delegation of India on whether the submission of the United States of America implied there was no need for any further work said that the United States of America definitely was committed to the agreement the Committee reached in SCCR/21, which was based on text-based discussions. On a follow up question from India as to whether the United States of America had determined there was no need for a legally binding instrument, the Delegation reminded the Committee of the conclusion of SCCR/21 which proposed discussion by the Committee to agree on either an instrument or instruments, binding or non-binding, and said that the view of the Delegation on that was the Committee should continue work on the issues before the SCCR by clearly formulating principles and norms; those norms could provide guidance to countries to strengthen, improve and clarify exceptions and limitations for libraries and archives. The Delegation disagreed with the suggestions by the Delegations from Pakistan and South Africa that the SCCR should focus discussion on specificity and said it did not think the session would be most profitable by turning the discussion to a cluster-based approach.

86. The Delegation of Egypt stressed that libraries could convert works and adapt them to a digital form for very specific types of use such as digital use by the public, as well as exchange of works with other libraries, and that the conversion of works into another format allowed all rightsholders and users of libraries and archives alike to have access to the work. Recounting some of the benefits, the Delegation stated that any natural person could use those copies for purposes of education, research, distance learning, etc. To Egypt, making works available to other libraries and archives so as to meet the objective of access to knowledge was important and would allow libraries and archive services to make digital copies for preservation of the original copy, and transform or convert the work from one format into another for those who have specific needs.

87. The Delegation of the Islamic Republic of Iran expressed its support of the proposal by the United States of America but on the way forward would want to react to the statement of the Delegation of the European Union. It stated there should be a clear commitment for all Member

State to return to text-based work and the conclusion of the said session which underlined the equal treatment of all issues while taking into account the different maturity of those issues.

88. The Delegation of New Zealand said that adapting the copyright framework to the digital world was an issue all Member States were likely to have to deal with in their domestic policy making and that New Zealand had a range of exceptions for libraries and archives which were updated for the digital landscape in 2008; those amendments aimed to ensure that the exceptions which had been drafted for the physical environment could also encompass digital formats. The Delegation also expressed its general support for the objectives and principles set out in the document submitted by the United States of America and hoped that that would help the Committee to focus its work on the issues, including identifying feasible options to address the issues at stake. It stressed that consensus on clear objectives and principles could give countries a harmonized framework to work within when developing and updating domestic legislation and thus could give guidance to stakeholders on the activities that should be considered legitimate under the law.

89. The Delegation of the European Union and its Member States stated it fully upheld and respected the work program that was approved at the 21st session of the Committee. It was interested in the exchange of national experiences and practices and therefore welcomed the proposal by the United States of America which was drafted upon thematic clusters but said that did not mean the European Union was necessarily ready to adopt the cluster approach.

90. The Delegation of Algeria pledged its full support to the statements by South Africa on behalf of the African Group and that of Algeria on behalf of the Development Agenda Group (DAG). It urged consensus building on the drafting of an international instrument on exceptions and limitations and suggested that the proposals from Brazil and the United States which did not constitute a text could be used as guidelines for discussion.

91. The Delegation of the Russian Federation stated that there had been active work in the Russian Federation on the development of a library system and cooperation among institutions of higher education. It suggested that the Committee in its discussions should pay attention to electronic copies in libraries for users particularly in terms of volumes and how a user could achieve such access, and making copies of works to which there is legal access via libraries and works where the author had not given his or her approval for electronic copying. The Delegation indicated that the Russian Federation had noted the European Union's position requesting further study on the problem in the light of previous experience in a number of countries and believed it would be wonderful if the discussion could lead to a single document which would cover all exceptions and limitations in copyright; which would not only concern people with limited possibilities, print disabilities and others, but also libraries and archives. It thus gave its full support to all the proposals presented and promised to join in the discussion session.

92. The Delegation of Senegal thanked the Delegation of the United States of America for its proposal on the four issues including the general comments on principles whilst taking note of the fact that the Delegation implied in its statement that the document presented by the United States was incomplete and would make a subsequent addendum containing the whole of its proposal. The Committee must work on the basis of the mandate from the 21st session.

93. The Delegation of Nigeria expressed its frustration and said it was struggling with the direction in which the Committee was proceeding; the Delegation was however grateful to the Chair for the earlier clarification and associated itself with the optimism expressed by the Chair that the Committee would achieve its course.

94. The Delegation of the United States of America stated that the idea of drafting a text without knowing why the text was being drafted was the issue and too often the Committee had

looked at text without having clarity of vision of what the objectives were and what had been agreed upon, and also the edges of where perhaps the Committee did not agree on the objectives; so for the United States of America, it believed that engaging in a text discussion was useful but what was most useful was where the Committee had a full and frank exchange of views on the issues. Elaborating further the Delegation asked, for example, what did the Committee believe were the principles that were the limits for preservation copying or preservation reproduction by libraries, which countries believed that such preservation was appropriate when formats were obsolete and how could one determine when formats were obsolete. In the view of the United of America, those were the kinds of discussions that were specific and it believed it was in that spirit that many delegations would like to have discussions so that the Committee could actually move toward understanding the kind of norms for copyright or exceptions that the SCCR would like to formulate and what are the precise words the Committee should use to best capture the principle it intended.

95. The Delegation of Kenya stated that the proposal by the United States of America would serve as a document that would help in guiding the discussions of the Committee and should therefore be taken together within the background document as well as the proposal that was presented by the Delegation of Brazil. The Delegation noted that looking at the proposal by the African Group, one would find that most of those issues on objectives and principles were all in place. The Delegation also stated that in looking at the two documents by Brazil and the United States of America there was no point of departure in relation to the objectives and principles as the document from Brazil and the United States of America on the objectives and principles stated were broadly the same; the Delegation suggested that the proposals should guide the discussion rather than serve as a working document.

96. The Delegation of Brazil supported the suggestion that the discussion of the Committee should focus on the mandate of the SCCR and to Brazil the proposal of the United States of America clearly brought out all relevant issues pertaining to the libraries and archives and the importance of the museums as far as exceptions and limitations.

97. The Delegation of the Islamic Republic of Iran supported the coordinated efforts by pledging its full support to the proposal of South Africa. The Delegation was of the view that the text conclusion of the 21st session was clear and should not be subject to any kind of interpretation.

98. The Delegation of Ecuador announced that the Delegation of Uruguay had expressed its intention to join the proposal and it would therefore make a tripartite statement which would focus on legal instruments. The Delegation thanked the United States for text it submitted, giving the floor to other members of its Delegation to present the proposal on behalf of Ecuador, Uruguay and Brazil. It expressed the hope that its statement might help the Committee to move forward. The Delegation stated that the proposal was a set of exceptions and limitations which were specific in nature for libraries and archives and could be debated during the session together with other provisions pertaining to libraries and archives already covered in the African Group proposal SCCR/22/12, the background paper submitted by Brazil as well as the text submitted by the United States of America. The Delegation however said Brazil, Ecuador and Uruguay would reserve the right to make additional proposals over the course of the discussions. The Delegation called on the Secretariat to draw up a comparative text of subjects in order to facilitate the work of the Committee on the text which had been gathered into clusters.

99. The Delegation of India expressed appreciation for the joint proposal submitted by Ecuador along with Brazil and Uruguay and said to facilitate the discussion the Delegation associated itself to the request from Ecuador for the Secretariat to prepare a comparable document on the proposals. The Delegation also associated itself with the suggestion by the

Delegation of Kenya on document SCCR/17/2 as it contained detailed national experiences and analysis of the international framework.

100. The Delegation of Norway welcomed the discussion of the important issues on exceptions and limitations for libraries and archives. Norway expressed its general support for the proposal of the United States of America and said Norway was open to different solutions on the issue of exceptions and limitations for libraries and archives but believed the document of the United States of America formed a good starting point for the discussions.

101. The Delegation of Panama, speaking on behalf of the Group of States of Latin America and the Caribbean (GRULAC), stated that GRULAC endorsed the work program approved at the 21st session and the conclusion in document SCCR/21/12. With respect to proposals by other Delegations, GRULAC expressed the view that if the Committee followed the approved work program, it could in theory make a recommendation in May 2012 to the General Assembly. GRULAC called on the Committee to really start working.

102. The Delegation of South Africa welcomed the joint proposal made by Brazil, Ecuador and Uruguay. It believed the proposals would augment the text submitted by the African Group but emphasized that the Committee needed to move in a structured manner by looking at the relevant provisions that needed to be discussed. The Delegation stated it had heard the explanation the United States of America gave over the intent of its document and was under the impression that even though the document was on objectives and principles, the content already existed in the proposal of Brazil.

103. The Delegation of Mexico along the same lines expressed by several delegations suggested that the Committee needed to progress based on one of the proposals on the negotiating table, based on that the Committee could then address the issues in an order of priority by proceeding from the most straightforward to the most complex issues. The Delegation felt the document by the African Group formed a good basis to begin the debate with.

104. The Delegation of United State of America was pleased with the proposals from Ecuador on behalf of Uruguay and Brazil as the content was similar to expressions of principles and objectives in the proposal of the United States of America. The Delegation looked forward to later ask questions on the proposal and embraced the suggestion by Delegation of India for the Secretariat to prepare a comparative document.

105. The Delegation of Malawi commended the United States of America for its proposal on objectives and principles for exceptions and limitations for libraries and archives and said it considered the proposal as a framework against which to consider the proposal presented by the African Group which was also complemented by both Brazil and IFLA. The Delegation stated that its assessment of the proposal by the African Group *vis-à-vis* the framework provided by the United States of America pointed more at convergence than divergence but what was worth noting was the absence of the exception on legal usage which the Delegation thought should be included from the proposal by the African Group. The Delegation declared that it was against that background that it viewed the proposal by the United States of America as complementary to the African Group which it fully endorsed.

106. The Delegation of the United States of America agreed with the suggestion of the Delegation of South Africa and said the expression of clusters from the Delegation would be largely contained in its principles and objectives contained in the document but requested the Chair to consult further with the Delegations of South Africa and Pakistan as it thought the list of topics or clusters presented by the Delegations was excellent but was not recorded on paper.

107. The Delegation of the European Union and its Member States supported the approach by thematic clusters suggested by the Chair as it would give an opportunity for its Member States to provide their perspectives.

108. The Delegation of Chile highlighted that according to the conclusions of the SCCR/21 the discussion should be text-based, and that substantive work should take place from that moment on. It proposed to focus on the exceptions and limitations for libraries and archives in order to achieve a common understanding about that topic and concept. It underlined the importance of the discussion on the topics of library lending, reproduction for preservation, the effects of technological protection measures and orphan works. It declared that Chile had only recently implemented the 2010 legislation on limitations and exceptions for non-profit libraries and archives and consequently there was not a lot of national background.

109. The Delegation of South Africa welcomed the document submitted by the Delegation of the United States of America and stated that there was no need to discuss the principles therein once they were also in the Brazilian document. It recommended focusing on the clusters mentioned and noted that the document created by the Secretariat dealt with principles, but no text *per se* existed as in the Brazilian and South African documents. It suggested working on the clusters in an order that would prioritize the items so that some advance would be made, such as library lending, cross-border issues, preservation and right of reproduction.

110. The Delegation of the European Union and its Member States disagreed with the Delegation of the South Africa stating that objectives and principles should be discussed once it was agreed to follow a thematic clusters approach, and not the content of the documents distributed.

111. The Delegation of South Africa affirmed that the task was to develop a text and that it did not mind having the document from the United States of America because it was only on principles and objectives, which would give the framework of the structure. It underlined that was important to develop a text on the substance and wondered when the clusters were going to be discussed.

112. The Delegation of the European Union and its Member States was of the opinion that if the documents with the three texts were just distributed then the discussion should be on all the documents inserted in the table and not only part of them, which would be done by clusters.

113. The Delegation of Brazil clarified that it had sponsored only a background paper and not an alternative text for a treaty in document SCCR/23/3 (The Case for a Treaty on Exceptions and Limitations for Libraries and Archives: Background Paper by IFLA, ICA, EIFL and INNOVARTE). It expressed agreement with working in clusters, including principles and objectives. It pointed out that that document could provide elements for the discussion, especially part 1.3 of the document which dealt with the current problems faced by libraries and archives.

114. The Delegation of Italy noted that the table that contained the IFLA text was something beyond the view of the committee.

115. The Delegation of Brazil proposed to substitute for the text of the second column of the table the text of the background paper it submitted, when applicable, so it therefore would remain clear that Brazil was not submitting any text proposal.

116. The Delegation of Kenya highlighted that the African Group proposal was treaty language, Brazil's document was a background paper, and the United States' document was on principles and objectives, and the Delegation wondered what was being compared when each document had a different purpose.

117. The Chair explained that there were several proposals with some principles and the idea was to put all the concepts brought by the various documents into one single document so that now a list of topics could be made and the order of the discussions on them could be set. It was stressed that Brazil already made some clarifications and that some recommendations on the order of the issues to be discussed were expected.

118. The Delegation of Senegal stated that in a norm-setting process two fundamental things had to be taken into account: guidelines to define the base of the work and a clear idea of what was trying to be achieved, the objectives. It underlined that the difficulty was not in those, that the clusters should be defined and discussions should take place, looking at the concrete proposals that were in the document. The Delegation explained that if there was a proposal on the first item, preservation, than that should be the starting point. It pointed out that there was a good idea how to proceed and it requested the Chair to produce a list of clusters for discussion. It stressed that it was not denying the need for principles, but that an idea of the objectives was also needed.

119. The Delegation of Ecuador stressed that there were two text proposals, the African Group and the joint proposal of Brazil, Ecuador and Uruguay, but that the document prepared contained only the background paper of Brazil.

120. The Delegation of Italy highlighted that it was ready to discuss based on text, but not based on texts submitted by organizations. It observed that what was contained in the second table of the document was not the Brazilian proposal, which was the document 23/3 on preservation, but on the contrary the proposal from IFLA. It declared that it was not prepared to discuss documents that were not submitted by governmental organizations or Member States.

121. The Delegation of the European Union and its Member States highlighted that the document should be revised because the proposal from IFLA had not been endorsed by any Member State. It stated that two clusters should be discussed with priority: legal deposits and library lending and supply of works. It declared that lower priority should be given to the discussion on implementation and purchase of works, technological protection measures, library and archival material, reproduction and supply of copies.

122. The Delegation of Nigeria declared that the table would be better vertically once page six of the document became Brazil and Ecuador and the IFLA text in parentheses. It endorsed the list made by the Delegation of the European Union. It stressed that the discussions could begin with preservation, library lending, and legal deposit, and from that point move towards protection measures, cross-border use and orphan works. It expressed agreement with the document on principles proposed by the Delegation of the United States of America and recalled that the document would be better in a vertical format.

123. The Chair noted that the Secretariat took note of the observations made by the Delegation of Nigeria regarding page six and seven of the document.

124. The Delegation of Mexico stated that in the case of preservation there was wording of the African Group and on page three of the joint proposal by Brazil, Ecuador and Uruguay; in the case of lending page nine would be used and this way the problem of the second column could be avoided and the Committee could move forward.

125. The Delegation of Brazil supported the discussion by clusters and informed the meeting that the African Group text was in the first column, the joint proposal by Brazil, Ecuador and Uruguay was in the third column, and the second column provided information that could help the discussion.

126. The Delegation of South Africa emphasized that when a cluster was discussed the document in written form was wanted and the identified cluster should be in there to be populated with the words.

127. The Delegation of the United States of America agreed with the statements of the Delegations of Nigeria and the European Union in the sense that the discussion should start with preservation, library lending, legal deposits and the issue of limitation on liability for librarians that was found in the joint proposal document and in the United States of America document under the title Other General Principles. It expressed concern with the proposed approach of one document-based discussion and with the statements that the United States of America did not submit a text, when the conclusion of the SCCR 21 was to work towards an appropriate international legal instrument, whether model law, joint recommendation, treaty and/or any other written form. It declared that the understanding that the only form of text that could be discussed was treaty language was not the understanding of the United States of America.

128. The Delegation of Egypt proposed to work on the basis of first discussing the document submitted by the United States of America and then discussing the proposals made by the African Group and the Delegations of Brazil, Ecuador and Uruguay. It requested a consolidation of the texts from the Brazilian and the joint proposal texts.

129. The Delegation of Ecuador supported the statement of the Delegation of Mexico.

130. The Delegation of the European Union and its Member States declared that working on a single text was difficult to accept and agreed with the United States' proposal and said that there had been no time to react to the documents.

131. The Delegation of Pakistan agreed with the Delegation of the United States of America that there was an option of what kind of text could be drafted, that it could be a treaty, model law or something else and that there was an obligation to draft a text. It highlighted that for the sake of transparency the document had all proposals and that new proposals could be incorporated in the text, preferably in the form of clusters.

132. The Delegation of Mexico agreed that it was time to move to discussions on the substance and that some issues could be agreed with. First, the discussions should be regarding all the proposed texts. Second, the European Union would need more time to discuss internally but no agreement would be reached at that moment and the discussion on the text could provide more guidance.

133. The Chair stated that there was a consensus to work on clusters, and in order to avoid subjective opinions on the different views, that the clusters to be discussed should be clearly defined.

134. The Delegation of the United States of America requested that the European Union repeat the list of clusters previously mentioned.

135. The Delegation of the European Union and its Member States stated that the same order of the paper should remain, except for library lending and supply of works and legal deposit, which should be discussed before parallel importation and cross-border uses.

136. The Chair requested the United States of America to recall the topics mentioned by it before.

137. The Delegation of the United States recalled that it requested addition of the topic of limitations for librarians and that it was in the joint proposal as well as in the United States of

America's text under General Exceptions. It requested a reading of the list of clusters that had been mentioned to that moment.

138. The Secretariat listed the clusters mentioned: 1. preservation of library and archival material; 2. right of reproduction and supply of copies; 3. legal deposit; 4. library lending; 5. parallel importation; 6. cross border uses; 7. retracted, withdrawn and orphaned works; 8. liability of libraries; 9. technological protection measures; and 10. contracts.

139. The Delegation of Senegal referred to the second item and stated that it would be more appropriate to refer to reproduction rights and safeguarding copies and that in the case of succession the whole problem was not covered by the issue of orphaned works. It stated that orphaned works when the term referred to books was not the same as in the case of people, because in the first when the author is not known he could appear in the future, therefore it would be more appropriate to think about that possibility. It declared that item seven should be dealt with more carefully regarding definition and that safeguarding copies should be added to item two.

140. The Chair indicated to the Delegation of Senegal that notes would be taken on what had been added to item number two: right of reproduction and safeguarding copies. Also, the distinction that "orphaned", in terms of books, could not be understood in the same way as when referring to people would be taken into account.

141. The Delegation of Ecuador supported the interventions of the Delegations of Nigeria and South Africa and noted that the item of contract was included in the original document.

142. The Delegation of Argentina mentioned that the list was non-exhaustive but only a working list and that item seven should also refer to works for which the term of protection of copyright was finished.

143. The Chair stated that it was added to item seven and that the Secretariat would distribute the list.

144. The Delegation of Senegal stated that an item on definitions was also important.

145. The Chair asked the plenary to make direct reference to which text was being mentioned when an intervention was made and asked the plenary if there should be a specific or a general discussion.

146. The Delegation of South Africa affirmed that it could work on a sharing experiences basis.

147. The Delegation of the European Union and its Member States stated a preference for the general discussion and noted that the different proposals were not so exhaustive as to encompass everything.

148. The Delegation of Pakistan stressed that there was a need to be specific and that the middle ground was to have a general discussion that culminated in a specific textual suggestion by those who made interventions on a specific item.

#### *Topic 1: Preservation*

149. The Chair opened the floor for comments on the first item, preservation of library and archival material.

150. The Delegation of Algeria asked for guidance regarding the options.



151. The Chair clarified that it two options were proposed and that the Delegation of Pakistan proposed a third option. The proposal was to look at the documents available and to make comments in the light of national experiences or other general comments that could be relevant.

152. The Delegation of Kenya proposed to look at the African Group proposal on preservation of library and archival materials. It mentioned that the proposal allowed making limited copies of published and unpublished works, but only for the needs of teaching, researching and preservation of cultural heritage, all for nonprofit users.

153. The Delegation of the United Kingdom stated that it believed that exceptions and limitations were an integral part of a system that benefitted creators and users, and supported cultural and educational enrichment and economic growth. It stressed that the United Kingdom did not make use of all exceptions possible, such as the exception regarding the availability of works preserved in libraries on dedicated terminals. It underlined that the Hargreaves Review recognized the importance of exceptions and limitations in providing balance and flexibility in the copyright system, because copyright could work as a barrier to economic and social innovation and growth and it was recommended to modernize the current exceptions to assure that copyright did not unduly restrict useful activity by third parties. It underlined that reviews of the system of limitations and exceptions were being considered, and that current national legislation allowed the shifting of format for the purpose of preservation, but only for literary, dramatic and musical works. It observed that some proposals also covered other usages and wondered whether those should be dealt with under the other items, so the discussion would be on the ability of libraries and archives to preserve the work. It agreed with the intervention of the Delegation of Senegal that the definitions were important and wondered if museums should be added to the list so they could also preserve the cultural goods they had. It underscored that the current national legislation only allowed the use of exceptions if there was no possibility to obtain the work from the rightowner.

154. The Delegation of Senegal stressed that Article 14 of the African Group proposal had three paragraphs, the first one with certain principles, the second with objectives and the third with practical modalities for library and archival material preservation that referred to the very important principle of the three-step test.

155. The Delegation of Austria highlighted that limitations and exceptions for preservation purposes should be based on a set of elements, that they should cover all the works published or unpublished but be restricted to the collection of the libraries and archives, and that the preservation copies should not be used in addition to the originals of the collection, but instead of them.

156. The Delegation of Italy recalled that the preservation purpose was already contained in Article 5 of the European Union Directive 2009/29 and in Article 69 of the Italian law. It stated that there were three principles that directed the work. First, the lawful acquisition of the work. Second, that a copy could only be made to preserve a work of the collection and not for any other purpose than assuring that the work remained in the collection, which was different from what was found in the African Group proposal that mentioned educational purposes. Third, it had to be done for not-for-profit purposes.

157. The Delegation of France declared that it did not have an exception for preservation purposes but because of the European Union Directive France implemented an exception for libraries and archives' materials, reflected in Article 2113 of the French Intellectual Property Code. It stressed that the provision also dealt with neighboring rights and provided special protection for databases. It pointed out that some principles were applied such as the restriction of the material to works contained in the collections and that no economic or commercial benefit could originate from the application of the exception. It observed that the exception allowed

damaged works to be replaced or a digital copy to be created to avoid further deterioration, but only with the conditions mentioned.

158. The Delegation of Greece stated that Article 22 of the Greek Copyright Act 2121 of 1993 allowed without the consent of the author and without payment for a nonprofit-making library and archive to reproduce one additional copy from a work already existing in its permanent collection for the purpose of retaining that additional copy or transferring it to another nonprofit-making library or archive. It stressed that the copy was allowed only when it was not possible to obtain another in the market promptly or with reasonable terms. It underlined that the requirements to allow such a copy were non-profit purposes, the existence of the work in the collection, the aim of the reproduction to produce an additional copy or transfer it to another not-for-profit organization or library, and that the reproduction was necessary once it was not possible to obtain a copy in the market promptly or with reasonable terms.

159. The Delegation of Germany declared that it implemented the European Directive and that the provisions of Article 53 of its national legislation were similar to other European countries. It stressed that the library and archive had to act for the public interest and not for profit.

160. The Delegation of Japan declared that under the provisions of its National Library Act the production of works at libraries was permitted if the works had been damaged in a severe manner or if the reproduction was necessary for the preservation of the works, and that the National Library should attain its purpose of preservation for public use of the materials, ensuring the publications were preserved in good condition.

161. The Delegation of Mexico declared that it was appropriate to establish conditions to define the quantity of copies, the kind of works that were able to be reproduced if published or unpublished works and that in the latter case there were implications for the moral rights of the author. It highlighted that in the second paragraph of the African Group proposal the need of teaching or research was a matter of security and that in the case of out-of-catalog works mentioned in the third paragraph there were implications for the right of public communication.

162. The Delegation of Spain stated that Article 37 of the Spanish Intellectual Property Law established limitations to the exclusivity of copyright for libraries with the purpose of reproduction and allowed consultation in special terminals that could not be opposed by the rightowner if it was done with non-profit purpose by libraries, museums, public archives and cultural and scientific institutions and the reproduction was for research and preservation purposes.

163. The Delegation of Ecuador declared that the second paragraph of the text submitted by the Delegation of the United States of America was a good basis for discussion and that there could be a text that stated exceptions and limitations should enable libraries and archives to make copies of published and unpublished works for purposes of preservation and replacement, which would depend on international best practices, stating it in a flexible way.

164. The Delegation of the United States of America underlined that even though the African Group proposal was entitled "Preservation of library and archival material" the second paragraph mentioned the needs of teaching and research, which was a different topic and in a similar way the same happened with the third paragraph that stated "which shall be made for nonprofit uses in the general interests of the public and for human development". It stressed that the language found there was significantly more expansive than the straightforward concept of preservation known in the library community. It asked if it was the intention to end the discussion on preservation or just end the specific topic.

165. The Delegation of Canada observed that in Canada copying was limited to the maintenance or management of the libraries' and museums' permanent collections or for

another library, archive or museum, and that the preservation had to comply with six specific functions or purposes: First, a copy could be made if the original was unpublished or rare and there was a risk of deterioration. Second, for on-site consultation if the original could not be viewed, handled or listened to because of its condition. Third, an alternative format could be made if the original was in an obsolete format or the technology required to use it was unavailable. It was stressed that that purpose was being revised by the Parliament to reflect the new digital technologies. Fourth was to allow the library, museum or archive to copy for catalogue making. Fifth was for insurance purposes or police investigations. Sixth was in case that restoration was needed. It pointed out that for the first three purposes no limitation was applied when a commercial copy was available in the medium and quality that was appropriate for that preservation purpose. It observed that another condition was that if a person needed to make an intermediate copy to accomplish one of the purposes of the first section, the intermediate copy had to be destroyed once it was not needed anymore.

166. The Delegation of China declared that the Article 22 of the Chinese Copyright Law provided that libraries, archives and museums could preserve and reproduce copies for the preservation of their materials. It observed that in the regulations on information and cyber-distribution there were some rules concerning digitization and that libraries, museums and archives could digitize when two conditions were followed: that the original works were damaged or almost damaged or that the format was outdated, and that the works were not available anymore on the market or could only be obtained at a price clearly much higher than the original price.

167. The Delegation of Kenya declared that paragraph two, Article 14 of the African Group proposal dealt with copies being used solely for the needs of teaching and research. It highlighted that it was important to look at the wider context, not limited to libraries and archives, and that it was important to note that the preservation of the works in libraries and archives was mainly for research and teaching purposes. It stated that the proposal was in fact narrowing the specific uses for which libraries and archives normally used the works.

168. The Delegation of the United States of America declared that discussion of the issue of preservation should not include the issue of dissemination of copies for purposes of the needs of researchers, which was very important and was dealt with in specific national provisions. It observed that in order to finish discussion in the first cluster the language of the proposal should be reverted.

169. The Delegation of Korea mentioned that Article 31 of the Korean Copyright Act together with the Library Act and a presidential decree allowed materials for public use to be reproduced for the purpose of preservation when it was necessary for libraries.

170. The Delegation of Nigeria agreed with the Delegation of Kenya that the African Group proposal had a broader sense and that it was intended to narrow the acts of the libraries and affirmed that it would welcome any suggestion by the Delegation of the United States of America in order to improve the text.

171. The Delegation of Algeria observed that all delegations agreed that the preservation of library and archival material should be done in such a way as to ensure that it had no commercial or indirect commercial purpose. It recalled that some legislation went further and had provisions regarding digitalization while others, such as the Algerian legislation, dealt with conventional documents. It underlined that when talking about libraries and archives there was general discussion about exceptions for non-profit uses, including making a copy without the author's authorization in order to respond to a request from another library and in the cases where the work was damaged, lost or made unusable. It highlighted that in Algeria there were two conditions, that it had to be impossible for the library or archive to acquire a copy in an

acceptable and lawful way and that the reproduction of the work had to be an isolated case, not systemic.

172. The Delegation of Azerbaijan declared that to include libraries and archives in the list of limitations and exceptions would be the right decision, even though there were different approaches for the issue. It underlined that practical results were sought. It observed that its national legislation had a system for limitations and exceptions in accordance with Article 9(b) of the Berne Convention, which made possible reproducing without the authorization of the rightholder or remuneration when copies were made for not-for-profit purposes and if the works were lost, damaged or tampered with in some way. It stressed that it could be also done at the request of another library or archive when there were the same conditions. It noted that this was a way to support libraries and archives but that a new international standard was needed because of the digital era, in view of the need of moving from one media to another and the availability of works in an appropriate format. It stated that it intended to convene an international conference on copyright and related rights for persons with print disabilities because it was considered an important issue.

173. The Delegation of the United States of America recalled the previous interventions that stressed the different approaches among the Member States and that there was also commonality among them, especially regarding exceptions and limitations for the purpose of preservation. It was proposed to form a small group that would create a list of elements considered part of a properly delineated provision on preservation.

174. The Delegation of Senegal pointed out that the African Group proposal was made in the context of making it possible to copy works in certain cases and to safeguard such copies when there was problem with the original for loss or damage, but that it was important to bear in mind that copies should be able to be consulted for teaching and research purposes. It stressed that preservation should be done for some purpose and that once there a copy of a work should be accessible for teaching and researching, otherwise there would be no reason to preserve it.

175. The Delegation of South Africa wondered how the discussions would be captured because it was suggested to have a document that included all the inputs made on the floor.

176. The Chair proposed to create small working groups with those who contributed to the wording of the text and then incorporate the suggestions in a text, and in the meantime to meet in the plenary to make headway on other topics.

177. The Delegation of Pakistan declared that the Secretariat could capture the contributions from the floor and consolidate them or the delegations who contributed could submit written comments to be incorporated.

178. The Delegation of the United States of America agreed with the suggestion of the Delegation of Pakistan because some contributions referred to national legislation and others referred to general concepts of preservation exceptions or limitations. It declared that it had not understood that the proposal of parallel sessions would cover all clusters, but only the first cluster, where a working group could be formed.

179. The Delegation of South Africa highlighted that it was important to go through a number of clusters, by the means of working groups or not, and stressed that there was a need to define what kind of document was going to result from the process. It suggested that the comments be collated so as much information as possible would be gathered in view of cleaning up the text. It declared that the Delegation was open to all the methods as long as in the end of the day there was a single document with inputs from various members.

180. The Delegation of Ecuador expressed concern with the work on clusters regarding the number of delegations and participants, so clusters could not be dealt with in a parallel manner. It stated that discussion would have to be cluster-by-cluster because delegations could not take part in seven parallel clusters. It declared support for the proposal of small working groups, with sponsors and interested parties.

181. The Chair observed that it would be a great advantage to create working groups where there would be an exchange of ideas and face-to-face discussions in order to have a good conclusion and some wording. He stressed the disadvantage of needing to define how many or who would take part, when, and how. The alternative was to have the delegations that wanted to make comments get together in order to have the topic and the comments of each delegation who contributed in a polished document to be sent to the plenary. The Chair concluded that there were two alternatives.

182. The Delegation of Algeria observed that the proposal was to create working groups that would work on the 10 clusters defined in plenary but that would result in 10 working groups. It pointed out that it did not want to deviate from the already existing text, with more working papers and proposals. It stressed that it wanted to improve or feed into the proposals that already existed.

183. The Delegation of the United States of America declared that it would be not comfortable with the creation of working groups without the Standing Committee previously addressing the cluster, and that a decision from the plenary could take place in order to decide whether a working group for the specific cluster was appropriate, as in the case of the first cluster where it could be, but that to establish working groups on 10 clusters was not appropriate. It wondered about the status of the transcriptions of the interventions which could be used to study the comments of the plenary. It pointed out that the Committee should achieve as much progress as possible because this was a very large project.

184. The Chair informed delegations that the comments on the transcriptions would be captured and incorporated.

185. The Delegation of the European Union and its Member States stated that it would like to discuss internally the issue of working groups before expressing an opinion about it in plenary.

186. The Chair recalled that the Committee was dealing with item 5 of the agenda regarding libraries and archives. The Chair also reminded the Committee that some delegations had pointed out that a good solution was discussing the non-exhaustive list of 10 topics among subgroups, while other delegations opposed that proposal because they would be unable to attend more than one subgroup at the same time. Some delegations highlighted the need to discuss the 10 topics in a thoughtful manner, focusing on each one of the issues. It was proposed that all the topics be discussed in the plenary in order to allow Member States to fully contribute to the debate. In addition to the oral discussion in plenary, the Member States would also have the opportunity to make contributions in written form by sending them to the Secretariat.

187. The Delegation of the European Union and its Member States wondered if the process would be to focus on each topic separately or if the plenary would discuss them together at the same time. The Delegation stated its preference for the first option and asked what the deadline for the submission of written comments was.

188. The Chair clarified that the debate in the plenary would be one topic after the other, as was already done with the first one in the previous day. Regarding the written comments, the deadline would be the end of the week. Such comments would be merged by the Secretariat in one single document divided into the different topics discussed.

189. The Delegation of Syria highlighted the need for Arabic translation of the aforementioned documents.

190. The Delegation of South Africa showed its preference for the preparation of a single document, which included all contributions, in opposition to several documents, and supported the adoption of the proposed deadline for submission of written comments so that a document could be ready on Monday, November 28, 2011. It also supported having the plenary orally discuss the 10 topics sequentially, as stated by the Delegation of the European Union.

191. The Chair clarified that the initial purpose was to have a single document divided into the agreed 10 topics. The Chair highlighted that the preparation of such a document collecting also the oral contributions of Member States was a tremendous workload for the Secretariat.

192. The Delegation of South Africa clarified that it was referring to the texts that were going to be discussed or proposed in the plenary, not mere general comments; the aim was to have a document with textual suggestions.

193. The Delegation of Algeria speaking on behalf of the Development Agenda Group (DAG) welcomed the working methodology in clusters and the discussions already held on the first topic. The Delegation recalled that the mandate granted by the conclusions of SCCR/22 was to engage in a text-based discussion. It proposed that the Secretariat prepare a document including the three existing textual proposals, divided by topics and with Member State comments on each of the topics.

194. The Delegation of the European Union and its Member States stated that the deadline of Friday was not reasonable or realistic for several reasons. First, the text proposals contained in the table distributed were very recent and some time was needed in order to analyze such proposals. Second, delegations should not have to focus on one specific topic in detriment to the others, especially because it was a changing document. In conclusion, delegations needed the necessary time to react and express their opinions in the written contribution. Therefore the deadline should be at least several weeks long.

195. The Delegation of Pakistan supported the discussion by topics. It was understood that the Secretariat should incorporate the textual suggestions in the existing table so that by Monday, November 28, the Committee could have a new document. At a later moment, the written comments would also be included in some way, but the relevant issue was not to lose the contributions made in the plenary.

196. The Delegation of Angola supported the declaration of the Delegation of South Africa and stated that it was important to evolve to a document that included both the United States' and African Group' proposals categorized in 10 clusters. In addition, the written comments delivered would have to be integrated. The fixation of a new deadline was open for opinions.

197. The Delegation of Spain requested the translation of the documents into Spanish.

198. The Delegation of Chile stated that it supported the opinions of the Delegations of the European Union, Angola and Pakistan. It was keen to have the contributions submitted to the Secretariat by Friday so some progress could be made, but for those delegations in need of more time a reasonable deadline should be given, for example a couple of months.

199. The Delegation of India expressed its support for the contributions made in both oral and written form and stated that if the written contributions were categorized by topics it would be helpful.

200. The Delegation of Slovenia, on behalf of the Regional Group of Central European and Baltic States, supported the intervention of the Delegation of the European Union regarding the need for a later deadline.

201. The Delegation of the United States of America on behalf of Group B welcomed the discussion by clusters and agreed with the Delegation of the European Union that the deadline on Friday was too short as the delegations would be engaged in other discussions during the week.

202. The Delegation of South Africa stated that there was flexibility to reach a reasonable deadline. It supported the statement of the Delegation of India that not only comments but also legal texts could be submitted by the delegations.

203. The Chair stated that the clusters were still open and by Friday written comments should be delivered to the Secretariat, which would collate them into a compendium. It informed the meeting that there would be a second deadline of one month for further comments on that initial compendium and that would be submitted to everybody on Monday.

204. The Delegation of the European Union and its Member States stressed that the deadlines did not provide enough time and supported the declaration of Chile. It requested a deadline of two months counted from the end of the session. It also highlighted that it disagreed with the implementation of two different deadlines and was of the opinion that such a methodology would be detrimental to the work process and would hurry the preparation of the comments.

205. The Delegation of South Africa underscored that the Delegation of Chile correctly proposed a middle ground with two different deadlines, for those who were able to submit by Friday and subsequently at a later time. It suggested the plenary move the discussion to the substance rather than procedural matters.

206. The Delegation of Brazil supported the declaration of the Delegation of South Africa.

207. The Delegation of Pakistan stated that it shared the same opinion with the Delegation of South Africa. It declared that it would be relevant to have the documents with comments by Monday, but it understood that some delegations would need more time to submit their comments and so a second flexible deadline could be given.

208. The Delegation of Japan endorsed the opinion of the Delegation of the European Union in the sense that sufficient time should be given for evaluation of the impact of proposals on the current national regimes of limitations and exceptions.

209. The Delegation of Mexico aligned itself with the proposal of the Delegation of Chile. Two deadlines was deemed reasonable once the format of the comments was defined. It stated that with the comments due Friday it would help to define the way the comments should be made in the two-month period.

210. The Chair stated that an equitable solution would be the establishment of a deadline for Friday and another deadline in three months for comments on the initial positions delivered by Friday and reflected in a document to be published on Monday. The Chair opened the floor for discussions on the second cluster of agenda item number five, right of reproduction and safeguard copies.

#### *Topic 2: Right of reproduction and safeguard copies*

211. The Delegation of Kenya on behalf of the African Group presented article 11 of the proposal that read: "It shall be permissible for a library or archive to supply a copy of any work,

or of material protected by related rights, lawfully acquired or accessed by the library or archive, to another library or archive for subsequent supply to any of its users, by any means, including digital transmission, provided that such use is compatible with fair practice as determined in national law.” It highlighted that one of the main issues at stake was fair use and practice according to the national law.

212. The Delegation of Senegal stated that the possibility of the right of reproduction for safeguarding copy purposes was something enshrined in the African Group’s proposal. It declared that in the second line of such proposal the lawful acquisition of the work was emphasized, making it possible to generate a copy of works that were protected by copyright but also providing certainty for the rightsholder. It emphasized that libraries and archives can exchange information as long as the exchange is compatible with national legislation. It underlined that the measures for backup purposes should take place with total respect for copyright and related rights.

213. The Delegation of the European Union and its Member States explained that its regional legislation issued in 2001 dealt with limitations and exceptions for libraries and archives. It mentioned that the Information Society Directive established that the member states may provide for exceptions and limitations in respect of a specific act of reproduction made by publicly accessible libraries, education establishments, museums, and archives, provided those were not for direct or indirect commercial advantage. The Delegation underlined that there was no blanket permission but permission for a specific act of reproduction. Also, there was a limitation on the beneficiaries to those institutions that were publicly available and had nonprofit purposes. It highlighted that the beneficiaries should have scientific and/or educational goals. It also pointed out that those provisions were strictly framed by the three-step test. The Delegation called attention to the requirement that the European member states, when applying the limitations of the Directive, should duly take into account the economic impact on the protected works, especially in view of the digital environment. It stated that the Directive provided flexibility in its implementation to member states and at the same time a balanced respect for copyright, taking into consideration the different legal traditions and approaches regarding limitations and exceptions for libraries and archives. It emphasized that libraries were able to undertake the required activities without necessarily having a copyright limitation in their national legislation. It also recalled that licensing systems were a possibility to remunerate the rightowners. It concluded that such a framework did not oblige the member states to necessarily take the same approach and also allowed the possibility of facilitating the functional enjoyment of limitations by libraries and archives.

214. The Delegation of Egypt declared that the purpose of reproduction should not be limited to research, but also include the needs of different educational institutions that require a copy of the work in question, as well as collaboration between libraries to thus disseminate knowledge and information. It expressed the view that the limitation should not be limited to the reproduction right for reference purposes, but should be extended to translation of the work as well. It stated its willingness to modify the title of cluster two to Reproduction and Translation.

215. The Delegation of Pakistan noted that the Brazilian proposal highlighted the purpose of reproduction, and referred to the intervention of the Delegations of Egypt and the European Union indicating that the reproduction should be for education, scientific and research purposes. It hoped that a more holistic approach could be taken in the sense of full reproduction rights for libraries.

216. The Delegation of Mexico referred to the question of what should be understood as legal acquisition of the work and highlighted the fact that digital transfer should also be taken into consideration, so as to comply with other types of rights.



217. The Delegation of the United States of America referred to proposed article 11 of the African Group, the joint document submitted by the Delegations of Brazil, Ecuador and Uruguay, as well as the background paper submitted by the Delegation of Brazil. It expressed the view that the reproduction right for the supply of copies, as mentioned by the Delegation of Pakistan, was not only a matter of activity but also of the purpose and the intent of the reproduction and the supply of copies. The supply of copies was deemed to be an activity associated with the authors and publishers. It showed concern with the extension of the limitation and stated that the supplying of copies could be divided into two types of activities: 1. when the library supplied a copy to another library and 2. when the library supplied a copy to an end user. It noted that the African Group proposal dealt only with the interlibrary supply of copies while the joint proposal of Brazil, Ecuador and Uruguay, as in the American legislation, dealt with both cases. It stressed that the American legislation also addressed the issue of how many copies were supplied and that a number of conditions should be considered for a provision on limitations and exceptions: First that the library believes that the copy would be used for noncommercial purposes, either direct or indirectly. Second that the copy carries a notice of the copyright protection of the work. Third, that the copy of the work becomes an actual possession of the end user, either a library or a researcher. The Delegation of the United States of America highlighted that it was important to determine how much was being copied, and therefore made a distinction between interlibrary collaboration and the provision to an end user of a journal article, small parts of collections or small parts of a work such as a chapter and a limited number of pages versus when a copy of the entire work was made. It pointed out that in the last case, adverse effects to the publishers and authors were to be considered. It underlined that such practice should not be systematic, otherwise one single library might end up making copies for all libraries. It recalled that the IFLA proposal addressed this question applying fair practice criteria while the joint proposal made use of the three-step test and the Berne Convention. It expressed concern with an international instrument that applied the fair use criteria without having a clear concept in all national legislation, and therefore opined that the joint proposal of Brazil, Ecuador and Uruguay represented a better solution for an international copyright law that did not have a clear definition of fair practice across jurisdictions.

218. The Delegation of Ecuador referred to the intervention of the Delegation of Egypt regarding the issue of translations and pointed out that it was expressly contained in the Berne Convention when dealing with the scope of the exceptions, that translation was an implicit exception to the exception of reproduction, therefore where there was an exception for reproduction, translation was also included. It endorsed the proposal of the Delegation of Egypt.

219. The Delegation of India endorsed the interventions of the Delegations of Egypt and Ecuador. It stated that article 10 of the Berne Convention provided that translation was permissible according to fair practice.

220. The Delegation of the United States of America highlighted that the Delegation of India mentioned the provision of the Berne Convention for quotation and not reproduction of entire works, therefore the fair practice was applied for quotation only.

221. The Delegation of Italy highlighted that the requirements of the three-step test should be already accommodated in the text, and not left for national legislation. It underlined that respect for the three-step test was not seen in the joint proposal of Brazil, Ecuador and Uruguay, since reproduction and distribution rights were mentioned there, including reproduction without any limitation. It stated that would allow a free-of-charge parallel market and pointed out that the educational purpose was a very broad and ambiguous criterion. It asked for a more precise text for the limitation and respect for the three-step test.

222. The Delegation of Brazil stressed that the economic implications were not significant because copyright protection would not be undermined by making possible safeguard copies

limited to a strict minimum. It underscored that there was no intention to undermine the fundamental principles of legal reproduction and the three-step test, nor to allow reproduction in vast quantities. It declared that the inclusion of the condition of a legal acquisition of the work would forbid the use of material that infringed copyright under the scope of the limitation. It stressed that if a work infringed copyright no exception or limitation could be applied. It pointed out that the proposal respected the principles of limitations to the right of reproduction, ruled out the possibility of engaging in any economic activity regarding the safeguard copy, and also allowed national legislation to provide remuneration according to national practices.

223. The Delegation of Kenya agreed with the intervention of the Delegation of Senegal and added that the reason why Article 11 of the African Group proposal mentioned fair practice according to the national legislation was because there were several traditions regarding the concept of fair use.

224. The Delegation of Brazil referred to the interventions of the Delegations of Italy and the United States of America and declared that it agreed with the latter in the sense that when the joint proposal mentioned international obligations the three-step test was included. It expressed uncertainty as to whether the Delegation of Italy had referred to Brazilian legislation, and it stated that Brazilian legislation did not incorporate the Appendix of the Berne Convention, consequently there was no translation right in Brazil as brought by the Berne Convention. It also clarified that the three-step test was part of Brazilian legislation as the international agreements were part of the Brazilian legal system; it highlighted that national jurisprudence also mentioned the three-step test.

225. The Delegation of the Russian Federation called for more caution with the limitations and exceptions of copyright. It expressed concern with the right of translation for libraries under the Berne Convention. It declared support for the intervention of the Delegation of Italy because libraries should not be given unlimited possibilities to use all copyrighted material, which could represent a serious danger to the publishing market.

226. The Delegation of the Islamic Republic of Iran wondered if the African Group could change the text proposal phrasing to “including digital transmission, provided that such use is compatible with fair practice as determined in national law for such reproduction.” It recalled that in the joint proposal of the Delegations of Brazil, Ecuador and Uruguay the fair practice concept referred to the reproduction and not use.

227. The Delegation of the United States of America declared that the African Group’s Article 11 proposal as it was drafted did not limit itself to safeguard and backup copies. A clarification regarding Article 11 was requested from the African Group.

228. The Delegation of Italy declared that the reference made before was not to the Brazilian legal system but to the proposals presented in the plenary.

229. The Delegation of Ecuador recalled that the Berne Convention allowed quotations under fair practice and therefore it was permissible for illustration for educational purposes. It reminded the meeting that the fair practice standard could be used for the reproduction right in illustrations for teaching. It stated that the scope of the three-step test in the joint proposal was general, and that the reproductions would be in accordance with standards under existing international obligations. It observed that some matters protected by neighboring rights were not subject to international standards and therefore the three-step test. It mentioned that broadcasting and radio were not subject to the three-step test because those were governed by the TRIPS or Rome Convention.

230. The Delegation of Portugal stated that Portuguese legislation allowed libraries, archives and public museums to reproduce published works and that the number of copies should satisfy

the internal needs of the institutions and not the public. It declared that the institutions had to pay a fair remuneration for private copying, to be negotiated between authors and publishers. It informed the meeting that public institutions should cover the objectives of archives and the preservation of works and also the purposes of research, allowing consultation of works within their premises.

231. The Delegation of Chile declared that the right of reproduction was important for libraries and archives in order to carry out actions essential to the dissemination and protection of knowledge. It mentioned that reproduction was necessary to copy works held by the institution itself or by others and to produce copies for private use. It declared that Chilean legislation allowed reproduction for inclusion in the library's catalog of those works that were not available in the market anymore. It pointed out that in the case of private copying it was limited to fragments of works. It expressed that an international standard would not necessarily have to provide a definition of a quantity to be reproduced once each country could establish such a limitation. It indicated that the right of reproduction could include all formats, present or future, where knowledge and information were transmitted. It emphasized that digital or electronic copies should be considered in neutral language that would include future formats.

232. The Delegation of Germany referred to the intervention of the Delegation of the United States and recalled that libraries had two different activities, between libraries and to end-users. It stated that the German solution to the activity of the library regarding end-users was created after a long debate because there was no legislation on this issued prior to the European Directive, but only jurisprudence regarding the sending of copies via traditional mail or fax. It recalled that the Delegation of the European Union explained that the European Directive imposed specific limitations to the reproduction right and to the right of communication to the public of protected works, and that German legislation stated that "it shall be permissible in response to an individual order for the public libraries to reproduce and transmit by post or facsimile individual contributions released in newspapers and periodicals and also small parts of a released work so far as the exploitation by the person placing the order was permissible pursuant to Article 53". The Delegation explained that Article 53 contained the limitations to the reproduction right for private and other personal uses. It pointed out the link between what was allowed to the libraries and the limitations and exceptions for individual users. It highlighted that German law also stated that "reproduction and transmission in other electronic form, such as email, for instance, shall be permissible solely as a graphic data file and for the purpose of illustration, for teaching or for scientific research to the extent justified by the noncommercial purpose to be achieved. Reproduction and transmission in other electronic form shall moreover be permitted only where it is not made manifestly possible upon agreed contractual terms for members of the public to access those contributions or small parts of a work from a place and at a time individually chosen by them and on terms that were adequate." It stressed that publishing houses that were online had priority over the dispatching of copies by libraries. It announced that paragraph two of the mentioned article stated that "an equitable remuneration shall be paid to the author for the reproduction and transmission. The claim may only be asserted by a collecting society." It underscored that German legislation seeks balance between the end-user of libraries and the authors and publishers, calling attention to the need for care in imposing solutions that were not balanced and that left no room for the Member States to find their own balance.

233. The Delegation of Senegal referred to the question raised by the Delegation of the United States of America stating that the African Group's proposal mentioned the practical exchange between libraries and archives.

234. The Delegation of the United States of America stated that its national legislation dealt with the issue of whether a copy is available in the market at a fair and reasonable price when the entire work is being reproduced. It explained that the criteria of fair practice appeared only in Article 10 of the Berne Convention, in Article 10.1 regarding quotation and Article 10.2

regarding illustration in publications, broadcasts or sound visual recordings for teaching, and that the fair practice would be limited to those activities of Article 10.2. It mentioned that it believed that the Delegation of Ecuador was mentioning that article when it referred to fair practice in education. It affirmed that the application of the three-step test to broadcasting existed and that the Article 11 of the Berne Convention was modified by Article 13 of the TRIPS Agreement, as discussed in dispute settlements at the World Trade Organization (WTO), where there had been no statement that denied the application of the three-step test to the right of broadcast.

235. The Delegation of France mentioned that it had implemented an exception, similar to Germany, and that the European Directive allowed countries to have a lot of room to maneuver and to be in accordance with their national traditions. It mentioned that Article L102.5 of the French Intellectual Property Code provided for the reproduction of a work and its representation as two different rights, and aimed to preserve the possibility of consultation for the reasons of research or private study by private individuals within the facilities of a library accessible to the public or to archive departments in so far as they did not seek any economic or financial advantage. It underlined that the same conditions were applied in case of preservation that concerned material that was held in the collection of institutions, without commercial purposes. It highlighted that those two exceptions, reproduction and representation, were exclusively limited to dissemination through individual computers dedicated and used only for consultations locally in the library or archive department.

236. The Delegation of Ecuador stated that Article 13 of the TRIPS Agreement did not apply the three-step test for broadcasting companies, and therefore the three-step test could not be applied because the Berne Convention mentioned copyright. It stated that regarding neighboring rights there was no international standard that obliged the application of the three-step test.

237. The Delegation of Austria declared that Austrian legislation did not mention the right of reproduction for libraries, but that Sections 40-P to 42 provided a framework for reproduction for personal or private use which was relevant for those institutions as well and therefore allowed libraries and archives to reproduce works for their customers as long as they provided analog copies or digital copies for noncommercial research purposes. It stated that the amount of copies was limited and could only be reproduced if the work was out of print or not available in sufficient number, but that remuneration by the private copy levy existed.

238. The Chair indicated that there were no more interventions to be made on cluster two and opened the discussion on cluster three pertaining to legal deposit.

### *Topic 3: Legal Deposit*

239. The Delegation of the United States of America stated that legal deposit was very important to its national library system but asked to make an intervention at a later moment.

240. The Delegation of Mexico highlighted that the items to be discussed within legal deposit should be the obligation to make available to a library different materials, the time frame during which the materials were to be made available, the time of production, the time of publishing, who was responsible for the preservation/custody of those materials, and any obligation regarding publicity or information on this type of material.

241. The Delegation of Spain indicated that the legal deposit system in Spain dated back to 1617 and some modifications were recently implemented by Law 23 of 2011. It emphasized that sound, visual and audiovisual materials were to be made available to the public, with the objective to compile and conserve in public administrations different copies of the work and to

gather information in order to generate statistics and provide access and consultation of the works within the premises of the institutions.

242. The Delegation of the Czech Republic stated that it had provisions similar to other European countries. It mentioned that there was no provision regarding legal deposit in the Copyright Act, but there was a special law that obliged publishers of books, journals, magazines and newspapers to send a number of copies of the published work for the National Library and for some other public libraries. The same rules apply also for a special library for visually impaired persons (VIPs).

243. The Delegation of Argentina stated that the publisher in Argentina had the obligation to provide three copies within a three-month period, which should be sent to the National Library, the Library of the Congress and the national archives. It mentioned that if the publisher did not comply the fine was 10 times the value of the book.

244. The Delegation of the United States referred to the document distributed by it and expressed the will to include legal deposit as a topic for discussion in plenary. It stated that two principles were mentioned, the first one being the role of legal deposit systems to develop national collections and aid preservation efforts, including collecting work published in multiple formats, which is important for cultural heritage. It highlighted that its legislation provided for the deposit of published work in the Library of Congress and even though those works were submitted through the registration system, they were technically different. It pointed out that two copies of the best edition should be deposited by the publisher; if not, the Library of Congress could demand such deposit. It emphasized that this was not a formality in the copyright system, because the protection did not depend on the deposit. It recalled that those deposit systems were faced with the challenge of acquiring digital works, which was under analysis by the United States government. It stressed that the second principle was that libraries and archives served the public because they maintain essential government information. The Delegation mentioned that through a system established 200 years ago, 1240 Federal Depository Libraries with federal government documents existed, that there were no copyright restrictions on this government material, and that based on U.S. policy government materials should be disseminated as widely as possible.

245. The Delegation of Malaysia expressed contentment with the principles highlighted by the Delegation of the United States of America and expressed the view that a text that allowed libraries and archives to have more than one center would be better.

246. The Delegation of Japan mentioned that legal deposit in Japan included private and government publications and that the goal in the Diet Library Act was to diffuse the material.

247. The Delegation of India stated that India had an act specifically for Legal Deposit which existed before the Copyright Act of 1954. The act stated that a copy should be given to the biggest four libraries of the country. The act was under revision to be adapted to the digital environment.

248. The Delegation of Egypt stated that the Intellectual Property Law of Egypt from 2002, Article 84, obliged publishing houses and television systems to provide fixed copies to register and deposit in libraries, and that it was not infringement of copyright and neighboring rights if the aim and purpose was the preservation of the works.

249. The Delegation of Canada stated that libraries and archives protected cultural heritage and made it available to citizens, and they could also manage certain administrative and federal documents. It recalled that Canadian publishers had to send a copy of the published work within one week and in a number that varied according to the number of copies published. Such works would receive a description that would be added to a database that was accessible

globally, independent of the type of media of the work. It highlighted the difference between legal deposit and registration and that since 2007 online maps and publications were dealt with by the provisions. It stated that different types of access could be granted such as open or restricted, including the possibility of downloading the work or not.

250. The Delegation of the United Kingdom stated that the legal deposit system existed in the United Kingdom since 1662 and that six copies had to be provided for legal deposit, for the British Library, the National Library of Scotland, the National Library of Wales, the Bodleian Library Oxford, the University Library Cambridge, and the Library of Trinity College, Dublin. It mentioned that the concept of publication was very wide and that the subject of online publication was under analysis and was also important for cultural heritage.

251. The Delegation of Jamaica mentioned the Legal Deposit Act of Jamaica, which was followed by the implementation of regulations that included downloading to reformat or refresh for preservation purposes.

252. The Delegation of Germany declared that the Legal Deposit system dated from 1663 and the depositary institution was the National German Library, and highlighted that the Legal Deposit Act established the materials to be deposited and the responsibility for the deposit, but did not deal with any regulation regarding permission to use the work, which was left to the Copyright Code.

253. The Delegation of Austria stated that depending on the works deposited, acts of reproduction were necessary and had to be permitted because the depositary institution itself may need to make copies. Clarification on this issue was requested.

254. The Delegation of France stated that in French legal deposit there was no connection with copyright. Some exceptions for deposit institutions existed, to reproduce and make available to the public material that came from the legal deposit, but those institutions benefitted from exceptions that were not part of the Intellectual Property Code. It underlined that the National Heritage Code respected the principles mentioned under the cluster regarding preservation.

255. The Delegation of Switzerland stated that legal deposit was not part of its copyright law, which did not require legal deposit, because copyright was seen as a natural consequence of the act of creation.

256. The Delegation of Chile stated that registration was voluntary and that there was no legal deposit system in Chile. It asked if the deposit system in other countries made available physical copies to users and if the penalty for non-compliance with the legal deposit was effective.

257. The Delegation of Greece stated that the legal deposit system was not linked to copyright and therefore did not form a requirement for the granting of the protection.

258. The Delegation of the United States of America referred to the questions of the Delegation of Chile and stated that the works deposited in the National Library were available to users and the federal government works were also available through many libraries. It also mentioned that there was system of fines and penalties in case of non compliance with the legal deposit requirements.

259. The Delegation of Kenya asked the Delegation of the United States of America where the discussion of exceptions and limitations would be placed for countries that do not have a registration system.

260. The Delegation of the United States of America declared that there were two aspects; one was the legal deposit of private publishers and the second one the legal deposit of government works. It highlighted that in the second aspect in the United States the government's material did not have copyright but in those jurisdictions that had copyright for materials produced by the government and a system of legal deposit, exceptions and limitations were the best way to disseminate the works.

261. The Delegation of Argentina referred to the question of the Delegation of Chile and stated that the works deposited in the National Library were available to the public.

262. The Chair announced that an ambassadorial level meeting between the World Blind Union (WBU) and the International Publishers Association (IPA) was scheduled for 18:30 that day.

#### *Topic 4: Library Lending*

263. The Chair opened the discussion on cluster four regarding library lending.

264. The Delegation of Kenya introduced the African Group proposal emphasizing that the provision enabled libraries to exchange works that were not available in one library for the benefit of another library. The proposal stated that "it shall be permissible for a library to supply a copy of any work or material protected by related rights, not fully acquired or accessed by the Library and Archive to another Library and Archive, for subsequent supply to any of its users by any means, including the digital transmission provided by such use compatible with fair practice as done by national law." It explained in response to a question from the Delegation of the Islamic Republic of Iran that the interlibrary exchange was in fact a use, the lending of the works to other libraries.

265. The Delegation of the European Union and its Member States mentioned the European Rental and Lending Directive, and that since 1992 there was an exclusive right of lending where at least remuneration for authors should be given. It reminded the Committee that according to the Directive in certain cases there was an exclusive right, as for films and phonograms, and that in others, such as for books, a remuneration right could be used. There was also the possibility of exemptions for public lending, but the exemptions should be narrow and include remuneration, as the European Court of Justice had stated. It also clarified that interlibrary loan was not mentioned in the Directive and therefore left to the Member States of the European Union.

266. The Delegation of Italy informed delegations that in Italy the lending of phonograms and videograms was limited to those distributed 18 months before, a period that was presumed to allow the rightholder to enjoy the benefits of the exploitation.

267. The Delegation of Senegal mentioned that the African Group proposal was balanced and called attention to the reference to national fair practices as it was a position that considered all the rightholders of the sector.

268. The Delegation of Egypt stated that expanding library lending as an absolute right would destabilize for the benefit of the public and contrary to the author's interest. It proposed the creation of a provision that allowed the rental of works without the author's consent in order to avoid delays in teaching and research.

269. The Delegation of India pointed out that library lending was an implied exception in the Indian Copyright Act and that the Information Library Network under the auspices of the Ministry of Human Resource Development shared information among all institutions of the government

of India such as documents and books that were available. It mentioned that the private sector had a similar initiative, called the Development Library Network, DELNET, that covered around 500 universities and which implemented interlibrary loans. It highlighted the relevance of these systems because there were sparse funds for libraries, and the exceptions were important. It highlighted that it could be seen in the WIPO study on Library Exceptions by Kenneth Crews that 17 countries provided interlibrary loan exceptions and only six countries had express exceptions. It pointed out that the Brazilian background paper and the International Federation of Libraries Association (IFLA) draft treaty proposal dealt with the traditional lending right. The latter stated in Article 6 that "Any Contracting Party which at the time of ratification or accession expressly provides for libraries a remunerated limitation or exception to a public lending right of authors may keep such provisions, provided that notification is deposited with the Director General of WIPO at the time of ratification or accession to the Treaty. The Contracting Party may withdraw the notification at any time." The Delegation of India praised that initiative because the notification on the ratification of that article regarding interlibrary loan could be deposited or withdrawn at any time by the Member State.

270. The Delegation of the Czech Republic observed that the public lending of printed works had explicit exceptions only since in 1990 in that country, and that in 2006 a remuneration right was included in the legislation regarding public lending of works. Remuneration was to be paid by the public entity to the collecting society organization, which also received information regarding public loans from the institutions. It explained that it was also possible for libraries and other institutions to lend phonograms and audio visual recordings on the spot.

271. The Delegation of Austria declared that Austria had a remuneration right for public lending in accordance with the European Union Directive, and because that right was designed for non-commercial purposes it did not foresee space for limitations and exceptions. It underscored that the remuneration right could be implemented if the respective state wished but that it was of the opinion that it was not the plenary's intention to discuss a new lending right.

272. The Delegation of France announced that the objectives of the French legislation regarding lending were to ensure the remuneration right to authors; to consolidate access for libraries and the general public ensuring that the remuneration was not paid by the user and that the author did not receive double payment for the same action; to balance the supply chain of books and the financial situations of the authors and libraries and; to increase the partnership between libraries and bookshops. It pointed out that the remuneration system was managed by the French Society for Authors (SOAF) and that there was a lump sum paid by the state and a payment determined according to the public price of the works rented.

273. The Delegation of the United States of America stated that there was no express provision in the United States of America regarding the lending of works by libraries, because it was an implicit right derived from the right of distribution and the First Sale Doctrine of Section 109. It pointed out that regarding the lending of software and sound recordings there were limitations and that nonprofit libraries were able to lend those materials. The joint initiative of Brazil, Ecuador and Uruguay was applauded regarding the description of the lending capacity of libraries and archives and the neutral way the library lending provision was written in that proposal.

274. The Delegation of Germany summarized that there was no limitation or exception for library lending in Germany but there was a rule in Section 27 of the Copyright Law which defined the conditions for public lending, with equitable remuneration to be paid to the author, through a collecting society.

275. The Delegation of Ecuador clarified that the purpose of the joint proposal was to ensure that libraries could comply with an essential function to lend works to users and that it was essential that countries recognized this right of lending, together with an exception that



protected libraries. It underscored that there was no international instrument that governed the three-step test exception to loan that was done in national legislation. It expressed its opinion that the system of some countries to provide a remuneration right in case of public loan could be maintained.

276. The Delegation of Mexico noted that there was a limitation to the right of distribution of copies of the works that had already been implemented for other types of works. It highlighted that in Mexico a system of public lending was not defined but that it was important to establish a system where one could monitor and verify the source of the material lent by the library. It proposed to discuss a database on interlibrary loans.

277. The Delegation of the Bolivarian Republic of Venezuela stated that education was a human right and that the reality in Europe was the exception and hence a multinational law should not be based on that reality or model, which would mean a disparity with the Development Agenda goals.

278. The Delegation of the European Union and its Member States emphasized that it was making an effort to achieve a balanced political and copyright objective and that the legislation was well-developed with the objective to guarantee education, culture and information.

#### *Topic 5: Parallel importation*

279. The Chair opened the floor for comments on cluster five regarding parallel importation.

280. The Delegation of Kenya introduced the African Group proposal in Article 10: "It shall be permissible for Libraries and Archives to purchase any legally published works to be incorporated into their collections in cases where a contracting party does not provide for the importation rights after the first sale or other transfer or ownership of a work." It pointed out that the main purpose was to ensure that the libraries were able to buy the books in a lawful manner. It highlighted that the article referred to works that were not available in the country.

281. The Delegation of the European Union and its Member States affirmed that in the proposal the link was not clear between parallel importation and distribution rights for the benefit of libraries and archives, and that it was difficult to provide specific types of distribution rights limited to specific beneficiaries. It stressed the risk of creating a parallel different market and noted that there was no provision within the European Union in that regard, although there was a free movement of goods and therefore regional distribution rights.

282. The Delegation of India referred to the WIPO Copyright Treaty (WCT) Article 6 and mentioned that it was for the developed countries to decide if they wanted international exhaustion reflected in their national legislation. It underscored that the same approach was taken in the IFLA proposal and the Brazilian background paper, which were almost the same as the aforementioned Article 6. It observed that due to the reality of lack of funds the libraries could take advantage of cheaper rates for books.

283. The Delegation of Egypt recalled that Article 6 of the TRIPS Agreement provided that the contracting parties would determine their exhaustion of rights. It highlighted that it was an important provision and that it should be reflected in an international instrument for libraries.

284. The Delegation of Austria informed delegations that it applied the regional exhaustion criteria and that there was no exception to that principle. It did not understand the suggestion where a library bought a work and it was not distributed, as the seller would be the one infringing.

285. The Delegation of Mexico asked what types of works were being mentioned when talking about legal importation.

286. The Delegation of Ecuador underlined that there was no joint proposal from Brazil, Ecuador and Uruguay regarding the issue discussed, but that it supported the proposal of the African Group in the sense that libraries should not be hampered by the right to import and export in order to acquire materials in any part of the world legally. It emphasized that that would be compatible with the TRIPS Agreement.

287. The Delegation of Brazil informed delegations that the second column of the document was a proposal for text.

288. The Delegation of the United States of America requested to provide comments about the topic at a later moment.

*Topic 6: Cross-border issues*

289. The Chair opened the discussion on cluster 6 regarding cross-border uses.

290. The Delegation of Senegal highlighted that the African Group proposal never intended to say that libraries had to act as bookshops and clarified that the African Group proposal was limited to certain conditions for libraries and archives to receive an exchange of works. It pointed out that when talking about importation, it was limited to the situation where there was no availability in the domestic market, and also that parallel importation was not an open license.

291. The Delegation of Mexico suggested having a limit on the number of works to be acquired for importation.

292. The Delegation of Italy explained that in Italy the subject was not understood as an exception to copyright but a supplementary vision of the exhaustion of rights which was decided by each member state.

293. The Delegation of Germany indicated that in Germany there was regional exhaustion and expressed confusion with the African Group proposal stating that international legislation assigned to the authors and rightowners the right of distribution. However the case of importation by a library was the case of acquisition, and there was no right of acquisition.

294. The Delegation of Ecuador informed delegations that the African Group proposal made sense because it would allow importation without the consent of the author and then, according to the proposal, the libraries would have the freedom to be able to purchase and import works for their collections, not becoming a bookstore but simply having the works in their collections. It also indicated that there was no limit on the number of works to be imported, but it was important that the library import as needed for its collection instead of imposing a limited number on importation.

295. The Delegation of Kenya explained that this particular article of the proposal was not talking about the right of acquisition, as was already said such a right does not exist. It highlighted that the importation issue was dealt with in the proposal, because libraries and archives had in their collections a lot of books from outside the country, and the provision would allow them to import the books without necessarily infringing copyright. It agreed with the Delegation of Ecuador that a number should not be imposed as a limit.

296. The Delegation of Mexico wondered about the validity of libraries taking part in public auctions of unpublished works and whether that would fall within the category of parallel importation.

*Topic 7: Orphan works*

297. The Chair opened the floor for comment regarding cluster 7 on orphan works.

298. The Delegation of Kenya emphasized that the issue of orphan works was developing in the world and the proposal stated that "It shall be permitted for the beneficiaries provided for to reproduce and use a work and materials protected by related rights for which the author or rightsholder cannot be identified or located after reasonable inquiry." It mentioned that national legislation could supplement the proposal to determine what a reasonable inquiry was. It pointed out that the second paragraph of the proposal did not apply to libraries and archives. The text of the second paragraph was: "It shall be a matter of national law to determine whether certain commercial use and works protected for which the author cannot be identified or located after reasonable inquiry would require payment or remuneration."

299. The Delegation of Argentina highlighted that the issue of exhausted works was under analysis by national legislators and that limitations and exceptions for orphan works were being studied in order to allow reproduction. It pointed out that the limitations and exceptions for preservation, under the first cluster, might have already taken into account orphan works, but it expressed the desire to keep cluster number seven.

300. The Delegation of Austria made reference to the previous cluster of cross border issues in order to comment that it was already covered by the cluster of reproduction and distribution of copies to the libraries and archives' users and that the limitations in domestic legislation also applied to cross-border issues.

301. The Delegation of Senegal highlighted that it was a delicate matter and that it was important to respect a procedure before declaring a work as an orphan work. It pointed out that the rightholder could appear after the declaration of an orphan work and wondered if the rightholder should suffer the consequences of that. It answered the Delegation of Argentina by saying that the concept of exhausted works was different from orphan works because exhaustion was based on the expiration of protection and therefore the work falling in the public domain. It stressed that Argentina was talking about another situation, when the work was no longer available in the market, and wondered what would be Argentina's criteria of exhausted works, those that were not available in the market or a work with the term of protection exhausted.

302. The Delegation of Argentina replied that it referred to works that were no longer available in the market, out of print or no longer produced.

303. The Delegation of India informed the meeting that the issue of orphan works in India was dealt with by compulsory licensing, where any publisher interested in publishing orphan works had to address the Copyright Board asking for permission and follow a due diligence requirement such as advertisement in English and Hindi newspapers stating a time limit. It highlighted that once the time limit lapsed the compulsory license was granted and the remuneration stipulated by the Copyright Board was paid to the government. If the rightowner appeared, the money from the compulsory license would be transferred from the government funds to him. It highlighted that in the case of libraries, it was difficult to seek a compulsory license and an exception was given to libraries when the book was no longer in the market.

304. The United States of America indicated that the Japanese and Canadian copyright systems had a robust system that dealt with orphaned works. It reminded the meeting that the issue at stake was how orphan works affected libraries and archives and, mentioning the second paragraph of the African Group Proposal, stated that commercial purposes would not be something that libraries and archives would be engaged in. It declared that a well-crafted system of exceptions for libraries and archives for copyrighted works would also include orphan works. It wondered why orphan works was a separate issue once the exceptions were for all copyrighted works.

305. The Delegation of Kenya clarified that the relevant provision for orphan works was only the first paragraph of the proposal and not the second paragraph and that it was an evolving area of copyright.

306. The Delegation of Brazil agreed with the previous statements of the Delegations of India and Argentina that commercial availability of the work should not affect the use by the libraries.

307. The Delegation of Ecuador highlighted that there were many cases where an exception to copyright existed but a library could not benefit from it. It expressed the will to discuss withdrawn and retracted works.

308. The Delegation of the European Union and its Member States pointed out that under the label of orphan works different criteria existed, and from the reasonable starting point of assuring that the rightholders could not be identified the discussion moved to mass digitization, out of commerce works and unpublished works which the author may never want to publish. It declared that sometimes the proposal was based on a government license, and sometimes like the United States of America was considering, a limitation or exception of copyright. More caution with the topic was requested emphasizing that there was very little precedent of limitations and exceptions for libraries and archives. It mentioned the Memorandum of Understanding dated from 2008 with the necessary steps and process for the diligent search for orphan works and that the European Commission proposed a Directive that was still under discussion, but that other issues were also considered such as out-of-commerce works, voluntary agreements of rightholders, voluntary collective management by societies and various types of licenses. It underlined the need for mechanisms that helped the availability of works, which did not necessarily mean limitations and exceptions for libraries and archives.

309. The Delegation of Senegal noted that once a book was out of stock, the publishers had the obligation to reprint it and that obligation usually involved publishing contracts. It was expressed that sometimes the authors asked for the ending of the publishing contract when the work was sold out, because it was not lawfully available in the market anymore, leading to damage to publishers and booksellers.

310. The Delegation of India highlighted the published work "Copyright Paradox" by Neil Netanel, Oxford University Press, where two reasons were mentioned for the increase in copyrighted works: the extension of the term of protection and the lack of formalities for registration of copyrighted works. It pointed out that there was no incentive for publishers or rightholders to republish works even though there was a demand by libraries. It concluded that there was a need for an exception for not-for-profit libraries.

311. The Delegation of Egypt underlined that the African proposal mentioned a diligent search for orphan works, but raised the question of what a diligent search was, and said that the definition should be left to national legislation.

312. The Delegation of Italy aligned itself with the declaration of the Delegation of the European Union. It highlighted that the criteria of diligent search was complicated and to be left for national legislation and mentioned the case where the work was published in a foreign

country. It raised the question of what the territorial limitation of the diligent search was, if it was where the author lived or where the book was published. It remarked that there was a need for a set of principles for the diligent search in an international instrument.

313. The Delegation of Kenya asked to make reference to cluster six of the agenda item, cross-border issues, and highlighted that the motivation of the provision was to allow for interlibrary exchange across borders. It declared that the provision stated “It shall be permissible for libraries located in a territory of a contracting party to send, receive or exchange a copy of a work or material protected by related rights legally made in a territory of another contracting party, including copies of works and materials protected by related rights made in accordance with this treaty.”

#### *Topic 8: Liability of Libraries and Archives*

314. The Chair declared that cluster eight of the agenda item was under discussion.

315. The Delegation of Ecuador stated that because libraries dealt with a large number of works and because of the large number of civil and criminal procedures regarding use of unauthorized works, libraries should not be subject to sanctions because of the acts of their users, which was reflected in the joint proposal by Brazil, Ecuador and Uruguay.

316. The Delegation of the United States of America referred to the document of principles and objectives that declared: “National copyright laws may recognize limitations on the liability of certain types of damages applicable to libraries and archives and their employees and agents that act in good faith, believing or having reasonable grounds to believe that they have acted in accordance with copyright laws.” And also that “Existing national systems of exceptions and limitations for libraries and archives should be examined to determine whether they require updating in the digital era to enable libraries and archives to continue to carry out their public service mission.” It highlighted that employees of libraries and archives employees should not be liable when they acted in good faith believing they were acting in compliance with legislation. It underlined that the text of the joint proposal was too broad when it stated “shall be protected from claims for damages from criminal liability, and for copyright infringement.” It affirmed that a total exemption for librarians would not be appropriate, and that librarians acting in their professional capacity should be shielded from statutory damages.

317. The Delegation of Brazil agreed with the intervention of the United States of America that the employees of libraries, when acting in good faith, should not be held liable, and said that the Brazilian libraries were demanding a legal certainty statute from the Brazilian authorities.

#### *Topic 9: Technological Protection Measures*

318. The Chair opened the floor for comments on cluster number nine on Technological Protection Measures (TPM).

319. The Delegation of Kenya presented the African proposal that stated “contracting parties shall ensure the beneficiaries of exceptions and limitations have the means to enjoy the exception where technical measures have been applied to a work including when necessary the right to circumvent the technical protection measures so as to make the work accessible.” It highlighted that there were certain users that fell within the scope of limitations and exceptions that would not be able to exercise them because of TPMs, because circumvention was not authorized in many legislations.

320. The Delegation of India called attention to the agreed statements of Article 10 of the WCT and Article 16 of the WPPT where limitations and exceptions were deemed to be exercised in the digital environment, hence there was no need to allow libraries to circumvent TPM, which could lead to piracy.

321. The Delegation of Brazil declared that TPM was also important for visually impaired people (VIP), and that this implication was reflected in the joint proposal.

322. The Delegation of Ecuador stated that the obligation to protect TPM, brought by Article 11 of WCT, was against non-authorized use, thus countries had flexibility to implement limitations to TPM. It pointed out that the joint proposal by Brazil, Ecuador and Uruguay allowed libraries to circumvent TPMs and exercise the acts permitted by legislation.

323. The Delegation of the United States of America mentioned that there was no provision specifically dealing with TPM in its national legislation except one that allowed the circumvention by libraries to determine if they want to purchase a copy of a work for the library's collection. It stated that a very robust system for providing exceptions to TPM was in place, managed by the Library of the Congress and the Department of Commerce. It declared that every three years, exemptions were given for persons that were likely to be adversely affected by the prohibition to circumvent. It was also pointed out that the national legislation exempted librarians and archivists that acted in good faith from criminal liability for TPM circumvention.

324. The Delegation of Italy wondered why a rule regarding TPM and libraries would be necessary once the work was acquired legally and lawfully by the library.

325. The Delegation of Ecuador stated that the reason to allow circumvention of a TPM by libraries and archives was because they could need to make a preservation copy, among other examples.

326. The Delegation of Egypt recalled that some TPM could be applied to works in the public domain and declared that TPM should not exist for works in the public domain.

#### *Topic 10: Contracts*

327. The Chair opened the floor for comments on cluster 10 of the agenda item, regarding contracts.

328. The Delegation of India declared that many librarians had problems with contracts because the legal limitations and exceptions provided in domestic law were affected and therefore limited by the means of contracts. It gave the example of a physical copy of a book that had no limitation on the number of times it was lent compared with a digital copy, which could only be lent 20 times.

329. The Delegation of Ecuador stated that a license which prevented having a preservation copy needed to be avoided by a treaty.

330. The Delegation of the United States of America expressed its view that regarding the determination of what kind of arrangements librarians were best able to enter into, its experience was that libraries were effective in dealing with publishers. It expressed hesitation about limiting the capacity of libraries to pursue the best deal possible to obtain the most materials for the collection.

331. The Delegation of Australia expressed opposition to an international norm that dealt with negotiation of arrangements with publishers. It stated that agreements would be better dealt with directly by the private sector.

332. The Chair recalled that written comments on agenda item number five should be delivered by Friday, with an additional deadline of three months. The Chair proposed to initiate discussion on agenda item number 6, limitations and exceptions for persons with print disabilities.

333. The Delegation of the European Union and its Member States declared that it was not ready to discuss agenda item number six once the work on agenda item number five went faster than expected.

334. The Delegation of South Africa stated that it was also not ready to discuss item six.

335. The Delegation of Chile supported the interventions of the Delegations of the European Union and South Africa.

## **ITEM 6: LIMITATIONS AND EXCEPTIONS**

336. The Chair expressed thanks for the initiative of Egypt, Mexico and the United States of America to organize the meeting with the International Publishers Association and the World Blind Union. It was an extraordinary opportunity to have a frank and direct exchange of ideas that helped the understanding of all the topics underlining the issue of the visually impaired. He thanked specifically the Director General for his availability to be a facilitator and a moderator of a fruitful dialogue among Member States. Presenting document SCCR/22/16 prepared by the Chair, he clarified that it was based on the conclusions of the previous session of the Committee that requested the preparation of that new document. The purpose of the document was to submit to the Committee a clear-cut, coherent, transparent and collective text, which incorporated all the comments made by the delegations during the discussion on exceptions and limitations to copyright for persons with print disabilities, held in the previous session of the Committee. The intention was to include in one single document the comments made by the delegations so that the Committee did not lose sight of the previous work. The text was the result of the contributions of the delegations whose comments had been taken into account without any position being committed or pre-judged and with the understanding that new future positions and comments would remain possible. The Chair urged all the delegations to achieve definite results during that SCCR session and invited them to make general comments on the document; he suggested that specific comments on the text be postponed. The objective was to understand the guiding spirit of his exercise.

337. The Delegation of the United States of America, speaking on behalf of Group B, noted that in addition to certain technical and grammatical changes, there were significant substantive changes to the document. In order to better understand the changes, Group B suggested that the Chair provide an overview of SCCR/22/16 before the Committee engaged in a discussion of the document. Group B remained committed to seeking convergence in order to establish new standards to improve access for the visually impaired while safeguarding the integrity of the intellectual property system. It noted that the dialogue among the World Blind Union, the International Publishers Association and Member States was a step in the right direction. Group B thanked the Delegations of Mexico, Egypt and the United States for organizing the event and especially the WBU and IPA for helping delegations to better understand the areas where convergence must be achieved.

338. The Delegation of Algeria, speaking on behalf of the DAG, hoped that the document enabled the adoption of an international instrument which responded to the requirements of all the parties concerned. The efforts undertaken on the issue were praiseworthy and it

commended the authors for the different proposals tabled. A legal instrument should require that all countries have in their legislation exceptions and limitations to facilitate access to works for the visually impaired, while providing for cross border exchange in accessible formats.

339. The Delegation of the European Union and its Member States recognized considerable progress was made to find a solution that helped to remove barriers which prevented the access of the visually impaired to books in accessible formats. At the previous SCCR session, held in June 2011, the European Union and its Member States together with other WIPO Member States presented a proposal for an international instrument on exceptions and limitations for persons with print disabilities, which was the result of a series of fruitful consultations and a sustained effort by a number of countries. All the Member States that did not join that document made additional drafts and suggestions and comments. It thanked the Chair for the preparation of the new proposal for an international instrument on limitations and exceptions for persons with print disabilities. There was a need to discuss the text which raised a number of questions. It was appropriate and also feasible to agree on solid text that enhanced the availability of works in accessible formats to visually impaired people, while being mindful of the need to have effective protection of the rights of creators. It felt that reopening a debate on the nature of the instrument before having discussed substantive issues and objections was unlikely to yield progress. It also felt that the open discussion that took place the previous day between the World Blind Union and International Publishers Association was extremely productive. On a number of points it appeared that the main stakeholders were able to expose their points of convergence and differences, as well as the areas where the text could be improved or where compromises could be found.

340. The Delegation of Brazil thanked Mexico, the United States and Egypt for convening those consultations which were very useful and practical. Concrete proposals were offered by IPA, which reflected its concerns regarding the instrument under negotiation. It believed that an agreement was within reach, not only referring to the content but also to the nature of the instrument. After discussing the content, at some point in time in the current session there was a need to reserve time for discussion on the nature of the instrument, because the issue had not yet been tackled by the plenary in a broader discussion.

341. The Delegation of South Africa welcomed the document, SCCR/22/16, and believed that it should form the basis of the negotiations. It proposed that the document be adopted as the working document of the Committee, even if it noted that there were changes in the document, which could still be discussed. It encouraged Member States to engage positively during the session with a view of concluding the instrument. It was its expectation to conclude an international binding instrument for visually impaired persons. The Delegation reiterated the outcomes of the General Assembly and emphasized that through enhanced dialogue good results could be reached. It welcomed the event which was organized by the United States, Egypt and Mexico.

342. The Delegation of Mexico said that it had promoted that initiative to improve access to visually impaired people to copyright protected works. Mexico endorsed the proposal submitted from Brazil, Ecuador and Uruguay, which recommended the drawing up of an international legally binding document, with text submitted by the World Blind Union with special emphasis on the human rights aspects. To achieve that objective, the Delegation expressed its support for considering the text submitted by the Chair as the basis for negotiations. The Delegation warned the Committee that it should not forget that the final objective was to achieve effective access to appropriate formats for all visually impaired people and people with difficulties in having access to works and recommended that all delegations negotiate with a constructive spirit.

343. The Delegation of Pakistan mentioned four points. Number one, it welcomed the Chair's document and believed that was a step in the right direction. There was a need to move



forward on the document and enter into discussions. Number two, it welcomed the frank discussion of the previous day. It was very enlightening to hear both sides presenting their comments, their suggestions, and their positions. Number three, the most important thing for the Delegation was the need to conclude those discussions and commit to an instrument. Number four, it believed that the international instrument needed to be binding and therefore during the session it was necessary to have a discussion on the nature of the instrument.

344. The Delegation of Switzerland stated that document SCCR/22/16 was very well prepared, but it noticed that some comments made were not reflected, including some from the Swiss Delegation.

345. The Delegation of Senegal supported the intervention of the coordinator of the African Group. It accepted that the document under discussion be considered a working document and become the basis for discussion in the SCCR. It also hoped that the discussion would result in a draft text that would be a legally binding instrument.

346. The Delegation of Turkey welcomed the proposal on an international instrument on exceptions and limitations for persons with print disabilities. It highlighted the current text-based discussion in the plenary.

347. The Delegation of Argentina aligned itself with the delegations that asked for the joint proposal to become a working document of the SCCR and highlighted the support of the International Publishers Association for an instrument regarding exceptions and limitations. It agreed with the statements of the Delegations of Brazil and Pakistan on the importance of a deadline for discussion. It stressed that the negotiations would make explicit the seriousness of the Member States toward the goals of the Development Agenda (DA).

348. The Delegation of Paraguay endorsed the comments of the Delegations of Argentina, Brazil and Pakistan regarding the discussion of the document.

349. The Delegation of the United States of America believed the text proposal was appropriate for discussion. Regarding the adoption of the document as a working document it highlighted that a discussion on the specific topics of the document would be more appropriate at that time.

350. The Delegation of Chile underlined the need for a discussion on the legal nature of the international instrument.

351. The Delegation of Nigeria accepted the use of the document as a basis for discussions in the plenary.

352. The Delegation of India hoped that the discussion about the document would enable a binding legal instrument for limitations and exceptions for the visually and print disabled.

353. The Delegation of Ukraine supported the adoption of the document as a basis for discussion.

354. The Delegation of Algeria noted that various delegations wanted to move forward with the proposed document and expressed concern as to whether it would be possible to prepare a draft proposal for the General Assembly to approve the convening of a Diplomatic Conference. It wondered how the process would work and when the process would take place, specifically if informal consultations should take place. It opined that working on an informal basis and subsequently discussing the results of such consultations in the plenary would allow the obtaining of results in time for the General Assembly.

355. The Delegation of Kenya endorsed the African Group position.

356. The Delegation of Ecuador recalled that basic human rights were at stake in the discussion and expressed its agreement with the drafting of a document for discussion. It declared its will to achieve a legally binding international instrument.

357. The Delegation of Egypt highlighted that the document was relevant to achieve an instrument that was either binding or not.

358. The Delegation of Canada declared that its national legislation provided an exception for the production of materials for VIPs. It highlighted that an international instrument would allow cross-border exchange of materials with appropriate safeguards for copyright owners.

359. The Chair opened the floor for the declarations of the Non-Governmental Organizations.

360. The representative of the Royal National Institute of Blind People (RNIB) praised the progress made during SCCR 23 in the direction toward eliminating copyright barriers preventing blind, partially sighted and other people from accessing published works. The representative highlighted that the copyright world supported a treaty for disabled people and that access to books and ideas would be improved. It was underlined that the RNIB was not able to send materials to other organizations because licensing schemes did not allow that in some situations. It was mentioned that if there was an international instrument in place, access to Bookshare U.S.A. could be given to members which would therefore allow the transfer of works. The representative underlined that there was no good reason not to work towards a binding first-class law to solve the book famine instead of a second-class law for reading-disabled people. A binding WIPO treaty was requested to avoid reading-disabled people having the massive task of continuing for many years to struggle towards a first-class solution.

361. The representative of Electronic Information for Libraries (e-IFL.net) underlined that libraries were one of the key distributors of materials serving print-disabled persons and that developing countries' libraries were likely to be the mechanism by which material was delivered. It was stressed that a binding document was necessary to achieve the objectives set out in the preamble of the proposal delivered by the Chair, which recognized the continued shortage of available works for print-disabled people. It was stated that a two-step approach would result in failure. The representative mentioned that the UN Special Rapporteur on the Right to Freedom of Opinion and Expression declared access as a human right. It was emphasized that 90% of the blind and visually impaired people were from developing countries and that a binding treaty would allow reading-disabled people to access the collections of libraries for education, leisure and personal development. Reference was made to a discussion regarding broadcasting organizations which would take place and therefore an equal weight to the needs of blind and visually impaired people should be given in order to reach a treaty instrument.

362. The representative of Transatlantic Consumer Dialogue (TACD) highlighted that there were two different positions, from the side of the World Blind Union (WBU) a very pragmatic and concrete attitude with flexibility that looked for solutions for millions of people and, on the other side, the industry with a general kind of approach that did not address concrete issues and spoke theoretically and ideologically. It was stressed that the discussion was not whether the technology would solve the problems by itself because it would not and could not. It was asked if it was possible for the blind organizations and other visually disabled groups to trust the publishers and if a power to veto would be given to the publishers. The representative declared that not having a diplomatic conference for a treaty for the visually impaired next June would be politically indefensible. The meeting was informed that self-regulation such as a stakeholders' platform alone in cases of market failure was admitted by everyone not to work. It was stressed that the Special Rapporteur of the UN, Mr. Frank LaRue, issued a statement calling for a binding legal treaty for visually impaired people and in WIPO there was a call for a diplomatic

conference. It was also mentioned that a Yale Law School report gave recommendations that: “Generally, hard law prevents instruments from becoming dead letter agreements. Soft law is a less appropriate solution where there is already consensus and specificity, as there is here. Soft law also creates inefficiencies, as countries try to determine how to satisfy its vaguer aspirations.” A soft law would not mobilize domestic actors who had not yet implemented the UN Convention on Persons with Disabilities. It was stated that a turning point was being reached where concrete progress would be achieved or civil society would be informed of the names of those who were stalling progress. It was concluded that no evidence was shown that rightholders would be hurt by those exceptions because such exceptions already existed around the world including in the United States of America and in the European Union without representing a loss of commercial income to the rightholders. The representative urged concrete progress and not ideological debate.

363. The representative of the Ibero-Latin-American Federation of Performers (FILAIÉ) stressed that the General Assembly supported an international treaty for people with visual disabilities. It was pointed out that on page four, Article A of the document, when it mentioned “literary artistic work” following the Berne Convention Article 2, the term “scientific work” should be added as there was no reference to the Berne Convention in the document. It was highlighted that on page 5, paragraph 7 there was doubt about what the term “Member State” referred to, if it was contracting party of the treaty, of the WCT, the Berne Convention or a Member State of WIPO. The representative suggested including a reference to the WPPT in the text. The representative hoped that the treaty would bring light to the visually impaired and everyone who needed it.

364. The representative of the National Organization of Spanish Blind People (ONCE) requested a legally binding document where there could be a global exchange of accessible books and materials in an efficient and rapid manner. It was recalled that such exchange existed in some countries with no damage to the rightholders. It was stressed that national legislation did not refer to trusted intermediaries and therefore a binding international instrument should not include such a mechanism.

365. The representative of the Latin American Union of the Blind (ULAC) stated that an exception was vital and that the context was to find a solution equitable for rich countries with resourceful organizations as well for Latin American countries where there were small organizations and schools that tried to keep up with users’ needs. The importance was highlighted of working with the publishing houses in order to get the books directly from them but also to create an exception to allow more and to provide materials for the students of blind schools. It was declared that the importance of a binding instrument was to oblige states to comply with it and that that would allow the ULAC to work with governments to ensure they were complying with such instrument. It was stressed that a good example was the Convention on Persons with Disabilities and Argentina, where great progress had been achieved in the past 10 years, but that only a recommendation would not lead to the change that was hoped for. It was recalled that sometimes blind people had to obtain materials through illegal means whereas if there was a legal framework in place it would be better because more security would be provided for the parties involved. It was underlined that there were easier ways to engage in piracy than using materials for blind people. The representative mentioned that the discussion had taken three years while in Argentina 70% of the VIPs could not finish secondary school because of the lack of access to materials. It concluded that the text was already mature and that an instrument would produce a real change in the scenario.

366. The representative of the Library Copyright Alliance (LCA) stated that a legal instrument was vital to increase access to knowledge for VIPs and to provide equal access to copyrighted materials. It was mentioned that libraries were stakeholders who could help in the process because they could continue to provide accessible format copies of copyrighted works for patrons with print disabilities in keeping with their primary public service mission, providing

services related to education, training, adaptive reading, and information access as in Article A of the proposed document. The representative stressed that as trusted intermediaries that maintained policies and procedures for ensuring compliance with copyright and other laws, they were authorized entities and should not have to seek further permission in order to create accessible copies of works already available for other patrons. It was underlined that a requirement for those institutions to provide a report could threaten privacy rights found in many national laws like those of the United States of America.

367. The representative of the Inclusive Planet Foundation (IPF) referred to the amendments made to the text proposed and stressed that the rightholders deleted the part “persons with visual impairments must have full and equal access to reading material” and wondered if the VIPs should have the right of equality denied, or because the reference to the WIPO Development Agenda (DA) was deleted by the rightholders, if they were against the DA. It was mentioned that the rightholders added the text “An authorized entity maintains compliance policies and procedures regarding access and IT security that follow internationally recognized standards. It records appropriate usage information and provides this to rightsholders in a transparent and timely manner.” It was underlined that 99% of the of the Non-Governmental Organizations (NGO) in developing countries would not be able to spend the money required to comply with such standards for IT security and it was asked why other copyright exceptions did not have this requirement, such as in the backup of a CD. It was stated on behalf of the DAISY Forum of India (DFI) that a voluntary agreement such as the Stakeholders’ Platform and the TIGAR Project were just a way to operationalize the treaty but that they would not be able to cover all titles in the world. It was stated that in India, DFI signed agreements with publishers but that after several years of effort there was only permission from a minimum percentage of the rightholders. It was stressed that there should not be any alternative other than a binding treaty and that a stakeholders’ platform would be an effective tool after the approval of the treaty.

368. The representative of the Canadian Library Association (CLA) praised the Canadian legislation which allows producing alternate formats but explained that different international limitations were a significant challenge for libraries and other not-for-profit institutions which served print-disabled people. The representative reported the experience of failure in having agreement between Canadian and American NGOs because of cross-border legal issues, which meant that American students had to wait for another institution to produce an alternative format that already existed in Canada, spending more time and resources for a process that would not represent less income for rightholders.

369. The representative of the International Group of Scientific, Technical and Medical Publishers (STM) requested the work to be focused on three goals: equal access, a framework of public and private sector partnership and a system that protected innovation and creativity and facilitated equal access.

370. The representative of the European Blind Union (EBU) on behalf of libraries for print-disabled people in Germany, Switzerland and Austria highlighted that agreements had recently been concluded with collecting societies of those three countries and that it was a good example of how a soft law was not effective to solve the problems. It stated that the framework in those countries was that Austria had exceptions for VIPs except for downloads and streams; while Germany and Switzerland had exceptions for VIPs including download and streaming. It was highlighted that the agreement among the collecting societies of the three countries applied the Austrian criteria, the only one which did not include streaming and downloads. The representative recalled that libraries ensured that only eligible users had access to the materials and that those people would not have access at all if it were not for the libraries. It was stressed that such access was usually publicly funded by those states that saw that as a fundamental right, in line with the UN Disabilities Convention. It was underlined that a binding treaty would allow exchange of works legally produced by organizations that had legal supervision.

371. The representative of the National Federation of the Blind of the United States (NFB) stated that technology could take more books, material and information to the VIPs all over the world, against the major barrier to the blind that was lack of information. This was a great opportunity to turn the blind population into first class citizens, and the blind population was one of the poorest in the world. It was underlined that technology would not solve all the problems because even though a publisher could make available a digital formatted book using EPUB3, that would still not be accessible for people that need a Braille hard copy version, such as deaf-blind people. It was stressed that limitations and exceptions were necessary to allow authorized entities to produce material in appropriate formats and that a clear message should be sent to the world by means of a binding treaty agreed to by the VIP associations, publishers and Member States.

372. The representative of the International Federation of Film Producers Association (FIAPF) stated that the industry promoted solutions to secure access to works by VIPs and that individual and flexible contractual solutions were best suited to deliver on the objective of better access to audiovisual content for users with sight disabilities. It declared that the best solution would rely on the existing corpus of copyright law and would create a flexible framework for practical solutions where it was important to encourage the ability of book publishers and stakeholders to mutually develop beneficial strategies including incentives to publishers. It was expressed that the solution should bring no ambiguity about the three-step test of the Berne Convention as a limit to the creation of exceptions and limitations under national law.

373. The representative of the International Federation of Library Associations and Institutions (IFLA) recalled that the SCCR had the mandate from the Convention on the Rights of Persons with Disabilities where it was stated that print disabled people had the right to equal access to books, knowledge and information at the same time, cost and quality as everyone else. It was highlighted that libraries had a trust position within the disabled community because they were key instruments. The representative expressed IFLA's will for a binding treaty and underlined that voluntary agreements had not adequately addressed the need of VIPs.

374. The representative of the French-Speaking Union of the Blind (UFA) declared that he was luckily born in France so he could get education even being blind, but that would not be the case for French-speaking people in Africa, where only 0.0001 % of the documents were available to blind people. It was stressed that it meant the non-availability of basic educational material, let alone reading for pleasure or university. The representative informed the meeting that an anecdote would better describe the scenario: "Some years ago I visited Tunisia, one of the countries which had evolved the most when it comes to recognizing the rights and providing for the needs of the visually impaired of French speaking Africa, and I visited a school for the visually impaired in a suburb of Tunis and I took part in a French class with 35 children, boys and girls between the ages of 11 and 12. At a given moment we were having a discussion and I said, 'Imagine that I was a fairy and with one wave of my magic wand I could grant the dearest of your wishes. What would you want me to do?' Of course I was expecting all sorts of things, all sorts of desires and wishes, but I was astonished to hear 35 voices speak as one, saying, 'Oh, if only you could do that, we would want books, Braille books, Madam.' "

375. The representative of Knowledge Ecology International, Inc. (KEI) stressed that print disability was not defined in the text proposal and that attention should be given to what type of works were included, that the exclusion proposed by the publishers association regarding works published electronically should not be accepted. It stated that the text proposal of the IPA brought a lot of restrictions, sometimes non-existent in any national legislation, and that considering such proposals would go against many national legislations, besides the fact that including such a proposal alongside with other Member States' proposals would mean giving Member State status to the IPA. A possibility of negotiation failure was exemplified with the 1971 Appendix B of the Berne Convention. It was stated that the result in 1971 was so complex

and had such small economic incentives that it was considered a failure; and the 2003 implementation of Article 6 of the Doha Declaration regarding cross-border movement of drugs produced under compulsory license was also a failure because its complexity made it difficult to implement. It was mentioned that paragraph 9 of the August 30, 2003 decision on the implementation of Article 6 of the Doha Declaration stated "This decision is without prejudice to the rights, obligations and flexibilities members had under the TRIPS Agreement ..." and that in the text of the proposal a language modification should be made because it was considered too narrow and that whatever was included should be without prejudice to other rights under the Berne Convention and TRIPS, the three-step test and the flexibilities therein. It was underlined that a text that could be interpreted as new provision and a result more restrictive than the three-step test should be avoided. The representative suggested that a look should be taken at the declaration on a balanced interpretation of the three-step test and copyright law, including paragraph six which stated "the test should be interpreted in a manner that respects the legitimate interest of third parties including interest derived from human rights and fundamental freedoms, interest in competition, notably in secondary markets, and other public interests, notably in the scientific, cultural, social or economic development."

376. The representative of the American Council of the Blind (ACB) stated that the result should have balanced rights, barrier removal and legally binding rules. It was recalled that technology was deemed to solve many accessibility problems and that limitations and exceptions should cover the remaining access issues, in view of the fact that only 5 % of published books were available to the blind, in spite of the current technology. Two reasons were mentioned why technology was only one of the tools to provide access: because the majority of people with print disabilities did not have access to books produced using technology, such as computers, and because the devices marketed for electronic books were not usable by people who were blind and often the websites used to download were not readable with screen readers. The representative highlighted the role of libraries and affirmed that the instrument to be developed should not burden those institutions or hinder their ability to continue providing access to books to VIPs. ACB asked for a binding legal instrument instead of a voluntary one.

377. The representative of the National Organization of the Brazilian Blind People (ONCB) declared that Brazilian legislation provided exceptions and limitations for VIPs but that more work was being done in order to provide more access to books. The representative was concerned with the publishers' position in affirming that the solution would be merely technological. It was recalled that representatives of DAISY affirmed before that the format converter DAISY was evolving slowly and mentioned that it only positively affected blind people with access to computers. The meeting was informed that in Brazil from six million blind people, only 10,000 had formal employment, and that happened mainly because of lack of information, culture and education. It was underlined that Article 30 from the UN Convention on Persons with Disabilities guaranteed access to information and yet three years had lapsed since the beginning of the discussion on the issue and it was time to decide for a binding legal instrument. It was mentioned that a number of concerns were raised regarding the economic damage to publishers, but that blind people also suffered damage; the representative asked how much it cost to lack access to the human right to have information.

378. The representative of the *Comité National pour la promotion sociale des aveugles et amblyopes* (CNPSAA) suggested that the instrument should not be lightweight, limited or restrictive, and that a recommendation would not bring satisfaction. The need was expressed for a legally binding instrument that could be applied in similar ways in all countries and in a far-reaching way which would be essential to promote exchanges between countries.

379. The representative of the International Publishers Association (IPA) supported appropriate exceptions for VIPs because they were a necessary piece in a greater puzzle. The meeting was informed that three aspects of the text should be discussed. First, where works were made

available in formats for VIP those should have precedence over copyright exceptions. Second, the arrangements made for the international exchange under copyright exceptions should encourage, enable and recognize collaborative solutions. Third, solutions that encouraged trust to develop and sustain behaviors of trust between entities should be encouraged. It was declared that a text with specific amendments to the proposed text was prepared by IPA as requested in plenary. The Stakeholders Platform was not related to the debate in the plenary, but was another piece in the puzzle.

380. The World Blind Union (WBU) reminded the meeting that it represented 285 million people where 80% were from developing countries and that in most developed countries the unemployment rate among blind people was around 70%, and it was 90% in developing countries, therefore the blind community did not have resources for high-cost technology devices. It was restated that the blind community would not accept a voluntary instrument and recalled that the UN Convention on the Rights of Persons with Disabilities was already ratified by 100 countries. It hoped that the IPA had modified the text of the proposal reflecting some of the discussions.

381. The representative of the South African National Council of the Blind (SANCB) stated that emphasizing the technology and the implications of a treaty was a delaying practice and that it was time to give credence to the book famine and to improve the quality of life for VIPs by ensuring there was an international legal instrument. Delegations were urged to propose the adoption of a treaty by 2012.

382. The Chair informed the delegates of the positive results of the meeting held among him, the coordinators of the regional groups plus two, representatives of the World Blind Union and representatives of the International Publishers Association; and in addition informed the delegations of a parallel meeting to the plenary held between representatives of the World Blind Union and representatives of the International Publishers Association, in the presence of the WIPO Secretariat.

383. The Chair presented to the delegates document SCCR/22/16, also called “the Chair’s document”, and requested comments on each of its articles. In addition, the delegates were reminded of the schedule for the Informal Consultations on Broadcasting to take place on Saturday and Sunday, November 26 and 27, 2011.

384. The Delegation of the Bolivarian Republic of Venezuela proposed that the review of document SCCR/22/16 be made by each delegation presenting its comments, without following the article by article scheme, with the aim of saving time. It also indicated that the European Parliament would discuss in a meeting in the following weeks limitations and exceptions for persons with print disabilities and visually impaired persons.

385. The Delegation of the European Union and its Member States indicated to the Delegation of the Bolivarian Republic of Venezuela that the mandate for negotiating international agreements was not granted by the European Parliament but by the European Council where the 27 Member States were represented. The Delegation also indicated that the European Parliament has the possibility to review the results of negotiations on an international agreement. And it finally mentioned that the meeting to which the Venezuelan Delegate was referring corresponded to an oral political discussion to take place within a few weeks.

386. The Delegation of the United States of America requested confirmation from the Chair with regards to the presentation of comments, questions and suggestions on the preambular clauses of document SCCR/22/16, which was immediately confirmed by the Chair. Accordingly, the Delegation requested the replacement of the preambular clause phrase “Visually Impaired Persons and Persons with Print Disabilities” with “Visually Impaired Persons / Persons with Print Disabilities”, as initially included in document SCCR/22/15, in order not to imply that it refers to

two different groups, and not to one whole beneficiary group. Also the Delegation of the United States of America suggested combining preambular clauses 2 and 10, in accordance with the language of the Universal Declaration of Human Rights. Regarding preambular clause 6, it requested to maintain the original language of the clause included in document SCCR/22/15 Rev.1. Finally, with regards to preambular clause 12 it requested to change “acceptable formats” to “accessible formats”.

387. The Delegation of the Bolivarian Republic of Venezuela thanked the Delegation of the European Union on behalf of its Members States for clarifying the information it had provided. The Delegation also indicated that as no Delegation had opposed its proposed working scheme, it should be considered.

388. The Delegation of Brazil made a general observation on several provisions of document SCCR/22/16 where the references to Contracting Parties and Member States, and the verb “should” had been deleted from various provisions, and asked to maintain them until they are duly addressed, as a reflection of the lack of agreement over the nature of the instrument.

389. The Delegation of the United States of America concurred with the suggestion made by the Delegation of Brazil, in relation to the references to Contracting Parties and Member States, and the verb “should” that had been deleted from various provisions. The Delegation also invited the Delegation of the Bolivarian Republic of Venezuela to restate its proposal on the way comments should be addressed by reformulating it again, as the Delegation of the United States of America had already begun raising particular points on the preambular clauses of the document.

390. The Delegation of the Bolivarian Republic of Venezuela indicated that its proposal was to review the document passing through the articles where there was already consensus, as all delegations had already had access to the proposals from the United States of America, the African Group, Brazil, Paraguay, and Mexico supported by the GRULAC, etc., and just work on the specific provisions where there were still disagreements.

391. The Delegation of Kenya on behalf of the African Group supported Brazil’s proposal with regards to the references to Contracting Parties and Member States, and the verbs “shall” and “should” that had been deleted from various provisions.

392. The Delegation of the European Union and its Member States supported the comment raised by the Delegation of the United States of America on retaining the text as it was in document SCCR/22/15 Rev.1 regarding contracting parties.

393. The Delegation of Egypt suggested condensing the 17 paragraphs of the preamble into 10. It also proposed to include in paragraph 3 of the Preamble a reference to scientific works as indicated by the Berne’s Convention second article. The Delegation supported Brazil’s proposal on maintaining the reference to “Contracting Party” in line with the WPPT.

394. The Delegation of Japan pointed out that as it had previously stated in document SCCR/22/15 Rev.1, in paragraph three of the Preamble the importance and flexibility of the three-step test should be emphasized as the basis of the instrument.

395. The Delegation of India requested to modify the second paragraph of the Preamble by replacing “limited visibility” by “low visibility”, a term that corresponded to the technical and medical terminology.

396. The Delegation of the United States of America noted that the fourth preambular clause was new to the text compared to document SCCR/22/15 Rev.1. The Delegation also stressed the importance of being very careful with regard to the words included in the text when they



refer to technical or medical areas. Regarding preambular clause 17 the Delegation proposed to simplify it by saying "taking into account the importance of increasing the number and range of accessible format works." The Delegation aligned itself with the observation raised by the Delegation of Egypt on shortening the preambular clauses.

397. The Delegation of Kenya on behalf of the African Group expressed its concern on the introduction of new terms to the text and aligned itself with the proposal of the Delegation of the United States of America on replacing "Visually Impaired Persons and Persons with Print Disabilities" with "Visually Impaired Persons / Persons with Print Disabilities", and suggested making this change also in the title of the document.

398. The Delegation of Switzerland proposed to modify paragraph two of the Preamble in order to align it with the Universal Declaration of Human Rights with regards to the access to information and communication, as well as the right to education and research.

399. The Delegation of Senegal supported the statement made by the Delegation of Kenya on behalf of the African Group. The Delegation proposed that paragraphs three and four should be reformulated as they were repetitive or perhaps paragraph four should be deleted, as what was contained in this paragraph was reiterated in paragraphs six and seven. It also proposed to merge paragraphs 10 and 11 as the statements included in both paragraphs were linked. With regards to preambular clause 12 the Delegation stressed the need to review the wording of this paragraph in order to avoid misleading people on what is meant in the paragraph regarding the requirement of a harmonized international norm on limitations and exceptions.

400. The Delegation of the Bolivarian Republic of Venezuela reiterated its proposal on the working scheme to be followed, and requested that after the review of the Preamble was done, the other Delegations should raise their objections to it, and in case there was no objection the proposal should be adopted.

401. The Delegation of the European Union aligned itself with the comment made by the Delegation of Japan on the importance of reaffirming the application of the three-step test in the context of this instrument. With regards to preambular clause 13 the Delegation proposed to maintain the language included in the prior drafting of document SCCR/22/15 Rev.1.

402. The Delegation of Brazil referred to the comments made by the Delegation of the United States of America regarding preambular clause 12, and stressed the importance of establishing cross-border exceptions due to the continued shortage of available works in accepted formats for visually impaired persons even in countries that recognize exceptions and limitations for visually impaired persons.

403. The Delegation of Morocco aligned itself with the proposal of the Delegation of Senegal on deleting preambular paragraph four, as the principles included in this clause were also reiterated by Article 15.

404. The Delegation of Mexico referred to paragraph 10 of the Spanish version of document SCCR/22/16, and suggested replacing "impart information" with "share information". In relation to paragraph 17 it suggested replacing "to guarantee" with "to guarantee their full and effective participation".

405. The Chair asked for additional comments on the Preamble from delegations, and reminded them that in the meeting held on the previous day among him, the Coordinators of the Regional Groups plus two, the representatives of the World Blind Union and representatives of the International Publishers Association, it was proposed to start the current session with the working scheme that was being applied on making general comments to the document, while in parallel the World Blind Union and the publishing industry representatives held their meeting.

The Chair highlighted that the purpose of the exercise was to be as inclusive as possible with all the constructive ideas of the delegates in order to produce a document that was as precise as possible. Finally the Chair proposed to the delegations to move from the document's Preamble to Article A.

406. The Delegation of the Bolivarian Republic of Venezuela expressed thanks for the explanations given by the Chair and indicated that they had not been informed of the decisions taken in the previous day's meeting as the Coordinator of GRULAC had not had time to meet with the group members.

407. The Delegation of Kenya reiterated its position and reservations about the definition of "authorized entity" included in paragraph four of Article A.

408. The Delegation of Switzerland suggested, taking into account that the current instrument is addressed to improving access for persons with print disabilities to copyright protected works, including the word "written" in the definition of "work" included in Article A, so it would read: "Means a written literary or artistic work..."

409. The Delegation of Algeria suggested with regards to the definition for "accessible format copy", to add at the end of the paragraph the words "or others", in order to ensure that the definition is broader and that it encompass all works, not only printed but digitized works.

410. The Delegation of the United States of America in relation to the definition of "work" comprised in Article A, suggested returning to the language of document SCCR/22/15 Rev.1, including the variations that had been proposed and taking note of the concerns expressed by the Delegations of Switzerland and Algeria, and the proposal of the Delegation of Egypt to add the word "scientific". The Delegation indicated that the appropriate language construction should be found that recognizes works that exist principally or originally in digital format, even though they are written works. With regards to the definition of "authorized entity" the Delegation proposed to return to the previous formulation including the words "one of its primary missions" instead of "one of its activities", and also to delete the last phrase that reads "in accordance with national law". Finally, regarding paragraph two of the definition of "authorized entity", the Delegation proposed to replace the words "to determine the beneficiary persons that they serve" with "to determine the eligibility of the beneficiary persons that they serve".

411. The Delegation of the European Union and its Member States said that regarding the references to Contracting Parties and Member States, and the verbs "shall" and "should" that had been deleted from various provisions, it aligned itself with the previous comments made by the other delegations in order for the text to reflect the current status of matters. With regards to Article A's definition of "work" the Delegation stressed its discomfort with use of the word "valid" as it introduces uncertainty, and as it is a term more appropriate for trademarks and patents than for copyright, and could even suggest a need to register copyright. Also it suggested returning to the previous definition of work included in the Berne Convention, which was more sturdy and reliable. Referring to the definition of "authorized entities", the Delegation aligned itself with the comments raised by the Delegation of the United States of America on using the previous language in order to replace the words "that has as its primary mission" with "that has as one of its primary missions", considering this wording as more open and flexible. In relation to "authorized entities" the Delegation wished to highlight its preference for the previous language included in document SCCR/22/15 Rev.1, and pointed out that what it wanted to achieve to some extent was that the authorized entity had procedures in place to check that the copies were being distributed to beneficiary persons under the instrument and not to others. Also the Delegation pointed out that the footnote included in document SCCR/22/15 Rev.1 encouraging rightholders and beneficiary persons to cooperate and participate in authorized entities had disappeared, and that it made part of a broad compromise for which they had been flexible with the notion of "authorized entities". In addition, the Delegation underscored its

discomfort with the reference to national law in the definition of “authorized entities”, as it may tend to suggest that everything should be decided under national law. It welcomed the possibility of discussing clear language for that specific point. Finally, the Delegation asked for clarification and open discussions on how the proposed instrument related to existing norms agreed at WIPO, due to its current definition of copyright and its link to national law.

412. The Delegation of India indicated regarding document SCCR/22/16 and its definitions of “accessible format copy” and “authorized entity”, that they should both be extended not only to persons with print disabilities, but persons with visual impairments. The Delegation also noted that there was no clarity on the word “trust” in the definition of “authorized entity” due to several divergences on its interpretation, and highlighted that there was a fear from stakeholders in India, especially the visually impaired and other print disabilities communities, that it may lead to a kind of licensing system.

413. The Delegation of Jamaica pointed out that the real solution they were seeking was not only for works to be more accessible, but also to promote a greater incentive or encouragement for people to prepare works, for publishers to prepare works for VIPs. Accordingly, the Delegation asked for the inclusion of some mention in the definition of “authorized entity” to what works will be distributed and in which quantities, in order to be able to have statistical tracking of what would be issued and in what measure.

414. The Delegation of Morocco proposed to modify the second paragraph of the definition of “authorized entity” in the following way: “An authorized entity, which will apply the rules and procedures, etc.”.

415. The Delegation of Brazil proposed with regards to the definition of “work” included in the “Chair’s document” to return to the previous definition included in document SCCR/22/15 Rev.1. Additionally, the Delegation proposed to omit in Article B from the definition of “beneficiary person”, the reference to a person with a visual impairment or a perceptual or reading disability or any other print disability, because after all the instrument was for those beneficiary persons. Finally, the Delegation asked for clarification on the fact that in some provisions the document includes “in accordance with national law” as a general reference, which may modify the context. Also it requested clarification on why the reference was included in some provisions and not in others.

416. The Delegation of Japan asked the Chair who authorized the “authorized entity” and how will they get “the trust.”

417. The Delegation of the United States of America aligned itself with the Delegation of Brazil on just using the phrase “beneficiary persons” instead of “visually impaired persons” or “persons with print disabilities.”

418. The Delegation of Senegal supported the statement made by the African Group, and regarding the definition of “work” included in Article A, endorsed the current definition included in the text. With regards to the “accessible format copy” the Delegation stated that it corresponded to “any type of copy”. It also welcomed the comment made by the Delegation of Morocco regarding the definition of “authorized entity”. The Delegation pointed out that legal instruments that protect beneficiaries are not always the same, for which reason it stressed the need of defining copyright and related rights, and accordingly, to include in the text a reference not only to copyright holders but to related rightsholders, as limitations and exceptions do not rely solely on copyright but on related rights.

419. The Delegation of Algeria proposed to insert the definition of “beneficiary person” included in Article B into the list of definitions compiled in Article A. [STOPPED HERE 419 OF 788]

420. The Delegation of India aligned itself with the proposal made by the Delegation of Algeria on introducing Article B's definition of "beneficiary persons" in Article A, the article of definitions.

421. The Delegation of the United States of America commented on the suggestions made by the Delegations of Algeria and India, indicating that in the United States' original proposal in 2010 the definition of "beneficiary persons" was included in the first article with a complete set of definitions. The Delegation reminded delegations that the reason for giving a different treatment to this definition and including it in a separate article was to adopt the approach taken in the draft treaty submitted by Brazil, Ecuador, Mexico and Paraguay, later joined by Argentina, on behalf of the World Blind Union. The Delegation expressed its agreement with retaining a separate article for this definition in order to stress its importance.

422. The Delegation of Brazil aligned itself with the considerations stated by the Delegation of the United States of America regarding Article B, to give more visibility to the definition of "beneficiary person" by keeping it in a separate article.

423. The Delegation of the United States of America proposed to revert Article B to its previous version in order to maintain the definition of "beneficiary person" as the person who "has a visual impairment or perceptual or reading disability". The Delegation also proposed to add at the end of Article B the following language: "a beneficiary person means a person who is unable through physical disability to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading in the manner of a person without such a disability".

424. The Delegation of Nigeria aligned itself and endorsed the considerations given by the Delegation of the United States of America regarding maintaining the definition of "beneficiary person" in a separate Article B.

425. The Delegation of Morocco endorsed the statements of the Delegations of the United States of America and Nigeria regarding Article B. The Delegation highlighted Article B as the fundamental article within the text, and indicated that for this reason it should be a self-standing article, and also pointed out that it needed to be reformulated and reworded in order to make it more clear, specifically with regards to the French version. The Delegation also pointed out that it was necessary to specify exactly how many categories of persons were comprised, as the current wording was confusing. In addition, the Delegation noted that the Article seemed to have three categories of beneficiaries: blind, visually impaired and disabled persons, for which the word "persons" should be used in each of the paragraphs of the article.

426. The Delegation of Egypt endorsed the maintenance of the definition of "beneficiary persons" as a self-standing article due to its importance, as it precisely specifies who the beneficiaries of the rights are. With regards to Article C the Delegation proposed to extend the limitations or exceptions not only to the right of reproduction but to the right of translation, because its non-inclusion for some countries would be just meaningless.

427. The Delegation of the European Union and its Member States reserved the right to propose amendments and textual suggestions. Regarding the proposal made by the Delegation of Senegal on including definitions for copyright and neighboring rights, the Delegation called the attention to the Delegation's proposal to discuss neighboring rights, as the agreement was to limit the discussions to the members of the WCT. In relation to Article B the Delegation suggested replacing the reference to "an exception for the benefit of the beneficiary persons", with "an exception to facilitate the availability of works in accessible formats for the beneficiary persons", as the modification to this language would broaden the aims of the current work. The Delegation considered that there was a risk of not satisfying this hurdle by simply having an exception, and noted that there could be several ways to resolve the issue, one of them would be to revert to the previous text, and another would be to point out that the objective was so

broad that perhaps other policy measures and exceptions and limitations would be needed in order to facilitate the availability of works. Regarding subsection four of Article C, the Delegation highlighted the wider scope of action that the word “otherwise” provided to the text, as it indicated there was a wide range of alternative possibilities for getting copies beyond the exception, without limiting this to specific distribution by a publisher.

428. The Delegation of Jamaica referred to subsection four of Article C and proposed to replace the word “shall” with the word “may”, and requested reinforcement of the fact that the exceptions were for cases when there is no reasonable price or reasonable alternative, as they wanted to ensure that the incentive to produce VIP accessible products remained.

429. The Delegation of Kenya proposed to include a particular provision in the document concerning the nature and scope of provisions.

430. The Delegation of Algeria proposed with regards to Article B and its inclusion in the list of definitions of Article A, to divide the document in Chapters and leave Articles A and B under the Definitions Chapter, and Article C under the Copies Chapter. Regarding Article C, the Delegation pointed out that in the Article’s heading the reference was made only to exceptions, while throughout the paragraph the reference was made to exceptions and limitations. The Delegation also noted that in terms of law and legislation there is a difference between an exception and a limitation, as an exception requires the authorization of a rightholder, while regarding a limitation things are different as there is no authorization, nor remuneration involved. Accordingly, the Delegation proposed to include a definition for exceptions or limitations in Article A in order for Member States to be clear on this.

431. The Delegation of Brazil with regards to paragraph one of Article C noted that Brazil was not part of the WCT, and observed that a definition could help make the text more precise, for which purpose they did not oppose a reference to the WCT. In relation to paragraph two of Article C the Delegation requested that the Chair clarify why it had been modified from the formulation initially proposed. The Delegation also aligned itself with the comment raised by the Delegation of the European Union and its Member States regarding paragraph four, with regards to retaining the word “otherwise” in the text. Finally, the Delegation requested to revert to including the text of the second footnote, which comprised carefully weighed and fully discussed drafting.

432. The Delegation of India wished to highlight that in paragraph five of Article C the use of the expression exceptions or limitations should not be understood as referring to the licensing system.

433. The Delegation of Switzerland stated that after comparing Articles C and D it could be noted that there were parallels between them, as both Articles established an obligation for Member States for people with print disabilities, followed by a model clause through which said obligation may be fulfilled, providing the flexibility needed to come up with an extremely well-crafted alternative solution, compatible with the three-step test. Nonetheless the Delegation noted that there was a notable difference between the two Articles, which was the wording found in Article D. Accordingly, the Delegation proposed to incorporate Article C(4) in a newly drafted Article C(2).

434. The Delegation of the United States of America aligned itself with the Delegation of Algeria on the proposal to add the words “and limitations” to the title of Article C, in order to improve it. The Delegation also proposed to add to Article C(3) the word “likewise” before the word “limited” so it would read “any other exception or limitation in its national copyright law that is likewise limited”, in order to clarify the language without making any change to the meaning of the text. In relation to Article C(4) the Delegation proposed in order to clarify the understanding

of the text, to replace “said exceptions or limitations” with “exceptions and limitations under this article”.

435. The Delegation of the European Union and its Member States asked for clarification, recognizing the comment previously made by the Brazilian Delegation referring to the WCT, on how the text could refer to the right of reproduction and the right of making available while referring to copyright as defined under national law.

436. The Delegation of Ecuador highlighted that under Article C(4) exceptions should not depend on the existence of commercially available works, as the justification for the exception was not to fulfill a gap or to correct a defect in the market as happens with many other exceptions. In this case it was a question of defending fundamental public interests, in particular human rights. For this reason there should not be a requirement of not having available works. Regarding the proposal of the Delegation of Egypt on including the right to translate as part of those rights, subject to exceptions, the Delegation considered it was an already implied provision.

437. The Delegation of India said that regarding the expression “reasonable time” included in Article C(4), it proposed to limit this provision to for example one year.

438. The Delegation of the United States of America indicated it had failed to understand the proposal of the Delegations of the European Union and its Member States and Brazil with regards to the word “otherwise” included in Article C(4), but nonetheless supported the maintenance of the word in the text. Regarding the proposal and comments made by the Delegations of Egypt and Ecuador, the Delegation noted that in its understanding the instrument did not include the right of translation, and stressed the importance in this regard of moral rights, their ramifications, and the justification for making translations available for one distinct group and not to others.

439. The Delegation of Senegal proposed to change the order of the text and its numbering by perhaps turning B into A, turning 3 into 1, 4 into 2, and 5 into 3. The Delegation noted the importance of highlighting “lawful access”, for which it proposed that B become A.

440. The Delegation of Brazil observed with regards to the proposal made by the Delegation of Algeria on working on a definition of exceptions and limitations, that it would be a very complex exercise with consequences not only for the working document, for which reason the Delegation proposed not to include in the discussion the definition of exceptions and limitations.

441. The Delegation of Japan asked for clarification on some points of Article D. First, regarding “authorized entity” in the fourth line of the first paragraph, the Delegation asked if this concept also identified an entity of an exporting country. Second, the Delegation explained that under Japanese copyright law it is possible for Japan to enable accessible format copies for exporting, which is why they asked for clarification with respect to what the obligation is for Member States included under the first paragraph of Article D. The Delegation noted that according to its understanding Member States are obliged to require the achieving of certain legal conditions by authorized entities in order for them to be allowed to distribute or make available accessible format copies, and on the contrary, they are not required to establish authorized entities or to implement the exportation of accessible format copies to an authorized entity. Under those understandings, the Delegation asked if on the basis of Article D’s first paragraph and its subparagraph, Member States are allowed to adopt any other measures while satisfying the three-step test, without requiring an authorized entity. [stopped here]

442. The Delegation of the European Union and its Member States, regarding the comments made on Articles C and D, proposed to have the maximum consistency between them, at least insofar as major issues were concerned. With regards to the proposal made by the Delegation

of Senegal on how the articles could be best presented in a coherent and articulate sequence, the Delegation proposed to move subparagraph 3 of Article 3 to be subparagraph 1 of the same Article, a proposal that could also be applied for Article D.

443. The Delegation of the United States of America underscored its agreement with the Delegation of Brazil regarding the suggestion raised by the Delegation of Algeria, as the Delegation considered it could be very hard and extremely time consuming to craft a definition of exceptions and limitations. In relation to Article D(3) the Delegation proposed to insert the word "likewise" so that it would read "Any other exception or limitation in its national copyright law that is likewise limited to", which in its consideration did not change the meaning of the phrase while being a clarification.

444. The Delegation of Japan with regards to Article E indicated that the words importation and exportation usually meant the exchange of tangible goods or products, and usually did not mean the exchange of intangible goods such as accessible format copies.

445. The Delegation of Ecuador asked for clarification to the Delegation of the United States of America regarding its proposal on Article D(3) on adding the word "likewise", as to whether it was applicable to No. 1 or to No. 2 of the same article.

446. The Delegation of the European Union and its Member States proposed to remove from Article E the phrase "without the copyright rightsholder's authorization". The Delegation pleaded for simplicity, and for taking into account what was previously discussed in the last SCCR, to allow Member States to mirror the flexibility of their exceptions in relation to imports.

447. The Delegation of the United States of America aligned itself with the proposal of the Delegation of the European Union and its Member States on deleting the last phrase of Article E, so including their previous proposal it would read in the following way: "To the extent that national law would permit a beneficiary person or an authorized entity acting on the beneficiary person's behalf to make an accessible format copy of a work, the national law shall likewise permit a beneficiary person or an authorized entity acting on that person's behalf to import an accessible format copy". In relation to the question raised by the Delegation of Ecuador, the Delegation indicated that Articles C(3) and D(3) were intended to be observations to state the freedom of contracting parties of the Berne Convention and the other copyright treaties to carry out exceptions and limitations that meet the three-step test. Those articles were meant to observe that what is above them is also compatible with the three-step test. In addition, in order to increase the clarity of Article D(2), the Delegation proposed to change the language of its last paragraph from "The Member State may limit said distribution or making available of published works which, in the applicable accessible format..." to "The Member State/Contracting Party may limit distribution or making available under this article of works, which in the applicable special format...", taking into account that in previous discussions the concern was raised about capturing published works and making them available in media in the digital era, for which reason the word "published" should be deleted.

448. The Delegation of Brazil aligned itself with the Delegations of the European Union and its Member States and the United States of America with regards to deleting the last part of Article E, and also supported the proposal of the Delegation of the United States of America on introducing the term "likewise" in Articles C(3) and D(3).

449. The Delegation of Australia referring to Article F proposed to delete in both of its paragraphs the words "have the means" and replace them with the words "are not prevented from enjoying the exception". The Delegation also proposed to add a clarifying clause to Article F, providing the following language: "The Member State may fulfill Article F(1) by permitting under its national copyright law circumvention of technological protection measures for the purposes of and to the extent necessary for benefiting from an Article C exception."

450. The Delegation of Switzerland stressed the need to review the wording of Article F. The Delegation indicated that Article F had to be seen in connection with the provisions of the WCT.

451. The Delegation of the United States of America proposed to replace in Article F the words “the work” for “a work”, and also to replace “Member States” with “a Member State/Contracting Party”, taking into account that the intent of this article was to express the capacity of a single Member State or a single Contracting Party, and not the Member States working together. Additionally, the Delegation suggested the following wording for Article F in order to express a better comfort level with what was currently being done: “a Member State/Contracting Party should/shall authorize competent authorities”. Lastly, the Delegation proposed to replace in the first paragraph the words “Member States shall” with “Member States should/shall”.

452. The Delegation of Japan aligned itself with the amendment proposal raised by the Delegation of Australia.

453. The Chair convened a meeting with the group of regional coordinators plus one, the representatives of the World Blind Union, the representatives of the publishing industry and the Secretariat, in order to be informed of the results of the parallel meeting held during the morning by the representatives of the World Blind Union, the representatives of the publishing industry and the Secretariat. Afterwards the Plenary’s afternoon session would resume.

454. The Chair informed delegations of the schedule for the informal consultations on broadcasting to be held on November 25 and 26, 2011.

455. The Delegation of the United States of America applauded the productive discussion held among the group of regional coordinators plus one, the representatives of the World Blind Union, the representatives of the publishing industry and the Secretariat during the informal meeting for deciding the path forward on print disabilities, where the main topic discussed was how to handle the Chair's Text and how to handle the series of comments made by the Member States during the current session, as well as the comments and proposals that the Member States wanted to make afterwards.

456. The Delegations speaking on behalf of the African Group and Brazil proposed to adopt document SCCR/22/16 as a working document of the Committee with the integration of all textual proposals and substantive comments made by delegations during the plenary session, and all corresponding written submissions made by member delegations by midnight November 25, 2011, in order to have a new working document available starting the following week for the Member States to review for corrections and/or clarifications.

457. The Chair requested the delegations to send all their comments on document SCCR/22/16 to the Secretariat’s e-mail [copyright.mail@wipo.int](mailto:copyright.mail@wipo.int) by midnight, November 25, 2011.

## **ITEM 7: PROTECTION OF BROADCASTING ORGANIZATIONS**

458. The Chair opened the session and reminded the meeting that during the weekend informal consultations on the issue of broadcasting had taken place. He thanked the Chair of the informal consultations, Ms. Alexandra Grazioli, the Secretariat and all the participating delegations. He was thankful to the Secretariat for the fact that it worked over the weekend in order to prepare two very valuable and important documents, one related to the issue of visually impaired persons and the other pertaining to the issue of libraries. He proposed that Ms. Grazioli report to the SCCR the main outcomes of the informal consultations.



459. The Chair of the Informal Consultations on the Protection of Broadcasting Organizations thought that Member States had a very interesting and good discussion during Saturday. In June 2011, the Committee reaffirmed its commitment to continue to work on a signal-based approach consistent with the 2007 General Assembly mandate towards developing an international treaty to update the protection of broadcasting and cablecasting organizations in the traditional sense and it approved a work plan in order to maintain the momentum on the issue. Following the work plan adopted, an Informal Consultation on the Protection of Broadcasting Organizations took place on Saturday, November 26. It was so effective that it did not require a meeting on November 27 as had been originally foreseen. The aim was to develop work on a draft treaty with a view to making a recommendation to the 2012 General Assembly on the possible scheduling of a diplomatic conference. The consultation was open to the participation of all members and observers of the SCCR. The following documents formed the basis of the discussion: SCCR/15/2, SCCR/22/5, SCCR/22/6, SCCR/22/7, SCCR/22/11. In order to structure the discussion during the informal consultation, the Chair had submitted a proposed list of issues for consideration for a draft treaty on the protection of broadcasting in order to make progress on the work. That approach had been accepted by the participants and an extensive debate had taken place that enabled them to have a better understanding of current views on the main elements and to further frame the future work in the plenary of the SCCR. The Chair had been requested to prepare a report on the content of the discussion. The first topic examined was the question of the objectives. The importance was clearly highlighted of updating the protection for broadcasting organizations and the need for following a technology-neutral approach while sticking to the definition of broadcasting organizations in the traditional sense. The relation between the new treaty and other existing conventions and in particular the International Convention for the Protection of Performers, Phonogram Producers and Broadcasting Organizations of 1961 was also discussed; the new treaty should be seen as complementary to the Rome Convention and be open to all WIPO members while recognizing that not all WIPO members were party to that convention. It should be developed as a stand-alone treaty, but taking into account other treaties, like the TRIPS agreements, WPPT, and the Brussels Convention. The distinction between the platform of origin and the platform of exploitation was not considered to be an essential discussion at that stage. The possibility to follow differentiated approaches for the scope of application and the scope of protection was also posed as a question; for instance, to provide in the treaty different levels of protection following different models in order to provide the protection. The Chair pointed out that this issue was going to become particularly relevant during the drafting process. Concerning the object of protection, there was discussion concerning the alternatives of focusing more on the signal or on the broadcast. The option of sticking to the model of the Rome Convention was highlighted by some delegations; the importance of clearly separating the definitions of terms and the description of the rights granted was also highlighted. Concerning the definitions, drafting suggestions concerning the definition of broadcasting were received. Some delegations expressed also the need to distinguish between broadcasting and cablecasting organizations; the question of the responsibility of the broadcasting organizations was also raised. It was proposed to add a number of other possible terms to be defined such as “rebroadcast of program carrying signal”, “programmed” and “cablecasting”. Finally, concerning the scope of protection, the participants debated concerning the alternatives of granting exclusive rights, rights to prevent some activity by the broadcaster, or rights to authorize. The latter alternative was not supported by Member States, but by some NGOs. The discussion also covered an alternative that was presented by the previous chair of the SCCR, Mr. Jukka Liedes, concerning a way to mix the two different approaches. Exceptions and limitations were also included in the work of the consultations; their actual scope would be shaped on the basis of the actual rights granted. Besides the elements that the Chair had mentioned in the list of questions and in the non-paper, some delegations expressed an interest in discussing also general principles, cultural diversity, and the defense of competition. At the end of the consultations, the Delegations of South Africa and Mexico had announced that they were working together in order to table a revised proposal the following week.

460. The Chair thanked Ms. Grazioli for her excellent work and deep involvement; and opened the floor on agenda item 7 on the protection of broadcasting organizations.

461. The Delegation of the United States of America, speaking on behalf of Group B, thanked the Secretariat and Ms. Grazioli. Group B remained dedicated to working with other Member States on a treaty for broadcasting organizations and it hoped progress would be achieved at that session.

462. The Delegation of South Africa expressed its sincere appreciation to all the Member States that had participated in the insightful discussion on the issue of protection of broadcasting organizations. Drawing from the report presented by the Chair of the Informal Consultations, South Africa, together with Mexico, had made a commitment to produce a draft text with the hope to drive the discussions forward. That was probably the way in which the SCCR could have a focused discussion and expedite the negotiation on the matter. The momentum, built since the 21st session, should not be lost. The proposed text took into account a number of issues, including the mandate of the 2007 General Assemblies, the proposals that were presented previously from South Africa, Japan and Canada; and the paper presented by the Chair. It hoped that Member States and NGOs considered the proposal to be balanced, because it took into account not only the interests of the broadcasters, but also of rightsholders and the general public. The text was very brief, focusing only on critical articles of the treaty that were expected to be the real points of discussion. The first part of the proposal was about the preamble, introducing the context of the treaty itself, including also a section dealing with the Development Agenda, but unfortunately the specific language was not finalized. The first Article of the draft dealt with the relation of the treaty to other treaties and conventions. The Delegations took into consideration the debate of the Informal Consultations and the submissions made by the United States of America and China stating that the treaty should be open to everyone. According to the proposal the treaty was self-standing and should be open to all WIPO Member States, including those that were not party to the Rome Convention. Article 2 contained a list of definitions such as signal, broadcast signal, broadcasting organization, fixation and so forth; the definitions were technologically neutral. During the Informal Consultations Iran had clarified that the 2007 General Assemblies mandate did not deal with platforms. Traditional broadcasting organizations referred to the broadcasting organizations but not the technologies; secondly, the mandate still allowed taking into account technological development. The scope of application was very narrow and the beneficiaries were only broadcasting organizations. Article 6 listed the rights of broadcasting organizations. It was not decided whether or not they were to be considered exclusive rights. The language was neutral to the nature of the rights. In addition the draft provided two alternatives, one relating to fixation and one that did not contain fixation at all. Article 7 dealt with limitations and exceptions, for the purpose of safeguarding public interest values. The balanced language reflected the legal solutions included in the Rome Convention because it was felt they were still appropriate. The lists included uses in relation to private use, current events, and education and scientific purposes. Of course Member States could, in their own domestic law, provide for further limitations and exceptions as long as they were in line with the three-step test. Article 8 regulated the term of protection. The Delegation noted the divergent views defending and opposing the view that once the broadcast had been broadcasted, the protection ended. Its view was that the term may or may not exist depending upon the nature of rights accorded to broadcasting organizations. If they had the right to fixation, obviously the issue needed to be discussed. The proposal had a minimum of 20 years. Article 8 regulated Technological Protection Measures. Article 10 dealt with obligations concerning Rights Management Information and reflected the same solutions as other treaties. The last article related to the enforcement of rights.

463. The Delegation of Mexico thanked the Delegation of South Africa for facilitating the joint work on the document. The draft was based upon the comments made by various delegations during the consultations and the documents presented during SCCR/22. There was a need to

have an international binding instrument to promote the protection of broadcasting organizations, to protect them against unauthorized uses of their signals, signal piracy, unfair uses by third persons of their transmissions, and hacking made possible by new technologies.

464. The Delegation of the European Union and its Member States said that the consultations, which were skillfully chaired by Ms. Grazioli of Switzerland, allowed the identification of some of the issues which needed to be further discussed during that session. The WIPO treaty on broadcasting organizations remained a high priority for the Delegation and it was convinced that that improvement was feasible within WIPO. Therefore, it welcomed the ambitious work plan with the aim of progressing the work on a draft treaty and making a recommendation to the 2012 WIPO General Assembly on the possible scheduling of a diplomatic conference. According to the work plan, the discussions were to be based on a number of contributions that had been made by different members as well as on the paper on the elements of protection of broadcasting organizations prepared by the Chair of the informal consultation meetings. It also recalled that the position of the European Union and its Member States, as submitted in 2001 in document SCCR/6/2 and in 2003 in document SCCR/9/12, was still valid and should be taken into consideration during the discussions alongside the other proposals. The aim was to converge towards a single text in order to advance negotiations. The proposal tabled by South Africa and Mexico was going to be given due consideration.

465. The Chair informed the meeting that the proposal from South Africa and Mexico had been circulated.

466. The Delegation of the United States of America thanked South Africa and Mexico very much for the introductory remarks. Unfortunately, the delegates did not have the text while the proponents were providing a summary of the document, so requested to repeat that exercise at a later stage.

467. The Delegation of Japan thanked the Secretariat and the Informal Consultations Chair. It welcomed the new document proposed by South Africa and Mexico. It reminded the meeting that the discussions on the issue had been going on for a long time; there was a need to have substantive discussions on the object and scope of protection of broadcasting organizations in line with the mandate of the WIPO General Assembly of 2007. In order to promote the discussion on the item document SCCR/15/2 should be considered a good basis.

468. The Delegation of India welcomed the organization of the informal consultations and the joint proposal submitted by South Africa and Mexico. Some time was needed to study the document.

469. The Delegation of the United States of America thanked the Delegations of South Africa and Mexico for their recent submission and was looking forward to studying it carefully. It had been the long-standing position of the United States that a new treaty may be needed to update the provisions of the broadcasting protection under the 1961 Rome Convention on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, particularly in regard to the piracy of signals. There was broad agreement among Member States that signal piracy had become an increasing problem, although they were unable to reach consensus on how to address the growing problem of signal piracy, both in 2006 and 2007. The Delegation believed that the SCCR must comply with the General Assembly mandates, requiring reaching agreement on the objectives, scope and object of protection in a signal-based approach before proceeding to a diplomatic conference. It was committed to work on exploring the possible approaches to a treaty for broadcast organizations that could meaningfully address signal piracy and update the Rome Convention while at the same time safeguarding the public domain and avoiding undue complexity or burden on the international copyright system. Any proposed treaty should be technologically neutral in the sense that the

activities of traditional broadcast organizations were treated the same way across different distribution platforms.

470. The Delegation of Senegal welcomed the proposal from South Africa and Mexico. There was a lot of very interesting material in the document and it hoped to contribute to an in-depth consideration of the document.

471. The Delegation of South Africa, speaking on behalf of the African Group, welcomed the progress made thus far in the Committee for developing a treaty for the international protection of broadcasting organizations. The Committee had undertaken significant work to expedite the work on the issue. The informal consultations were very productive and, therefore, it encouraged all Member States to engage constructively as the issue had been on the agenda for far too long. It hoped the treaty would be concluded at the earliest possible time.

472. The Delegation of Egypt thanked South Africa and Mexico for their proposal, but it was necessary to be given enough time to study it. As stated in relation to the issue of exceptions and limitations for libraries and archives, there was a need to consult with capitals.

473. The Delegation of Kenya welcomed the informal consultations and aligned itself with the statement made by the Delegation of South Africa on behalf of the African Group. It noted that there had been several documents submitted over the last 10 years. It therefore welcomed the proposal from South Africa and Mexico, document SCCR 23/6, which was a step toward a single document, also taking into account various developments, contributions received over the years as well as the mandate from the General Assemblies. Following up on the intervention by the distinguished Delegation of Japan, it was important to start structured discussions on the protection of broadcasting organizations based on text towards the preparation of an international treaty for the protection of broadcasting organizations.

474. The Delegation of the Islamic Republic of Iran recognized that the informal consultations provided a very flexible environment to exchange views on the three subjects mentioned in the mandate of the General Assembly's decisions in 2006 and 2007. It thanked Ms. Grazioli for her commitment and the Delegations of South Africa and Mexico for their proposal included in document SCCR 23/6. The Committee had to move forward to conclude a broadcasting treaty and stop the signal piracy that was an increasing phenomenon, while this issue had been under the consideration of this body for more than 10 years.

475. The Delegation of India took the floor to congratulate and appreciate the work of Ms. Grazioli and her balanced and informative report.

476. The Delegation of the Russian Federation welcomed all the efforts to advance on the issue of the protection of broadcasting organizations. It was very interested indeed in having such useful documents including the proposal by South Africa and Mexico for discussion and hoped rapid progress would be made. The Delegation was going to study in detail the new proposal and was interested in moving forward as quickly as possible to specific discussion on a specific document. It also endorsed the point made by the United States of America in saying that it was important to start off with a clear understanding of what scope and object of protection meant. At the previous session, there was some contradiction as to what exactly was supposed to be protected. It was necessary to start by defining and determining the concept of the object of protection and the scope of protection; that was the crucial first step.

477. The Delegation of China recognized that the SCCR had already done a great deal in seeking to prepare a draft treaty on the protection of broadcasting organizations. It thanked the Secretariat and the delegations of South Africa and Mexico. In the course of the informal consultations progress was made towards achieving concrete results. China was ready to continue to work on the issue and hoped to focus on the object and the scope of protection for a

future treaty in the hope of overcoming the differences as quickly as possible. The document from South Africa and Mexico was just received and it needed time to analyze it in detail and consult with experts in China.

478. The Delegation of Nigeria welcomed the renewed focus and constructive approach on this long-standing issue. The broadcast industry was increasingly facing new challenges, and as different platforms evolved, there was need to find new solutions. It believed the effort of South Africa and Mexico would be helpful in moving the work of the Committee forward. It welcomed the organization of the informal consultations and was looking forward to a positive and focused discussion on the new proposal.

479. The Delegation of Brazil thanked all delegations that participated in the informal meeting, its Chair and the Secretariat. It thanked also South Africa and Mexico for their proposal. Brazil would study the draft and provide its position in due time. In order to be effective on the way forward, it considered that before convening a diplomatic conference on that subject, the SCCR should have fulfilled the 2007 mandate of the General Assembly, which stated to consider convening a diplomatic conference after achieving agreement on the objectives, specific scope and object of protection of the proposed text. The new proposal could help that process.

480. The Delegation of South Africa appreciated the interest expressed by other Delegations on the proposal. It and Mexico tabled the document at that moment with the hope of having more extensive discussion the next day. Both Delegations were ready to answer and clarify any doubts of Member States.

481. The Chair asked the Delegation of the United States of America whether it wanted to ask any questions to the co-sponsors of document SCCR 23/6.

482. The Delegation of the United States of America informed the meeting that it was not in the position to pose detailed questions. In the previous intervention it only pointed out that at the time of the explanatory introduction other Member States did not have the proposal in front of them.

483. The Delegation of the Islamic Republic of Iran proposed to devote some time to allowing the proponents to explain the new articles either in the course of the day or the following day.

484. The Delegation of India appreciated the statements made by the distinguished Delegates of the United States and Iran. Obviously a draft text on broadcasting slightly differed from other treaties. It had a lot of technicalities, legal and also economic aspects. The Delegation needed some time to understand the proposal and to prepare appropriate questions at a later time.

485. The Chair, acknowledging the various interventions on the issue and thanking the proponents for the early submission, agreed that more time was needed by Member States to study the new text. The Chair agreed to devote some time at a later stage to explaining the content of the proposal and clarifying all the questions from Member States.

486. The Delegation of the European Union and its Member States wanted to be sure how the SCCR would proceed. It wanted to confirm that the later focused discussion was going to take place the following day.

487. The Chair planned to provide enough time to Member States to study the document, pose questions and receive full explanations from the proponents. Unless Member States had some concerns, that discussion could take place that afternoon.

488. The Delegation of South Africa concurred with the need to provide sufficient time to Delegations to go through the document proposed by Mexico and South Africa. It proposed to postpone that focused discussion to the next day.

489. The Delegation of the European Union expressed support for the proposal made by the South African Delegation.

490. The Delegation of India also supported the proposal of having the discussion the next day. There was a need to consult experts in the capital.

491. The Delegation of Senegal supported the proposal put forward by South Africa. It needed to take some time to study the document and come back and discuss it again the following day.

492. The Chair noted that no other delegations wished to take the floor on the issue, and informed the meeting that the item of the protection of broadcasting organizations was going to be further discussed the following morning.

#### **ITEM 6: LIMITATIONS AND EXCEPTIONS (cont.)**

493. The Chair introduced the next item and opened the discussion on the issue of visually impaired persons and the related document.

494. The Delegation of the United States of America speaking on behalf of Group B thanked the Secretariat for the hard work over the weekend in preparing the new working document on an international instrument on limitations and exceptions for persons with print disabilities. However, delegations needed time to review the working document to ensure that all comments and textual suggestions had been captured. From a preliminary review, it noted that a few of the comments and suggestions had not been captured. On the point of restructuring, in order to avoid bracketed text, perhaps specific textual suggestions could have been reflected as options. It asked the Secretariat to restructure the document to provide more clarity.

495. The Delegation of the European Union and its Member States said that the document was based on text of the Chair and incorporated the positions taken by the delegations during the previous days. There were a number of comments regarding specific language proposals; some of them were requests to go back to the consensus document that was tabled at the previous session of the SCCR and endorsed by about 40 Member States. That was the case for instance regarding the textual suggestions in the definitions of Article A and other textual suggestions as regards new wording on articles. It was important to properly reflect those suggestions. It also joined the comments made on behalf of Group B that a document presenting the textual suggestions as options would be useful. More time was needed to review whether all of its interventions had been appropriately reflected in the document.

496. The Delegation of Brazil welcomed the efforts of the Secretariat in preparing such an important document. As stated by other delegations, it had also spent time reading carefully the document and tried to catch all the changes that were made, but more time was needed to see whether all comments had been reflected. The document reflected an evolution of the previous documents with all the comments; it was indeed a good step.

497. The Delegation of South Africa took note of the need for appropriate time to study the document by other delegations, but wanted to emphasize its thanks to the Secretariat for undertaking the work in such a short period of time. It asked whether the document on libraries and archives was ready.

498. The Chair announced that, taking into account the comments made by several delegations, the Committee was going to defer to a later time the discussion on the document. The Chair suggested that the proposed changes be made available to the Secretariat by the delegations as quickly as possible.

499. The Delegation of Switzerland wanted to support the request that was made about restructuring the document. The comments could be incorporated as footnotes in order to have a document that would be easier to handle and to speed up the discussion.

500. The Chair said it was necessary to give the Secretariat enough time to work on the document including new inputs and the new proposed format.

501. The Delegation of the United States of America suggested that after the introduction of the document on libraries and archives the Chair could suspend the plenary to give delegations and regional groups some time to go through the various documents and work on their comments. It proposed to take a lengthy break up to 4 p.m. Delegations might be allowed to make statements on the record, but others could just provide their written comments to the Secretariat to amend the documents.

502. The Delegation of Ecuador stated that there was a mistake in the libraries document in attributing text proposals referring to preservation, parallel imports, cross-border usages, orphaned works and the right to withdrawn works, which were proposals made exclusively by the Delegation of Ecuador. In the document those appeared to be put together by Brazil, Uruguay and Ecuador.

503. The Delegation of Brazil supported what was previously stated by the Delegate of Ecuador. It also added that there was a proposal from Brazil, Ecuador and Uruguay regarding library lending which was not included in the document.

504. The Secretariat acknowledged the commendations expressed by Member States for its hard work over the weekend and pleaded with the Committee to not overburden the Secretariat with additional requests. Everyone was anxious to see progress on the VIP issue; the document captured almost all the comments with a few involuntary omissions. Asking to restructure the document in such a short time was a quite excessive request for two reasons; the information was already included in the document and reformatting was not going to provide any new information. Such information had been circulating in the Committee for years. Additionally the Secretariat had a lot of urgent work to deliver on the preparation of the diplomatic conference on audiovisual performances.

505. The Delegation of Brazil said that considering the time constraints and the complexities involved it would not ask for the document to be restructured. Work could be done on the existing document. It was a way to move forward, it was only necessary to carefully read and check what was put into the new document, but restructuring the document would not add new information. Probably the comments of Member States would have been the same.

506. The Delegation of the European Union and its Member States stressed the need to have a document allowing the Committee to go forward. It had few requests for revision on the substance but what was really important was to modify the structure. It was not a request to do it in half an hour, but by the end of the week so that delegations could send the requested changes.

507. The Delegation of Switzerland wanted to support the statement made by the European Union. It believed that a restructured document would allow the Committee to be much more efficient and effective. Understanding the time constraints, it was acceptable to have it by the

end of the week so that by the next Committee meeting, Member States could take a decision on the issue.

508. The Delegation of the United States of America wanted to support the suggestion from the European Union and Switzerland that on that day the Committee focus on providing corrections or updates or comments to the text so that they could be accurately reflected. As a next step, perhaps by the end of the week, once the restructuring took place, a decision could be made on the item.

509. The Delegation of Argentina believed the document represented a huge step forward in the negotiations. The next step needed to be that those delegations who did not see their comments reflected appropriately and adequately had an opportunity to remake their comments or resubmit their comments in an appropriate period of time. Regarding the restructuring of the document, it wondered whether it was the best way to move forward. As Brazil stated, the information was contained in the document in one form or another. It might need to have some additional comments included.

510. The Delegation of South Africa reminded the meeting that the agreement was to have a document reflecting all comments of Member States. However the restructuring of the document was a totally different issue. It was something new and some delegations, including South Africa, were not in support of that because it was not reflected in the agreement of the previous week.

511. The Delegation of Brazil expressed concern about wasting time in restructuring the document instead of investing it in substantive discussion. It considered that if transforming the structure was just an editorial aspect of the work, that could be done after the current session. It proposed that any text discussion that week could be based on the existing document; any other editorial changes could be perfectly well done after that session. It wanted to avoid discussing the structure instead of the substance.

512. The Delegation of Jamaica supported the comments made by Brazil and South Africa. It believed that the document was sufficiently comprehensive for substantive comments to continue. Any redraft would prevent important work on the document.

513. The Delegation of Nigeria supported the interventions of South Africa, Brazil and Jamaica. It did not see the possible achievement of such a restructuring; it was likely to lead other delegations to have the same request in the future.

514. The Delegation of Algeria thanked the Secretariat and endorsed the comments made by the African Group and other delegations to the effect that the SCCR needed to continue working on substance and not to focus on the structure. Changing the structure should not affect in any way consideration of the substance of the issues.

515. The Delegation of Switzerland believed that everyone agreed on the importance and value of working on substance. The request made by a number of delegations to restructure the document was not in any way intended to block that work on substance in the plenary. The two issues, the restructuring and the discussion of substance, could be dealt with in parallel. Friday of that week was an appropriate deadline for the restructuring.

516. The Delegation of Kenya believed the document was enough to enable the discussion of that afternoon. The issue in relation to structure could be dealt with after SCCR/23. It urged the SCCR to work on substance and then elaborate clearer ideas on the structure for a later stage.

517. The Delegation of Australia thanked the Secretariat and expressed support for the comments made by the Delegate from Kenya. Australia was very keen to proceed quickly to a



substantive discussion on the visually impaired document and it believed that the issue of structure could be dealt with during that week perhaps through a discussion of regional coordinators.

518. The Delegation of the European Union and its Member States said there was clarity at that stage. It and other delegations had highlighted the importance of restructuring, without the intention of avoiding starting discussions on substance that afternoon. That was something it was ready and willing to do. During the week a new structure could be prepared with the aim of better understanding the document and the comments reflected.

519. The Delegation of Japan expressed support for the comment made by the European Union.

520. The Chair acknowledged the great work and merit of the Secretariat. He was going to ask it to make another herculean effort, reminding delegations that those were not the only issues that the Secretariat had on its plate that week. There was another key point for discussion, the Preparatory Committee for the Diplomatic Conference. Despite the fact that the SCCR had been adding workload, the Secretariat continued to work in a timely and effective manner. The Chair suggested that the Delegation of the European Union meet with the Secretariat to discuss its concerns on the format of the document. The Chair confirmed that in the afternoon session the discussion was going to focus on the issue of persons with print disabilities and visually impaired persons.

521. The Delegation of South Africa, in response to the Chair's comment, requested that time be allocated to discuss the other document on libraries and archives as well.

522. The Chair informed the delegates that Agenda item number six on limitations and exceptions for persons with print disabilities was the subject to be discussed.

523. The Delegation of Brazil asked for an amendment regarding a statement of the Delegation about the definition of work, as the Delegation's proposal was to revert to the definition included in document SCCR/22/15 Rev.

524. The Delegation of the European Union asked the Chair if the procedure to be followed was that delegations would proceed to mention their contributions or inputs to the text, starting with the Preamble and continuing with the following articles.

525. The Chair indicated to the delegates that the procedure to be followed was to propose initially general comments and afterwards continue in order through the document. The Chair asked for comments on the Preamble.

526. The Delegation of Kenya indicated that the comments attributed to the Delegation of Kenya were made on behalf of the African Group. Regarding paragraph three of the Preamble, the Delegation requested replacement of "print disabilities" with "visually impaired".

527. The Delegation of the European Union noted that its proposals in the text should be presented as proposals from the European Union and its Member States. The Delegation requested to divide the current text into textual proposals made by the delegations on one side, and the Chair's proposed text on the other. In relation to paragraph number four of the Preamble, the Delegation requested full reflection of its comment on emphasizing the importance of copyright protection as an incentive and reward for literary and artistic creators. Regarding comment 0.3 on paragraph 13 the Delegation requested the replacement of "Appropriate Measures" with "Alternative Measures".

528. The Delegation of the United States of America with respect to the second preambular paragraph indicated there was a suggestion made by the Delegation from Switzerland similar to one made by the Delegation of the United States of America, which was to change "which limits their right to access and communication and also education and research" to "which limits their freedom to seek, receive and impart information and ideas of all kinds", in order to go directly with the language from the Declaration on Human Rights. In relation to the 17th preambular paragraph, the Delegation noted that its comment should read "taking into account the importance of increasing the number and range of accessible format works", maintaining everything after that in the text. Finally, regarding comment 0.23 on paragraph 16, the Delegation proposed to associate its language with the text used in the Audiovisual Performers Treaty with regards to the Development Agenda.

529. The Delegation of Egypt stressed the text of preambular paragraph 24 on the proposal made by the Delegations of Egypt, Kenya and the United States to reduce the clauses of the preamble from 17 to no more than 10.

530. The Delegation of Senegal endorsed the comment made by the Delegation of Egypt, and proposed to make the Preamble more coherent and consistent. In addition, the Delegation proposed to merge paragraphs 10 and 11, in the following way: "Recognizing also the need to seek, receive and impart information and ideas through any media and regardless of frontiers, as well as the fact that legislation is territorial in nature and there is uncertainty regarding the legality of activity that undermines the development and use of new technologies" and so on, up to the end of paragraph 11. Regarding paragraphs 12 and 13, the Delegation proposed to be more consistent in their wording. In particular, the Delegation proposed with regard to the bottom of paragraph 13 where it refers to "printed text" and goes on and then says "it is recognized", to refer to the fact that there may also be works that are not in a format available to such persons, not necessarily print works but also other kinds of works. Accordingly, the Delegation observed it was necessary to reformulate the language in order to ensure it encompassed not only printed works but also other works. Finally, the Delegation indicated that in paragraph 14 there was a comment wrongly assigned to Algeria.

531. The Delegation of the Russian Federation supported the comments made by the Delegations of Egypt and Senegal, as they also believed the number of paragraphs in the Preamble should be reduced, as some proposals did not have a legal basis at all.

532. The Delegation of Austria endorsed the proposal of the Delegation of Kenya, considering that indeed there were descriptions of beneficiaries throughout the Preamble that were not very consistent. The Delegation also proposed that the statement made in comment 0.01, that the term "visually impaired persons and persons with print disabilities" should be replaced by "visually impaired persons/persons with print disabilities", should be applied to all the definitions in the Preamble referring to the beneficiary persons, namely paragraphs 2, 4, 6, 7, 9, 12, 13, 14 and 17, in order to have more consistency by using just one term.

533. The Delegation of Egypt with regards to the definition of "work" included in Article A, highlighted its proposal in line with Article 2 of the Berne Convention to add a reference to scientific works.

534. The Delegation of Ecuador noted a mistake in the translation of comment A15.

535. The Delegation of the European Union and its Member States recalled its text proposals made to the definition of "work" placed in comment 02. With regards to comments made by the Delegation to the definition of "authorized entity", included in points 9, 10, 12, 16 and 19, it requested to include them in the part of the document that reflected the textual proposals. In relation to paragraph A02, the Delegation pointed out that its proposal in the definition of "work" was to replace "otherwise publicly available" with "otherwise made available to the public".

Regarding paragraph A10 the Delegation proposed to delete it. With respect to paragraph A23 the Delegation underscored that it should be further discussed, but in the meantime its request was to delete it, as well as paragraph A24 and the definition of "Member States". Finally, with regards to paragraph A26 the Delegation indicated it should be superseded by the Delegation's observations.

536. The Delegation of Kenya on behalf of the African Group observed that in paragraph A18 regarding the definition of "authorized entity", their Group had expressed their desire to have it deleted, and that they also kept their reservations regarding the fourth paragraph. The Delegation also requested that the issue of "visually impaired and print disabilities" should be reflected in the title of the document.

537. The Delegation of Senegal endorsed the proposal made by Kenya on behalf of the African Group, as in terms of development African countries did not have "authorized entities" yet, so a certain amount of flexibility was requested to be applied to the concept.

538. The Delegation of Brazil proposed to refer all references in the text regarding the "beneficiary person" to the definition included in Article B.

539. The Delegation of the United States of America endorsed the proposal made by the Delegation of Brazil, and indicated that the proposed substitution made throughout the text could contribute to harmonizing its language. Regarding comment B4, the Delegation clarified that its request was limited to the deletion of the phrase "or any other print disability", and not the text later in the paragraph.

540. The Delegation of the Russian Federation with regards to Article A and the definition of "work" proposed to stick closer to the definition included in the Berne Convention by adding a reference to scientific works.

541. The Delegation of Algeria pointed out that regarding Article A its request was to have a clarification in the treaty as to the effects of a limitation and the effects of an exception, as national legislation involves different effects pursuant to limitations or exceptions.

542. The Delegation of Egypt proposed to include the right of translation in Article C, as within Article 13 of the TRIPS Agreement it is possible to guarantee exceptions which do not have to be confined to the right of reproduction but may also apply to all exclusive rights, based on the three-step test. The Delegation stressed the importance of benefiting from the development taking place through the world in terms of culture and knowledge, by means of the right of translation.

543. The Delegation of the European Union and its Member States indicated there were a number of textual changes proposed in C4, C6, C10 and C11 that the European Union and its Member States wanted to have reflected in the textual part of the proposal, in particular, those that helped to clearly define the way in which the possible limitation or exception could be implemented via the establishment of authorized entities and their functioning. The Delegation underscored that on paragraph C06, its proposal was to delete the reference to the authorization of the rightholder, and to replace the expression "those copies" by the expression "such a copy". Regarding Article C08 the Delegation highlighted that its proposal for deleting part of that provision was conditioned on the inclusion of a new Article in order to form a coherent whole. With regards to C11, where the provision reads "The Member State/Contracting Party should limit the exceptions or limitations, etc.", the Delegation proposed to replace the word "should" by "shall", as the subsequent remainder of this Article referred to the three-step test and to existing obligations under international agreements, that could hardly be referred to as a "should". Also in C11 the Delegation proposed to replace the words "in the applicable special format" with the words "in an applicable special format". Finally, in relation to

C17, the Delegation requested to consider it, under the same logic of its previous comment applied to Article D, superseded by its more recent comments and observations.

544. The Delegation of the United States of America with regards to the comment in paragraph C07 aligned itself with the Delegation of Brazil on adding back the footnote included in the previous text. With regards to paragraph C09 the Delegation proposed it should read "Paragraph 3 is intended to state the freedom of contracting parties of the Berne Convention and the other copyright treaties to adopt other exceptions and limitations that also meet the three-step test".

545. The Delegation of the European Union and its Member States withdrew its comments on D12.

546. The Delegation of the United States of America stressed that its proposal on Article D, comment D08, was not to delete the end of the paragraph that reads "in the applicable special format cannot be otherwise obtained within a reasonable time and at a reasonable price in the country of importation". The Delegation also proposed in Article D1 to substitute "person with print disabilities" with "a beneficiary person". Regarding the Delegation's comment on paragraph 3 it should read: "is intended to state the freedom of contracting parties of the Berne Convention and other copyright treaties to adopt other limitations that also meet the three-step test".

547. The Delegation of Australia endorsed the proposal made by the Delegations of Brazil and the United States of America with regards to the use of the term "beneficiary person".

548. The Delegation of the European Union and its Member States requested to reflect in the part of the document that contains the textual changes (right-hand page), the new Article proposed by the Delegation as Article E *bis*, which was aimed to simplify the text and to mark the compliance with the three-step test.

549. The Delegation of the European Union and its Member States requested to the other delegations to further discuss Article F, particularly on the notion of importation in relation to copyright.

550. The Delegation of the United States of America, with regards to the second paragraph of Article F, indicated that its suggestion was not reflected in the comment, as it should read as follows in the third line of the second paragraph of Article F: "Member States/Contracting Parties may/should/shall authorize competent authorities to take appropriate measures to ensure that beneficiaries of the exception provided by Article C have the means to enjoy the exception where technological protection measures have been applied to a work."

551. The Delegation of the European Union and its Member States noted a possible typo on the second paragraph of Article F starting with "In the absence of voluntary measures", regarding the words "at least", which they thought should be deleted.

552. The Delegation of Egypt proposed to include in Article F a specific reference to the overcoming of technological protection measures of works that have fallen into public domain as a non-infringement of copyright.

553. The Delegation of Brazil indicated that the comment included in paragraph D07 did not pertain to it.

554. The Chair invited delegations to tackle Article G.

555. The Delegation of Switzerland endorsed the inclusion of the words “at least” in Article F, as they corresponded to something agreed in SCCR 22, and proposed their replacement by the words “in particular”, considering them more appropriate.

556. The Delegation of Algeria on behalf of the Development Agenda Group applauded the document prepared by the Secretariat and its format, and indicated it represented a development, as it showed that the course of the discussions held over substantive matters had become more mature, and welcomed continuing to working on it in the Committee in order to have a valuable document that could serve as a basis for the work towards the goal of an international instrument on limitations and exceptions for persons with print disabilities. The Delegation invited all parties to continue working together.

557. The Chair reverted to the discussions on Agenda Item No. 5 “Limitations and exceptions: libraries and archives”. The Chair pointed out the document prepared by the Secretariat on libraries and archives, which had been extended from seven topics to 11, including the four new topics proposed by different delegations, and compiled all the comments made on each of those topics. The Chair invited delegations to start making their comments with regards to Topic One: “Preservation”.

558. The Delegation of South Africa reverted to the document on Limitations and Exceptions for Visual Impaired Persons and asked about the conclusion of the document and the further steps regarding it, as the document still remained anonymous and on Friday, November 25, 2011, it had requested the adoption of the document including all the comments made by the Member States.

559. The Delegation of India aligned itself with the comment made by the Delegation of South Africa, requested the Chair to decide on the adoption of the document, and proposed to have a two-month term for sending later comments.

560. The Delegation of Ecuador endorsed the proposal made by the Delegations of South Africa and India on the adoption of the document.

561. The Delegation of the European Union and its Member States noted that for the Delegation and its Member States no extra time was required for which they expressed their disagreement with the proposal made by the Delegation of India. The Delegation indicated that in order to adopt the document it was necessary to be sure that it reflected the work and progress of the Committee, for which a slight restructuring was required, in order to have a document including all the comments made on the left-hand side, and the Chair’s text on the right-hand side.

562. The Delegation of Algeria asked the Chair for clarification with regards to the changes to be made to the document, whether it would be updated by the Secretariat compiling all the comments made by the Member States, or if it would also be restructured as proposed by the Delegation of the European Union and its Member States.

563. The Delegation of Senegal endorsed the proposal made by the Delegation of South Africa, in order to use the document as a working document for the next session of the SCCR.

564. The Delegation of Brazil aligned itself with the comments and proposals made by the Delegations of South Africa, Ecuador and Algeria on behalf of the Development Agenda Group, with regards to the adoption of the document as a working document compiling all the comments and suggestions made during the session.

565. The Delegation of Panama on behalf of the GRULAC countries indicated their non-acceptance of the proposal made by the European Union and its Member States, as it did not

correspond to what was agreed on Friday, November 25, 2011, on including the comments made to the text and afterwards approving it. The Delegation asked for clarification from the Chair on how the work would move forward if the proposal of the European Union and its Member States was accepted.

566. The Delegation of India indicated that taking into account the suggestion of the adoption of the document raised by various countries, the document should be numbered keeping its format. In addition, the Delegation insisted on its proposal of providing additional time for sending additional comments after the Delegates had discussed them with their stakeholders.

567. The Delegation of the United States of America stressed the importance of adopting the Working Document as the proposals that were made would not change any substance of the text. The Delegation also indicated that the different presentation proposals could be resolved in an informal meeting of interested groups.

568. The Chair suggested to the delegations to submit before the end of the day all the comments they had, in order for the Secretariat to include them in a Working Document for the consideration of all the delegations on the next day, and afterwards, its adoption.

569. The Delegation of the European Union and its Member States indicated it had no objection to the procedure proposed by the Chair, and proposed to extend the time given to the Secretariat for preparing and restructuring the Working Document in form and not substance, as previously proposed by the Delegation of the United States of America.

570. The Chair suggested as a working scheme that the comments made by the delegations be submitted to the Secretariat before midnight on November 28, 2011, in order for the Secretariat to present a new Working Document including them on the afternoon of November 29, 2011.

571. The Delegation of South Africa pointed out that November 29, 2011 was a day agreed to be dedicated to Broadcasting Organizations. The Delegation also noted that it was not interested in discussing any other subject, unless the issue of Broadcasting Organizations had been exhausted. The Delegation asked for clarification to the Delegation of the European Union and its Member States on the restructuring requests for the document, and suggested to the Delegation to discuss the request with the Secretariat. The Delegation invited the other delegations to facilitate their written interventions to the Secretariat in order to finalize the document and adopt it.

572. The Delegation of the United States of America welcomed the proposal made by the Delegation of South Africa, and proposed minor side discussions on the presentation of the document, in order to put forward the document for its adoption.

573. The Delegation of the European Union and its Member States aligned itself with the comments made by the Delegation of the United States of America and welcomed the proposal made by the Delegation of South Africa.

574. The Delegation of the Islamic Republic of Iran aligned itself with the comments made by the Delegations of the European Union and its Member States and the United States of America, and welcomed the proposal made by the Delegation of South Africa.

575. The Chair indicated to the delegations that the deadline for sending written interventions was midnight, on November 28, 2011. The Chair also indicated that on the afternoon of November 29, 2011, the document prepared by the Secretariat would be reviewed and adopted. Finally, the Chair moved the discussions to Agenda Item No. 5: "Limitations and exceptions: libraries and archives".

**ITEM 5: LIMITATIONS AND EXCEPTIONS (cont.)**

576. The Delegation of Egypt asked that the information to be submitted to the Secretariat not affect what had already been compiled on limitations and exceptions on libraries and archives. In addition the Delegation asked that the comments made during the session not be modified and the comments received by the Secretariat only be added.

577. The Chair indicated that the information to be submitted to the Secretariat specifically corresponded to limitations and exceptions for persons with print disabilities.

578. The Delegation of Brazil pointed out that some proposals were presented by the Delegation of Ecuador, and some others by the Delegations of Brazil, Ecuador and Uruguay, for which some topics should be reviewed. The Delegation indicated that the following topics were presented by the Delegation of Ecuador: Topic 1, Preservation; Topic 5, Parallel Importations; Topic 6, Cross-Border Uses; Topic 7, Orphan Works, Retracted and Withdrawn Works, and Works Out of Commerce, and Topic 10, Contracts. With regards to Topic 4, Library Lending, the Delegation noted that mistakenly the proposal of Brazil, Ecuador and Uruguay was assigned to the Delegation of the United States of America.

579. The Delegation of Algeria, on behalf of the Development Agenda Group, proposed that the title of the document should be on the same line of the document for persons with print disabilities, and thus it should say: "Working Document on an International Instrument on Limitations and Exceptions for Libraries and Archives", in order to allow the Delegations to respect the rule of equity. The Delegation also proposed that the numbering of the document should only reflect the comments. Finally, the Delegation proposed to have comments on one page, and proposals on another, as was done with the document for limitations and exceptions for persons with print disabilities.

580. The Delegation of the United States of America with regards to its Principles and Objectives proposal, stressed that under paragraph 27, the intention of the Delegation was to enable libraries and archives to advance in research and knowledge, as well as on the other principles described in their objectives and principles document. Regarding paragraph 83, the Delegation proposed to replace the text under the Principles and Objectives on the subject proposed by the United States of America, and add to the objective to: "enable Libraries and Archives to carry out their public service role of advancing research and knowledge and the associated principles". In relation to Topic 8, the Delegation requested to change the heading from "Liability" to "Limitations on Liability for Libraries and Archives". In paragraph 139 the Delegation requested to include the principle that "National copyright laws may recognize limitations of certain types of damages applicable to Libraries and Archives and their employees and agents that act in good faith, believing or having reasonable grounds to believe they have acted in accordance with copyright law".

581. The Delegation of the European Union and its Member States proposed to change the title of the comments compiled in the document from "Comments made to the proposed text" to just "Comments". The Delegation also noted that it would proceed to send written comments to the Secretariat with regards to the comments made by the European Union and its Member States. Finally, the Delegation asked the Chair for the deadline for presenting comments to the document

582. The Chair indicated to the Delegates that the deadline for sending written comments to the document was midnight on January 31, 2012.

583. The Delegation of Kenya endorsed the proposal made by the Delegation of Algeria on behalf of the Development Agenda Group with regards to the numbering and presentation of the

document. The Delegation also noted that the comments and proposals made to the document by Kenya were on behalf of the African Group.

584. The Delegation of Pakistan endorsed the proposal made by the Delegation of Algeria on behalf of the Development Agenda Group. With regards to the proposal made by the European Union and its Member States, the Delegation proposed to change the title of the comments in the document to “Comments on” and the corresponding topic.

585. The Delegation of Brazil indicated that the comment included in paragraph 9, page 11, was not submitted by Brazil.

586. The Delegation of Canada indicated that it would proceed to send its comments to the Secretariat, after having consultations regarding them.

587. The Delegation of Egypt proposed to extend the deadline for sending comments set by the Chair. Regarding Topic 2, the Delegation proposed to extend the limitations and exceptions not only to physical persons but to research institutes and universities. The Delegation also stressed its request on including its proposal on extending the limitations and exceptions not only to the right of reproduction but to the right of translation, based on the TRIPS Agreement.

588. The Delegation of India aligned itself with the proposal made by the Delegation of Egypt with regards to the right of translation, and explained the importance of this request due to the multilingual condition of India.

589. The Delegation of the United States of America, with regards to the request of the Delegation of Brazil to delete paragraph 83, pointed out that it should not be deleted but moved and reattributed. In addition, the Delegation indicated that it would be sending to the Secretariat the corresponding text of its proposal.

590. The Delegation of Kenya on behalf of the African Group clarified that regarding paragraph 122 the proposal of the African Group to delete the word “probably” only corresponded to paragraph 1.

591. The Delegation of the United States of America noted that the text sent to the Secretariat on Topic 8 was not reflect in the document and said it would proceed to resend the text.

592. The Delegation of Ecuador indicated it would proceed to send the text of its comment presented in paragraph 130 to the Secretariat, as it noted there were some problems with the translation of the intervention.

593. The Delegation of the United Kingdom indicated that it would proceed to send written comments to the Secretariat.

594. The Delegation of Kenya indicated that it would provide the proper language for the text included in paragraph 154, which was made with reference to Article 2.

595. The Delegation of the United States of America pointed out that its comment on this subject was mistakenly contained in paragraph 37, for which it requested to change the location, and additionally indicated that it would be sending the corresponding text version to the Secretariat.

596. The Delegation of the European Union and its Member States aligned itself with the proposals made by the Delegations of Egypt and Canada, and proposed to extend the deadline for sending comments to the text to the end of February.



597. The Delegation of the United States of America indicated that its understanding was that there was a three-month period for submitting comments to the text, until the end of the month of February.

598. The Chair indicated to the delegates that he would discuss the current deadline with the Secretariat in order to provide on November 29, 2011 a precise date for submitting comments.

599. The Delegation of South Africa asked the Chair about the conclusions on the document, and the further steps to be taken regarding it. The Delegation also noted with regards to the deadline for submitting comments that delegations needed sufficient time between the deadline and the SCCR 24 session, and the requirement of translations for the multilingual members of the African Group.

600. The Chair indicated to the Delegation of South Africa that the answer to its question would be provided on the next day, November 29, 2011.

601. The Delegation of South Africa indicated that its understanding was that it would be receiving the answer to the concern on the next day, November 29, 2011, so the Agenda Item would still be open.

602. The Chair reminded the meeting that on the previous day the item of libraries and archives had been under discussion. One of the issues raised by some delegations was about the deadline for making comments on the document on libraries and archives. It was proposed that Member States submit to the Secretariat their proposals on libraries and archives at the latest by Wednesday, February 29, 2011. The proposals should be very concise, precise and focused on the subject of libraries and archives. Some delegations had proposed that the document, compiling comments on the 11 subjects, be adopted as a working document.

603. The Delegation of the European Union and its Member States was convinced that the issue under discussion was going to be broadcasting organizations. It required time to consult with its Member States in order to answer the issue posed by the Chair. It agreed with the deadline for submitting comments. It believed it was not appropriate to adopt such document because it was not finalized.

604. The Chair clarified that the item on libraries had not been closed the previous day.

605. The Delegation of the United States of America said that it needed to look at the comments before it could consider adopting any document.

606. The Delegation of South Africa repeated that, as reflected in the tentative schedule, that day was dedicated to broadcasting organizations and in fact some members of the South African Delegation were not going to be present. It hoped the Chair could stick to the program. In addition it did not understand the concerns of the delegations opposing the adoption of the document on libraries and archives. Suggestions were made to align the document on libraries and archives to the VIP document. It reminded the Committee that at the 21st session it had agreed that all issues were going to be treated equally. The document included all the comments and inputs from Member States; it could be adopted with the view that new comments were going to be added. The document had ownership simply because everyone had contributed to it.

607. The Delegation of Algeria, speaking on behalf of the DAG, admitted that the Group was rather surprised by the fact that the Committee seemed to be paying so much attention to a question that should be absolutely self-evident, which involved a Secretariat document based on proposals made by Member States. This was a document upon which Member States had made comments which had been accurately reflected by the Secretariat.

608. The Delegation of the United States wanted to clarify that it considered the issue of libraries and archives as equally important as other issues on the agenda including the exception for the blind and visually impaired; but some of the text proposals in front of the Committee had just been shown for the first time. The document included not just comments on national experiences, but some new text proposed by a number of delegations which it did not have the ability to fully study and consider. Because of the importance of the issue full time should be given to develop the document before the SCCR adopted it as a working document. It could continue to be treated as a document prepared by the Secretariat, until all the inputs were received by the end of February, and then at the following meeting the SCCR could adopt some version of that document as the working document on that topic. The importance of the topic was shown by the fact that it was going to receive some continuing attention from the SCCR. It understood the comments of the Delegate from South Africa, but there had been a different track for the topic of exceptions for the blind and visually impaired.

609. The Delegation of the European Union and its Member States endorsed the intervention of the United States. It also said that equal treatment for different topics did not mean that the SCCR should not take into account the level of maturity of certain topics. It was a simple matter of timing. For the moment, there was no real agreement on the format or the presentation of the document. It informed delegations they had had some informal discussions offline to try to find a compromise, but it was a bit premature at that stage to take a final decision on the issue.

610. The Delegation of Angola supported what had been said by South Africa about the adoption of the document as a working document. It also recalled two principles that had guided the work of the SCCR: equal treatment of topics and equal treatment of issues, and flexibility. Member States agreed that a compilation should be produced reflecting all the inputs. The Secretariat should try to develop further language from that basis. It noted that the United States and the European Union had reaffirmed their commitment to the issue. That being so, it believed that document should be adopted as a working document with a specific number. It also stated that between now and the next session, Member States were free to contribute to improving the document. A sentence could be added in order to address the concerns of certain delegations. Flexibility was the second principle to be followed.

611. The Delegation of Nigeria agreed with the positions already expressed by South Africa and Angola. It was quite interested in seeing the Committee give equal treatment to the issues. The SCCR had done some good work and it was necessary to adopt and give a name to document incorporating that work. The Delegation asked what was the target objective to be achieved by the meeting, which it hoped to be concrete, such as the adoption of the document. In any case, it reminded delegations that Member States were given a deadline to submit further comments. It was afraid that not adopting the document could set the wrong precedent.

612. The Delegation of Senegal supported the African Group's position which was very constructive, about the equal treatment of all items on the agenda. It was fully committed to achieve concrete results. The adoption as a working document was extremely important for the Group.

613. The Delegation of Pakistan said the Committee had been working on the issue and the Secretariat had been requested to produce that document. The Committee could have named it in any way but its content remained the same. The Committee had been mandated to undertake text-based work and that was done, with really good inputs from all the countries. That showed the commitment that all Member States had to the issue of libraries and archives. That was not a stagnant document, it was a very preliminary work. It suggested not to even use the word adopt the document, because the Committee had already worked on it. As had been done with the VIP document it could be mentioned that the Committee adopted the document with all the comments that had been made and that would be made before the deadline.

614. The Delegation of the Bolivarian Republic of Venezuela endorsed the need to follow established processes because that was the only way to guarantee some certainty. It was not good having uncertainty about working documents that did not have any title. The subject was important for developing countries. It proposed to adopt the same approach used for the VIP document.

615. The Delegation of India joined the Delegations of South Africa, Angola, Nigeria, Senegal, Pakistan and Venezuela in requesting to adopt the document. The Delegate of Angola very nicely and elegantly explained the reasons for adopting the document followed by the Distinguished Delegate from Pakistan. The SCCR spent three precious days discussing all the clusters and all the oral comments had been incorporated; in addition some members had submitted written comments.

616. The Delegation of the Russian Federation pointed out that the document was discussed only during a few days, while the visually impaired issue had been on the table for at least three years. In view of the proposal to make additional comments by the specific deadline of February 29, 2011, it proposed to look at the document at the following session once it took a more definitive shape.

617. The Secretariat said both sides had very good arguments; some delegations pointed to the need to urgently advance the work. The SCCR should look at finding something in the middle, which had substance and value. The suggestion was to agree to some language that could fit in the conclusion; such as for example, draft compilation on limitations and exceptions for libraries and archives to which all comments and written inputs received by February 28, 2012 would be included with a view to it becoming a working document at the next session of the SCCR. Whatever the document was called, it was a document that reflected the status the SCCR had reached at that stage.

618. The Chair supported the Secretariat's proposal that would enable the continuation of the work of the Committee.

619. The Delegation of the European Union and its Member States had listened with interest to the proposal of the Secretariat, which appeared to be an interesting compromise. It reminded delegations that the SCCR was wasting valuable time that should have been spent on broadcasting. It then proposed to postpone the decision until Friday.

620. The Delegation of Egypt listened very carefully to the proposal made by the Secretariat and wanted to give a very brief proposal to not waste more time. The nature of the document the SCCR was examining was a compilation of all statements, proposals and comments, made by Member States during that session. In addition they had three months to add further comments and proposals. In the meanwhile it suggested that the document remain as a Committee document. After having received all the comments the document could receive a formal title and reference number and be submitted for SCCR 24.

621. The Delegation of South Africa in response to the proposal made by the Secretariat said it was not in a position to provide any feedback on that because it strongly believed it was on the right side based on what was agreed to by all Member States. So it found it difficult to accept that at the 23rd session the SCCR wanted to reverse what had been agreed to at the 21st session. It agreed with the European Union when it proposed to revert back to the issue on Friday so that SCCR could resume the discussion on broadcasting organizations.

622. The Delegation of Angola with reference to the proposal made by the Secretariat, stated it was the first time Member States had problems in adopting a document they contributed to create. There was a danger of setting a precedent that could be used in other fora and

committees. It agreed that the discussion could be postponed, but the Delegation announced it was not willing to accept not adopting the document.

623. The Delegation of the United States of America in a willingness to compromise was able to support the proposal by the Secretariat. Its understanding was that it meant to commit to have a working document on that topic by the next session. It reminded the meeting that new text was introduced and it needed to go back to consult and provide additional comments. It then suggested to move forward and to solve the issue outside of the plenary.

624. The Delegation of Ecuador proposed an alternative which perhaps better reflected the halfway position; which was to adopt the document as a provisional working document, and the conclusions should state that it would be revised and updated on the basis of inputs to be received in the future.

625. The Delegation of the Bolivarian Republic of Venezuela supported the proposal of Ecuador.

626. The Delegation of Mexico supported Ecuador's proposal; it was a very constructive one and included the spirit of the United States' proposal as well, but it was rather more formal. It also said that it was a dangerous practice to cross-reference a topic with another; it warned that the SCCR should treat every topic on its merit according to the schedule.

627. The Chair said that the delegations should not aim at being fully satisfied with the decisions on all items; the objective was to feel comfortable. There was a general direction towards which there was a need to advance.

628. The Delegation of Brazil supported what was suggested by the Delegate from Ecuador. It hoped that all the delegations could be engaged with that proposal because it was constructive and balanced.

629. The Chair, in view of the outcomes of the debate, proposed to adopt the document on libraries and archives as a provisional working document in the terms proposed by the Delegation of Ecuador.

630. The Delegation of the United States, speaking on behalf of Group B, said that the proposal made by Ecuador and echoed by a few other delegations was worth considering, but it needed more time to be considered. To avoid any further discussion, it proposed to come back to the issue at a later stage.

631. The Delegation of Algeria endorsed the proposal that the document be adopted as a provisional working document.

632. The Delegation of South Africa confirmed its suggestion to postpone the discussion on that document to a later stage.

633. The Delegation of Angola agreed to suspend the discussion on that issue.

634. The Delegation of the United States appreciated the suggestion from Ecuador and was going to look at the proposal with a positive and constructive spirit.

635. The Delegation of the European Union and its Member States supported what had been proposed by South Africa.

636. The Chair hoped the delegations could meet before the end of the week in order to solve that matter.

637. The Delegation of the Bolivarian Republic of Venezuela raised the importance of understanding how all the processes were going to be handled.

#### **ITEM 7: PROTECTION OF BROADCASTING ORGANIZATIONS (cont.)**

638. The Chair reminded delegations that a proposal by the Delegations of South Africa and Mexico on broadcasting had been submitted, and opened the floor for comments on the item of the protection of broadcasting organizations.

639. The Delegation of South Africa hoped that other Delegations had had the time to look at the proposal. It was not going to take Delegates through the proposal because it had already been done. It informed the meeting that it had very fruitful consultations with the Delegation of India, which suggested a few amendments to the text. The first was in relation to Article 2; the Delegation of India suggested that the definition of broadcast should be amended to be as follows: "Broadcast means the transmission of the signal by wire or wireless or electronic means by a broadcasting organization for reception by the public of sounds or images or images and sounds". India further suggested including in the last sentence that such transmission does not include webcasting and simulcasting. Both Mexico and South Africa agreed with that suggestion because it was their view that the matter relating to webcasting and simulcasting was going to be dealt with in a different process. The second amendment suggested by India was to delete Paragraph E of Article 2, which was acceptable. The third amendment proposed was in relation to Article 6, on the rights of broadcasting organizations; under Alternative B the Delegation of India suggested deleting the words "by any means" in Paragraph I. There was still need to study and discuss those issues.

640. The Delegation of the Russian Federation studied in detail the document and considered that having only one text was a considerable advantage and the only way to move forward on the matter. It believed that the text proposed by South Africa and Mexico could be the basis for the future work of the SCCR.

641. The Delegation of Japan reserved comments on the substantive issues and elements of the proposal of the Delegation of South Africa and Mexico for a later stage; with regard to the latest amendments, it wanted to clarify whether in the definition of the broadcast, webcasting and simulcasting were included or not.

642. The Delegation of India appreciated the efforts of the South African Delegation in discussing those issues and accepting its suggestions. The joint text of South Africa and Mexico was still open for discussion. The Indian Delegation, in reply to the query raised by the Japanese Delegation, clarified that the proposed amendment to the definition of broadcast did not include webcasting and simulcasting because it was not in the general sense of the mandate of 2007.

643. The Delegation of the European Union and its Member States had examined the text within the limited time available and identified a number of interesting approaches, although it had a few questions to raise. In that respect the discussion that had started with the question of Japan as to whether the instrument covered simulcasting and webcasting was a very crucial one. It was not clear whether the intention of the changes in the definition of broadcast was to exclude activities of simulcasters or webcasters or if it went farther and also established that when a broadcasting organization engaged in things that were considered simulcasting or webcasting those activities were not covered by the protection to be granted by the treaty. That was an important issue to understand. The Delegation suggested having a presentation Article-by-Article to avoid having a discussion that went in all directions.

644. The Delegation of Brazil informed the meeting that, since it was a new document, it could present preliminary questions and comments to the text and reserved the right to make further comments and questions on the proposal submitted by Mexico and South Africa in the following SCCR. First it welcomed the language proposed in Article 7 on limitations and exceptions; it recalled that in document SCCR/15/2 there was a proposal on limitations and exceptions that was similar, but included a broader list of limitations and exceptions that could be inserted in the proposal submitted by Mexico and South Africa. Second there were three important provisions that should be part of the international instrument on broadcasting organizations which were: general principles; protection and promotion of cultural diversity; and defense of competition. The new document was an important contribution to the discussions on the protection of broadcasting organizations which needed to be framed under the General Assembly mandate adopted in 2007. The Delegation also suggested including in the list of documents for consideration also document SCCR/15/2 Revised Draft Basic Proposal for the WIPO Treaty on the Protection of Broadcasting Organizations.

645. The Delegation of Mexico clarified that the main driver for the proposal was to find a solution to signal piracy. There was a need to grant a legal action for broadcasting organizations against people that used digital platforms to carry out webcasting or simulcasting when those were illegal conduct, especially in the case of the broadcasting of a sports event. In the case of a broadcast protected by copyright, there were international instruments, like the WCT and the WPPT, that could apply. The key point was to suit the object of protection to technological developments and to link it to the origin of the signal and to rule out the use by third parties through webcasting or simulcasting.

646. The Delegation of the United States of America mentioned that it had had a preliminary chance to read the proposal, but reserved the right to engage more deeply at a future SCCR. By way of preliminary comment, it agreed with the Article-by-Article approach, and was curious to know how the proponents understood the meaning of signal-based approach. In fact the text included a definition saying that that approach encompassed protection "against the illegal use of the broadcast"; yet the proposal provided for certain exclusive rights of broadcasting organizations. So it was interested in hearing more from the proponents about how the proposal bridged the gaps as were perceived by a number of delegations over the years between a rights-based approach and a signal-based approach for protecting broadcasting organizations. In addition under the particular approach set forth in the proposal it was curious to learn whether exclusive rights were the sole basis for protecting broadcasting organizations.

647. The Delegation of Senegal believed the proposal gave a definitive opportunity of exchanging views on the issue of the protection of broadcasting organizations. Broadcasting was a vector for the promotion of cultural diversity, so it was very important in the preamble to include a paragraph referring to the relationship between broadcasting and promotion of cultural diversity. The Delegation welcomed the inclusion of safeguard clauses in Article 1. In Article 2 on definitions, it suggested adding two important concepts: transmission and communication to the public. In fact those terms appeared in Article 6. It was necessary to further study Article 4 on beneficiaries of protection. Regarding Article 7 it emphasized that broadcasting organizations had to enjoy some kind of guarantee against the improper use of their signal prior to broadcasting, but it was important to consider limitations and exceptions. The Delegation pointed out that document SCCR/15/2 could be used as a model on that theme. On the term of protection it was tempted to refer to the Rome Convention, but further discussion was needed. On the technological measures, it believed they were an essential element for any kind of legal instrument on protection in the area of copyright and related rights.

648. The Delegation of Chile informed the meeting it needed more time to study the proposal, but it welcomed allowing progress on the subject through a pragmatic approach aimed at overcoming the problem of the illegal use of signals. Referring to the proposal itself, it had two preliminary comments. First, on Article 1, on the relation to other conventions and treaties, it

thought there should be a certain amount of consistency with previous treaties; and on Article 7, limitations and exceptions, it pointed out that it was necessary to include such a provision.

649. The Delegation of Canada welcomed the fact that broadcasting organizations continued to be an item on the SCCR agenda. It reserved the right for further comments during the text-based analysis but it reminded delegations that Canada had submitted a proposal on the draft broadcasting treaty which included a opt-out for the retransmission for the signals in the country where they were received. The Delegation also echoed the curiosity of the United States of America on the understanding of the signal-based approach and shared the view that some more work was necessary on the definitions related to rebroadcast and transmission.

650. The Delegation of Japan as a preliminary comment pointed out that in Article 6, both Alternatives A and B included the exclusive right of the communication or transmission of the broadcast signals to the public; however, those rights were not given to the other copyright and related rightsholders in other treaties such as the WPPT. Japan thought it was necessary to have careful consideration to giving those exclusive rights to broadcasting organizations.

651. The Delegation of South Africa thanked all the delegations expressing support for the joint proposal. It took note of all the comments and was going to take them into consideration. It was also ready to engage in bilateral discussion and to receive further comments in written form. It agreed there were some elements missing, but that was partly due to the fact that the proponents wanted to submit a very short and handy proposal focusing only on the more crucial issues. Once agreement was reached on those essential points, other elements could be discussed. For instance, originally it did not want to present the article on TPMs until the informal consultations took place. The Delegation believed the mandate of the General Assembly was quite clear that the protection was for traditional broadcasting organizations. On webcasting a lot of work had to be done to understand the implications. With regard to the issue of the signal, it believed the proposal was clear, in fact it was clarified that the object of protection was the signal. Regarding the question of the exclusivity of rights, it pointed out that it had been a debated issue, including in the informal consultations; the current proposal included language that did not express a decision about exclusivity. In any case those rights were broadcast rights and not content rights.

652. The Delegation of Mexico, following on from the intervention of the Delegation of South Africa, repeated that the two terms, broadcasting and signal, should be adjusted to suit new technologies or to fit in with new technologies. The pending issue that remained was webcasting and simulcasting.

### **Statements of Non-Governmental Organizations**

653. The Chair gave the floor to Non-Governmental Organizations.

654. The representative of Public Knowledge was concerned that the text prepared by South Africa and Mexico contained language that could grant copyright and related rights to broadcasters. Preambular language was not enough to ensure balance when substantive language moved in another direction. Article 6 granted a bundle of rights to broadcasters, such as fixation, that were unnecessary for a signal-based approach. New related rights could interfere with the rights of copyright holders.

655. The representative of the European Broadcasting Union (EBU) stated that the submission of the proposal of South Africa and Mexico marked a milestone in the SCCR discussions; it was a decisive step towards adoption of a treaty. The Committee had entered into the stage of technical discussions among experts on the treaty text and broadcasters were happy to assist in the process. The representative wanted to stress it was essential to not focus on technology

but to keep in mind that broadcasters were protected for the fact they delivered program services to the public on whatever platform and via whatever technology and for whatever device the public may wish to receive the program service. The program service required right clearance, editing, non-interrupted delivery 24 hours per day and, of course, the content changed every day, almost every hour. All those activities required substantial responsibility as outlined by several delegations but also financial and organizational investments which presented a huge boost for the creative economy as a whole. Public service broadcasters in Europe invested more than 10 billion Euros per year into original radio and television programming. Therefore it was in everyone's benefit to not put those investments in the creative economy in jeopardy by allowing for loopholes in the protection of broadcasters as indicated by many delegations. If the Internet had existed at the time of the Rome Convention in 1961, the representative was confident that the definition of broadcasting would have been more technologically neutral. EBU hoped the SCCR would consider the treaty text on the table, which provided a very good basis for achieving the desired result.

656. The representative of the Computer and Communication Industry Association (CCIA) thought there was a need to have an electrical engineer to explain that the signaling used to transmit programs in any medium does not exist upon fixation. The SCCR should not protect the fixation of something that no longer exists for 20 years. Second, the representative noted that around the world the spectrum that had been used for decades for broadcasting was being reallocated for technologies like WIMAX which was a form of WiFi which allowed coverage of wider areas by using phones, 4G phones and the like. Ironically the definition of broadcasting in the Rome Convention was going to increasingly apply to anyone who transmitted programs over wireless technologies using the Internet. CCIA doubted that was the goal of the Member States. There was a danger to have a treaty that covered an increasingly broad number of beneficiaries doing something physically impossible in fixing signals and doing things with fixed signals. And yet if the SCCR tried to exclude the Internet via other parts of the instrument, it was going to cover an increasingly shrinking amount of the activities of beneficiaries that were not actually protected in the first place.

657. The representative of Association of Commercial Television in Europe (ACT) believed that the informal consultations served an extremely useful purpose in enabling technical discussions which were necessary to take place in a congenial setting. Clearly there were a lot of technical issues which needed further discussion and ACT was very happy to hold itself available to answer any questions that arose.

658. The representative of the International Chambers of Commerce (ICC) believed that the scope of the new proposed text gave sufficient protection to broadcasting organizations. It also agreed that while the document did not cover connections or webcasting and simulcasting it did cover the exploitation of signals from any platform using any medium. That was not an obstacle in respect of the rights of other copyright holders. It did not harm any public interests under the constitutional rights of the countries represented.

659. The Delegation of Ecuador looked at the text and said it needed a lot more time to study it properly. At the outset it wanted to ask why if on the one hand the proposal was supposed to protect only the signal there was an exclusive right provided to authorize the indirect reproduction of the fixation of the signal. It did not believe the signal could continue to exist once it was fixed. Once the signal had been captured the only thing remaining was the transmitted contents.

660. The representative of the International Federation of Journalists (IFJ) recognized the pressure to combat piracy of broadcaster's signals. IFJ was in favor of the full archiving in public libraries allowing access to all including the visually impaired. In the near future the formats for the delivery of textual work were going to be rigorously structured enabling visual display, Braille output, spoken output and more. It could be expected to see automatic



translation between languages as well as useful automatic summaries and versions in simplified language. IFJ supported the requests for a more specific definition of the beneficiaries. Libraries were under powerful political pressure to become digital institutions, which meant becoming secondary broadcasters and publishers and in some countries there was pressure for schools to be made for-profit-making institutions. Journalists were generally strongly in favor of the existing exception allowing others to use extracts of their works regarding public affairs with credit and IFJ preferred that Member States implement that in any broadcasting treaty. In general the IFJ concluded that the digital world was a single market that required innovative licensing schemes and WIPO in the very near future was going to have a role to play to contribute to economic development while safeguarding the public interest and ensuring that such schemes rewarded the actual creators who do the creative work. In practical terms, if any new exceptions allowing communication to the public are enacted they should be accompanied by rights of remuneration for performers.

661. The representative of the Coalition for Access to Culture wanted to express support for the document presented by South Africa and Mexico.

662. The representative of the Centre for Internet and Society (CIS) associated CIS with the statements made by Public Knowledge and CCIA. Broadcasters invested in infrastructure and in licensing copyright works. The first investment was protected by broadcast rights and the latter investment was protected by copyright law. Broadcasters already had right of enforcement insofar as the license was concerned. There was no need for additional protection with regard to that. The investments made in infrastructure in traditional broadcast and in IP-based transmission were very different even if it was the same traditional broadcasters engaging in both. Given that the investment was the basis for protection of broadcasters the rationale was not applicable to all platforms. Providing rights to large broadcasters for their online transmissions while excluding small webcasters would create a hierarchy without any basis in either principle or existing law. CIS also supported the amendments suggested by the Indian Delegation, the questions put forward by the United States Delegation, and the Brazilian Delegation's statement on the need to ensure cultural diversity and competition.

663. The representative of Electronic Information for Libraries (eIFL.net), also on behalf of the International Federation of Library Associations and Institutions (IFLA) continued to believe that there was no compelling public policy reason for a new international instrument on the protection of broadcasting organizations because piracy of broadcast signals was already adequately dealt with under existing laws and treaties. Any new layer of rights that affected access to content was of concern to librarians because it imposed an additional barrier to access to knowledge, particularly content in the public domain. If however further work was to be done on the proposed treaty it was essential that signal protection should apply to the first broadcast of a work only and not to rebroadcasts of the same work. Otherwise broadcasting organizations could have perpetual protection of work by simply rebroadcasting it. Libraries had practical experience of that problem. For example, a major library in Europe wanted to publish a sound recording from its archive that was originally broadcast in the 1950s. The recording was taken from a rebroadcast in the 1980s. Although the performer's rights had expired and the authors had waived their fees, the library had to pay the broadcasting organization approximately 10,000 US Dollars to use the recording. That was a significant barrier to reuse of content. The representative took note of Article 3 of document SCCR/23/6 stating that the object of protection should not include mere retransmissions.

664. The representative of the Copyright Research Information Centre (CRIC) reminded the meeting that the treaty was an international minimum standard and the new proposal went just a little above that standard. In the previous 15 years digital technology and the Internet had developed enormously. Broadcasters were suffering from numerous piracies. To protect broadcasters and to secure the environment of social communication there was an urgent need to update the protection of broadcasting organizations to fight against piracy on the Internet.

The minimum legal protection included the right of making available broadcast signals whether fixed or not and protection for broadcast signals. Broadcasting systems were changing from analog to digital in many countries; at that stage CRIC urged the SCCR to update the protection of traditional broadcasting according to the 2007 General Assembly mandate.

665. The representative of Knowledge Ecology International (KEI) reiterated that by granting rights to broadcasting organizations the rights of copyright holders were undermined. The primary concern was to extend the protection beyond the 1961 Rome Convention. In its most aggressive formulation in terms of rights of broadcasting entities the treaty provided up to 20 years or even perpetual exclusive rights in content the broadcaster did not create and for which it did not own the copyright. Among the advocates of that treaty there were a number of companies aggregating copyright content into channels such as cable, satellite, television and radio. And for many countries that would have resulted in a transfer of income from local copyright owners to media conglomerates such as Disney, Time Warner, Viacom and NewsCorp. KEI noted that disagreements still remained on the objective, scope and object of protection of the proposed broadcast treaty. The broadcasting entities wanted a treaty that provided intellectual property rights; that was the wrong paradigm for the Internet and unnecessary for any platform where copyright and theft of service laws provided balances regarding user rights and adequate remedies against unauthorized uses.

666. The representative of the Canadian Library Alliance (CLA) shared the concern that there was little reason for an international instrument on the protection of broadcasting organizations because the piracy of broadcast signals was already dealt with under existing laws and could be enforced. The problem was the layering of rights that the draft treaty implied for the content. It was a concern for libraries because it had a potential to pose a barrier. CLA was very pleased to see that limitations and exceptions were addressed in the proposal from the Delegations of Mexico and South Africa.

667. The representative of the National Association of Commercial Broadcasters in Japan (NAB JAPAN) reminded the meeting that since 1999 a number of proposals had been made to the SCCR and document SCCR/15/2 Rev reflected most of them and therefore could serve as a good basis for the single text which the Committee considered to be the best way to balanced discussions. Work should start on developing a single text, after having achieved agreement on the objective, scope and object of protection with respect to the protection of broadcasting and cablecasting organizations in the traditional sense in accordance with the 2007 mandate of the General Assembly.

668. The representative of the Asia-Pacific Broadcasting Union (ABU) said that piracy in the Asia-Pacific was getting worse. The latest survey conducted by the Cable and Satellite Broadcast Association of Asia showed that the total cost of broadcast piracy had reached 2.2 billion U.S. Dollars during the period of 2010-2011. The data singled out India as the biggest loser in the Asia-Pacific region with a total accumulated loss of 1.4 billion U.S. Dollars, which represented 64 per cent of the total cost of the piracy in the Asia-Pacific region. Financial losses arising from piracy were not limited to broadcasters, but governments also suffered heavily in terms of lost tax revenues. In the same survey conducted by Price Waterhouse Coopers five countries incurred a total loss in tax revenue of 241 million U.S. Dollars for 2010 and 2011. The figure did not even cover the tax losses of India which had one of the biggest piracy rates in the region. Piracy occurred during unauthorized hacking of rebroadcast signals, and mostly involved use of illegal decoders, unauthorized use of smart cards, and unauthorized use of a broadcast signal.

669. The representative of the Motion Picture Association (MPA) was supportive of a balanced treaty for the protection of broadcast organizations. MPA, like other NGOs, was concerned by possible implications for the protection of the underlying works licensed to broadcasters.

670. The representative of the North American Broadcasters Association (NABA) believed the proposal conformed with the General Assembly mandate for a signal-based approach. While some maintained that that approach excluded that any rights be afforded to broadcasters, others including the Governments that had submitted proposals interpreted that phrase as implying the protection of the broadcast signal and not the content. The deletion in Article 6(b)(i) of the words "by any means", proposed by India, would deprive the treaty of much utility. The Internet was the major source of piracy.

671. The representative of the Association of Commercial Television in Europe (ACT) referred to a 2010 report of the magazine "The Economist" which revealed that piracy was the mischief for television broadcasters and stated "Television piracy gets less attention than film or music piracy but it is no less widespread. It is likely that every stream of a copied show represents a lost viewer on television." Piracy was a direct threat and as the representatives of Knowledge Ecology International and Public Knowledge had stressed the reuse of broadcasts was a matter for the owners of the various underlying rights and content to deal with. However if the copyright owner had granted an exclusive license at a fair price to the broadcaster the owner would not have a strong incentive to bring an infringement action on his own account and could be disinclined to move speedily to join an action by the broadcaster. The broadcaster's own right was a more effective instrument. The Rome Convention provided for a right of fixation which in the new digital era was an important element in the fight against free-riders. If the right of fixation was absent from the catalog of rights, free-riders would not be prevented from claiming that their transmission was not based on the original broadcast, but on a fixation.

672. The Delegation of China referred to Article 6 of the South African-Mexican proposal on the right of transmission for broadcasting organizations. Article 15 of the WPPT and the performance right related only to the right to obtain remuneration for commercial transmissions. In accordance with Article 15, Member States had the possibility to make reservations. The Government of China when it acceded to the WPPT did make a reservation in that respect. It therefore asked whether under the South African-Mexican proposal reservations would be permitted. It also stressed the limited time that had been available to the Delegation to study the proposal. Document SCCR 15/2 was a document of a different nature than the newly submitted proposal so some time was needed to consult with capital experts. It reserved its right to make comments at a later stage.

673. The Delegation of Jamaica thanked the Delegation of South Africa and Mexico for the submitted proposal and reserved its right to make further comments.

674. The Delegation of South Africa suggested on the basis of the statements made to conduct a focused, article-by-article discussion.

675. The Delegation of Senegal noted that broadcasting was an important activity essential to humankind as a whole which remained a very delicate area and which required regulations. It suggested looking into definitions to add the concept of "responsibility" or "liability", meaning the legal entity that takes the initiative and responsibility for packaging and assembling. Such concepts would contribute to secure the position of authors, performers, producers and broadcasting organizations

676. The Chair stated that he opened the discussion on Document SCCR 23/6 regarding the proposal presented by South Africa and Mexico on broadcasting. He opened the floor on the Preamble.

677. The Delegation of Senegal suggested adding a paragraph in the Preamble on the relationship or the link between broadcasting and expressions of cultural diversity. Broadcasting was in itself a vector and a truly essential vector in promoting the diversity of cultural expressions.

678. The Delegation of Egypt stated that after the reference to contracting parties, a paragraph referring to the Development Agenda was to be discussed at a later stage to ensure that the right balance between the interests of broadcasting organizations on the one hand and the interests of the public on the other would be struck. It also expressed support for the proposal of Senegal to refer to expressions of cultural diversity.

679. The Chair opened the floor on Article 1.

680. The Delegation of the European Union and its Member States requested the Delegations of South Africa and Mexico to provide clarification on the relation under the proposal of the proposed treaty with the Rome Convention as Article 1, Paragraph 1 contained a rather broad reference to international, regional or bilateral treaties, but no specific reference to the Rome Convention. The proposed treaty ought to be considered as a special agreement under Article 22 of Rome Convention.

681. The Delegation of South Africa thanked the delegations that had provided comments on the Preamble and invited delegations to provide written language relating to the comments made. In relation to Article 1, statements had been made at the informal consultations that the treaty had to be considered as a stand-alone treaty and not in any way part of any other treaty. The treaty would have to be a stand-alone treaty open to all Member States to allow other Member States to join and be signatory to it.

682. The Delegation of the United States of America noted with approval the appropriately broad non-derogation clause set forth in Article 1, Paragraph 1. It appeared to go beyond other copyright and related rights treaties to encompass all other international, regional and bilateral treaties. That kind of broad non-derogation principle that paid due respect to obligations under other international treaties was endorsed.

683. The Delegation of South Africa confirmed that the intention was that the new treaty would in no way prejudice existing treaties or superimpose on them. That was contained in the wording "shall not prejudice any rights or obligations under any treaty".

684. The Delegation of Egypt considered that Paragraph 3 was sufficient to express the stated concern.

685. The Chair opened the floor for comments on Article 2.

686. The Delegation of Canada requested clarification on the relationship of Article 3 Paragraph 2 on "the object of protection granted under the provisions shall not include mere retransmission", with the particular paragraph relating to the definition of retransmission in Article 2(e). The exclusion of mere retransmission of the object of protection within the definition of retransmission created some uncertainty about the intent of retransmission of a broadcast by the original broadcasting organization since the definition was organized throughout by the entity instead of around the activity. The terms by any other person in Article 2(e) could be interpreted to mean that the retransmission by the original broadcaster would be covered meaning that broadcasting organizations would enjoy the right to authorize any transmission of their broadcast signals via Article 6 alternative A(ii) or 8 for those very retransmissions. That would not reflect the opt-out option which Canada had presented in its proposal.

687. The Delegation of Switzerland thanked the Delegations of South Africa and Mexico for a very useful basis for taking the work forward. It reserved its right to provide additional comments at a later stage, while on Article 2, it asked why the text did not contain a definition of the term "pre-broadcast".

688. The Delegation of China stated that regarding Article 2, the Chinese translation did not provide any definition of the term of broadcasting as the Chinese translation of "broadcast" was "broadcast program." The modification had to be made to the Chinese version.

689. The Delegation of the European Union and its Member States stated that the definitions provided under the proposal required careful analysis. It had been said in the Committee that neither webcasting nor simulcasting were covered by the proposal of the delegations of Mexico and South Africa. It asked whether the intention under the proposal was not to give any protection to any transmissions over computer networks by broadcasters and cablecasters. It also seconded the Delegation of Canada on the question concerning the meaning of Article 3, Paragraph 2, and the relation between this article and the definition of transmission. Support was also expressed with the statements made by the Delegations of Senegal and Canada on the need for additional definitions such as "transmission" and "communication to the public".

690. The Delegation of South Africa stated that there was still a need to reach agreement on what constituted a retransmission so text proposals would be welcomed but the understanding was that it referred to a simultaneous or delayed transmission. The proposal had attempted to focus on the areas which had been discussed during the informal consultations but due note had been taken about the definitions that were missing. In relation to webcasting and simulcasting the intention was to exclude them in accordance with the mandate of the 2007 WIPO General Assembly while the protection would have to be granted to the broadcasting signal on all platforms of exploitation by broadcasting organizations. Text proposals would be welcomed.

691. The Delegation of Mexico stated that it would welcome proposals in relation to the definition of the term broadcasting notably with a view to make a clear distinction between what would fall under the scope of protection and what would not. All types of platforms that the broadcasting organizations were using from the radio, electrical, cable or satellite aspects and any other media would require careful analysis. The intention was not to provide protection to third parties using those signals for mere retransmission as reflected in point two of Article 3.

692. The Delegation of India stated that the definition of retransmission had been deleted by the Delegation of South Africa after discussion with the Indian delegation. Two additional definitions would be proposed after consultation with the South African delegation in relation to the pre-broadcast signal and the term "program."

693. The Chair opened the floor on Article 3.

694. The Delegation of India provided a reply to the query put forward by the Delegation of Canada with regard to Article 3, paragraph 2, referring to mere retransmission. The object of protection granted and the provisions of the treaty would not include mere retransmission, as the technicalities of mere retransmission were specific and had to be understood. When a broadcaster uplinked its signal to a satellite and the same signal was downlinked, it had to be taken through the cable or integrated receiver decoders. Mere retransmission was not covered so that the cable operator could not claim he was transmitting in the same way as the broadcaster and should be given the same rights. Mere retransmissions were not part of broadcasting.

695. The Delegation of the United States of America noted with appreciation Article 3 which drew a clear distinction between the carrier of the signal and the underlying content. The intention of that article was approved because it would safeguard not only copyrighted works but also works in the public domain. The Delegation was committed to further exploration of possible approaches to a treaty for broadcasting organizations that could meaningfully address

signal piracy and update the Rome Convention while safeguarding the public domain and avoiding undue complexity or burden in the international copyright system.

696. The Delegation of the European Union and its Member States asked a technical question in relation to Article 4 on whether there was a need to refer in the last item of paragraph 2 to public – reception of the public or subscribers – in this article since definitions already dealt with this issue as the signal was a signal for the reception of the public.

697. The Delegation of South Africa proposed to delete part of the sentence that read "reception by the public or subscribers" so the new sentence could read "The point of origin of the broadcast signal in an uninterrupted chain of communication intended for direct reception by the public is situated in another contracting party."

698. The Delegation of Canada highlighted the fact that in its proposal both the headquarters and the point of origin were referred to, as the words were "and" rather than "or"; they did not have to be from the same country but both had to be present as conditions.

699. The Delegation of the United States of America asked two questions in relation to Article 4, which provided that a broadcasting organization that had legal personality in a contracting party would be covered, even though it might not meet Article 4(2)(ii). Did that mean a broadcasting organization that had legal personality in the contracting state or contracting party but did not meet 4(2)(ii) would be covered? A second question was that if the general intent was to protect pre-broadcast signals against signal theft it was not sure that the wording of Article 4(2)(ii) achieved that objective as it implied that the point of origin of the broadcast signal was intended for direct reception by the public which might not be the case for a pre-broadcast signal being transmitted from one entity to another.

700. The Delegation of the Islamic Republic of Iran requested to keep the wording "or" between section (i) and section (ii), Paragraph 2 of Article 4.

701. The Delegation of South Africa answered the query put forward by the Delegation of the United States of America on Article 4. Under the proposal, broadcasting organizations would be protected when they were nationals of other contracting parties. Paragraph 2 defined who was to be considered a national, which would require having headquarters at the point of origin of the broadcast signal. In terms of pre-broadcast signals, discussions had never really seen pre-broadcast as being part of the broadcast signal. It had been acknowledged that if there was an interception of the pre-broadcast signal, it required some form of protection which the proposal attempted to provide under the rights of the broadcasting organizations by indicating that they would enjoy the right to authorize the use of the pre-broadcast signal. It would be a matter of domestic law of the contracting party to determine the conditions under which the right would be exercised. The pre-broadcast signal was not seen as being part of the broadcast signal itself but required some protection as the illicit interception between broadcasting organizations could result in the same harm as if the interception of the signal was between the broadcaster and the public.

702. The Delegation of the United States of America stated that under the current wording of Article 4, a broadcasting organization that had legal personality in a contracting party, but did not meet the requirements of 4(2), would not be a beneficiary. A broadcasting organization that sent its pre-broadcast signal under 4(2)(ii) which would not be intended for direct reception of the public would also not be covered as a beneficiary.

703. The Delegation of Egypt requested some clarification with reference to alternative A and considered that Articles 1 and 8 were contradictory.

704. The Delegation of Peru asked some preliminary questions in relation to Article 6. The provision stated that broadcasting organizations would enjoy the right to authorize in both alternatives A and B and then provided for the whole set of sub-items. Was the intention of the authors of the proposal only to grant the right to authorize to broadcasting organizations or to grant them the right to prevent some kinds of signals from being transmitted?

705. The Delegation of South Africa provided clarification of the right to authorize and stated that if a broadcasting organization did not authorize, this would to a certain extent have an implication on preventing as well. As regards Article 6, two alternatives had been provided, one was alternative A which looked at elements such as fixation as provided under document SCCR 15/2 and the other was alternative B which provided for a more focused approach around the signal without referring to what occurred after the signal had been broadcast.

706. The Delegation of Mexico stated that under Article 6, alternative A provided a whole list of different rights which member states would have to review and decide whether they should be provided under exclusive rights, right to remuneration or right to authorize. The relationship with the WPPT, particularly in relation with the right of communication to the public and Article 8, the transmission by any means, would have to be carefully analyzed.

707. The Delegation of India recalled the informal consultation held on November 26, 2011, during which many Member States had put forward different views. Many countries had said that exclusive rights were not acceptable. As a consequence, the delegation of South Africa had chosen to find a middle ground between countries seeking exclusive rights and other countries which had referred to a right to prohibit. Article 6 provided only a right to authorize. The Indian Delegation had expressed its interest in alternative B although it had some reservations and some technical suggestions. In alternative B(1)(i), it was proposed that the word "transmission" be replaced with "rebroadcast" to become "rebroadcast of their broadcast signal." The South African Delegation was also requested to delete the expression "by any means", while it remained open to further discussions with the Delegations of South Africa and Mexico.

708. The Delegation of the European Union and its Member States sought clarification on the difference between the rights that were listed in Article 6 alternative A such as communication of the broadcast signals to the public, and transmission of the broadcast signal. With respect to Paragraph 2 which provided flexibility to contracting parties the issue was why such flexibility had been provided for the rights of performance, public performance and the use of signal and not for the remaining rights. It was also not clear whether Paragraph 2 only referred to alternative B or also to alternative A.

709. The Delegation of the United States of America expressed appreciation for the efforts shown by the Delegations of South Africa and Mexico to find a middle path recognizing that many delegations had been uncomfortable with the formulation of exclusive rights. It looked forward to further analysis of the different options. It also expressed support for the question put forward by the Delegation of the European Union and its Member States on the reasons why alternative B permitted a more open relationship in relation to the second and third rights but not the first.

710. The Delegation of South Africa stated that alternative B2 constituted an attempt to find a middle ground as there was some concern in terms of protecting broadcasting organizations for their performance in public or the use of the pre-broadcast signal. The possibility of providing reservations was also mentioned as a way to find some middle ground.

711. The Chair opened the floor on Article 7.

712. The Delegation of Switzerland referred to Article 7(2) and stated that the wording might suggest that the three-step test was not applicable to Paragraph 1 of the same Article. It requested confirmation that this was not the intent of the provision.

713. The Delegation of South Africa referred to the report of the regional seminar on the protection of broadcasting organizations for African countries held in 2010 in Abuja, Nigeria, which had evidenced the need to provide for a broad framework for limitations and exceptions to deal with public interest issues. Article 7(2) allowed for limitations and exceptions while allowing contracting parties to add additional limitations and exceptions subject to compliance with the three-step test.

714. The Delegation of Japan asked for the same clarification as the one sought by the Delegation of Switzerland.

715. The Delegation of the United States of America asked why an express exception for ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts had not been included in the proposal.

716. The Delegation of Mexico stated that the list of limitations and exceptions which was provided in the text had been taken from the Rome Convention. However as regards ephemeral fixation it considered that those types of limitations were not a real limitation in view of the use and incorporation of the signal. It was a limitation in favor of the organizations when they had included other types of materials within the signal.

717. The Delegation of Ecuador expressed support for Article 7 of the proposal as it was and preferred a clear-cut list of exceptions which would be allowed and not be subject to the interpretive difficulties of the three-step test. It was also important in view of the ongoing discussions that people with disabilities be given access to content. The new instrument had to consider compulsory provisions, particularly in relation to exceptions for people with disabilities or other interest groups such as libraries.

718. The Delegation of India recalled that at the informal session held on November 26, 2011, it had only put forward a list of minimum limitations and exceptions because the proposed treaty for the protection of broadcasting organizations had to be signal-based. The minimum exceptions had been listed and included in the proposal and it could support Article 7.

719. The Delegation of South Africa stated that the treaty's focus was the signal and explained why the list of exceptions and limitations which was provided was shorter than that of the Rome Convention. It had no objection to adding additional exceptions and limitations in so far as they were compliant with the three-step test.

720. The Chair opened the floor on Article 8.

721. The Delegation of Peru stated that its authorities would have to look at the term of protection but noted that the period would need to be computed from the end of the year in which the broadcast signal was broadcast. The criteria would not apply the same way in all national legislations as different criteria applied, as in Peru where the period of protection was computed from the first of January of the year following the broadcast. It asked the reasons why the period was computed according to the criteria in the proposal and whether this choice was the result of consultations.

722. The Delegation of Mexico explained that the criteria chosen for the term of protection was similar to what could be found in the existing treaties, particularly in the WPPT, in Article 17 on the term of protection, which provided 50 years in favor of the phonogram producer. The



reference to the end of the year in which the fixation had been made did not prevent the possibility of providing other criteria as had been suggested by the Delegation of Peru.

723. The Delegation of India noted that once the signal had been sent out for public reception, the life of the signal ended. Therefore the issue of providing a term of protection for the signal was doubtful. The term of protection was however linked with Article 6, and Article 8 was inextricably linked with Article 6. A few additional issues relating to Article 6 would need further discussions with the proposal proponents.

724. The Delegation of China stated that its question was linked to the one raised by the Delegation of India as it thought the calculation of the term of protection required some understanding about the signal and was it to be understood in relation to the term of protection of a live signal or whether the term of protection applied to already fixed signals? It requested clarification on the method of calculation as the 20-year term of protection seemed to refer to fixed signals.

725. The Delegation of South Africa replied that the term of protection very much depended on the alternative selected under Article 6. Under alternative A which captured the fixation of the broadcast signal the term of protection would need to be specifically stated. Under alternative B which focused more on signal transmission the term of protection would not necessarily be the same. The issue would need to be addressed more from a legal enforcement perspective and the period for which the Committee would want to grant protection to the broadcaster to be able to enforce his rights.

726. The Delegation of Senegal shared its concern in relation to the term of protection as it was only the end of the year in which the broadcasting signal was transmitted which was taken into account and not the legal status of the signal as of the transmission date. It could be useful that the period of protection be counted as of the point in time when the signal was broadcast.

727. The Chair opened the floor on Article 9.

728. The Delegation of Switzerland noted with approval Article 9(2) which aimed at avoiding any negative impact on permitted uses. This was conditioned by an absence of voluntary measures which could be understood as technological measures having precedence over limitations.

729. The Delegation of South Africa stated that in some cases rightsholders needed to provide content in ways that did not require overcoming technological protection measures. Such an example was provided with DVD or Blu-Ray providing a note that consumers can access certain websites to acquire content without having to break the protection measures existing on the DVD or Blu-Ray. The intention provided under paragraph 2 was that only in cases where the rightsholder had failed to allow voluntary access to content could you exert your right through the onerous way of breaking the technological protection measure to allow permitted uses.

730. The Delegation of the European Union and its Member States referred to Article 2 and Article 9, paragraph 2, relating to the principle that the protection did not extend to the underlying content. Why did that paragraph contain a reference to the protection of the work being broadcast and not only to the broadcast itself?

731. The Delegation of India stated that encryption of channels was a technological protection measure and such technological measures were used for uplinking and downlinking of the signals. When the viewer was viewing, the technological protection measures did not come into the picture. The example of time-shifting was given, and there were several case law decisions in the United States of America and India which allowed time-shifting without making it an

infringement or act of piracy. Technological protection measures should not come into the picture once the signal was made available for public reception.

732. The Delegation of the European Union and its Member States recalled that its question referred to Article 9, on the relation between technological protection measures and the application of limitations and exceptions. Article 3, paragraph 1 set a principle that the protection granted under this treaty did not extend to the underlying content. It asked why there is a reference in Article 9, Paragraph 2, to providing protection for the work being broadcast.

733. The Delegation of South Africa confirmed that the proposal sought to protect the signal. However, certain national laws would provide that protection is not granted to the broadcast signal and protection is granted only because of the program content being carried on the said broadcast. Some legislation would not grant protection because the work would be in the public domain and this would be the case because of the content carried by the signal not the signal itself. It was always about the program content that was carried on that broadcast signal.

734. The Delegation of the Islamic Republic of Iran indicated that the concern raised by the Delegation of the European Union and its Member States applied also to some extent to the issue of limitations and exceptions. However Paragraph 2 of Article 1 states "Protection granted under this treaty shall leave intact and shall in no way affect the protection of copyright or related rights in subject matter incorporated in broadcast signals."

735. The Delegation of Ecuador requested the Delegation of South Africa to further elaborate on the explanation just provided regarding the scope of Paragraph 2 of Article 9. It was not clear whether member states would be allowed under the proposal to circumvent technological protection measures.

736. The Delegation of South Africa clarified that Article 9(1) provided that contracting parties were obliged to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures used by broadcasting organizations. However, technological protection measures so implemented could prevent users from accessing content which under copyright law they would be entitled to access. Therefore Paragraph 2 provided that when a rightsholder failed as a first step to voluntarily provide access which would be allowed under for example an exception or limitation, then users would be entitled to turn to the state to remedy that situation. The state should first provide the rightsholder the opportunity to address the situation and if it failed the contracting party itself would look at ways to ensure that the legal protections given in paragraph 1 did not adversely impact upon those rights or limitations and exceptions for permitted uses.

737. The Chair opened the floor on Articles 10 and 11 and thanked the Delegations of South Africa and Mexico for having submitted their proposal which had proven very useful.

738. The Delegation of Mexico thanked all the Delegations which had contributed to the discussions and proposed a work program to conclude in a timely manner. Once each delegation had the opportunity to consult back in its capital, they could be allowed to submit comments within a certain deadline which could be sent to the WIPO Secretariat who would forward them to the proponents of the proposal for consideration and possible inclusion in a revised proposal.

739. The Delegation of South Africa also thanked all the delegations for their comments and indicated it looked forward to endorsing the suggestions made to allow further progress. It was confident that the involvement of the WIPO Secretariat would ensure transparency in the process and endorsed the proposal on the work program made by the Delegation of Mexico.

740. The Delegation of India expressed its appreciation to the Delegations of South Africa and Mexico for submitting their proposal and to the Delegation of South Africa for further discussing and clarifying some important doubts which allowed the discussions to move forward. A stakeholders consultation would be organized in India to discuss the proposal and allow the delegation to adopt the necessary approach and come back with more useful suggestions at the next SCCR.

741. The Delegation of Mexico stated that it was currently reviewing and open to any comments that would be made. It sought to protect broadcasting organizations and to provide them with the legitimacy to initiate legal action against illegal use in any platform in principle but it would be open for any comments irrespective of what had been discussed in plenary. Delegations had the possibility to further submit comments and proposals with brief explanations during the period which would be open for comments.

742. The Chair stated that delegations would have the possibility of sending comments on the South African/Mexican proposal by February 29, 2012.

743. The Delegation of the European Union and its Member States noted that the European Union and its Member States would continue discussions after the proposed deadline and would likely have comments to submit after the deadline of February 29, 2012.

744. The Chair clarified that the deadline would correspond to the last date the WIPO Secretariat could receive comments to the proposal which could be sent in a timely manner to the Delegations of South Africa and Mexico for consideration and inclusion in a new text.

745. The Delegation of the United States of America commented that the date would be the same as the one set for submission of comments on the working document for libraries. It recommended choosing the last day of March.

746. The Delegation of Ecuador supported the proposal from the United States of America.

747. The Delegation of Brazil requested clarification on the status of the document provided by the Delegations of South Africa and Mexico and whether the work plan on this agenda item would continue on the basis of the documents that were on the table including document SCCR 15/2.

748. The Delegation of South Africa noted that the documents which had been listed corresponded to the working documents available for the informal consultations and were not related to the future work program of the Committee.

749. The Secretariat advised that no document could be excluded from the discussions unless agreed by the Member States themselves. It also recalled that during the informal consultations some delegations had made reference to document SCCR/15/2, although it was however desirable for the Committee to move towards a single text for the discussions. It was expected that at the next session of the SCCR delegations would agree to move the discussions forward on the basis of a single text as this was indispensable to end the negotiations.

750. The Chair opened the session and thanked the Delegate of the United States of America for being Chair of the Preparatory Committee of the Diplomatic Conference on Audiovisual Performances. The Chair also thanked the Delegation of China for hosting the forthcoming Diplomatic Conference in the beautiful city of Beijing and also commended the Delegations of Mexico and Morocco for their kind offers to provide the venue. He informed the Committee that the document on the visually impaired was about to be distributed. In order to continue with the agenda of the SCCR the Chair opened the topic of broadcasting organizations. The Delegations of South Africa and Mexico presented a very valuable document. It was a technical

document which had required arduous efforts of both Delegations; the SCCR had agreed to the deadline of February 29, 2012 for the submission of comments on that proposal. Opening the floor for comments, the Chair reminded delegations that the previous session of the Committee concluded with the idea that the SCCR needed to agree on a future work plan.

751. The Delegation of Switzerland said it was necessary to have clarity regarding when the following SCCR would take place. That information also affected the debate on broadcasting.

752. The Chair informed the Committee that the Assistant Director General was going to address that matter shortly. In the meantime Member States were asked to take the floor on future work on broadcasting organizations. The Chair proposed that a meeting of a working group could take place to refine the document submitted by the Delegations of South Africa and Mexico.

753. The Delegation of Brazil asked for some clarification because it did not know the format, the terms of reference and the objectives of a working group. It was important to keep the discussion on the issue in the plenary.

754. The Delegation of the United States of America concurred with the suggestion of the Delegation of Brazil. It was much more productive to have discussion in the plenary. The Delegation was studying the technicalities and complexities of the draft but it was not sure the SCCR needed a working group.

755. The Delegation of South Africa preferred to discuss the issue in the plenary provided that enough time was devoted to that agenda item. It was important to allot specific time to the issue of broadcasting organizations.

756. The Delegation of the United States of America agreed with the Delegation of South Africa on ensuring that there was dedicated time at the following SCCR meeting for a full discussion of the broadcasting issues. The Delegation intended to present a robust submission by the end of February 2012. In case other Member States were going to do so, there was going to be rich material to discuss.

757. The Delegation of India recollected the statement made by the Director General of WIPO at the opening of that session reminding the meeting that it was appropriate to go back to a normal timetable of five days discussion. Therefore it was crucial to reserve some time for broadcasting. The suggestion to hold a Working Group was also very important.

758. The Delegation of the United States of America certainly believed an appropriate amount of time dedicated to the broadcasting issue was needed at the following SCCR, but expressed the same concern that the Director General expressed when opening that session about the length of meetings. Many Delegations had had key members of their Delegation who had to leave Geneva, return to Geneva or were unable to attend the entire SCCR. It suggested to the Chair to conduct informal consultations to sound out the possibility of modifying the previous agreement and delaying the additional days devoted to education. Speaking in his personal capacity, the Delegate reminded the meeting that when the SCCR reached the agreement on the number of additional days Member States knew it was an overambitious plan. Reconsidering the schedule could be beneficial for all items under discussion.

759. The Delegation of Brazil agreed with the previous interventions that appropriate time was to be dedicated to the discussion on broadcasting.

760. The Delegation of South Africa believed the SCCR should respect the mandate. That session proved that all the additional days were used to discuss the target topic even if some people had thought they were unnecessary.

761. The Chair urged Member States to take a decision regarding a specific path forward on the topic and suggested holding informal consultations at 2.30 p.m.

762. The Delegation of the Islamic Republic of Iran raised again the question about the dates of the following SCCR.

763. The Delegation of the European Union and its Member States was available to participate in the informal consultation but thought there was no need because the positions of Member States were not differing so much.

764. The Delegation of South Africa supported the statement of the European Union. The SCCR was in agreement that the issue of broadcasting was going to be discussed in plenary and sufficient time was going to be allocated to it. Member States also agreed that written comments on the new proposal were to be sent by February 29, 2012.

765. The Delegation of the United States of America said that if that was acceptable to South Africa it was acceptable to it as well.

766. The Delegation of Brazil also supported what was suggested by the Delegation of South Africa and supported by the United States. It reminded delegations that other documents should be considered in those discussions.

767. The Delegation of India pointed out that since there was a convergence there was no need for informal consultations.

768. The Delegation of Japan supported the comment made by the Brazilian Delegation.

769. The Delegation of the European Union and its Member States supported the latest statements from South Africa and Brazil.

770. The Chair requested the Secretariat to clarify the question on the dates for the following SCCR, as raised by Switzerland and Iran.

771. The Secretariat stated that it usually fixed the dates mostly for organizational reasons. It was the first time there were two options, either March 2012 or July 2012. It believed it was a sensible approach to consult with those Member States that had expressed different views on the issue. Either under the Chair's guidance or under the Secretariat's guidance it proposed to meet regional coordinators and other interested Member States to discuss the dates.

772. The Delegation of the Islamic Republic of Iran asked about the date of the following SCCR because it was relevant information for the discussion on the future agenda on broadcasting organizations. Indeed the joint proposal of South Africa and Mexico brought new energies and a new constructive environment towards a good achievement to expedite the broadcasting. Member States had an opportunity to send their comments until the end of February. The Delegation also mentioned other proposals and documents that were still under consideration and suggested that the SCCR should focus on a single text. There was a need to expedite the process after more than one decade on the issue. There were three elements that needed to be agreed upon.

773. The Delegation of Egypt thought that if the plan was to receive comments until February 29, perhaps having the SCCR in March could be little short for Members to digest the comments and look at other proposals. The Delegation was of the opinion that back-to-back meetings were to be avoided and enough time was to be left for the preparation thereof. Additionally it

suggested sticking to the mandate by having the three additional days allocated for limitations and exceptions for educational and research institutions.

774. The Chair accepted the suggestion of the Secretariat to meet and discuss the pending issues including the dates of the following SCCR.

775. The Delegation of South Africa stressed the importance of discussing further the dates of SCCR 24. Making reference to and supporting the intervention of the Delegation of the Islamic Republic of Iran it said it was mindful that the SCCR should move forward ideally using only one text, but not discarding other documents, which could be useful. That was the purpose of trying to reflect comments and suggestions from other Delegations.

776. The Delegation of Brazil agreed that the SCCR had a mandate to accelerate the discussions and it wanted to work constructively; but the document submitted by South Africa and Mexico was a new document, which needed to be analyzed in more detail. The SCCR did not have a mandate to define whether the document was or was not a basis for the discussion. In fact it had already proposed to include document SCCR/15/2. That issue could be discussed further.

777. The Delegation of Japan wanted to express the same comment as the Brazilian Delegation.

778. The Delegation of the European Union and its Member States associated itself with what had been said by Brazil and Japan.

779. The Delegation of the Islamic Republic of Iran said it did not mean to exclude other documents on the table, which were very valuable. Those deserved to be used for production of a single document with the same value and to expedite the work. It did not hear that the Mexican and South African Delegations insisted that their document formed the sole base for discussion. It was necessary to expedite the work by producing a single document.

780. The Chair reminded the meeting that in the work plan agreed upon at the previous SCCR it was foreseen that the discussion would be based on a specific list of documents. The Chair's work plan also included a proposal to hold informal consultations, which were held with fruitful results. In the same line of advancing the work, the Delegations of South Africa and Mexico submitted a document containing a proposal that required great efforts from both parties. The proposal was analyzed in detail and was still open to written comment until the agreed deadline.

781. The Delegation of South Africa sought clarification regarding the documents under discussion. It acknowledged that there were many valuable documents but the SCCR should be ambitious enough to establish that it was working toward a single document. It recognized the need of other delegations to study the new proposal.

782. The Delegation of Senegal said the issue had been the subject of lengthy discussion. It has been at the center of the discussions and a very important intellectual process. It was important to stress this was not the final version of the proposal and that comments from other delegations were going to be considered.

783. The Delegation of the Russian Federation reminded the meeting that it supported the proposal put forward by South Africa and it seemed that in principle other delegations had no objections to it. It was not a matter of rejecting all the previous documents, but identifying a single text that guided the negotiations. Therefore it proposed that the SCCR accept the idea to consider as a single basic document the one submitted by South Africa and Mexico.

784. The Delegation of India recognized that the Delegate of South Africa elegantly summarized the status of the document and all the passages of its presentation. South Africa also said that the other proposals were also to be considered.

785. The Delegation of the European Union and its Member States said it did not have the same memory as the Russian Federation. Things were clear as the meeting had been reminded by South Africa. The proposal from South Africa and Mexico was new and it needed review in order to express a thoughtful opinion. It was quite clear that there were several drafts on the table including the text that had been tabled by the European Union. It was hard to accept the Russian request to adopt the new proposal as the only working document.

786. The Delegation of Japan believed that the document submitted by South Africa and Mexico needed further clarification and consideration. The SCCR should discuss the issue of working only on the basis of that document in the next session.

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

787. The Chair noted that there were no other matters to be discussed.

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

788. The Chair presented the set of draft conclusions and submitted them for the consideration of the Committee.

789. The Chair thanked all for their efforts, noted that the Standing Committee unanimously had adopted the conclusions set out below, and closed the session.

## **CONCLUSIONS**

### **Limitations and Exceptions: Libraries and archives**

1. The Committee took note of three new documents, namely “the Case for a Treaty on Exceptions and Limitations for Libraries and Archives: Background Paper by IFLA, ICA, EIFL and INNOVARTE, presented by Brazil (document SCCR/23/3); “Objectives and Principles for Exceptions and Limitations for Libraries and Archives,” presented by the United States of America (document SCCR/23/4); and the “Proposal on Limitations and Exceptions for Libraries and Archives,” presented by Brazil, Ecuador and Uruguay (document SCCR/23/5).
2. Delegations identified 11 common topics for discussion, namely: 1) preservation, 2) right of reproduction and safeguarding copies, 3) legal deposit, 4) library lending, 5) parallel importations, 6) cross-border uses, 7) orphan works, retracted and withdrawn works, and works out of commerce, 8) limitations on liability of libraries and archives, 9) technological measures of protection, 10) contracts, 11) right to translate works.
3. A compilation of the comments made by the delegations on the above topics, as well as the provisions on libraries and archives of the Draft WIPO Treaty on Exceptions and Limitations for the Persons with Disabilities, Educational and Research Institutions, Libraries and Archives, proposal by the African Group (document SCCR/22/12), and of the above documents SCCR/23/4 and SCCR/23/5, was prepared by the Secretariat.
4. This compilation, including any further legal, textual or other comment or correction on any of the above 11 topics sent by delegations to the WIPO Secretariat by February 29, 2012, will constitute a Committee document titled “Provisional working document containing comments on and textual suggestions towards an appropriate international legal instrument (in whatever form) on exceptions and limitations for libraries and archives,” identified as document SCCR/23/8 Prov. This document will constitute the basis for the future text-based work on the matter to be undertaken by the Committee in its 24th session.

### **Limitations and Exceptions: Visually impaired persons/persons with print disabilities**

5. The Committee took note of Chair’s proposal for an international instrument on limitations and exceptions for persons with print disabilities (document SCCR/22/16).
6. On the basis of this proposal and taking into account the various comments made and text-based options presented by delegations, a “Working document on an international instrument on limitations and exceptions for visually impaired persons/persons with print disabilities” was adopted by the Committee (document SCCR/23/7). This document will constitute the basis for the future text-based work on the matter to be undertaken by the Committee in its 24th session, with an aim to agree and finalize a proposal on an international instrument on limitations and exceptions for visually impaired persons/persons with print disabilities.
7. The Committee encouraged the stakeholders to continue the work of the Stakeholders’ Platform.



## **Limitations and Exceptions**

8. The Committee agreed that the item of limitations and exceptions will be maintained on the agenda of the 24th session of the SCCR.

## **Protection of Broadcasting Organizations**

9. The Committee thanked the Secretariat for organizing the Informal Consultations on the Protection of Broadcasting Organizations in Geneva on November 26, 2011 which were attended by Members and observers of the SCCR, and thanked its Chair Ms. Alexandra Grazioli from Switzerland. The discussions contributed to the progress of the work on a draft treaty to update the protection of broadcasting and cablecasting organizations in the traditional sense. The outcome of the consultations was presented to the SCCR/23 session and the report of the meeting is contained in document SCCR/23/9.

10. The Committee took note of the draft treaty proposal presented by the Delegations of South Africa and Mexico (document SCCR/23/6). Members made comments and asked preliminary questions.

11. The Committee reaffirmed its commitment to continue work, on a signal-based approach, consistent with the 2007 General Assembly mandate, towards developing an international treaty to update the protection of broadcasting and cablecasting organizations in the traditional sense.

12. The Committee approved the work plan as set out in the annex of these conclusions.

13. The protection of broadcasting organizations will be maintained on the agenda of the 24th session of the SCCR.

## **Next Session of the SCCR**

The 24th session of the SCCR will take place in July 2012, after the Diplomatic Conference on Audiovisual Performances. The dates will be announced by the Secretariat in due course.

### *Annex*

#### *Protection of Broadcasting Organizations: work plan*

1. To maintain the momentum regarding a draft treaty on the protection of broadcasting organizations and cablecasting organizations in the traditional sense, the Committee agreed to continue discussions on a signal-based approach consistent with the 2007 General Assembly mandate and agreed on the following work plan:

2. Members are invited to send textual, legal and other comments to the proposal of the delegations of South Africa and Mexico (document SCCR/23/6) to the WIPO Secretariat by February 29, 2012. These comments will be made available to the Delegations of South Africa and Mexico for their due consideration. The Delegations of South Africa and Mexico will, based on the comments received, revise the proposal. The Secretariat will make all the comments available on a SCCR Forum ([www.wipo.int/copyright](http://www.wipo.int/copyright)), as they are received, for discussion at the next SCCR.

3. In order to expedite discussions and with a view to making a recommendation to the 2012 WIPO General Assembly on the possible scheduling of a Diplomatic Conference, two working days of the SCCR/24 session will be dedicated to the protection of broadcasting organizations with the objective of reaching agreement on a single text to pursue text-based discussions at the SCCR/24 session.
4. The following WIPO documents will also be used as a basis for discussions:
- Draft Treaty on the Protection of Broadcasting Organizations proposed by the Delegations from South Africa and Mexico on the protection of broadcasting organizations (document SCCR/23/6), taking into account the comments received by the WIPO Secretariat by February 29, 2012;
  - Report of the Chair of the Informal Consultations on the protection of broadcasting Organizations held in Geneva On November 26, 2011 (document SCCR/23/9)
  - Elements of the Draft Treaty on the Protection of Broadcasting Organizations prepared by the Chair of the Informal Consultations on the Protection of Broadcasting Organizations held In Geneva on April 14 and 15, 2011 (document SCCR/22/11);
  - Comments on the Draft Treaty for the Protection of Broadcasting Organizations: Proposal by the Delegation of Japan (document SCCR/22/7);
  - Proposal on the Draft Treaty for the Protection of Broadcasting Organizations: Proposal by the Delegation of Canada (document SCCR/22/6)
  - Revised Draft Basic Proposal for the WIPO Treaty on the Protection of Broadcasting Organizations (document SCCR/15/2);
  - Protection of the Rights of Broadcasting Organizations, submitted by the European Community and its Member States (document SCCR/6/2);
  - Article 1 *bis*, submitted by the European Community and its Member States (document SCCR/9/12); and
  - Any other textual contributions.

[Annex follows]

**ANNEXE/ANNEX****LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS**MEMBRES/MEMBERSAFRIQUE DU SUD/SOUTH AFRICA

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

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

III. ORGANISATIONS INTERGOUVERNEMENTALE/  
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ORGANISATION INTERNATIONALE DU TRAVAIL (OIT)/INTERNATIONAL LABOUR  
ORGANIZATION (ILO)

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[End of Annex and of document]