

Standing Committee on Copyright and Related Rights

**Thirty-second Session
Geneva, May 9 to 13, 2016**

DRAFT REPORT

prepared by the Secretariat

1. The Standing Committee on Copyright and Related Rights (hereinafter referred to as the “Standing Committee”, or the “SCCR”) held its Thirty-Second Session in Geneva, from May 9 to 13, 2016.
2. The following Member States of the World Intellectual Property Organization (WIPO) and/or members of the Bern Union for the Protection of Literary and Artistic Works were represented in the meeting: Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Barbados, Belarus, Bosnia and Herzegovina, Brazil, Cambodia, Canada, Chile, China, Colombia, Cuba, Czech Republic, Democratic People's Republic of Korea, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, France, Gabon, Georgia, Germany, Greece, Guatemala, Guinea, Holy See, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Italy, Japan, Kenya, Kuwait, Kyrgyzstan, Mexico, Monaco, Mongolia, Morocco, Nepal, Netherlands, Nigeria, Oman, Panama, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Senegal, Serbia, Slovakia, South Africa, Sri Lanka, Sweden, Switzerland, Thailand, Tunisia, Turkey, Turkmenistan, Ukraine, United Kingdom, United States of America, Uruguay, Uzbekistan, Viet Nam, Yemen and Zimbabwe (82).
3. Palestine participated in the meeting in an observer capacity
4. The European Union (EU) participated in the meeting in a member capacity.
5. The following Intergovernmental Organizations (IGOs) took part in the meeting in an observer capacity: African Regional Intellectual Property Organization (ARIPO), African Union (AU), Commonwealth of Independent States (CIS), European Audiovisual Observatory, South Centre (SC) and the World Trade Organization (WTO) (5).
6. The following non-governmental organizations (NGOs) took part in the meeting in an observer capacity: *Agence pour la protection des programmes* (APP), Alianza de Radiodifusores Iberoamericanos para la Propiedad Intelectual (ARIPI), Archives and Records Association (ARA), Asia-Pacific Broadcasting Union (ABU), Asociación Argentina de Intérpretes (AADI), Association for the International Collective Management of Audiovisual Works (AGICOA), Association of Commercial Television in Europe (ACT), Association of European Performers' Organizations (AEPO-ARTIS), Canadian Copyright Institute (CCI), Canadian Library Association (CLA), Canadian Museum of History, Central and Eastern European Copyright Alliance (CEECA), Chamber of Commerce and Industry of the Russian Federation (CCIRF), Civil Society Coalition (CSC), Club for People with Special Needs Region of Preveza (CPSNRP), *Conseil national pour la promotion de la musique traditionnelle du Congo* (CNPMT), Copyright Research and Information Center (CRIC), Daisy Consortium (DAISY), Electronic Frontier Foundation (EFF), Electronic Information for Libraries (eIFL.net), European Broadcasting Union (EBU), European Bureau of Library, Information and Documentation Associations (EBLIDA), European Law Students' Association, (ELSA International), European Publishers Council, European Visual Artists (EVA), German Library Association, Ibero-Latin-American Federation of Performers (FILAIE), International Association for the Protection of Intellectual Property (AIPPI), International Association of Scientific Technical and Medical Publishers (STM), International Authors Forum (IAF), International Center for Trade and Sustainable Development (ICTSD), International Confederation of Music Publishers (ICMP), International Confederation of Societies of Authors and Composers (CISAC), International Council of Museums (ICOM), International Council on Archives (ICA), International Federation of Actors (FIA), International Federation of Film Producers Associations (FIAPF), International Federation of Library Associations and Institutions (IFLA), International Federation of Musicians (FIM), International Federation of Reproduction Rights Organizations (IFRRO), International Federation of the Phonographic Industry (IFPI), International Literary and Artistic Association (ALAI), International Publishers Association (IPA), International Society for the Development of

Intellectual Property (ADALPI), International Video Federation (IVF), Karisma Foundation, Knowledge Ecology International, Inc. (KEI), *Latín Artis*, Max-Planck Institute for Intellectual Property and Competition Law (MPI), Motion Picture Association (MPA), North American Broadcasters Association (NABA), International Association of Broadcasting (IAB), Program on Information Justice and Intellectual Property (PIJIP), Scottish Council on Archives (SCA), Silke VON LEWINSKI (Ms.), Professor, Munich, Society of American Archivists (SAA), The Japan Commercial Broadcasters Association (JBA), Union Network International - Media and Entertainment (UNI-MEI), World Association of Newspapers (WAN) (60).

AGENDA ITEM 1: OPENING OF THE SESSION

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

8. The Director General joined the Chair in welcoming the delegates to the Thirty-Second Session of the SCCR. He observed that that was the last session to be held before the Assemblies of WIPO, and that it was the last opportunity, with respect to the actions that the delegates expected the Assemblies to take, for the follow-up of the Committee's work. The Director General indicated that, as such, that Committee meeting was an extremely important opportunity. He indicated his thoughts that the Member States held the view that the Assemblies themselves are not an ideal forum for negotiating, that they're really a decision-making body. That the real negotiations towards any recommendations should take place in the Standing Committee, and had been taking place in the Standing Committee. The Director General stated that the Standing Committee in particular, had had an extremely good record over the last five years. That the delegates who had attended the conference on the Global Digital Content market, had had the opportunity to have a heightened consciousness about the profound challenges and opportunities confronting the world of Copyright, as a consequence of the digital revolution. The Director General indicated that it was all unfolding at an extremely rapid pace, and that the work of the Standing Committee, was not unfolding at the same sort of pace. He noted that the pace of the Standing Committee was a result of the need to consider, extremely carefully, the implications of the issues before the Standing Committee, in that very changing environment. The Director General observed that it was a busy week, and that the first issue before the delegates was broadcasting, of which he had previously shared some words. The Director General recalled that the Chair had, in the past, spoken frequently about the economic, cultural, and social importance of broadcasting. He indicated that even as the longest standing issue on the Agenda of WIPO, dating back originally to 1996, under the Chair's leadership, and in a very much changed environment, the Committee had advanced the understanding of the broadcasting issue. The Director General added that because of the changing nature of technology, broadcasting was not an easy issue to tackle, and that, that Committee meeting was the last opportunity the delegates had to make a recommendation, for any action, that they wished the Assemblies of Member States to take that year, with respect to carrying that particular item forward. The Director General noted that another issue was exceptions and limitations, in particular, on the one hand, to libraries and archives, and on the other hand, to education, research institutions and other disabilities. He noted that a lot of work has been done in the Standing Committee on the issue of libraries and archives but it was up to the delegates to decide if they wanted to keep the issue on the Agenda for the following 20 years. Additionally, the Director General noted that as all were aware, the issue of education and research institutions was little less advanced. Therefore, he added that the Committee would have the opportunity to review a study by Professor Daniel Seng done in this area. The Director General noted that there were two other items that had crept into the Agenda, under the rubric other matters. As the Agenda had been concerned with the same items now for quite a significant number of years, the Director General indicated that he rather welcomed the addition of new items to the Agenda. In the context of a rapidly changing external environment, of which Copyright is a central feature, such changes to the business, economic and technological environment, are extremely rapid and profound. The Director General stated

that he hoped the two items that had crept up under other matters would receive some discussion from the delegates during that week. Those items were, first, the proposal coming from Senegal and the Republic of Congo, with respect to the remuneration and to the resale right. This was a right that was rooted in the fundamental rights of creators and authors. The other item was from the Group of Latin American and Caribbean Countries (GRULAC) and was a discussion on the evolving digital environment and digital market. The Director General noted that there was no need to emphasize just how important that particular environment was, as changes were being led by new business models. The Director General added that they were seeing every day, new ways in which Copyright was being used as a market mechanism to find return value to creators and to business associates. In closing, the Director General wished the delegates very good discussions in the course of that week, under the extremely able and knowledgeable leadership of the Chair.

9. The Chair thanked the Director General for his opening address and further thanked the delegates for both their participation in the SCCR, and their willingness to continue constructive work. The Chair informed the Committee that the Member States would continue to work on all subjects on the draft Agenda, as reflected in the working documents considered at the Thirty-First session. For the schedule of the work, the Chair announced that it was proposed to divide the meeting time equally between the protection of broadcasting organizations and limitations and exceptions. The Chair informed the delegates that much of the first half of the week would be spent on Agenda Item 5, protection of broadcasting organizations, and the other half of the week, from Wednesday afternoon, would be devoted to Agenda Items 6 and 7, on Limitation and Exceptions for Libraries and Archives and Education and Research Institutions and People with other Disabilities. For Thursday, the Chair noted that the Secretariat had made arrangements for Professor Daniel Seng to present his study, and that on Friday afternoon, the delegates would discuss Agenda Item 8 on the topic of other matters. The Chair informed the delegates that for each of the proposals submitted in the Thirty-First Session, namely, the proposal for corporate analysis related to the digital environment submitted by the Group of Latin American and Caribbean Countries (GRULAC), and the proposal on the resale of royalty rights submitted by the Delegations of Senegal and the Republic of Congo, the Committee would be invited to discuss for up to one hour, each one of them.

AGENDA ITEM 2: ADOPTION OF THE AGENDA OF THE THIRTY-SECOND SESSION

10. The Chair opened Agenda Item 2, adoption of the Agenda of the Thirty-Second Session of the SCCR as included in Document SCCR/31/1 Prov. The Chair informed delegates that based on discussions with regional coordinators it was proposed to add an item of the contribution of the SCCR to the implementation of the Development Agenda. The Chair added that item in the Agenda and informed that that would not serve as a precedent, as was done previously in that Committee. The Chair informed that the Agenda Item would be added to the provisional Agenda, right before Agenda Item 8, Other Matters. The Chair continued that the agenda item on other matters would then become Agenda Item 9 on the Agenda, with Agenda Item 10 as closing of the session.

11. The Delegation of India supported the Chair's proposal, and deemed it an excellent proposal. The Delegation motioned that their group would like to support it.

12. The Chair thanked the Delegation of India for starting with that constructive approach. The Chair opened the floor for other comments. As there were no other comments on the proposed Agenda, the Chair adopted the agenda.

13. The Delegation of Greece, speaking on behalf of Group B, expressed Group B's positive expression on the issue, with the understanding that the item is a talk basis.

14. The Chair thanked the Delegation of Greece for its statement and stated that that too was

something the Chair had said.

15. The Delegation of Nigeria, speaking on behalf of the African Group, supported the proposal made by the Chair.

16. The Chair thanked the Delegation of Nigeria, speaking on behalf of the African Group, for the support. The Chair requested if the floor had any other comments. With no more comments, the Chair reminded the delegates that the Agenda had been adopted by the Committee.

AGENDA ITEM 3: ACCREDITATION OF NEW NON-GOVERNMENTAL ORGANIZATIONS

17. The Chair opened Agenda Item 3, Accreditation of new non-governmental organizations (NGOs). The SCCR had received a new request for accreditation, which was contained in document SCCR/32/2, and was a request by the Canadian Museum of History (CMH). The Committee approved the accreditation of the CMH as an observer.

AGENDA ITEM 4: ADOPTION OF THE REPORT OF THE THIRTY-FIRST SESSION OF THE SCCR

18. The Chair moved to Agenda Item 4, the adoption of the report of the Thirty-First Session of the SCCR. As there were no comments, the Chair invited the Delegations to send written comments or corrections to the Secretariat, and invited the Committee to approve document SCCR/31/6. The Committee approved document SCCR/31/6.

19. The Chair invited the Secretariat to confirm the proposed schedule, and to make announcements regarding the various side events.

20. The Secretariat confirmed the proposed schedule, including the presentation by Professor Daniel Seng and summarized the side events scheduled.

OPENING STATEMENTS

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

22. The Delegation of India, speaking on behalf of the Asia Pacific Group, expressed its confidence in the Chair and thanked the WIPO Secretariat for its work. The Delegation stressed the importance of the Committee in dealing with the protection of broadcasting organizations, in dealing with the limitation and exceptions for libraries and archives and in dealing with the exceptions and limitations for educational and research institutions for persons with other disabilities. The Delegation indicated that those three issues were of great importance to their group, and that in terms of the level of discussion on those issues at the Thirty-First Session of the SCCR, it would not be wrong to say that the SCCR is facing difficulties, in as far as coming to an agreement, on how to proceed with some of those Agenda items.

23. The Delegation stated that those issues had not received equal level of commitment and understanding and that, based on the differential socioeconomic development of the Member States, inclusiveness and mutual understanding of each of those priorities, was essential for progress. In the spirit of multilateralism, the Asia Pacific Group reaffirmed its commitment to engage constructively in negotiating a mutually acceptable outcome on all three issues, before the Committee. The Group also wanted to put on record its support for the proposed program of work, and indicated that it would like to see the finalization of a balanced treaty on the protection of broadcasting organizations, based on the mandate of the 2007 General Assembly,

to provide protection on the signal-based approach for cablecasting and broadcasting organizations, in the traditional sense. For the Asia Pacific Group, exceptions and limitations were of critical importance for both individuals, and for the collective development of enlightened societies. However, there was no denying that some divergence, on how exceptions and limitations should be approached, existed among Member States. Exceptions and limitations had an important role to play in the obtainment to knowledge, which could be hampered by lack of information. It was unfortunate that the absence of adequate will to discuss and develop the two exceptions and limitations before the Committee, resulted in a stalemate on all three important issues. The Asia Pacific Group had taken note of the proposal submitted by GRULAC in the previous Session, to discuss the current digital environment and copyright interface. The Delegation noted that members of the Asia Pacific Group would make interventions in their national capacity under that Agenda Item and would productively participate in the discussion on that contemporary topic. Based on previous discussions and new input, the hope of the Asia Pacific group was that all member states would engage sincerely and constructively in that session, and on those two issues, so as to be able to develop a mature text to discuss and work on. As the same Committee which facilitated the Beijing Treaty and Marrakesh Treaty, the Asia Pacific Group was optimistic that the noble intentions and right will, would pave the path for the development of appropriate international instruments on all three issues soon. The Group looked forward to productive results and tangible progress in that session.

24. The Delegation of Latvia, speaking on behalf of the Group of Central European and Baltic States (CEBS) Group, expressed its confidence in the Chair and thanked the Secretariat for the preparation of the meeting. The Delegation expressed that the Committee should take into account the digital environment and technological progress, and how those factors impacted the needs of broadcasting organizations, in terms of protection. Leaving those important factors behind would mean having an outdated treaty that did not correspond to the actual developments and trends in the broadcasting sector. In that regard, the Delegation commended the Chair for preparing the Revised Consolidated Text on Definitions, Object of Protection, and Rights to be Granted. The Delegation hoped that that document would assist the Committee in advancing the discussions and in building common understanding. The Group invited all the delegations to adopt the broadcasting treaty as soon as possible. On the topic of limitations and exceptions, the group was looking forward to hearing the preliminary findings on the study on education, carried out by Professor Seng. The Group was willing to engage in a constructive manner on that topic, in the framework of their already expressed position, the development of non-binding instruments.

25. The Delegation of the Bahamas, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), thanked the Chair and the Secretariat for organizing the meeting. GRULAC supported the work of the Committee and further reiterated its readiness to work constructively on the issues on the Agenda, for that meeting. GRULAC congratulated the WIPO Secretariat for having hosted a successful, educational conference on the global digital content market, highlighting sector by sector how the global digital world was rapidly changing access and business models for the greater content economy. The Delegation expressed that the information received broadened participants' understanding of the subject matter and fed into the discussions of the SCCR Committee. On the Agenda of that meeting the issues that were of interest to GRULAC included the protection of broadcasting organizations, limitations and exceptions for library and archives and limitations and exceptions for educational, research institutions and persons with other disabilities. With respect to limitations and exceptions for educational, research institutions and persons with other disabilities, GRULAC welcomed the presentation by Professor Daniel Seng from the national University of Singapore, on the update of the five studies presented in 2009. On the subject of limitations and exceptions for libraries and archives, GRULAC supported an open and frank discussion that would result in effective

solutions, with regard to problems affecting libraries and archives around the world. GRULAC was very interested in the discussion on the proposal submitted by Brazil, Ecuador, Uruguay, India, and the African Group, regarding the treatment of that topic. In order to promote the work on that topic, the Delegation supported the debate on the table. GRULAC reiterated its willingness to continue discussions on broadcasting organizations, with the view to update the protection following the signal-based approach. The Group welcomed the text proposed by the Committee, with the support of the Secretariat, as a contribution to the discussions on definitions, object of protection and rights to be granted. GRULAC also looked forward to the discussion related to Document SCCR/31/4, Proposal for Analysis of Copyright Related to the Digital Environment. The Delegation stated that it was GRULAC that had proposed the discussion on the new challenges, arising from the use of protected intellectual property works in the digital environment, within the SCCR. The Delegation welcomed a full exchange of views, from other Member States, on their proposal. With respect to the Marrakesh Treaty, GRULAC announced that Chile would be depositing its instrument of ratification that week, and that Ecuador, Panama plus others, would do the same in the coming weeks, joining Argentina, Brazil, El Salvador, Mexico, Paraguay, Peru and Uruguay, that had ratified the Treaty. The Delegation stated that to date, half of the ratifications were attributable to GRULAC members and as such encouraged other Regional Groups to follow their lead in working towards making the Marrakesh Treaty, a global international instrument.

26. The Delegation of Greece, speaking on behalf of Group B, thanked the Chair and the Secretariat for its work, congratulated the Vice-Chair and noted that it looked forward to fruitful discussions. Group B stated that it continued to attach importance to the negotiations on the Treaty for the Protection of Broadcasting Organizations. WIPO, as a specialized agency, had a responsibility to continue to be relevant, particularly as the environment evolved and developed, due to the advancement of technology. In order to maintain such relevancy, WIPO had to continue to listen to the perspectives of the real world, and respond to the developing demands in various fields. No one questioned the significant economic value of broadcasting, and the appropriate protection of such an economic value, was one of the demands to which the organization was required to respond. In that regard, Member States had to find a solution which fit into the current environment, without letting their solutions become outdated, before they had any effect. It was only Member States that could ultimately agree upon practical, and other solutions, and it was them that could maintain the relevancy of the Committee and organization. The Delegation thanked the Chair for his proposal on the updated broadcasting text and definitions, object of protection and rights to be granted, which was regarded as an attempt to clarify the text and the definitions, and move forward, the work on broadcasting organizations. On the text, the Delegation still had a number of comments and technical clarifications. The Delegation highlighted that during the recent Committee meetings, rich discussions were had that helped Member States better understand the various perspectives and issues that we needed to be addressed. On the issue of exceptions and limitations, Group B hoped that the Committee would find a consensus that would further its work. The Delegation indicated that in one of the previous sessions of that Committee, the presentation by Professor Kenneth Crews, followed by an intensive discussion, gave the Committee a clue as to a way forward, and served as a helpful reference to the adoption of national policies exceptions and limitations that respect established differences of legal systems. The Delegation underlined that the Committee should give serious consideration to the objectives and principles as proposed by the United States of America, which in reality, pursue the common ground where no consensus exists within the Committee for the normative work. Group B confirmed its commitment to constructive engagement in the work of the SCCR.

27. The Delegation of Nigeria, speaking on behalf of the African Group, thanked the Chair, the Vice-Chair and the Secretariat for their hard work and commitment. Bearing in mind that that session was the last session of the SCCR before the WIPO 2016 General Assembly, the African Group hoped that the Committee would be able to progress definitively on some agenda topics. The Delegation stated that they were cautiously optimistic that the Committee could reach

consensus on the convening of a diplomatic conference in 2017, for the protection of broadcasting and cablecasting organizations against signal piracy and in conformity with the General Assembly mandate. Given the maturity of that text, the Delegation believed that extended discussions were not clearly aligned with the timeframe for conclusion, on the objectives of the draft Treaty on the protection of broadcasting and cablecasting organizations. It was the view of the African Group that issues of divergence within that Agenda item were not so unsurmountable, so as to prevent the Committee from moving forward on the objective. The Group looked forward to the Chair's presentation on the Revised Consolidated Text on Definitions, Object of Protection, and Rights to be Granted, and hoped that he can facilitate progress on the subject. Similarly, the African Group looked forward to identifying a path forward for the Committee's engagement in the field of exceptions and limitations, to facilitate access to knowledge and information. The Delegation hoped to engage in text-based work to develop international legal instruments on exceptions and limitations for libraries and archives, and exceptions and limitations for educational, teaching or research institutions and persons with other disabilities. In the face of growing disparity in the field of access, knowledge and information, and with its inclusion in the Sustainable Development Goals, the African Group encouraged Member States and stakeholders to renew their commitment and in good faith, work together to remove the uncertainty and vulnerability that characterizes the Committee's discussions on the subject of exceptions and limitations. Knowledge was at the core of every growth stream imaginable. A considerable number of potential beneficiaries should not be excluded from fair access to knowledge, as a result of legally adjustable structures. Indeed, significant changes related to access to knowledge and information had accord at the national, regional, and global level, on exceptions and limitations in the SCCR. To that end, the relevance of the Committee's negotiations could not be overstated, taking into account the digital environment as well as the Committee's position to respond to global realities and continually ensure an appropriate relationship between the rights of creativity and the public interest. The Delegation also hoped that the knowledge and information provided by the WIPO conference on the global digital content market could impact the work of the SCCR that week.

28. The Delegation of the European Union and its Member States thanked the Secretariat for the preparation of that session of the SCCR. The Delegation stated that the Committee should strive to make the best possible use of time and resources, which demanded clarity, as to the goals and expected deliverables under each Agenda item. The European Union and Member States had been actively involved in the discussions on the Treaty for protection of broadcasting organizations. Those discussions were of great importance and the delegation was ready to work constructively to advance the work on a matter that was undeniably complex and technical. It was of importance that the Treaty towards which the Committee was working, responded to the current and future needs of broadcasting organizations. The Delegation welcomed continuing the discussion, which was had at the last Committee meeting, and looked forward to in-depth discussions on the updated text on definitions, object of protection and rights to be granted, that the Committee had prepared for that session. The Delegation noted that as they had mentioned on previous occasions, what was needed was a broad consensus as to the extent of the protection to be granted, so that the Treaty could provide broadcasting organizations with adequate protection in today's world. Considerable efforts had been made during previous sessions of the SCCR to build consensus on a treaty, which was meaningful, in view of the pace of technological development. The European Union and its Member States would continue to contribute constructively to the discussion on exceptions and limitations. The Delegation strongly believed that the existing international copyright framework already empowered WIPO Member States to introduce, maintain and update limitations and exceptions in their national legislation. Member States could meaningfully respond to local needs and traditions, while continuing to ensure that copyright was an incentive and reward to creativity. The Delegation of the European Union and its Member States did not see a need for legislatively binding instruments, but stressed the useful work that could be done in the SCCR on how exceptions and limitations could best function within the existing legal framework, and also on how the SCCR could provide guidance regarding the manner in which international

treaties are implemented in national laws. Discussions would be most useful if they were aimed at a more thorough understanding of the issues at stake, and if they were aimed at an investigation of possible solutions among those available under the framework of existing international treaties. The Delegation hoped that the SCCR would come to a shared understanding on how that could be achieved on a consensual outcome. The European Union and its Member was of the view that exchanging best practices, in an inclusive way, could be useful for all Member States. The Delegation expressed support for the inclusion, in the normative Agenda of the SCCR, of the proposal from Senegal and the Republic of Congo on the resale right. The Delegation believed that that was an important subject for the international IP system that should find a place, in the proceedings of the SCCR.

29. The Delegation of China thanked the Secretariat for its hard work and acknowledged the importance of the SCCR as a specialized Committee in WIPO. The Delegation stated that the Agenda items up for discussion, the protection of broadcasting organizations, limits and exceptions for libraries and archives for educational, research institutions and for persons with disabilities, are still major issues that need the attention of all Member States. Although there was no consensus on the relevant issues among Member States in the previous sessions, the Delegation hoped that the Committee would be more understanding and compassionate. The Chinese Delegation thanked the Chairman for the revised and consolidated proposal on definitions, object of protection and rights to be granted. The Delegation stated that it would continue to pay attention and participate actively in the discussion on the draft Treaty on the Protection of Broadcasting Organizations and other important Agenda items. The Delegation urged other Member States to have a pragmatic attitude in reaching the consensus on the two issues, and also to focus on the Audiovisual Beijing Treaty, of which the Delegation was ready to provide support and cooperation in the ratification process.

30. The Delegation of Iran (Islamic Republic of) congratulated the Chairman and thanked the Secretariat for its hard work. The Delegation aligned it's self with the statement delivered by the Delegation of India, speaking on behalf of the Asia Pacific Group. On the issue of the protection of broadcasting organizations, the Delegation indicated that as highlighted in the 2007 General Assembly Mandate towards developing a legal framework for protecting broadcasting organizations against signal piracy, it attached great importance to the continuation of the work on the signal-based protection of broadcasting organizations in the traditional sense. As the mandate of the General Assembly was confined to broadcasting and cablecasting organizations in the traditional sense, the definition of broadcasting, protected by the scope of the Treaty, should as such be limited to the type of transmission exploited by traditional broadcasters. Additionally, the granted rights under the framework of the proposed Treaty should protect signals that were legitimately originating from broadcasters, including the right to prohibit unauthorized transmission of live signals from other computer networks or any other digital or online platforms. As webcasting was not part of the WIPO General Assembly Mandate of broadcasting in the traditional sense, the Delegation of Iran (Islamic Republic of) stated that it was not in a position to support the inclusion of webcasting under the framework of the Treaty. The Delegation believed that it was important to make clear that protection should be limited to broadcasting signals, and that the proposed legal framework should not have a second layer of protection for broadcasts and should not restrict free access to information and knowledge in order to balance the Treaty for the benefit of the right holder, broadcasters and society at large. In that context, the Delegation believed that there should be a balance between the interests of the creators, the public and of the broadcasters. The Delegation added that expanding the scope of protection and granting additional rights to the signal and the signal over the internet, increased costs and affects access to broadcasting in developing countries. With the emergence of new techniques that delivered content via computer networks and mobile devices, it was important to determine whether and how intellectual property rights would apply with respect to broadcasting, as those techniques held great promise in bridging the knowledge and digital divide. With an increase in access to knowledge, and freedom of expression, there

was too a need to assess the impact of the various elements of the proposed Treaty on the public domain as well as look at the impact of the proposed articles on users, performers, and others. Finally, the Delegation thanked the Chair for his thoughtful and productive work in preparing the Revised Consolidated Text on Definitions, Object of Protection, and Rights to be Granted.

31. The Delegation of the Russian Federation thanked the Secretariat for its work. It stressed its position that it was in favor of adopting the documents that the Committee had been working on for a very long time now. The Delegation supported the words of the Director General who had stated that Member States should think carefully about the work at hand so that it doesn't continue for yet another 20 years. The Delegation of the Russian Federation appealed to other Member States to consider finding a compromise and a solution, particularly in terms of the rights of broadcasting organizations and the development of a document on that. With the process having been very long and drawn out, Member States should as soon as possible find a resolution that would go to protect the interest of society on one hand, and also the rights of the authors, on the other. The Delegation stated that it supported the proposal on the right to share the distribution and that though it was very important to protect the rights of authors, the primary concern, however, was to not disperse the Committee's efforts in trying to cover too much ground and not reaching any conclusions. The Committee should concentrate on the essentials, which would foremost be the agreement on the protection of broadcasting organizations.

AGENDA ITEM 5: PROTECTION OF BROADCASTING ORGANIZATIONS

32. The Chair opened Agenda Item 5 on the protection of broadcasting organizations. The Chair reminded the Committee of the mandate, which had been received during SCCR 31, to prepare a revised document for the following session of the Committee taking in account proposals and the clarifications discussed. Document SCCR/32/3, Revised Consolidated Text on Definitions, Object of Protection and Rights to be Granted, was put before the delegations for their consideration. The Chair noted that the document before the Committee was not a compilation of all of the different positions expressed but was instead an assemblage and read of the main points of consensus in the discussion that was had. Before the Committee was a document to help trigger discussion as Member States sought for a common understanding in terms of the object of protection, scope of the Treaty and rights to be granted. The Chair believed that the Committee had made great progress and was looking forward to its analysis of the revised consolidated text. The Chair hoped that the Committee would be in a position to make certain requests at the General Assembly, which was scheduled to take place during the second half of that year. The Chair opened the floor to Regional Coordinators.

33. The Delegation of Greece, speaking on behalf of Group B, reiterated the necessity of updating the international legal framework, for the effective protection of broadcasting organizations in the digital era. The updating of copyright systems should be done in a timely manner and should address technological issues, as well as the reality that broadcasting organizations face in today's world. The Group noted that for the sake of the Committee's negotiation, Member States should further their legal understanding, based on what was shared in that Committee Session. The most pragmatic and effective way forward was to use the Chair's Revised Consolidated Text on Definitions, Object of Protection, and Rights to be Granted as a guide for continuing the discussion, and the most critical element in the discussion was the technical understanding and knowledge of the issues faced by broadcasting organizations in today's world, and how those issues could be the basis of the Treaty text. The Delegation committed itself to engaging in any exercise that would contribute towards reaching a meaningful and timely outcome for the effective protection of broadcasting organizations in

the digital era.

34. The Delegation of Latvia, speaking on behalf of CEBS, appreciated the progress achieved on Agenda Item 5, in the last few sessions. The Delegation stated that it was committed to further working on the Treaty on the protection of broadcasting organizations, with a view to convene a diplomatic conference in the near future. The Delegation welcomed the Chair's consolidated document and was pleased to see that the discussions that took place in the previous session were captured in it. Even though there was still some work to be done on the rest of the text, that document demonstrated the advancement of the Committees deliberations, in the direction of the Treaty. In the discussions where each issue addressed in the Treaty would be addressed separately, CEBS wished to further elaborate its position on the key areas of the Treaty, namely: definitions, object of protection and rights to be granted. As final note, the Delegation reminded the Committee members that that Treaty should take into account the fast evolving digital environment, in which broadcasting was taking place. As a means of ensuring effective protection of the broadcasting organizations in the digital era, the Delegation believed that the Treaty should too cover the transmissions on internet platforms.

35. The Delegation of Nigeria, speaking on behalf of the African Group, thanked the Chair for the Revised Consolidated Text on Definitions, Object of Protection, and Rights to be Granted. In that session, the Delegation looked forward to reaching consensus in the call for a 2017 Diplomatic Conference for the protection of broadcasting organizations against signal piracy. As such, the African Group was ready to support a treaty that focuses on signal piracy, as contained in the 2007 mandate of the General Assembly. The African Group would also support a simple technological neutral instrument that would allow for adequate policy space for implementation by Member States. The Group looked forward to discussing that further and would make its interventions it began to consider the Chair's draft text.

36. The Delegation of China thanked the Chair for the Revised Consolidated Text on Definitions, Object of Protection, and Rights to be Granted. The Delegation noted that the text rightly targeted the issues that were under discussion, as it proposed alternatives that would guide the direction of the meeting. Since Member States stood in disagreement during the previous sessions, the Delegation hoped that the Committee would reach a more substantial consensus during that meeting. China was delighted to see that most Member States recognized the importance of protecting broadcasting organizations. The Delegation noted that with regard to the scope and object of protection, and subject of protection, the Committee had almost achieved consensus. China committed itself to making progress through its collaboration with other Member States so as to have the Committee achieve consensus on more issues. The Delegation further hoped that the objective of convening a diplomatic conference would be the main object of the Committee's efforts.

37. The Delegation of India, speaking on behalf of the Asia Pacific Group, noted that in the previous session, there were a lot of textual and consensual agreements on the table, which formed inputs for the Revised Consolidated Text on Definitions, Object of Protection, and Rights to be Granted document, which had been distributed to the Member States. The Delegation hoped that Member States would be able to discuss and iron out various differences, which they had on various divergent issues. Based on the 2007 General Assembly mandate, that was agreed to in 2012, the Asia Pacific Group supported the development of an international treaty for the protection of broadcasting organizations. The Delegation also supported attempts to reach an agreement that was based on the signal-based approach for broadcasting and cablecasting organizations in the traditional sense. They were committed to working to achieve a balanced text cognizant of the interest and priority of all stakeholders. The Delegation believed that adhering to the original mandate, without introducing a new layer of protection, would facilitate the achievement of the desired balance between the rights and responsibility of

the broadcasting organizations. The Asia Pacific Group would continue to participate in all the consultations, with the view to finalize a treaty on the protection of broadcasting organizations in traditional sense by reaching consensus on outstanding issues and taking into consideration the positions of all member countries.

38. The Delegation of the Bahamas stated that they looked forward to addressing the interests and priorities of all Member States. The Delegation welcomed the Revised Consolidated Text on Definitions, Object of Protection, and Rights to be Granted that was proposed by the Chair and looked forward to a fruitful atmosphere that would produce constructive and beneficial results for all WIPO Member States.

39. The Delegation of the European Union and its Member States stated that the treaty on the protection of broadcasting organizations was a high priority for the Delegation. The Delegation remained strongly committed to advancing the work on various technical issues discussed in previous Committee meetings. The Delegation welcomed the Revised Consolidated Text on Definitions, Object of Protection and Rights to be Granted prepared by the Chair, and had a number of technical and substantive comments on the text. The Delegation was prepared to continue to follow an open, constructive, and flexible approach that focused the discussion on the main elements and aspects of the Treaty that had more convergence among Delegations. The work of the Committee should result in a meaningful treaty that kept up with the pace of technological development. The Delegation, in particular, believed that the transmissions of traditional broadcasting organizations, over computer networks, such as simultaneous or TV catch-up, warrant protection of active piracy. As it had indicated in previous meetings, the Delegation attached great importance to the adequate catalog of rights, which would go to protect broadcasting organizations against access to piracy, whether occurring simultaneously with protected transmissions, or after the transmissions had taken place. The Delegation of the European Union and its Member States hoped that that Session would bring the Delegations closer to finding a solution on that main element of the Treaty. As it had been mentioned on previous occasions, what was needed was a broad consensus as to the extent of the protection to be granted, so that the future Treaty would provide broadcasting organizations involved in an increasingly complex technological world with adequate, effective protection. Considerable efforts had been made during previous sessions to build such consensus. The Delegation hoped to continue on that path while not losing sight of the technological realities and of the needs of broadcasting organizations in the 21st Century.

40. The Chair introduced Document SCCR/32/3, Revised Consolidated Text on Definitions, Object of Protection, and Rights to be Granted. He presented the text and indicated that in the previous session, the discussion on the object of protection had ended prematurely, as a result of the many different options referencing signals and the term broadcast. The Chair noted that as the Committee had agreed, the more precise term to refer to object of protection was a qualified-type of programme-carrying signal. Based on the definition, that was not a mere signal or an electronically-generated carrier, but was rather a signal that carried a programme. The Chair indicated that in the revised version of the text, there was an introduction of the word programme, and with it was a suggested definition meaning live or recorded material consisting of image, sounds or both, or representations thereof, that were authorized by the right holder for transmission. In terms of the definition of broadcasting, the Chair noted that there were two alternatives presented: Alternative A and Alternative B. Alternative A included a separate definition for broadcasting and cablecasting and required a definition of cablecasting, whilst Alternative B had just one definition for broadcasting and one which was not limited to the so-called traditional definition of broadcasting. The two definitions for broadcasting were a result of the definition of broadcasting being limited to traditional broadcasting, and specifically to transmissions made by wireless means. The Chair indicated that the limitation in the definition of broadcasting erased the need to have a separate definition of cablecasting, which

several Delegations had suggested to include, as cablecasting was proposed to be part of the Object of Protection of the Treaty. The definition of cablecasting was similar to the previous one, with a difference that it was not wireless, and instead, used wire. Alternative B, which reflected the submission from the Delegation of South Africa, had one technologically neutral definition of broadcasting, which was part of one of the contributions made at previous sessions. Summarizing in the definition of broadcasting we have Alternative A with a limited definition of broadcasting and require additional definition of cablecasting and Alternative B with a unique definition of broadcasting, technologically neutral. Contained in letter D was the definition of broadcasting organizations plus the terms, activities and functions that had to be covered by that broadcasting organization. Due to some concerns that had been clearly expressed by some Delegations, the definition of cablecasting organization was in brackets, as the inclusion of cablecasting as an object of protection was still under discussion. In terms of the definition of retransmission, the Chair noted that it too had two alternatives: Alternative A and Alternative B. Alternative A defined retransmission as the transmission of the reception by the public, by any means, or over any medium, or as the transmission of a programme-carrying signal of any other entity, than the original broadcasting organization, or someone authorized by it, whether simultaneous, near-simultaneous or deferred. The Chair stated that the reason for that big scope definition of retransmission was that in different instruments, it had been observed that the use of the term retransmission was included, regardless of the technology. If the term retransmission through Internet was being used, the intention of that term was not to enhance the object of protection of that Treaty, but to be consistent with term retransmission, which is used in a broader manner in the updated discussions on the topic. Alternative B's definition of retransmission was limited to simultaneous or near-simultaneous transmission. That definition did not include the deferred transmission, and did not cover other types of activities that could be considered deferred or that are limited to the simultaneous or near-simultaneous transmission. The Committee had the option to select the bigger scope of the term, without necessarily deciding the scope of protection, but needless to say, had to decide which would be the better term. The need to clarify what was considered a near-simultaneous transmission was raised in previous the discussions of the Committee, where an understanding that a transmission delayed only to the extent necessary to accommodate time differences, or to facilitate the technical transmission, was reflected. The Chair expressed that the definition of pre-broadcast signal would remain in brackets, as it had not reached a degree of consensus enough, to remove such brackets. In terms of the definition of signal, the Chair indicated that there was a consensus or similarity that was proposed. Signal was the programme-carrying signal submitted to a broadcasting organization, or someone acting on its behalf, for the purpose of subsequent transmission to the public. The Chair presented the second section of the document, which was the Object of Protection. The Chair indicated that protection only extended to programme-carrying signals which, thanks to the definitions that had been clarified in previous sessions and transmitted by or on behalf of broadcasting organizations, were the Object of Protection of the Treaty. That was very important as it reflected the consensus that the Committee was following the mandate and limiting protection to activities made by broadcasting organizations. As reflected in almost all of the submissions received, the second paragraph stated that, with respect to retransmission pace, there would be no protection provided by the Treaty. The third paragraph included two alternatives. The first alternative stated that notwithstanding Paragraph 2, broadcasting organizations would also enjoy protection for simultaneous and near-simultaneous transmissions by any means. While some delegations had suggested a possible protection that would be seen in the section of Rights to be Granted, while other delegations had suggested to include a right to prohibit so as to look at the piracy activities, the Chair as such indicated that how to offer that protection was yet to be clarified. The second alternative reflected a bigger scope because it stated that it not only is simultaneous and near-simultaneous, but that the third transmission, at that moment in brackets, could be a part of the Object of Protection. As there was some concern regarding the need of flexibility, if the Member States decided to extend that protection, Paragraph 2 would go

to limit the protection of the third transmission, including the making available of that transmission, in such a way that members of the public would select the time and place for access. Finally, Paragraph 3 in Alternative B stated that protection would be limited when contracting parties limited protection, accorded to broadcasting organizations, from other contracted parties that chose to apply Paragraph or Subparagraph 2. In the third section, Rights to be Granted, there were two alternatives in the first paragraph, and two in the second paragraph. The main differences between the two alternatives in paragraph one were that Alternative A stated that the right would be a right to authorize or prohibit, and the main difference with Alternative B was that Alternative B was limited to the right to prohibit. According to Alternative A of that first paragraph, the right to authorize or prohibit was related to the retransmission of the programme. The second part of that section stated that the right to authorize or prohibit would extend to the making available to the public. That was a separate issue, because in the first romanette, it is related to simultaneous, near-simultaneous and deferred in practice. The second expressly mentioned the making available of the public, as a way of transmission. Alternative B was however limited to the Right to Prohibit. The first paragraph in Alternative B, related to simultaneous, near-simultaneous, deferred retransmissions. Having two romanettes each, those were the two Alternatives, A and B, for Paragraph 1. Paragraph 2 related to the signal protection, and as it had not reached consensus, was in brackets. Further bracketed was the point that broadcasting organizations would also enjoy the Right to Prohibit reauthorization of pre-broadcast signals. Alternative B was not a Right to Prohibit but was a general term or phrase stating that broadcasting organizations would enjoy protection for the broadcast signal following a contribution submitted previously to that topic. On the Object of Protection and Rights to be Granted the Chair summarized that there was progress made in the definition section that assisted in the understanding of the terms. As a result of the discussion, there were options, broader definitions, technological restricted definitions, which presented a starting bases for discussion as well as material to take decision. Regarding the Object of Protection, that was the core of analysis and it would be a good result of that part of the session to see if the Committee had reached consensus on the Object of Protection. There were brackets that could trigger discussion and it would have been interesting to have had an understanding on that matter. Regarding the third section, Rights to be Granted, we have clarity on the options as well. The Committee had been presented with options such as the Right to Authorize or the Right to Prohibit, and had heard the advantages and disadvantages of using them. The Chair stated that the core of the discussion would be on the Object of Protection, of which it would be time to find consensus regarding the legitimate concern of the cablecasting situation.

41. The Delegation of Brazil wished to make some preliminary comments on the process of the preparation of document SCCR/32/3, Revised Consolidated Text on Definitions, Object of Protection, and Rights to be Granted. The Delegation stated that according to its understanding, members had mandated the Chair produce a new document based on Member States proposals. The Delegation was surprised at the over simplified positions in proposals and possibilities, Options A and B, that did not take into account a number of proposals mentioned in the previous meeting. That narrow approach could bring about a serious flaw, as that new document did not include proposed reached positions. Specifically, the Delegation of Brazil had supported a proposal presented by another delegation in the previous session, and was surprised to not see its inclusion in the new working document. The proposal was presented in support of Paragraphs 201 and 204 of the Draft report of the Thirty-First Session. In spite of the simplification of proposals, the Delegation hoped that the approach chosen by the Chair could bring positions closer.

42. The Chair responded by stating that the document was a tool and was not meant to reflect a compilation of all of the submissions and suggestions. It could be used to get the desired progress.

43. The Delegation of Brazil reiterated that the proposal presented and supported in Paragraphs 201 and 204 of the Draft Report of the Thirty-First Session should too be reflected.
44. The Chair responded by stating that it would ask the Secretariat to read Paragraphs 201 and 204 of the document, so as to promote the understanding of what the Delegation of Brazil had just reiterated.
45. The Delegation of Brazil thanked the Chair for the informative presentation of the important documents, in line with the statements that had been delivered by the Delegation of India on behalf of the Asia Group, and also in line with the comments that had been made by the Delegation of Brazil. The Delegation reiterated that that was confined to only broadcasting and cablecasting organizations in the traditional sense, therefore that traditional broadcasting would be limited to the traditional and should as such be protected and under the scope of the Treaty.
46. The Chair invited the Secretariat to read Paragraphs 201 and 204.
47. The Secretariat clarified that Paragraph 201 reflected the statement of the Delegation of the United States of America. The Delegation of The United States of America had referred to the discussion on cablecasting organizations which had taken place over many SCCR sessions. In that discussion, the Chair had mentioned the concerns, and a number of times, they had heard of the different treatments in the regulatory environment, most recently from the Delegation of Brazil. The Delegation had agreed with the statements of the Delegations of the European Union and its Member States and of Brazil, in that the issue was tied up with defining broadcasting organizations and cablecasting organizations. Given the expression of concern, and given the structuring of the consolidated text, one idea that had occurred to the Delegation was to make the protection of cablecasting organizations under the Treaty optional, and to leave that question to Member States. If that idea was to gain traction, then they would have needed to consider how such a provision would be structured. The Delegation had suggested an optional provision that would contain its own tailored definition of cablecasting organizations. They would not have had to arrive at that definition until they discussed the article that addressed that optional level of protection. In Paragraph 204, the Delegation of Brazil had referred to the proposal from the Delegation of The United States of America, regarding the possibility of allowing Member States discretion on an optional level of protection and had stated that it may have been a good way forward to give comfort to the Delegation of Chile and Brazil as well as other Delegations that had concerns regarding the national legislation.
48. The Chair stated that that was a good time to initiate a discussion on the inclusion of cablecasting in the suggestions made by different Delegations and in the original proposals for the suggested Treaty. Some legitimate concerns had been expressed, one of which was on the constitution, and the other, related to the specific regulatory situation. The Chair indicated that that suggestion had been effectively expressed in previous sessions but that it was not included as the Chair did not understand the document as a compilation of each and every different suggestion. Based on the document that the Chair had submitted, the whole use of the term cablecasting was in brackets, as there was still no consensus on all the things to be included. The Chair opened the floor for the discussion on the specific topic of cablecasting.
49. The Delegation of the United States of America thanked the Delegation of Brazil for drawing attention to Paragraph 201 of the Draft Report, which the Delegation indicated it was its paragraph. The Delegation explained that that intervention was intended to advance the discussion on a difficult issue for some Delegations and was a discussion that led the Delegation to further clarify that idea with stakeholders and other agencies of the United States

of America government. On that basis, the Delegation's position that cablecasting organizations should be included within the scope of the Treaty remains unchanged.

50. The Delegation of the European Union and its Member States agreed with the statement made by the Delegation of the United States of America. The Delegation's position that cablecasting organizations should be included in the Treaty and granted protection under the Treaty too remained unchanged.

51. The Representative of Knowledge Ecology International (KEI) stated that the suggestion made by the Delegation of Brazil, following up on what was arranged earlier by the Delegation of the United States of America was important. The characteristics of cable organizations were different in two different ways. For one, unlike a lot of over the air broadcasts, there was an agreement reached with the buyer which included paid services that offered different regulatory and legal regimes for preventing piracy that related to the cable television. The other was the concept for piracy for free signal, which was in fact different from something like a cable service. Secondly, the ownership of the broadcasting and the cable channel, the cablecasting beneficiaries, was a package of channels as opposed to people running wires to the home that meant that there was more multinational ownership of the channels as opposed, for example, to the stations which in a lot of countries have more local ownership. As such, it was much more manageable to consider the challenge of the over the air broadcast if the focus was simply on that issue and if cablecasting and cablecasting organizations were included, it would make it narrower.

52. The Chair stated that the comment regarding the situation related to cablecasting was not new and that it was related to a concern that had been expressed. Some delegations had compressed the need to include cablecasting. A comment related to the difference between cablecasting and cable distribution was raised in previous sessions the Committee, meaning that there were some entities, which without entering into the activities of assembling or packaging, or without having the legal and editorial responsibility, were limited to cable distribution. Those entities had been referred to as cable distributors, which were different from cablecasters. The Chair opened the floor and asked the delegations to elaborate upon that specific topic.

53. The Delegation of Latvia, speaking on behalf of CEBS joined those delegations that expressed the view that cablecasting should be included in that treaty as well, and that protection should be granted.

54. The Chair invited the comments from Observers to the discussion on cablecasting.

55. The Representative of the European Broadcasting Union (EBU) stated that it was important to realize that the definitions or the alternative definition were not intended to separate two types of organizations. The Representative stated that the intention was to say to connote broadcasting organizations, who deliver their programming via wireless network, and broadcasting organizations, who deliver their programming via a cable network. As such, for the purposes of that treaty it was important to realize that the discussion did not refer to different organizations. For the European Union and its Member States for example, its countries had only a cable network where broadcasters were active, meaning that the traditional free to air broadcasting no longer took place, and with everything having been digitized, broadcasters delivered their programming exclusively via a cable network or probably in addition via a similar kind of wired network. As such, such entities would have to be included. With regard to the concern raised by the Delegation of Brazil, the Representative stated that although important, it was an issue that could be resolved by drafting on that particular purpose in the plenary.

56. The Representative of Karisma Foundation referred to the rights that would be in the proposed treaty and gave an example of what had happened in Colombia, as an example of how retransmission rights could be abused. The Representative stated that at the beginning of March that year, a group of Colombian football fans were, over several digital platforms, Facebook, Twitter, etc., transmitting information on Colombian football goals, penalties and videos taken from benches in the stadium. At the request of RCN Televisión, the Colombian broadcast, some of the fans had their accounts blocked because the content they had shared on their accounts went against the rights of the professional football clubs and broadcasters. According to the organizations who claimed that the content shared was their own, the fans were obviously infringing copyright, as even the content that was taken from the stands, was claimed to be their own. That is as such an example of some of the difficulties posed by copyright, which go to infringe upon the rights of citizens who are no longer allowed to exercise their freedom of expression. Therefore, that treaty would be one that would go to protect the organizations, and as such believe that it should have as limited a definition as possible, so as to avoid any abuse.

57. The Chair thanked the Representative of Karisma Foundation for sharing its concern and stated that whenever a treaty which gives rights such as the ones that were being discussed, there would be a section where certain exceptions were allowed. The Chair suggested that it could be easier if delegations were to tackle legitimate concerns at the same time they received claims of inclusion that some other delegations had requested. The Chair offered to receive the delegations contributions on that matter, and hoped that the Committee would find a way to give a sense of comfort to those who had expressed concern regarding the inclusion of cablecasting, as well as those who had expressed the need of its inclusion. The Chair hoped that the Committee would negotiate instead of expressing the dichotomy of having them or not having them.

58. The Delegation of the European Union and its Member States stated that they would like to better understand the problem with including cablecasters in the scope of protection, since they simply viewed it as a different technique of transmitting programs. As such, broadcasting, as defined in Alternative A, related to wireless means of transmission, whereas cablecasting related to those transmitted by wire. Accordingly, the activity was exactly the same. The Delegation stated that in Europe, there were entities that broadcasted in that way. The Delegation wished to understand the concern behind including cablecasters as beneficiaries of that treaty.

59. The Chair noted that similar questions and concerns had been expressed in previous sessions. The Chair expressed that some constitutional provisions that differentiated treatment made to broadcasters and cablecasters had been previously mentioned. Some regulatory treatment had been applied in different ways to those entities, and delegations had expressed that in treating them in the same way, as a result of the proposed treaty, would have that policy implementation

60. The Delegation of Brazil supported the suggestion of the EBU who had requested that the Chair find the language to address the legitimate concerns of delegations.

61. The Chair stated that the invitation was accepted, unless there was any delegation who opposed it.

62. The Delegation of Chile stated that it would like a separate treatment in the definitions of additional broadcasting and cablecasting. The problem faced in Chile was that the telecommunications sector defined what a broadcaster was, and was as such considered a free telecommunication. In other words, the general public could receive it free of charge. The

cablecasters would therefore not be included, as they had permits for limited telecommunications services. That is why in that session, and in previous ones, the Delegation continued to express its concerns. And that was also why the Delegation was greatly interested in knowing what the EBU proposal would be.

63. The Chair thanked the Delegation of Chile for clarifying the difference between the definitions of broadcasting organizations and cablecasting organizations in its country. The Chair asked if there was, in other countries, a differentiation in definition of those entities, and if that had an impact on the exercise of bringing a framework of protection for the programme carrying signals transmitted either by broadcasting or by cablecasting. The Chair indicated that an impact on that relationship would be helpful for considerations and invited comments on those extremes.

64. The Delegation of Germany, responding to the statement made by the Delegation of Chile, stated that potentially for those delegations who had a problem with the special treatment of cablecasting organizations in their countries, that the Committee could introduce in the treaty a provision that both defined broadcasting organizations and cablecasting organizations, but that did not have any implications on national laws in other areas except those dealing with copyright issues. The Delegation suggested that the Committee include something for cablecasting, and included that what each country was doing at the national level, in other law areas, was not connected to that. The Delegation encouraged the Committee to think about that idea.

65. The Chair responded to the statement by the Delegation of Germany by recalling the paragraph for definitions, which stated that any additional clarification, if it were required, could be evaluated. The Chair stated that having received the invitation to prepare something for the consideration of the Committee, it would work on that proposal, which it believed would trigger discussions on the options the Committee faced, regarding the important issue of cablecasting. The Chair requested and opened the floor for comments, from the delegations, regarding Alternative A and Alternative B in letter E of retransmission.

66. The Delegation of the European Union and its Member States requested to share technical comments on previous definitions. The Delegation stated that from the definition of programme-carrying signal, it thought that the text, which was at that moment bracketed and which stated that, as originally transmitted and in any subsequent technical format, should be included in that definition. The second part that was in brackets, currently for reception by the public, was not needed in that definition because in both cases of the definition of broadcasting, both under Alternative A and Alternative B, there was a reference that it was for reception by the public. As broadcasting was for reception by the public, it was not necessary to duplicate the definition of programme-carrying signal. In the definition of programme, the Delegation was not clear about the additional that was authorized by the right holder for transmission. The Delegation did not understand why that would be needed, as it was really to describe what the programme was which was the material consisting of images, sounds, both, or representation thereof, and did not see the connection with authorization for transmission. The Delegation suggested that that part be deleted from the definition of programme. On the definitions of broadcasting and cablecasting in Alternative A, and also in reference to the definition of broadcasting in Alternative B, one thing that was not very clear was why the definition of broadcasting and cablecasting was limited only to traditional means of broadcasting and cablecasting. The Delegation suggested that a clarification be added in Alternative A for broadcasting and cablecasting, and in Alternative B that broadcasting that transmitted over computer networks should not constitute broadcasting and cablecasting and that the meaning of those terms be clarified. On the definition of broadcasting organizations, the Delegation thought that the definition had all of the right elements, although could be technically redrafted by

recognizing broadcasting organization as legal entities that took the initiative and that had the editorial responsibility for broadcasting or cablecasting, including responsibility in the process of assembling and scheduling programs carried by the programme carrying signal. On retransmission and the two alternatives, the Delegation wished to have as wide as possible of a definition of retransmission, and, therefore, favored Alternative A. The Delegation questioned the additional someone authorized in both Alternative A and Alternative B. It was not clear if it was transmission by an entity other than the original broadcasting organization, or someone authorized by it, and it was not clear whether that was supposed to refer to Paragraph 1 of object of protection where it indicated that protection extended to carrying signals transmitted by or on behalf of broadcasting organizations. If that was supposed to be the same idea, then the same terms should be used.

67. The Chair responded the Delegation of the European Union and its Member States the Chair stated that indeed in the definition of broadcasting and in the definition of cablecasting, was mention that those activities are made for reception by the public. And if that was the case, adding that extreme, which was still in brackets because there was a suggestion that came for its inclusion, could probably be considered, if it was still necessary to keep it, otherwise, it also could be deleted. On the definition of programme, the Chair stated that there was mention of a need for recorded material consisting of sounds and representation that was authorized by the right holder for transmission. In the treaty, only legal activities would be protected and it would be undeniable that the extension would not be to extend protection to an entity which was not complying with the copyright framework of protection or which transmitted illegal material. And because there was a treaty protecting programme carrying signals, it would receive protection regardless of the situation in which it was transmitting illegal material. Regarding the definitions of broadcasting and cablecasting, the reason why two alternatives were presented, was a result of the concern that had been expressed that the so-called traditional broadcasting activity mentioned in the previous international agreement was similar to what was up for discussion and mentioned wireless activity, whereas the traditional way to refer to cable activity was by wire. The other alternative, which was technologically neutral, indicated, either by wireless means or any other means. However, Alternative A did not reflect the current situation of traditional activities, but that was what was there until that point. Regarding the definition of broadcasting organizations, it was interesting as it referred to that the entity which was with application to broadcast or potentially cablecasters or cablecast, including those activities that were already highlighted. Concerning the definition of retransmission, there were definitions to be debated so as to decipher which one's the committee preferred. The Chair opened for comments on those matters.

68. The Delegation of the United States of America stated that with respect to the bracketed programme-carrying signal, it agreed with the statement made by the Delegation of the European Union and its Member States that it was probably an important phrase to retain in as much as it was made clear that subsequent technical modifications of the signal would not result in the loss of protection of the originally transmitted signal. With respect to the second phrase, particularly the second bracketed phrase for reception by the public, there was an argument that it underscored the narrow scope of signals that were protected under that treaty. With respect to the definition of programme, and that phrase that was authorized for transmission by the right holder, the Committee had heard in the last session that it raised difficult concerns with respect to public domain materials. The Delegation of the United States of America wished to see in the text of the treaty that only lawful materials ought to be lawfully transmitted by a broadcast signal. With respect to Alternatives A and B under the definition of broadcasting, the Delegation maintained that it had a preference for Alternative A. Alternative B was much more wide open, containing the phrase, or any other means for reception. With respect to the alternatives for the definition of retransmission, the Delegation had a preference for the more narrowly focused alternative, Alternative B.

69. The Delegation of the European Union and its Member States stated that on the definition of programme, it saw the addition as an obstacle to exercising rights under the treaty, and maintained that it preferred to see deleted from the definition of programme, the phrase that was authorized by the right holder for transmission. On definition of broadcasting and cablecasting, the Delegation wished to clarify that it was not looking to add an intermediate definition. As indicated by the Delegation of United States of America, the Delegation had a preference for Alternative A as that was the one that better represented the emerging consensus. The Delegation wished to be clear that the programme denoted traditional means of broadcasting and cablecasting and indicated that without that form of clarification, that the transmission of computer networks is not covered, it was not clear. On the remaining definitions, the Delegation added that since the Committee had a definition of near-simultaneous transmission, that they should have a definition of deferred transmission, of the object of protection and a definition of rights. For the definition of pre-broadcast signal which was defined as the purpose of subsequent transmission to the public, the Delegation wished to clarify even further that that signal when transmitted was not intended for direct reception by the public so when it was transmitted it was not for reception by the public, but it was for the purpose of subsequent transmission for the public.

70. The Chair thanked the Delegation of the European Union and its Member States for clarifying the definition of broadcasting, and also for clarifying that transmissions over computer networks are not part of the activity. On the need to define deferred transmission, even if bracketed, the Chair added that the Committee was still negotiating that activity, as part of the treaty, and that brackets were something that the Chair would take note of.

71. The Delegation of Argentina thanked the Chair and the Secretariat for the preparation of the documents for that meeting. The Delegation stated that with regard to Section 1, definitions under C, broadcasting, that they preferred Alternative A. With regard to D, which defined the broadcasting organization, the Delegation suggested that they square brackets be removed so that broadcasting organization and cablecasting organization be included in the treaty. The Delegation wished to clarify that the broadcasting organization was the person legally authorized to carry out the activities that were mentioned and that the inclusion of legally authorized would avoid giving protection to illegal transmissions. With regard to E, retransmission, the Delegation of Argentina preferred Alternative A and finally, with regard to G, it wished to remove the square brackets.

72. The Chair thanked the Delegation of Argentina and welcomed the Director of Copyright for Argentina, Dr. Gustavo Schötz.

73. The Delegation of Nigeria stated that it supported the Chair proposal for definition A, programme-carrying signal. The Delegation understood that the second bracket, as originally transmitted, and in any subsequent technical format, could mean that whether encrypted or not, could cover for concerns of whether encrypted or not. And in that regard, the Delegation stated that it could be flexible on that, except if the Chair had a different explanation. The Delegation supported the deletion of the last bracket, which was for reception by the public. The Delegation indicated that it would come back on B, on programme and the definition for programme. As had been indicated by the African Group in the past, the Delegation supported Alternative B for broadcasting. The Delegation believed that that was a technologically neutral and broad enough definition of broadcasting that could allow the policy space that was acceptable by many delegations, including those that had raised concerns like the Delegation of the European Union and its Member States. For D, broadcasting, broadcasting organization and cablecasting organization, the Delegation stated that it was open to keep discussing that,

but believed that in the first definition, the wide definition of C, broadcasting, could address the concerns of cablecasting organizations. Finally for retransmission, the Delegation supported Alternative B.

74. The Delegation of Austria supported the intervention made by the Delegation of the European Union and its Member States with regard to the definition of programme, particularly to the criterion that was authorized by the rights holder for transmission. According to the Delegation that criterion was not in line with the general principle in the area of copyright and related rights. That meant that if there were several layers of rights in a certain activity, the protection of each of those layers was independent from one another. Thus, if, for example, works of literature were translated without permission of the author, the transmission would be protected nevertheless. Also, if a performing artist were to perform the work of other artists without permission of the performance, it would be protected nevertheless. And with regard to broadcasting organizations, if a phonogram producer produced phonogram, without the necessary authorization from the rights holder, and the works of copyright and performances related, the phonogram would be protected nevertheless.

75. The Delegation of South Africa stated that they supported the Delegation of Nigeria's position and the African Group's position in terms of programme carrying signal. It was their that the last bracket should be deleted because it did not add much to the intended definition, which should be kept very clean and very simple for the purposes of the treaty. With regard to broadcasting, the Delegation was of the view that for the purposes of the treaty, a technical definition for broadcasting should be adopted. In that regard, it opted for Alternative B. Taking into consideration that there were member states that had issues with cablecasting, however, South Africa wished to put on the floor the possibility of catering for that consent, if possible, in the Preamble. If it was acceptable to each Member State, the Preamble could state that each Member State could determine what they defined as broadcasting when they did their national policies. With regard to retransmission South Africa opted for Alternative B.

76. The Delegation of Latvia, speaking on behalf of CEBS, stated that the definition of programme, authorized by the right holder for transmission should be deleted, and that for the definition of broadcasting, it favored Alternative A.

77. The Representative of the Copyright Research and Information Center (CRIC) wished to make a comment concerning broadcasting. Based on its understanding, the consensus in the Committee was that the protection of broadcast was limited to signals not extended to content transmitted by broadcasting organizations in the traditional sense. The Representative stated that fundamentally, related rights never interfered with copyrights and other rights. Broadcaster's rights and other related rights, protected all signals by broadcasts, irrelevant to contents. Accordingly, it was natural that broadcasting channels which transmitted a public domain movie should be protected. Under the WPPT Treaty, if one performer sings an old song, the performance itself was protected, even if that song was in the public domain. If broadcasting a public domain movie would not be protected by broadcasters related rights, the movie would not lend it to broadcast or an audience would end up not being able to see the movie through the television. That would be a problem for broadcasters, but also for audiences at large. The Representative thought that what "was authorized by the right holder in the transmission of the programme", should be deleted. For the purposes of the treaty, the definition of broadcasting organization was understood as entities which delivered the programme output exclusively by means of computer networks. Accordingly, in the case of broadcasting, in Alternative B, broadcasting organization included the entity which transmitted programme carrying signal only by Internet. That definition came out of the 2006 and 2007 General Assembly mandate, and the scope of the treaty confined the protection to broadcasting and cablecasting organizations in the traditional sense. Broadcasting in alternative A did not

make clear the scope of beneficiaries. At the end of 2015, more than 3 billion people in the world enjoyed the Internet and most of them enjoyed the Internet by mobile and wireless means. Beneficiaries should as such be limited to broadcasting and cablecasting organizations in traditional sense, in accordance with the General Assembly mandate and the Committee's consensus so far. As such broadcasting should not be understood as including transmission over computer networks. The Representative added that that would be the simplest and clearest clear way of defining broadcasters, broadcasting organizations and broadcasting.

78. The Chair invited delegations to make comments for the section of definitions before moving forward to the section of object of protection, and also invited comments from NGOs who had specific suggestions regarding the set of definitions.

79. The Delegation of Switzerland wished to make a comment on the definition of the pre-broadcast signals and requested some flexibility on that definition, to allow national implementation. The Committee simply defined broadcasting, without a separate definition of the pre-broadcast signal. Broadcasting covered the whole process, including the pre-broadcast signal if it were indeed separate. The concern it had in having a separate definition for the pre-broadcast signal would be that it would have to create rights on behalf of another entity who would be emitting that signal that would be different from the broadcasting organizations. In fact, the objective of the treaty was to provide protection to the broadcasting organizations, and the concern would then be that if pre-broadcast signals were to be defined separately, one would establish in that way rights to those who were the owners of those signals. Thus it was not so much about protecting or not that aspect of the signal, but simply not creating new rights that would go to favor others other than the broadcasting organizations that are dealt with under that treaty.

80. The Representative of the EBU stated that in the section on the rights on protection of the pre-broadcast signal, it had been clarified that what was protected was the pre-broadcast signal transmitted to them. That may be a way out to clarify that only that signal which was transmitted to a broadcast organization would be protected on behalf of that receiving broadcast organization. The Representatives suggested to clarify that it was the right to prohibit authorized retransmission of the pre-broadcast signal transmitted to them, because it referred to broadcasting organizations. As regards the other Alternative B, it was necessary to clarify that broadcasting organizations should enjoy adequate and effective protection for the pre-broadcast signal transmitted to them.

81. The Chair indicated that the section on the object of protection was the core section of the treaty because in the first paragraph, it stated that the protection extends to programme-carrying signals. However, it was important to clarify that those programme-carrying signals were protected if they were transmitted by a broadcasting organization. As stated in Paragraph 1 of the object of protection, protection granted under that treaty extended only to programme-carrying signals transmitted by or on behalf of broadcasting organizations. Another clarification contained in that paragraph was that the protection was only possible, if the activities were made by a broadcasting organization. Those were elements that were trying to tackle some of the concerns that had been expressed in the section of definitions. The Chair clarified that the object of protection did not confer the transmissions. As far as alternatives for additional protection, there was Alternative A which was related to the protection of simultaneous and near simultaneous transmissions by any means, and Alternative B which, as had been explained before, included the chance to enhance the protection to not only near simultaneous, but deferred transmissions including the making available of transmission and with some additional paragraphs, limiting that protection for decisions taken by a contracted party with an effect in the national treatment clause. The Chair opened the floor for comments.

82. The Delegation of Japan stated that with regard to Paragraph 3, it thought that the protection of simultaneous and near simultaneous transmission should be optional, not mandatory. In Alternative B of Paragraph 3, deferred transmission and on demand transmission were optional protection, however, simultaneous and near simultaneous transmission were mandatory protection even in Alternative B. The Delegation thought that there were different views among Member States, on whether or not to protect simultaneous or near simultaneous transmissions. In that regard, the Delegation of Japan thought that, on the protection of simultaneous and near simultaneous transmission, more flexibility should be given to each Member State. Its proposal in document SCCR/27/2 rev Article 6B provided enough flexibility on that issue because the protection of simultaneous and near simultaneous transmission was optional. Therefore, it proposed that the Japanese proposal be reflected in the text.

83. The Chair reiterated the statement from the Delegation of Japan, which stated that the Committee should find another voluntary alternative in as far as the protection of simulcasting and near simultaneous transmissions. The Chair requested that the Secretariat show and read to the Committee, the proposal made by the Delegation of Japan in previous Committee sessions.

84. The Secretariat read Article 6B, protection of signals transmitted over computer networks.

85. The Chair requested comments regarding the proposal submitted by the Delegation of Japan.

86. The Delegation of the United States of America stated that the Japanese proposal deserved serious consideration.

87. The Representative of CRIC thought that the Japanese proposal under Article 6 in SCCR/27/2/REV was a very good bridge between the different perspectives, in as far as transmission over the Internet. Some Member States had been discussing the protection of transmission over the Internet, broadcasting and also webcasting, since 2000/2001. In 2006/2007, the Committee had decided that protection of webcasting and simultaneous casting would be a separate issue. However, there still remained opposing views where some Member States still wished to have the protection of transmission over the Internet, and others, who still did not want to include that protection of transmission over the Internet. As such, the proposal by the Delegation Japan was a good tool for compromise.

88. The Delegation of Nigeria stated that its understanding was that the Committee was at a point where it wanted to make progress and move the discussion forward. The Delegation believed that the proposal, which had been made by the Delegation of Japan, had its merits, and that certainly the Committee could discuss it. The Delegation suggested that in order to maintain focus, the Chair should shape discussions around areas of convergence, rather than areas that proved to be more divisive. The definitions should as such maintain their broader form, which would prove to be more helpful for the Committee's work. The Delegation wished to encourage the Committee to work towards closing and narrowing the gaps in the area of divergence, so as to significantly advance the work of the Committee.

89. The Delegation of the Russian Federation thought that the Japanese proposal was a real step forward and was symbolic of the progress in the Committee's discussion. The proposal was something that could take the Committee's work forward. Since the Committee had been discussing that document for more than 15 years, in that time, technology had taken giant strides forward. It was important for Member States to recognize what happened at the Diplomatic Conference in the year 2000, where the Committee could not reach agreement, at that time, on audio visual performances. At that time, it had proposed the idea of optional protection, where they had indicated that if parties could not reach a particular agreement on a particular issue, then in fact, it might have been possible for there to be an option for protection, which would allow everyone's interest to be protected. The Delegation thought that a proposal like that was a valid approach to that kind of issue, and was clearly what the committee needed to move forward. Also, it was something that did not in any way negatively affect the interest of any country, of any party. If the Committee went for the formulation that was being proposed, each and every country would then decide whether or not there was a need for protection for the Internet or not.

90. The Representative of Electronic Frontier Foundation (EFF), stated that they did not support the proposal made by the Delegation of Japan. The Representative stated that just because there was dissent over that issue, making it voluntary was not the right solution. That did not solve the problem and actually largely defeated the purpose of having a treaty that was meant to lead to some degree of harmonization. Out of the options given in the Secretariat's original text, the Representative thought that the narrower one, which was Alternative A, was the better one of them. Generally however, the Representative did not think that the transmission of signals over computer networks was within the scope of the treaty. If the Committee were to include the Delegation of Japan's proposal in the discussions, then it would just lengthen the negotiations further.

91. The Representative of EBU stated that as had already been expressed by the European Union and its Member States and the CEBS Group, that in order to make that treaty meaningful, the Committee needed to include the activities of broadcasters. The Representative stated that as could be observed in its region, broadcasting activities were also to the benefit of the public as they demanded more and more on-demand transmissions. That trend as such raised the question on whether it was not more advantageous and forward-looking to include in the treaty, on-demand transmissions in the scope of application. The Representative stated that there was a need for flexibility on that point, especially since as a moving target, it was the most difficult element of the treaty. The longer the treaty was discussed, the more the technology would have developed. That issue was for example, not on the table in 1998, it was not on the table in 2006, but was today, very lively among the activities of broadcasters. That why it was important to find a solution.

92. The Chair responded that the Committee could try to think about flexibilities regarding each stage of or element that was part of that subject of protection.

93. The Delegation of Germany stated that even though it understood those delegations who wanted to have more flexibility in that case, it was important to consider that the treaty would not have many cases where it would be applicable, if the Committee did not introduce transmissions over the Internet. There were, in Germany, some general broadcasters who transmitted signals by satellite and antenna and who also had live stream Internet. The easiest way to pilot the signal of the broadcaster would be through that Internet live stream signal. That so happened to be the easiest way to gather it all over the world, and break the rights of the broadcaster, would only require the use of the live stream signal and not satellite or antenna signal. The Representative stated that as many countries were taking the opportunity to leave that out, there were very few cases where protection would be given to the broadcaster.

94. The Chair stated that in previous sessions of the Committee, Member State's resistance to include the right to authorize was reduced when the right to prohibit had been mentioned to cover any platforms. There was perhaps some common ground necessary to tackle the unauthorized use of material. The Chair stated that it was important to use that session, and not future sessions, in order to have an understanding of the long-time intent of having a treaty on that topic.

95. The Delegation of the European Union and its Member States stated a couple of points, on the object of protection. The Delegation wished to see pre-broadcast signals included in Paragraph 1, with the protection extending only to programme carrying signals, including pre-broadcast signals. In Paragraph 2, the Delegation wanted to emphasize the protection of retransmissions of signal, by broadcasting organizations. A broadcasting organization that transmitted a signal, which was afterwards retransmitted by a cable operator, through a cable, should be protected. Broadcasting organizations should be able to act in such situations where in the initial transmission by the broadcasting organization, the signal is intercepted and also where at any subsequent level or stage of retransmission, there is interception of the signal. Therefore, Paragraph 2 should state that provisions of the treaty shall not provide any protection to an entity that merely retransmitted a broadcast but will protect retransmission for broadcasting organizations. As far as Alternative A and B on the object of protection, the Delegation wanted to have as broad an object of protection as possible, as that would make the treaty more meaningful and as stated by the Delegation of Germany, there was need for the protection of transmissions over computer networks. The Delegation supported Alternative B, where the simultaneous and different transmissions were protected, although they believed that that protection should be in the mandatory scope of protection. It would be useful to have a definition of deferred transmission, as the way it understood deferred transmission was that it was a linear transmission deferred in time, which would be different from a transmission made in such a way that members of the public would access it at a time chosen by them. In Alternative A and B, the wording was not necessary, notwithstanding Paragraph 2 which referred to retransmissions, which were by definition carried out by third parties, while the treaty was looking at transmissions that were carried out by broadcasting organizations.

96. The Delegation of Latvia speaking on behalf of the CEBS Group aligned itself with the arguments and views expressed by the European Union and its Member States on the object of protection.

97. The Chair opened the floor for comments on Section 3 of the document SCCR/32/3, rights to be granted.

98. The Delegation of the United States of America stated that they wished to seek clarification on the concept of deferred transmissions. Over the previous several sessions, the concept had been understood to apply to a delayed linear, or in other words, a non-interactive transmission of the assembled and scheduled broadcast programming, which could be transmitted over the Internet. A deferred transmission would permit viewers to watch the entire three to four-hour prime time of the assembled and scheduled programming of a broadcaster at a later time. It was not clear how long the period of delay was, whether the words chosen limited to linear transmissions and whether the deferred transmission would be unaltered. Also, based on the notes in the Delegation's exercise on the charts, the word linear was included, but was not in the most recent Chair's text.

99. The Chair stated that the questions posed by the Delegation of the United States would be a part of an exchange that the Chair expected to happen between delegations and would be a part of the discussion to include a definition of deferred transmission.

100. The Delegation of the European Union and its Member States stated that it had the same understanding of the term deferred, as just set out by the Delegation of the United States of America. For delayed linear transmissions, the Delegation stated that there should be differentiation between deferred transmissions and transmissions that were made in such way that members of the public may access it from the place and time individually chosen. And it could also be a possibility for distinguishing those two in object of protection Alternative B. The European Union and its Member States stated that it would like to see all of those transmissions as mandatory transmissions in the object of protection or protected as mandatory, in the mandatory way. But there could be another possibility of looking at having simultaneous, near simultaneous deferred transmissions, as mandatory protection and having transmissions that were made in such way that members of the public may access it from a place and at a time chosen by them as optional. Because there looked to be two different transmissions, all of those should be included in a mandatory object of protection. For rights to be granted, the Delegation stated that its preference was for Alternative A, which had the understanding of the retransmission as simultaneous, near simultaneous and deferred, and also with the addition of the second paragraph, which was currently in brackets, which provided the right to authorized and prohibit, and make available to the public, the broadcast, in such way that members of the public may access it from a place and at a time individually chosen by them. The Delegation wished to see those points included in the text. The Delegation also wished to see included other points in had raised in the past such as, the right of fixation, the right of the reproduction of fixations and the right of distribution of fixations.

101. The Chair summarized the previous discussion. He stated that some of the suggestions regarding the so called post fixation rights had indeed been expressed by the Delegation of the European Union and its Member States and others, and that those suggestions were not a part of that instrument. The Chair reiterated that what was in the document was not the individual suggestions but those that were gaining support in the Committee, and those that had the chance to get a definition and support. Although the document was not going to be turned into a compilation of individual suggestions, the Chair stated that some of the alternatives would be reflected. The Chair stated that it would be very interesting to have seen how simultaneous transmission and near simultaneous transmissions were going to be dealt with, as in previous charts, a majority of member states was supporting the inclusion. With some flexibilities, the Chair hoped that the Committee could find a solution. The Chair thanked the Delegation of Japan for trying to find a solution on that matter. Its proposal had to be read carefully, and deserved further analysis. Some Delegations argued that the proposal was less than what was required because it turned everything optional whereas other delegations have stated that that proposal could be the solution even though making it optional wouldn't comply with the objective of harmonization that an international instrument should have. There was a much needed analysis necessary to discern if the whole system of protection for that treaty could be made optional or to identify which sections could be considered to be treated in an optional way. Furthermore, others had argued that the proposal from the Delegation of Japan increased the scope of the proposed treaty.

102. The Chair summarized the discussions and stated that some delegations had expressed favor of Alternative A, whilst others favored, Alternative B. The Chair encouraged the delegation to be flexible, so as to find a common ground on the different topics on the table for discussion. There were a lot of contributions in the section of definitions. Regarding the section of object of protection, there was an interesting exchange in the Committee regarding the options thereof. As there was no consensus on that topic, it deserved more discussion. One of the issues was the topic related to the important inclusion of cablecasting. In order to find a solution on that point, which had come up in previous sessions, the Chair, together with the Secretariat, had prepared a tool which would serve to foster the discussion on how the Committee could tackle those concerns. The Chair stated that during that session, he would present the preparation of that tool and would begin the discussion, of which did not have to culminate in a fixed position. The tool was just a nonpaper material to help foster discussion and to help bridge a consensus on that important matter. On the second issue, protection of transmissions of computer networks and the situation of simultaneous transmissions and near simultaneous transmissions, the Chair stated that there was an interesting discussion on that. Flexibility covered several technologies through computer networks, and as such, some of the Delegations expressed the view that too much flexibility on that matter could outdate the result of the proposed treaty which was intended to be useful in the 21st Century. Other delegations however showed satisfaction as flexibility could really give consideration of national realities, different degrees of use of technology, and a way to move forward on the discussion on that topic. The Chair indicated that that point deserved further discussion, as there was potential of progress, through those mechanisms of flexibility. The Delegation of Japan had too made an interesting point regarding that second issue. On the issue of transmissions of computer networks, there was a specific mention to a specific text proposal previously delivered which had points to discuss.

103. The Delegation of Thailand, speaking on behalf of the Asia-Pacific Group, stated that informal sessions would be helpful for the Group's constructive discussion on the interpretation of broadcasting organizations.

104. The Delegation of Nigeria, speaking on behalf of the African Group, supported having discussions in informal setting.

105. The Delegation of Bahamas stated that they had had informals that morning and were concerned on what would be the format and content of the informals.

106. The Chair responded to the Delegation of Bahamas and stated that delegations and NGOs could listen to what was discussed in informal settings. The Chair also stated that with the help of non-papers, there would be an initial discussion on the two topics that he had mentioned. At some point during the informal sessions, the delegations would have to come back and inform the Plenary of the situation of the discussions. The intention was to have a tool, which could foster discussions on the topics, in an efficient, direct and sincere way.

107. The Delegation of the Bahamas requested that the Chair specifically discuss what the non-papers would be.

108. The Chair stated that after the procedural situation, it was ready to explain, as well as distribute the non-papers, to the delegations.

109. The Delegation of Greece on behalf of Group B stated that it had discussed the issue of informals during its coordination meeting that day, and was of the opinion that since all discussions and positions expressed in Plenary were recorded, Plenary discussions had more merit. The Delegation expressed that it wanted to seek clarification on the objective of having the informals, and that it supported the idea of open-ended informal consultations.

110. The Chair requested that the Delegation of Greece explain what it meant by an open-ended meeting.

111. The Delegation of Greece expressed that though it hadn't decided on the exact number of participants, it wished that the informal sessions would be open-ended for at least its group.

112. The Chair stated that with respect the informal format, it was important that they worked with groups representing not only their individual positions, but the positions of the group. All group members will as such not be invited to participate in the informals. The Chair requested that delegates be flexible and allow the Chair to decide how many members could participate considering that they would not act individually, but would coordinate with other group members.

113. The Delegation of the United Kingdom supported what was expressed by its coordinator.

114. The Chair thanked the delegations who had expressed flexibility in going to informals, as well as the regional groups who had expressed some concerns. Discussions would continue in that original framework of all Delegations and NGOs, participating. The papers reflected the intention to go further in the issue of cablecasting, to foster discussion on the Japanese proposal, which had been referred to before. If the discussion were to become exhaustive because of all the participants, the Chair stated that it would take the decision to go to informals, so as to foster, in a smaller environment, participation.

115. The Chair announced the plan which it stated would start with a nonpaper prepared by the Chair, in order to foster discussion on the topic of cablecasting. The second nonpaper was the proposal by the Delegation of Japan which could foster discussion on the issue of voluntary options for the object of protection. The Chair recalled that there was a problem related to regulatory framework for broadcasting activities, and a concern that the inclusion of cablecasting could somehow affect or cause some troubles in the regulatory framework for broadcasting activities, in relationship to cablecasting. In that sense, the initial proposal on that issue was to have a clarification through an agreed statement applicable to the definition of broadcasting organization, stating that the definition of broadcasting organization in the treaty, would not affect the contracting party's national regulatory framework for broadcasting activities. That would be flexible enough to avoid, at the national level any problem. The second provision was a provision that could be included in the object of protection. The first paragraph in the object of protection was related to the protection that extended to program signals transmitted by or on behalf of a broadcasting organization. The third paragraph was related to the situation of simultaneous and near simultaneous transmissions. The Chair stated that the paragraph in the non- paper stated that contracting parties may deposit with the Director General of WIPO, a notification that it will limit the protection to such organizations. As it was drafted in the non-paper, that meant that the country could decide that it was not excluded, but that the application would be regulated or limited at the national level by national considerations. The reason behind that proposal was to give the flexibility to those legitimate concerns that had been expressed, regarding the inclusion of cablecasting. The Chair stated that in that draft, it had tried to take note of previous international agreements that used that kind of drafting. The Chair stated that the third paragraph would be an effect of such use of flexibility. The provision of the national treatment as related to optional protection for cablecasting organizations would be drafted as a proposal to be discussed. A contracting party would be entitled to limit the protection thereof, according to cablecasting organizations and other contracting parties. As there was no number for that paragraph on national treatment yet, it would be Paragraph X. The Chair stated that considering that if a member country made use of that flexibility it would have effect on reciprocity, the draft was the usual draft of an exception to the national treatment clause. The Chair stated that those were the three elements of the proposal and were the Chair's explanation of the two nonpapers that it shared with the delegations. The Chair Opened the floor for initial comments and thereafter, discussion on the first nonpaper regarding the issue of cablecasting.

116. The Delegation of Brazil thanked the Chair for the proposals that it had presented and for trying to figure out a way forward, for the discussions that were had the previous day. The Delegation stated that it had had a sharing of ideas based on previous session's discussions on how national legislations dealt with broadcaster organizations and cablecasters organizations. The Delegation stated that regarding the proposal that the Chair had just presented, it was difficult for it to make a clear evaluation of the idea behind the proposal of requesting a new text was to find a language in the treaty that would allow for the flexibility of member states to be part of it. The provisions to be included in object of protection would go to single out those countries that had a different kind of system, asking them to notify their systems to the organization. It understood that that would be out of the mandate that was given to the Chair the previous day and that the idea was to find necessary language and flexibility to include all Member States and not to single them out. The Delegation stated that it was not in a position to agree with that proposal on provisions to be included in the object of protection.

117. The Chair stated that part of the discussion was to initiate, to try to find reasons, problems or concerns that would find the best way to tackle that with delegation's contributions. The Chair stated that it would not go back to the discussion on the framework as it had started discussions on the topic that as on the floor.

118. The Delegation of the European Union and its Member States stated that it wanted to understand a little bit more on whether the suggestions for cablecasting were alternatives or if the Chair saw them as a package, and to explain the kind of effect each one of them would have.

119. The Chair expressed that it had not been prepared as a package. The Chair stated that those elements had been suggested in order to foster discussion, on the different ways to tackle different concerns that had been expressed. The Chair recalled two kinds of concerns it had expressed the previous day. One was related to the regulatory framework which pretended to be tackled by the first agreed statement with the clarification that there was no need to affect the national regulatory framework. The Chair stated that the other two paragraphs were related, but were not agreed statements. All of them were related to the issue of cablecasting that was why they were part of that nonpaper, but were not presented as package.

120. The Delegation of Chile wished to ask a question for clarification. Regarding the first proposal that the Chair had put forward, particularly on the adoption of B under definitions of broadcasting that incorporated cablecasting under broadcasting. The Chair stated that that required clarification by the Chair and that it shared the view that had been put forward by the Delegation of Brazil with regard to the form of flexibility. The Delegation sensed that the Chair was proposing flexibility for some countries, but it would prefer that that flexibility be for everyone and that it was made specific within the text. It also felt that there may be other alternatives that could be explored, without prejudice to that particular one.

121. The Chair stated that in Alternative B, where the definition of broadcasting was technologically neutral, the need of that clarification was required. The intention was that whatever clarification was needed it would tackle all the concerns that the Delegation of Chile had expressed in previous sessions. If the proposed agreed statement was not enough, the Chair was ready to listen to the contributions of delegations, in order to reflect all the concerns identified. On the issue of flexibility, the Chair stated that it was an interesting suggestion that it would like to test or to hear again from the Plenary. The Chair shared with the delegations a second new nonpaper and stated that it had been taken from a previous document, on the protection of signals transmitted over computer networks. It stated that broadcasting organizations and cablecasting organizations shall enjoy protection for their transmission signals excluding on the main transmission signals /simultaneous and in exchange of transmission signals of their broadcast over computer networks. Although that sentence was in brackets, it could be read without them, as challenge of protection for their transmission signal excluding on the main transmission signal and broadcast over computer networks. The protection provided for in Paragraph 1 claimed a contracting party, only if the legislation in the contracting party, to which the broadcasting organizations and cablecasting organizations belonged, permitted to the contracting party, the protection claimed. The extent on the specific missions of the protection granted in Paragraph 1 shall be governed by legislation of the contracted party where protection was claimed.

122. The European Union and its Member States stated that it had no position on the exact wording of the first paper. The Delegation expressed that during the previous day, regarding cablecasters, some delegations had indicated wanting to have some separation between areas of law. Although the Committee spoke about copyright when referencing the broadcasting treaty, and delegations seemed to have some concerns with the regulatory framework on media, and telecommunication law. It wondered whether the suggestion that related to the regulatory framework would be sufficient in that direction.

123. The Representative of KEI stated that the Chair's nonpaper on cablecasting and the Delegation of Japan's proposal had similar themes in as far as allowing countries to have different regimes for both cablecasting or for treatment over computer networks. In terms of computer networks, the Representative stated that unlike transmission which went directly to someone's home, the broadcast over the Internet was often accessible by an audience in lots of different countries. That created considerable cost to the person which was involved in transmitting information, especially if they believed that they had to clear rights in foreign countries for something that's put on the Internet. Once computer networks were introduced, there was a lot of complexity in terms of the individual use. When done under a creative commons license, one may feel that they had the rights from the copyright owner, and that they could use the work. However, they could find later find that there was a competing claim in a country where they had done the type of right that the Delegation of Japan was proposing. And if the transmission over the network was in that country, the individual could incur liability such creating costs that would determine the rights the different countries that might have done that. The Delegation stated that it did not want the Committee to think that was a simple solution and it could make more sense to include it in the cablecasting category than in the computer networks.

124. The Chair opened the floor to the second nonpaper regarding the protection of signals transmitted over computer networks.

125. The Delegation of the European Union and its Member States stated that the second paper was a proposal that had been circulated some time ago and that it was aware of the wording that was proposed by the Delegation of Japan. The Delegation stated that it still had some difficulty understanding why transmissions over computer networks of traditional broadcasting organizations would be excluded.

126. The Representative of KEI stated that even though the EU asked why the delegations may want to exclude computer networks from the treaty, one thing that had not been discussed was the limitations and exceptions that would apply to any of those regimes that were proposed. It was difficult to evaluate whether the proposals were going to work or not work, without having a better understanding simultaneously of both what the rights and the exceptions to those rights were going to look like.

127. The Chair stated that that comment was a reminder that there were other sections of the proposed treaty yet to be discussed. Until now, the Committee had not focused on those sections as it was crucial to have a discussion on the basics of the proposed instrument, meaning the object of protection, definitions and rights to be granted. However, at some point would arise the need to know which of those other elements would be a part of the proposed treaty, bearing in mind that, of course, the Committee could not thoroughly discuss those additional sections if it did not at least have a consensus on the boundaries of the treaty in discussion. The Chair stated that the Committee had started to use the technique of charts in previous sessions, in order to foster understanding of technical topics dealt with in that period. The Secretariat had also prepared a chart that contained those other remaining topics. That chart was not distributed at that point, because it was not the right moment to do that as the Committee had focused on other topics. The Chair expressed that the moment had risen to make reference to the existence of other sections of the treaty. Before getting to the detailed proposals that were there, the Chair requested that the Committee used again the chart which contained the other elements of the treaty.

128. The Representative of the EBU stated that it had a brief comment regarding the possible exclusion of certain online signals from the scope of protection. It had concerns about reference to computer networks, as it did not know if the Committee really knew what it was talking about. Computer networks were not defined in any WIPO Treaty as far it was concerned. And, for example, would that mean that IPTV would be excluded as well, even though in certain regions it was certainly considered as a normal broadcasting activity. The Representative warned that the Committee be very careful about the wording of certain possible exclusions.

129. The Chair stated that that comment included a question related to what the Committee understood when it used the term transmissions over computer networks.

130. The Delegation of Germany thanked the Representative of EBU of reminding the Committee of the problematic point of computer networks. The Delegation wanted to illustrate that as experienced in the homes of most of the delegates in the room, they accessed television, Internet and telephone from the same kind of cable. With the internet, individuals could access the live stream of traditional broadcasters as well as watch some kind of internet live stream. Individuals could then use the same cable to access some kind of TV signal. Thus, how could it be argued that that was a computer network signal and that the other one is in a computer network signal? That was the problem for the future, where all the technical devices converged to one system, and that was the point that could lead the Committee to a broad treaty.

131. As the Committee was making reference to the proposal by the Delegation of Japan, which used the term computer networks to distinguish the intention of the use of that term, the Chair invited it to contribute and to answer the question posted on that regard.

132. The Delegation of China stated as technology had advanced a great deal since the treaty came into discussion 20 years ago, it was now a very common phenomenon to have computer network transmission. If the Committee excluded the signals transmitted over computer network, that exclusion would not reflect the current reality today

133. The Delegation of Japan stated that it could not answer the questions raised, in appropriate manner. It needed some time to answer the question of what covered the computer networks.

134. The Chair stated that other issues were a part of the proposed treaty and reiterated that it was not the intention to cover all of the topics, while the Committee did not have an idea of the basics. The Chair invited the Secretariat to describe the chart entitled "other issues".

135. The Secretariat expressed that the chart that had been distributed had five specific issues listed on it. The first one referred to the beneficiaries of protection, term of protection, limitations and exceptions, technical protection measures, and rights management information. With respect to the beneficiaries of protection, there were three options that had been provided and which addressed the issue of the beneficiaries of protection under the treaty. The three options that were provided were taken from the two alternatives that were provided in document SCCR/27/2. The first one referred to the fact that national or contracting parties would be understood in broadcasting organizations that had headquarters in a contracting party, or whose broadcasting signal was transmitted from any other contracting party. The second option provided for the possibility to make a reservation to the secretariat of the headquarters of the broadcasting organization. And the third option provided a combination of headquarters in and also the place where the broadcast signal was transmitted in the contracting party. So it was the combination of the two criteria's. With respect to the term of protection, there were also three options. The first option included 20 or 50 years duration of protection. The second option made it subject to domestic law and the third option was that there would be no provision on the issue of term of protection. In reference to limitations and exceptions, it was similar to the '96 provision, WCT and WPPT. Provisions of both Article 10 of the WCT on limitations and exceptions, and Article 16 of the WPPT could be found in the Annex of that document. The second option, with regard to limitations and exceptions, was Article 15 of the Rome Convention, which its text could also be found in the Annex. Finally, the third option was to provide a provision, which was similar to Article 15 of the Rome Convention, which gave the possibilities to contracting parties to provide additional exceptions. There were three options for the technical protection measures. The first option was similar to the provisions, which could be found in the WCT annex of Article 11 and the Annex of WPPT Article 18. The second option on technical protection measures was to provide protection against unauthorized encryption of a protected broadcast; a specific kind of protection. Finally, the third option was a no provision option. Equally rights management information first option mirrored what can be found in WCT and WPPT and in there was also the text of Article 12 of the WCT and of WPPT, the text of the WPPT. Also found there was the second option, which referred to protection against removal or alteration of rights management information and the third option, which provided no provision with respect to rights management information.

136. The Chair stated that the intention of that chart was to help the Committee reach a common understanding of the use of the rights that were going to be part of the proposed treaty and the concepts. That chart was helpful as it went to help the Committee understand the concepts, the definitions, the options of rights to be granted, and the object of protection. The chart did not try to summarize the options that at some points were either contained in written submissions or discussed in previous Committees where opinions on the proposed treaty were expressed. With the tool having been printed and explained, the Chair stated that it was aware that the Committee could not get into a topic by topic discussion of the beneficiaries term of protection, since it lacked clarity on the boundaries of the treaty. The Chair opened the floor for comments on the definitions of object of protection and rights to be granted.

137. The Representative of KEI stated that in the document 27/2 Rev Version of the broadcast treaty, Article 2 on general principles, related to the importance of promoting access to knowledge and information, for scientific and educational objectives, and competitor practices or safeguards. The Representative stated that since lot of countries had participated in the drafting of the proposals for those exceptions, it would be important for delegations to review the previous work of Article 3 on the protection and promotion of cultural diversity, in Article 4 on the defense of competition and in Article C proposed in Article 10 on exceptions, a fairly extensive list of exceptions which could be applied. The Representative stated that those proposals in document 27/2 Rev Draft would be relevant to the new instrument.

138. The Representative of EBU provided the technical example for the question of the beneficiaries, which were under No. 1 and No. 3. Although they had similar wording, the only difference was that No. 1 included broadcasters whose headquarters were in another contracting party, or whose broadcast signal was transmitted from another contracting party. No. 3 was however cumulative, with both the headquarters and broadcast signals transmitted from the same contracting party. The Representative stated that broadcasters preferred No. 1 for the reason that sometimes the transmitter was located in a different country than the headquarters. In Geneva for example, the Swiss broadcaster transmitted its signal across the border in France, where in order to have a better reach in Switzerland, the transmitter was put on Salève Mountain. Therefore, if that was to fall in No. 3, then that signal would not be protected.

139. The Chair thanked the Representative of EBU for that clarification and stated that it had helped the Committee to understand why there were different proposals in the previous submissions, regarding beneficiaries and the impact on those proposals in reality. The Chair shared the results of Article 10, limitations and exceptions related to the protection of broadcasting organizations, and requested that Secretariat gave the Committee a description of available alternatives.

140. The Secretariat expressed that Article 10 on limitations and exceptions from document SCCR/27/2 Rev, actually contained three different alternatives, which were based on the different submissions received from the various delegations. Alternative A for Article 10, closely built on Article 15 of the Rome Convention, and provided that any contracting state may in domestic laws and regulations, provide for protection to exceptions guaranteed by that treaty, in terms of private use, use in the reporting of current events, use solely for the purpose of education and scientific research, and ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts. Paragraph 2 indicated that notwithstanding the contents of Paragraph 1 of the Article, any contracting state may in its domestic laws and regulations provide for the same, or other limitations and exceptions or exceptions, as were applied in connection with works protected by copyright, to the extent that such exceptions and limitations were confined to special cases that did not conflict with the normal exploitation of the broadcast signal, and did not prejudice the limitation of organizations. Alternative B contained two paragraphs. Paragraph 1 provided that contracting parties may in the national legislation provide for the same kind of limitations and exceptions with regard to the protection of broadcasting organizations, as they provided in their national legislation, in connection with the protection of copyright in literary and artistic works, and in protection of related rights. Paragraph 2 which related to the three-step test and provided contracting parties, shall confine any limitation or exceptions to rights provided for in the treaty, to certain special cases which did not conflict with the normal exploitation of the broadcasts and did not unreasonably prejudice the legitimate interests of the broadcasting organization. Alternative C, Paragraph 1 was identical to the could be found in alternative B, contracting parties may in the national legislation provide for the same kind of limitations and exceptions with regard to the protection of broadcasting organizations, as were provided for in the national legislation with connection with the protection of copyright in literary and artistic and the protection of related rights. A second paragraph stated contracting parties may in their domestic laws and regulations provide inter alia the exceptions listed below to the protection guaranteed by that Convention. It was presumed that those users constituted special cases that did not conflict with the normal exploitation of the work and did not unreasonably prejudice the legitimate interests of the rights holders. The list of the exceptions that were provided were: Alternative A, private use, Alternative B, use of excerpts in connection of reporting of current events, Alternative C, ephemeral fixation by broadcasting organization, which means of all facilities and their own broadcasts, Alternative D, used solely for the purposes of teaching or scientific research, Alternative E, the use of works specifically to promote access by persons with impaired sight, learning disabilities or other special needs, Alternative F, the use by libraries, archivists or educational institutions to make publicly accessible copies of work that was protected by any inclusive rights by the broadcasting organization for purposes of preservation of education and/or research, and Alternative J, any use of any kind in manner or form or any part of a broadcast, whether program or any part of it which was the subject of the transmission was not protected by copyright or any related right thereto. Finally, the third paragraph stated that irrespective of Paragraph 2, the contracting parties may provide additional exceptions to the exclusive rights conferred by the treaty, provided that such exceptions did not conflict with the normal expectation of the broadcast, and did not unreasonably prejudice the legitimate interests of the rights holder, taking into account the legitimate interests of third parties.

141. The Representative of KEI stated that in addition to Article 10, there were Articles 2, 3 and 4 which were part of the exceptions because they related to safeguards and also to how the exceptions were interpreted.

142. The Chair stated that knowing what was missing and knowing that there were some elements to balance the protection, would help the Committee to understand the whole treaty proposal. However, there were still some basic points that needed to be discussed.

143. The Delegation of the European Union and its Member States stated that it had several comments on the chart. The WPPT model was one that could be followed, as it was also the one used in the Beijing Treaty.

144. The North American Broadcasters Association (NABA) aligned itself with the statement made by the Delegation of the European Union and its Member States, and reemphasized its long-standing position that it favored the WPPT model.

145. After conferring with Regional Coordinators, the Chair stated that the afternoon session would start with informals.

146. The Chair thanked the delegations for their flexibility in allowing the representatives to exchange views, in an informal framework where there had been a discussion around the revised consolidated text on definitions of object of protection and rights to be granted. The previous day had started with a discussion on definitions, of which the definition of program carrying signal was debated. An exchange of views had taken place regarding the need to emphasize that programme-carrying signal meant not only an electronic, but originally transmitted program, and any subsequent technical format. A suggestion had also been made to delete the brackets. Regarding the brackets around public, it was argued that the Committee should avoid any duplicity of use of that phrase, since it was already stated in the definition of broadcasting. The reason it was still in brackets was because it needed further consideration either there or in the definition of broadcasting itself. In terms of the definition of program, it was there to meet the requirement of authorization of the rights holder. The Chair stated that it needed to recognize and clarify that that was for the intent of lawful transmissions, and not unlawful ones. One way to go about that clarification would be to add to objectives, lawful or authorized objectives, to the material that was part of the program. In terms of the definition of broadcasting, the Chair stated that there had been a discussion on the pros and cons, as well as advantages and disadvantages, of having a broader definition of broadcasting. It was necessary to clarify that transmission over computer networks would not constitute broadcasting. That sentence was added at the end of the definition of broadcasting, both in Alternative A and Alternative B. Additionally, regarding the definition of broadcasting organization, there had been some suggestions, regarding the best placement of the activity of broadcasting itself. There had been mention of the need to emphasize the activity of broadcasting itself, without so much of a focus on its activities of assembling and scheduling. There had been a discussion on that, and on where to place it. In terms of the definition of retransmission, two alternatives had been mentioned which needed further consideration. Regarding the definition of near simultaneous transmission, it was considered that delay shouldn't be confused with the term, deferred transmission that was used in other parts or in brackets. That clarification indicated that there was no agreement on that inclusion. Also, part of the discussion was on the rising need to include a definition of deferred transmission. Since there had been no submission on that, that could be expressed by adding brackets. In terms of the definition of pre-broadcast signal, an interesting discussion had taken place, in order to analyze the effects of having a definition for that part of the transmission, particularly if transmission was going to be included. If it was made to a broadcasting organization, it should be limited to transmission of a prior broadcast signal by a broadcasting organization and the consequences of those options. That discussion was on going. Regarding the object of protection in the first paragraph, there was a sort of consensus in terms of the inclusion of pre-broadcast signals. In terms of clarifying that no two programs contain the same, it was important to make the clarification, so as to avoid confusion. Along that line of argument, was the suggestion to consider tackling the issue of lawful transmissions. The second paragraph was argued to be a good paragraph to clarify that the protection of deferred retransmissions excluded from the scope of the treaty could have caused confusion with the protection of cablecasting under discussion. The Chair stated that Paragraph 3 had two alternatives. The discussion started with the protection of simultaneous and near simultaneous and even deferred transmissions. There were some questions that had been raised, on whether it was necessary to clarify the extension of protection for simultaneous and near simultaneous, since what needed to be understood was that there was an original broadcasting that would be protected, no matter the platform it went through. The Chair stated that those were the discussions that had taken place in the informal sessions.

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

147. The Vice-Chair reiterated the Chair's words and welcomed Professor Seng. The Vice-Chair explained that a study on limitations and exceptions for educational activities was commissioned from the Secretariat to Professor Daniel Seng in October 2015, and expressed that although the study was not completely finalized, it was very important for the Committee to look at the preliminary version and the contents thereof that were so far going to be presented by the professor. The preliminary version that was available currently carried an analysis of over 130 Member States. The Vice-Chair expressed its hope to have all Member States covered in the final version. The study by Professor Seng analyzed the relationship between national legislation on exceptions and limitations of WIPO Member States on the basis of eight categories of limitations and exceptions related to educational activities. The Vice-Chair introduced Professor Seng, a Professor at the National University of Singapore. Professor Seng obtained his doctorate from Stanford Law School, and was the author of numerous publications related to limitations and exceptions on copyright, including the 2009 WIPO Study on Copyright Exceptions for the Benefit of Educational Activities for Asia and Australia.

148. Professor Seng stated that the study was of immense proportions attempted to derive a holistic and unified view of the use of limitations and exceptions for educational activities in all the national legislation of all of WIPO's Member States. The difference therefore, between that study, and the five 2009 studies, was that it was done with the view to try to better understand, on a more systematic and holistic basis, the way in which the limitations and exceptions in national legislation had been drafted. As an educator, Professor Seng conceptually delineated what was to be understood by education. He stated that the word education itself came from the Greek term, educere, which was in Latin and which had two connotations. The first was to bring up or rear or educate children, which meant that one of the most important things about education was the education of children, our future generation. The other manifestation of the concept of education was to bring out or lead forth, which was an advancement of the state of knowledge that we as human beings derived in that world. Using the concept of philosophy and scientific progress, those were all manifestations of education, rhetoric, research and experimentation. Professor Seng stated that the concept of education was very broad, and with it came very strong public interest connotations that had not been lost to ancient civilizations. The contributions of Plato and Socrates in the ancient Greek traditions should not be forgotten, in the same way that the sages of China, Confucius, Bhaskara in India and Al-Razi of the Arabic peninsula, all of whom made immense contributions to the study of philosophy, medicine and mathematics, should not be forgotten. That was actually exemplified in the Universal Declaration of Human Rights which mentions that everyone has the right to education, and that education shall be free, at least in the elementary and fundamental stages where it was compulsory. Professor Seng stated that as the world was aware, education progressed beyond the elementary level, that is, technical and professional education, being made generally available and accessible. He stated that those connotations of education were what he was seeking to capture in that study, in which he examined all the limitations and exceptions that go toward advancing that agenda. The very concept of copyright legislation itself was born out of the Statute of Anne of 1710 which was the first piece of written legislation to try to codify copyrights. That piece of legislation started out by stating that copyright was an act for the encouragement of learning. Copyright and education, as such, have always been hand in glove. In the 1967 Stockholm Revision of the Berne Convention, there had been extensive discussions about the scope of education in light of the discussions about the quotation and education exceptions in the Berne Convention. At the same time, it was worth remembering that the so-called three-step test in Article 92 of the Berne Convention, and which arose from the Stockholm Conference, was also drafted with a view to encompass certain specific instances of limitations and exception, that had everything to do with education, ranging from provisions that exempt private or personal use of works, to use by libraries, to use by scientific institutions, and various other education related limitations and exceptions. Of course, that was not forgetting the real innovations arising from the conference in the form of Articles II and III of the appendix, which represented a major concession by providing for compulsory licensing for translations and reproductions for developing countries. That theme run on in the Rome Convention Article 15, and again in the WCT and WPPT, which started off in the preamble by recognizing the need to maintain a balance between the rights of the authors and the larger public interest, particularly education. As such, education featured prominently in the entire scheme of copyright protection. For the study, Professor Seng stated that he tried to take all those diverse elements of education as they were understood, and after close consultation with the WIPO Secretariat, tried to put them into eight distinct categories, of what he termed educational activities. The first was to examine the personal or private use of works. That was recognition that there could be a personal manifestation of education, which was a key component to the whole education process. That was called the educators language, self-actualization where the best way to teach was to actually make the student learn for himself or herself. While education was driven by the institute at a macro level, it was driven by the individual at a micro level. That micro action involved private or family activities or actions. Professor Seng stated that even for his daughter who was in school, he was told by her teacher

that he had to be part of her education process. He stated that he was involved with his daughter's school curriculum because it was part of educational activities, even though that curriculum took place in the comfort of the home. In the study, Professor Seng noticed that the multiplication of personal or private use of works was sometimes ameliorated somewhat by mechanisms for equitable remuneration of the use of the works. The study looked at the elements of the equitable remuneration as well albeit only for purposes of educational activities. Thereafter, the study looked at the category for quotations and exceptions. Education had always been premised on the fact it was instructed through quotations, by way of illustrations, augmentation, referrals, comments, and criticisms, all which called for reference to existing works, all for purposes of advancing education. As such, quotation was a key component to education. Professor Seng also examined in the study, the category of educational reproductions, which may have been in the form of single or multiple reproductions, by reprographing means for various educational purposes and activities, which may or may not have involved licensing, as in the form of voluntary licensing, collective licensing, or statutory licensing. Professor Seng expressed that he would then talk about the category of educational publications, which were in the form of publications that comprised essentially works that were already published but were put together in composite form for the purposes of instruction. That was different from the previous category because the primary beneficiaries of that exception or limitation would be the educational publishers. Another category that he looked at was school performances, as in the form of displays or showings either in schools or in clubs, either as part of school curriculum or related or tangential to school curriculum in the form of extracurricular activities. Professor Seng stated that he would also talk about the category of educational communications and recordings, of which he called off site performances. He was aware of the fact that in legislation such as that in the U.S. Copyright Act, the U.S. Copyright Act recognized a fused concept of performance and communication, but for purposes of that study, Professor Seng would tease them apart and refer to those as communications and recordings, which may be in the form of wireless meanings for communications or wired, therefore making the available rights that were put in place by the WCT and WPPT. That engaged discussions about distance learning, at the same time there were auxiliary rights of making recordings and copies of those broadcasts audiovisual works for instructional purposes. Professor Seng expressed that he would discuss the category of compulsory licenses, which needed not be in the form of the appendix to the Berne Convention. However, they took the form of translations or reproductions to produce affordable editions of works in developing countries, and that involved the licensing for broadcasting of works to the same end as well. Finally, Professor Seng expressed that he would look at the category of exceptions to the TPM, Technological Protection Measures and Rights Management Information, RMI protection provisions for purposes of education. Professor Seng indicated that his study was preceded by two studies, one on the limitations and exceptions for libraries by Kenneth Crews in 2014, and the other by Judith Sullivan on the limitations and exceptions for the visually impaired in 2007. Much as there were educational related elements associated with libraries and for the visually impaired, those would not be targeted in his study. For the methodology of the study, Professor Seng categorized and analyzed all the limitations and exceptions related to educational activities in the national copyright legislation of all Member States whose legislations were available in English. Given the lapse of time between then and the 2009 studies that was a new study; it was a *de novo* study. But at the same time, the ability to do the study was heavily premised on the availability of accurate and reliable English translations of the national legislation, if the legislation was not already in English. To that end, Professor Seng tried to access the first of all official English versions, otherwise, the officially translated versions in English of the national legislation. That would explain why the study was a work in progress, because at that point in time, when the study was done, the national legislations of 52 WIPO Member States were not available in English. The study was divided into four distinct and separate phases. The first was to locate and identify 2844 national instruments related to copyrights matters which were checked for contemporaneity and relevancy. It was through that process that Professor Seng discovered

that some translations were either out of date or had been superseded by newly enacted legislation by the Member States concerned. The second phase involved reading all that legislation to understand the copyright scheme, to identify the provisions related to educational activities, and to begin to build templates for the analysis. That was an important and dynamic step that resulted in the reading of templates, the reading of more legislation, and the changing of templates for the analysis. Professor Seng stated that that was the reason why the study was a work in progress. It recognized that the educational activities that were analyzed were not normally contained in one or two provisions in the copyright legislation of the national legislations. They were spread over a number of provisions, and were too in distinct separate parts of the copyright legislation. Hence there was a need to read through the entire legislation to understand where all the different pieces were. Phase 3 involved a detailed legislative review of each and every element of each and every identified provision and involved extracting all those elements and putting them into the templates of one of the eight categories. There were many instances where the provisions would address more than one category, in which case then the provision was slaughtered into multiple categories. One example Angola, in its Article 29 exempts performances, cinematic graphic projections, and communications of recorded or broadcast works, for purposes in teaching establishments. Therefore, that type of legislation required a categorization under both school performances and educational communications. The same provision was multiplied twice, because it was a compendious way of dealing with two separate and distinct, at least for that purpose, for the purposes of that study, and educational activities. In Phase 4, Professor Seng stated that he embarked on a holistic review and standardization of all the entries, to ensure that there were no errors. That process was accomplished through the utilization of computer software tools developed by Professor Seng. Because Professor Seng had done a first pass, that was why the first draft of the study was made available; Professor Seng was confident that it was about 95 percent accurate at that stage of his work. Complete that draft, Professor Seng stated that he put all the diverse provisions from the different Member States together, and checked them to make sure that they were categorized properly, that they were properly described so as to assist him in the analysis of all the provisions in the respective categories. What he presented was a summary of the analysis that was done in statistical form. Professor Seng stated that he examined a total of 1152 provisions. Those were tabulated or categorized into the six separate and distinct limitations and exceptions, coupled with one category on compulsory licenses and one category on the TPM limitations and exceptions. Professor Seng observed that the magical number was 136, and that all Member States had at least one limitation and exception dealing with educational activities, in the six categories of personal and private use, quotations, educational reproductions, educational publications, school performances and educational broadcasts. On average, each Member State had 7.9 provisions which meant that on average, Member States had more than one provision of limitations or exceptions for educational activities. There were two Member States that only had one such provision however, and those were Bolivia and Haiti. The provisions for those Member States could be found in Articles 24 and 32, respectively, of their national legislation. The top eleven Member States, by total number of limitations and exceptions, were New Zealand at 22, Australia at 18, tied with Ireland and Malaysia, the United Kingdom at 17, the United States of America at 16, Fiji at 15, St. Vincent and Grenadines at 14, Singapore and Bruno at 14, Montenegro also at 14 and it was a tie for the 8, 9, 10, 11 place amongst the four Member States that made up the rest. Professor Seng stated that those Member States had so many limitations and exceptions because aside from Montenegro, those states were members of the Commonwealth of Nations or were members of the British Commonwealth. The number of provisions was also reflective of the legal system and the inherited legal system of the Member State. The copyright systems of the Member States that had been highlighted, and who too were members of the Commonwealth of Nations, were very similar in many respects. The model that was used in those Member States was to enumerate very specific situations of permissible education related activities in the national legislation. For the United States of America, the count was 16, even though the United States of America

technically only had two education related provisions in Section 107 and 110, the infamous fair use provision and the long and complicated Teach Act, respectively. The reason why its number was multiplied was because there were numerous congress approved agreements and guidelines that arose from those provisions that had quasi-legal effect, and hence for purposes of that study, were included in the analysis under one of the categories that were described. In terms of the categories, the first was the category for private and domestic use. The first category had 130 Member States. Professor Seng stated that that was quite an impressive list, because it meant that almost all Member States had provisions pertaining to private or personal use of work and subject matter. On average, each Member State had 1.7 such formulations. That figure made sense because there was usually one for copyright works and one for derivative works. That was why the figure was approximately 1.7. The Member States had adopted two main formulations for the private and personal use limitation exception. The first formulation was to simply describe it as private or personal use. The second formulation was to use the more open-ended or open textured fair use or fair dealing provision. The private or personal use formulation could be a very generic one, or one for very specific scenarios. For example, the Czech Republic had six different formulations for private or personal use. They were spelled out in Articles 25 (1), 20 (1), 30a, of the Czech Republic's copyright legislation. And looking at the fair use or fair dealing camp, a similar picture arose in relation to 32 Member States. The fair use or fair dealing provision seemed to be predominantly used in Commonwealth countries, including ex-Commonwealth or former colonies. But it was not confined to Commonwealth countries. Israel had for example used the fair use or fair dealing formulation, Liberia had used the fair use or fair dealing formulation, and also the United States of America. Twelve of the Member States used the four or five factor test for evaluating fair use or fair dealing. In Antigua and Barbuda, Section 52 provided that fair dealing with a literary dramatic work for the purposes of research or private study did not infringe copyright. But it was subject to Section 54, which read that for the purpose of determining whether the act done constituted fair dealing, the court had to take into account all factors including, the nature of the working question, the extent and substantiality of the part taken, the purpose and character of the use and the effect of the act upon the potential market for or commercial value of the work. That pattern was repeated in 11 other Member States provisions. 23 of those provisions required the private or personal use to be executed, which the number was relatively low, when compared to quotations. There were 59 of those provisions that required some form of remuneration to be provided to the author or the related rights holder. That could take one of two forms. There could be a levy on the recording media, and there could be a levy on the reproduction equipment. That was why a holistic reading of the legislation was important because there could be provisions that described such private and personal uses as free users, when in theory they were not free, but they called for different form of remuneration. For example, in the Republic of Congo, Article 33 stated that the users of protected work should be permissible without the author's consent. It discussed the reproduction of the work for the users' own personal and private use. Article 48 then went on to say, reproduction by means of the sound or simply visual recording on physical medium intended for strict personal and private use, in accordance with Article 33 shall entitle the author to remuneration. That was why a holistic reading of the legislation was important, because as could be observed, Article 48 provided for remuneration to be afforded for the use of sound or visual recordings, to the authors of the works in question. As far as quotations, the number of provisions represented by the Member States increased to 132. Professor Seng stated that he only found four Member States that did not have quotation exceptions or limitations in their national legislation. As the study had a population size of 136, that meant that on average, each Member State had 1.4 such formulations, usually because there was one for copyright works and one for subject matter or derivative works. And like personal or private use, the Member States adopted one of two formulations, simply quotations/extracts formation or the fair use/fair dealing formulation. It was interesting to have observed in the study, that Member States had gone a few steps further with quotations. They premised many of those upon additional conditions. For instance, one

frequently used formulation was to require the quotation to observe fair or good practice, or not to exceed the extent justified by the purpose. Those were too the limitations that were placed on the scope of quotation. 143 out of 188 analyzed provisions required attribution, up from a small number of what were 23 for reproductions. And six of those provisions required remuneration. In Colombia for example, their Article 31 stated that it shall be permissible to quote an author, provided that they were not of such length and continuity that they might reasonably be considered a simulated substantial reproduction, constituting a prejudice for the author of the work. Furthermore, it was indicated that every quotation should mention the name of the author and the title of the work. That was the attribution requirement for the conditional quotation requirement. There was too a remuneration requirement where the inclusion of the works of others constituted the main part of the new work. The courts had to, at the request of any interested party, make an equitable assessment. Moving on to the limitations and exceptions for educational reproduction, there were 111 Member States identified by Professor Seng for the study. For those 111 Member States, there were a total of 220 provisions making up the total of 81 percent of all the Member States surveyed. Professor Seng added that that count was actually an underestimate, and the reason was for the purposes of the study, where there was a split of the reproduction right into two parts, reproduction of works and reproduction of derivative works or subject matter. The latter part was classified by Professor Seng under educational communications, broadcasts and recordings. For a more comprehensive picture of the total number of provisions pertaining to educational reproductions, that category had to be added up. Member States did have many of such limitations and exceptions, with each Member State having had 2.0 of such provisions. Member States had taken some pains to draw distinctions, some of which were very important, for instance, distinction between single or non-reprographic copying, versus multiple or reprographic copying. It was very interesting to note that there were 58 provisions that dealt with multiple or reprographic copying. Many of those multiple copying provisions were subject to conditions pertaining to the unavailability of the collective license or the requirements to make equitable remuneration. In Rwanda for example, Article 206 stated that there was free reproduction in the use of lawfully published work for teaching purposes by way of illustration, broadcasting or sound or visual recording. That Article 206 of Rwanda illustrated that the reproduction right in question engaged both works and subject matter, and provided the reprographic reproduction for teaching or examination in educational institutions, to the extent justified by the purpose. As such, distinction was drawn between using a work for teaching purposes and reprographic reproduction. The United Kingdom illustrates another example in terms of linguistic treatment given. In Section 32(2A) of the Copyright, Designs and Patents Act, it was stated that copyright in a literary, dramatic, musical or artistic work was not infringed if it was copied in a course of instruction, or for the preparation for instruction, provided the copying was fair dealing done by a person giving or receiving the instruction. That meant that the copying could not be done through a proxy, but had to be done by means of a reprographic process, which meant that that was by a non-reprographic means, which could result in as many copies as necessary being made, but without the use of a portable copying machine. The requirement for sufficient acknowledgment had to be also applied to those non-reprographic copies. There was a separate provision dealing with reprographic copying in Section 36 that required the reprographic copies to be for purposes of instruction, accompanied by sufficient acknowledgment for a noncommercial purpose. The legislation drew distinctions between single copies on non-reprographic copies and multiple copies. But limits were placed on the extent to which one could make reprographic copies. Section 36 indicated in Paragraph 2 that not more than 1 percent of any work could be made on behalf of any establishment in any quarter. The copying that was permitted in Section 36 was not permitted, that meant it was a preclusion of licenses that were available. The person who made the copies knew or ought to have been aware of that fact. That use of the situation where there was an available voluntary or collective license for the educational institution, under which the reprographic copying could have been made, and the educational institution knew or ought to have been aware of it, in which case then that particular limitation

exemption would not apply. Moving on to the other category for educational publications that was represented by the national legislation of 85 Member States. According to the list, there were 85 Member States with 94 provisions that counted for 63 percent of all the Member States surveyed. Professor Seng reiterated that that was different from educational reproduction, because the primary beneficiary here was not the education institution, but the educational publisher. On average, each Member State had about one or 1.1 of such provisions, and it was because it did not directly pertain to the part of education more narrowly formulated. As such, it required, for instance, the use only of a short or minor part or passage or extract or quotation of a published work, and there was also a distinction from quotations for publication. The net result of the use of that limitation or exemption was a publication or a collection for educational purposes. Many of those provisions referred to, for instance, a publisher, who was required to for instance, comply with the attribution requirement. Some of those provisions also required the remuneration of the office of the source work, which was found in 12 of the provisions. In India, for example, their Section 52.1H of the Indian Copyright Act, which was revised by the Copyright (Amendment) Act of 2012, stated that the publication, which was a collection mainly composed of non-copyright matter, bona fide intended for instructional use, was permissible and had to be described in the title and in the advertisements issued by and on behalf of the publisher. That limitation and exception was really for the primary benefit of the publisher, not of the educational institution. One of the conditions is that the publication had to be no more than two such passages and to be from works by the same author, and published by the same publisher during any period of five years. And if there were authors of joint works, there had to be an explanation on how to treat authors of joint works, in relation to that particular preclusion. Such authors could not be treated as separate and distinct authors. Slovenia also had such an example where it, in Article 47 of the Copyright and Related Rights Act of 1995, amended in 2006, stated that on payment of equitable remuneration, it shall be lawful to reproduce in readers and textbooks intended for teaching, and public communication of the works mentioned. The following category was educational performances. There were 80 Member States who had educational performance limitations and exceptions. Educational performance was an important aspect of school curriculum. There were 115 provisions from 80 Member States or 59 percent of all the surveyed Member States, which worked out to an average of 1.4 of such provisions per Member State with that provision. In that case, two distinct formulations were used. The first enabled the staging or the musical performance or the recycle of students, teachers and instructors for educational purposes, and ensured audiovisual works as part of educational instruction. The second was to allow for the playing and public showing of recordings by educational clubs and societies. That was somewhat different from the first category for which there were 100 provisions because the second category counts only 14 provisions. In the second category, the entity concerned engaged that educational activity was normally not the educational institution, but was a student body or club affiliated with the education institution. Hence, there was a need to consider that particular exception as well. Although the concept of educational activities was quite broad in terms of its scope, it came with very important conditions. For instance, the audience of the performance was limited to students, teachers and instructors, and the performance or display had to be free or if it was not free, all the proceeds had to be applied solely for purposes of the organization of the performance. That made it neutral, which meant that the club or educational institution was not supposed to turn that into money, revenue generation mechanism. Morocco, for example, in its Article 23 of the Copyright and Related Rights Law provided that it shall be permitted, without the author's authorization or payment of a fee, to perform a work publicly as part of the activities of an educational institution for the staff and students of such an institution, or the parents and supervisors. That was designed to deal with the third category, namely the instructors, who were not from the educational institution but who were somehow part and parcel of the providers for the educational performance in question. The following category dealt with educational communications, which had 96 Member States were represented and 226 provisions. Although the provisions were only from 96 Member States, the Member States who

had the provision had on average 2.4 of those provisions. The standard deviation of the count was 1.4, which was significant because the standard deviation was a measure of the degree of difference in the variability of the total number of such educational communications provisions in those Member States who have such provisions. In other words, there were Member States who had many of those provisions, and there were others who had only one of those provisions. If a standard deviation number was high, it meant variability was high, which meant there would be more formulations of what constitutes a limitation exception for educational communications. There was formulation that pertained to the exemption for broadcasting or communication of works or performances for educational, teaching and scientific research purposes, which would ostensibly include distance learning through broadcasts and cable programs. That formulation had 77 provisions. There was also the copying or making of recordings of audiovisual works for teaching or scientific purposes and those had 101 provisions. There was also the new de novo audiovisual works that were part of a course intended for film making, or for the making of sound tracks, and which had seven provisions. There were very specific provisions to enable interactive digital transmissions for on-line instruction of which there were only three provisions. As an example of the generic approach, Romania, in its 1996 law on copyright enabling rights, Article 33(1)(c) provided for the use of television or radio broadcasts of sound or audiovisual recordings, exclusively intended for teaching purposes, and also their reproduction for teaching purposes. For an example of a specific approach, Jamaica in Section 56(2) provided that the making of a film or film soundtrack in a course of instruction or preparation for instruction in the making of films or film sound tracks by both instructor and a person receiving instruction were exempt from copyright infringement. In Section 58 it discussed that the recording of a broadcast or a cable program may be made by or on behalf of an educational establishment for the educational purposes of that establishment. Those can be separate and distinct provisions dealing with separate and distinct acts of educational activities. Section 110 of the Teach Act was for teaching purposes, but the provision was actually extremely long. The provision discussed that the online interactive transmission of a work was comparable to that which is typically displayed in a course of a live classroom session, so it was recommended to compare what was done online with what was done during face-to-face transmissions. If it were deemed a performance, it would be under American law, where performance included the transmission that which was under the supervision or direction of an instructor, in an integral part of the class session. Also, that was not only in one thing, but must be part of the regular part of systematic mediated instructional activities. The interactive display was supposed to be directly related to and of material assistance to the teaching content. It could not be a case where the students got together and said, hey, let's watch a movie under that particular exemption; it must be associated with the elements of the teaching content. And because it was a very technologically specific provision, there were two additional provisos, one requiring the implementation to make sure that the access or reception of such transmission was limited to the students where it was technologically feasible, and to the extent that it was possible to apply technological measures or TPMs to prevent their unauthorized retention or further dissemination it had to also be applied. Finally, the educational institution should have implemented good policies regarding copyright. That was the scheme of things under Section 110, Subparagraph 2 of the U.S. Copyright Act, and dealing very specifically with online distance education. Towards the end of the study, the number of Member States with provisions that fell into the categories dropped, because the provisions became more and more specific. There were 29 Member States with provisions that pertained to compulsory licenses or limitations for purposes of the reproduction or translation of works. Professor Seng stated that he found a total of only 52 provisions for Member States or 11 percent of all the Member States surveyed, it was not 0, there was still quite a sizable number. On average, each Member State had 1.8 provisions, and the reason for that was because many of the Member States had provisions that dealt with translations under Article II of the appendix and reproductions under Article III of the Appendix of the Berne Convention. An interesting thing to note about that was that the extended division number was pretty small, at 0.8. That was borne out by the substantive analysis, because the

substantive analysis showed that the Member States implemented pretty carefully the various enumerated conditions prescribed in Articles II and III of the Appendix. The requirement was that the source publication be out of print or unavailable in the prescribed language, or be unavailable for the prescribed time, or for the prescribed time since the first publication, at a price that was not commensurate with that for similar works. There had to be a good faith attempt to contact the rights owner, and it was also of course subject to the licensee's obligation to make equitable remuneration for the award and exercise of the compulsory license. In Lesotho, for example, in their copyright order of 1989, Sections 10 and 11, it stated that it was lawful to translate a work into English, subject to the conditions in the first schedule, and Section 11 stated so for reproductions that related to the second schedule. Another example was China. Article 22 of the Chinese Copyright Law provided that a work may be used without permission, from and without payment of remuneration to, the copyright owner, provided an author and title of work mentioned and other rights enjoyed by the copyright owner are not prejudiced, and Subparagraph 11 made mention of translations of published works of a Chinese citizen, a legal entity, means a Chinese legal entity or other organization, Chinese organization, from the Han language into minority national languages for publication and distribution in the country. That was a provision that was implemented for policy reasons to allow for the proper dissemination of Chinese literature amongst the minority race groupings in China. Professor Seng stated that he would finally discuss exceptions to TPMs and RMIs which had 31 provisions from 22 Member States found in the study. That accounted for 17 percent of all the Member States surveyed. On average, each state had 1.3 of provisions on TPM or RMI exceptions for educational activities. The standard deviation was very small at 0.5, suggesting that there was little variability. There were 30 provisions that permitted the circumvention of TPMs and two provisions that permitted the circumvention of RMIs and one of those provisions permitted the circumvention of both TPM and RMI, hence it was 31 provisions in total. One of the formulations enabling the education institutions to make acquisition decisions by circumventing the TPMs or RMIs. There were five such provisions. There were also five provisions that enabled encryption research or studies and there were nine provisions that enabled teaching. There were four provisions that enabled the beneficiary of all the limitations and exceptions that exercised access to the work, which would otherwise be hindered by the TPMs or RMIs, which had twelve provisions. There was a lot of standardization regarding the way in which those exceptions should be formulated. But what was not consistent was how the TPMs or RMIs would be circumvented. There were a wide variety of different formulations, which did not have any distinct patterns. There were potential requirements that required the right holder to make available means for implementing countervailing measures, whatever those means were, or to alter their TPM or RMI protected works, to enter into voluntary agreements, or to permit the beneficiaries of certain classes to use works sans TPM or RMI. As such, there were a variety of different ways in which the implementation dealt with those exceptions that were actually worded in national legislation, and that is where there was the greatest variability in the formulations. In Sweden, for example, the Swedish Copyright Act of 2011 talked about how a user, pursuant to the provisions of 16, 17, 26, 26 a. or 26 e., which included educational activities, may exploit the work protected by a technological measure. The author or successor in title would be ordered by a court, upon the penalty of a fine, to make it possible for the user of the work, pursuant to the exception, to exploit the work in the way prescribed in the limitation or exception. Therefore the provision required the author or right holder to make it possible for the educational institution or the beneficiaries, to use the work protected by TPMs. There was a proviso there that was related to the new copyright directive that precluded works made available to the public and contractual arrangements from following within that particular exemption. New Zealand had a refreshingly different approach to that. In New Zealand, for example, Section 226D talked about a case where the rights that the issuer of a TPM work had under 226B, that meant that the copyright owner who normally was the issuer of a TPM work, could not prevent or restrict the making or importation or sale or let for hire of a TPM circumvention device. That meant that qualified individuals could import or sell or let for hire, in

New Zealand, a TPM circumvented device. That qualified individual included an educational establishment. Before that could happen, the individual had to first make a declaration to the supplier in a prescribed form. The reason for that was really simple. Unless you were an expert in cryptography, it was very unlikely for an educational institution to be able to circumvent a work that was protected by a TPM. Section 226D as such made it possible for an educational institution to bring into New Zealand a device for defeating the TPM provided it was an educational institution qualified under the provisions in question. Section 226E went on to exempt all circumventions made pursuant to a course of study at an educational establishment in the field of encryption technology, or the research facilities of an establishment engaged in the field of encryption technology. Professor Seng stated that he wished to share his observations as tentative conclusions. The first was that the way those limitations and exceptions were being implemented for educational activities in national legislation was quite diverse, and showed that the Member States had a good understanding and application of what constituted permissible limitations and exceptions. Judging from the breadth and depth of the language, there were many different solutions to address that issue of balancing the interests of the copyright owner with the public interests of education. There was a fairly good representation of all those techniques across all the eight categories, six categories of limitations and exceptions in question, ranging from private and personal use, quotations, educational reproductions, educational publications, school performances and educational communications. The compulsory license provisions and limitations still remained relevant to a sizable number of member statements. Professor Seng stated that TPM and RMI exceptions for educational activities were not widely implemented, and shared that perhaps that was because TPM and RMI themselves are pretty new and there was tremendous variability in the implemented provisions which suggested that there may have been room to improve on the drafted provisions. In as far as the limitations of the study, Professor Seng stated that for one, the study was a work in progress as there were still 52 Member States left to be analyzed. The study was an immense piece of research that had taken a tremendous amount of time and effort and that was not going to be until the analysis of the 52 remaining states. The analysis was a strict analysis of provisions in English and was as such premised on accurate and reliable English translations of national legislation. Professor Seng stated that the reading of the national legislation was not complete, particularly in the case of arrangements of provisions pertaining to voluntary or compulsory licensing for educational activities in the Member States concerned. For the study to be complete, Member States, if anything, had to communicate and provide information about what had to be reflected in the study. Professor Seng stated that he tried to address, in the study, the multi-faceted aspects of educational activities and requested from the delegation, any input that would go to further the study. Professor Seng stated that advancement of education was stand on the publications and the creative endeavors of others, and build upon them. That way, everyone can be, in the words of another famous philosopher, as wise as the giants who have stood before us, because the people who can see the furthest are not the giants, but the little dwarfs who stand on the shoulders of giants.

149. The Chair thanked Professor Seng and stated that the delegation should take away from the conclusion the fact that the results would be even better after they had been finalized. The Chair stated that keeping in mind that that was a preliminary version of the study, Professor Seng would be able to respond to any concerns and questions that the delegations had. The Chair requested that the questions and comments refer to the subject matter, which was exceptions and limitations for educational activities.

150. The Delegation of Nigeria, speaking on behalf of the African Group, thanked Professor Seng for his ongoing, well-organized and structured review study on copyright exceptions for educational activities. The Delegation deeply appreciated the historical context he had provided and the light he had shed on the emphasis placed on education for posterity at the time of its conception. The Delegation noted that the study highlighted the essential *quid pro quo* nature of the IP system, by underscoring the preservation of the special status of the use of works to promote and facilitate education. The Delegation welcomed the review of eight specific education exceptions, in the draft study, and viewed with interest, the already established high propensity for provisions that related to private or personal use, thus sanctioning the self-edification and personal instruction perspective of education. As the study was yet to be completed, the Delegation noted that the draft study refrained from making definitive conclusions, but recognized certain depths to be filled at the international level, including TPMs. The Delegation also acknowledged that the draft study promoted ideals of the 1948 United Nations Universal Declaration of Human Rights which asserts that everyone has the right to education. The study too promoted an analogy related to the first copyright legislation, the Statute of Anne of 1710, which emphasized the continued accessibility of affordable learning opportunities for all users, and which the African Group had drawn in the Committee. The Group stated that it would make more substantive comments after careful consideration of the study, after its completion.

151. The Delegation of China thanked Professor Seng for his presentation on the copyright limitations and exceptions for educational activities, and for mentioning the laws in China. The Delegation stated that the Chinese government had always paid attention to the fairness and equity of educational opportunities offered for the public.

152. The Delegation of Brazil thanked Professor Seng for presenting his vision on the update of the series of studies on exceptions and limitations for educational research institutions. The Delegation stated that the draft presented in the Committee took advantage of the five research papers presented in 2009 in that Committee. In the draft, Professor Seng elaborated on eight topics, private or personal use, quotations, the use of reproductions for educational purposes, educational publications, school performances, educational communications, and compulsory license for reproduction and translation of works for educational purposes, and exceptions to the implementation of TPMs and RMI. The Delegation expressed that although it had not had the necessary time to evaluate the document in its full length it was important to note that in Brazil, national jurisprudence had already decided that limitations were not necessarily part of positive copyright law as long as they addressed the fundamental right to education and followed the three-step test. With regard to private use/fair use, the Delegation had, in its positive national legislation, the limitation to reproductions of a small part of a work. In terms of questions, the Delegation stated that it would be important for Member States to understand the trends of the last five to seven years, in national legislation exceptions and limitations for educational research purposes, so as to provide insight on how Member States made an effort to reach the ever changing balance of rights and obligations in the IP system.

153. The Delegation of Latvia, speaking on behalf of CEBS thanked Professor Seng for providing the preliminary study on exceptions and limitations on copyright, with regard to teaching activities. The Delegation was looking forward to seeing the complete version of the study, and it was convinced that it would be a useful basis for further discussions on that topic.

154. The Delegation of the United Kingdom thanked Professor Seng for the study and stated that it needed more time to thoroughly look into the study. The Delegation expressed that in relation to the United Kingdom there might be elements in the study that might not have taken into account the changes that had been made in the 2014 copyright reform.

155. The Delegation of Chile thanked the Secretariat and Professor Seng the study which it felt would be of great use in future discussions, on that particular agenda item. The information brought together in the study demonstrated that all of the countries analyzed had at least one exception or limitation in that area, which meant that the issue was very relevant for Member States. The study also showed that there were few countries that had exceptions and limitations for TPMs, and that exceptions and limitations were considered at a time when only material works and not digital works were relevant. The digital element presented new challenges that had to be considered in an appropriate way, and legislation had to reflect new technologies. The Delegation stated that with regard to the issue of Chile within the study, it had corrections to be sent in later.

156. The Delegation of Bahamas, speaking on behalf of GRULAC, thanked Professor Seng for his study on copyright limitations and exceptions for educational activities. GRULAC welcomed the presentation and its focus on the advancement of education as a public interest against the interest of artists who work to create intellectual products. The Delegation stated that the document with its friendly layout would at its completion, become a useful tool of comparative analysis in terms of the laws of WIPO Member States in that area.

157. The Delegation of the United States of America thanked Professor Seng for his substantial beginning on the comprehensive study on limitations and exceptions for educational activities and for submitting a draft of the study to the SCCR at that point. The Delegation appreciated the author's de novo review of domestic regimes, given the many new modes of education, and acknowledged the formidable task of approaching all legal systems under a single methodology. The Delegation furthermore appreciated the author's acknowledgment that legal systems and legal traditions were diverse and that the limitations and exceptions in question were multifaceted and themselves diverse in structure and in application. The Delegation looked forward to reviewing the study as a whole, and to reviewing the section outlined on the U.S. system in particular. The Delegation would provide suggestions and edits, if any, to the author in due course and added that the study was a timely contribution to substantive discussions among experts on that issue, in the Committee.

158. The Delegation of Uzbekistan thanked Professor Seng for his study and analysis. The Delegation stated that though there are some issues yet to be resolved, the concluded study would help it work on its own legislation. The Delegation wanted to know whether any changes in domestic legislation would be included into the report in the meantime.

159. The Delegation of Uruguay thanked Professor Seng for the study he presented. The Delegation stated that the study was indeed a titanic work which was both comprehensive and rich. The Delegation stated that it agreed with the importance of education as was highlighted in the study. As one of the Sustainable Development Goals (SDGs), indeed education was the root to development that gave access to implementation. The Delegation stated that its country had provided information with regard to exceptions and limitations for educational activities and as there were some described issues with regard to translation, the Delegation stated that it would provide English version of its legislation on copyrights, so as to have that included in the following edition of the study.

160. The Delegation of India, speaking on behalf of the Asia Pacific Group wished to put on record its position on the hard work by Professor Seng, in drafting the study on copyright limitations and exceptions for educational activities. The study helped the Committee to understand how Member States, through their national legislations, maintained a delicate balance between larger public interest in the access to knowledge and right to education, and the protection of the rights of copyright holders. Since the report was a preliminary and was presented only a few days before that SCCR, the Delegation stated that after the presentation which was very clear and concise, it looked forward to reviewing the study, after it was complete.

161. The Delegation of Nigeria joined the delegates, in particular the African Group, in welcoming the interim report of the study on copyright limitations and exceptions for educational activities by Professor Seng. The Delegation believed that the report would significantly contribute to the discussions on the subject of exceptions and limitations for educational and research institutions, especially given the very clear identification of the various clusters of exceptions and limitations. The Delegation was particularly glad to note that Nigerian law was considered in the study. It however wanted to note that some elements of its law were not reflected in the report, specifically with regard to compulsory licenses for reproductions and translations. The Delegation hoped that Professor Seng would review that section of the study on Nigeria's law and that as Nigeria was currently reviewing its copyright law, the outcome of the study would certainly be very instructive in that review exercise.

162. The Chair congratulated Professor Seng for the very comprehensive global study which it was sure required an enormous amount of work. The Chair stated that it was sure that the vision of limitations and exceptions for educational activities presented would be extremely useful to not simply be studied, but for the impact it would make on national legislation. The Chair asked Professor Seng if the eight categories used to structure the study, were sufficient. The Chair wished to know if having undertaken the study, if Professor Seng believed that there should be additional categories. The Chair also wished to know how timely the categories were, in the light of the digital world, and if Professor Seng had studied the effect of those categories in the digital world.

163. The Delegation of the European Union and its Member States thanked Professor Seng for his presentation and welcomed the research carried out in order to update and consolidate the five 2009 Regional Studies, which provided an overview of the situation in WIPO Member States. The Delegation of the European Union and its Member States had not yet taken an in-depth look at the study, and looked forward to reviewing the comprehensive study and in particular, its sections dealing with the European Union and its Member States. The Delegation stated that it was willing to provide comments and updates to the study if feasible. The Delegation added that in terms of the term circumvention, it would like to further understand the author's analysis, and also that the European Union did not provide for a circumvention right as such, but asked Member States to provide for appropriate measures, to ensure that right holders made available to beneficiaries its exceptions, and in certain cases, the means of benefiting from the exception, such as by providing a copy without TPMs.

164. The Chair invited NGOs to ask questions and observations, bearing in mind the current status of the study.

165. The Representative from the Information Justice and Intellectual Property (PIJIP) stated that having reviewed a bit of the report, it noticed that it contained a lot of very interesting data on how to classify different limitations and exceptions. The Representative wished to know whether there was a plan to release the data on some kind of open access platform, so that other researchers could share, manipulate and use it, not just in its report form, but in its data form. The Representative asked Professor Seng to clarify his remarks on the United States of America fair use clause, and to share whether he would classify the existing Singapore fair dealing clause as a fair use clause. The Representative asked Professor Seng to comment on any differences between the Singaporean fair use clause and other fair use clauses in other countries such as the Republic of Korea, The United States of America, Malaysia, other places. In relation to the limitations and exceptions on education, the Representative asked Professor Seng to comment on the openness of educational limitations and exceptions in any countries, and if the professor had any reflections or analysis on that point.

166. The Representative of ENFL.net thanked Professor Seng on his study, which was both very comprehensive and very technical, and which it looked forward to analyzing. As the practice of education had over the last 20 years changed, particularly through the introduction new technologies that enabled exciting new, digitized, and international ways to teach and learn, the Representative asked how Professor Seng assessed how copyright laws have kept up with new technology, and to what extent those laws permitted the use of digital formats, on-line distance education, the use of multi-media in the classroom, and how they permitted cross-border use.

167. The Representative of Society of American Archivists (SAA) welcomed Professor Seng's monumental draft study on copyright exceptions for educational activities. The study's detailed charts on provisions in eight categories of educational uses, in various national laws, resonated with the purposes to which archives regularly pay for results of archival research. Because archivists saw such use and users as fulfilling the ultimate purpose of their work in acquisition and preservations, they were pleased to that countries provided exceptions to provide support the life that archivists managed. Despite being part of the same continuum, the Representative wished to make note of an important difference between the SCCR work on education and its work on library archives. In the case of library topic, what was at question was a more limited and more definable cohort of actors and beneficiaries. Before educators and students could utilize archival materials, whether for private study or published research, archives had to identify and acquire it, copy it for preservation, sometimes extract it from electronic systems, create index tools for it and make study copies of it for users worldwide. Those were carefully defined activities following an organized set of professional practices. Over the past eight years, many discussions of archives and libraries in the SCCR had focused consideration on a set of topics for exceptions and limitations. The Representative believed it was important that the current work to refine the 11 topics on archives and libraries exceptions proceeded expeditiously.

168. The Representative of KEI stated that it wished to know whether after completing the study, Professor Seng would identify the areas where he thought that there were more compelling cases to be made for the harmonization of exceptions. The Representative also wished to know whether cross-border issues that would benefit from some type of norm-setting, came up in the study. As there were a few exceptions related to translation, and with the high cost of doing high quality translations, the Representative wanted to know if it was possible, for works done under those compulsory translation licenses, to be provided to multiple markets, particularly for the countries where works in the education or scientific field, did not have big markets. The Representative also wished to know whether Professor Seng had explored the WIPO Study on Limitations and Exceptions of Copyright and Related Rights in the Digital Environment by Sam Richardson, which had explored whether the three-step test in copyright applied to limitations on remedies and in which the conclusion was that the three-step test did not apply to limitations on remedies. The Representative stated that the U.S. Copyright Office had reached the same conclusion, and had as such recommended a system for orphan works that would use a limitation on remedies, as opposed to limitation on right, or as opposed to compulsory licensing, as a way of expanding access to orphan works.

169. The Representative of the International Publishers Association (IPA) congratulated Professor Seng on his presentation. The Representative looked forward to the complete study inclusive of the last 52 countries on his list, and noted the profound national focus of his research. The study synced very well with the long standing policy position of the IPA, where it encouraged local authors to produce content for local publishers, so that students in each country could have educational resources of the highest quality.

170. The Chair requested that Professor Seng respond to some of the issues raised.

171. Professor Seng thanked the Chair, Vice-Chair and delegates for the very valuable contributions and observations. Professor Seng stated that he was happy to be engaged in a dialogue that would go to improve the presentation and study, as it was only through an open exchange of views and thoughts that the study could be more concise and more accurate. Professor Seng stated that in the review process of the legislation that was currently implemented, he would not have been able to address proposed changes to copyright legislation by the Member States concerned. For example, as the changes in the United Kingdom copyright law in 2014 were not yet enforceable, they were not reflected in the draft. Professor Seng stated that he would consult with the Secretariat regarding the treatment of legislative changes which were pending, but not enforceable as if those were to be considered or facilitated, the study would never stop. Professor Seng stated that the other alternative was to make the study a dynamically variably changing self-updating one, where the Member States could update the classifications themselves. The study would then become something akin to an education on exceptions. It would not only be a dynamically self-updating resource but would also serve as the most accurate and reliable updating resource for that purpose. Professor Seng welcomed that idea, given the fact that as some of the delegates had pointed out, education and educational activities and the scope of educational activities knew no bounds. In terms of the question posed by the Chair, Professor Seng stated that he could not definitively say that education could be compressed into distinct categories. Even in situations where educational dynamics could not be put into categories, for the purposes of the study, the categories were necessary. That was in a sense, the trade-off between abstraction and accuracy so as to be able to draw viable conclusions from social phenomena. Unfortunately, as every social scientist could say, every study was biased because of the assumptions the researcher makes in that process. If there was any particular category that would better fit the categorization that was there, Professor Seng stated that he would be more than to consider it, although that would mean redoing substantial parts of the study. Professor Seng stated that as he went through the 2280 provisions of legislation that were provided by the Member States, he initially started off with only four categories which soon after started to expand. It was a dynamic process which he had put to a stop after eight categories, as he began to prepare for that meeting. Professor Seng stated that he had a great deal of dilemma with the category pertaining to communications and recordings. Initially that category was proposed as two separate ones in his analysis, after reading through the legislative provisions he collapsed them, realizing that many Member States treated the two scenarios as being the same. In other words, when there was distance learning involved, there was some form of not just transmission of the work, but also recording of the ensuing transmission, for instance for repeat transmissions. To treat them separately seemed to be a bit artificial. But yet, at the same time, there had to be an acknowledgement of the fact that there could be a recording without broadcasting or broadcasting without recording. As such, there was a trade-off involved in the formulation of the entire study, which was the cause of the dilemma. Many of the so-called distance learning provisions that were plausible in the national legislation called for substantive interpretations that were given to concepts like communication or works or subject matter, which at the level of the study could not be undertaken as the study was supposed to be limited to reasons of feasibility to a legislative review of the national provisions. Professor Seng expressed that in discussions with the Secretariat about the study, one of the first questions posed was how the case law jurisprudence, as it was called in common law systems, which surrounded the entire concept of educational exceptions, would be dealt with. As there were at least three cases dealing with fair dealing, not fair use, in Singapore, Professor Seng stated that he could not address all of them as to do so would mean looking at national legislation as well as all 188 national jurisprudence. Professor Seng expressed that he tried his very best to be as comprehensive and as exhaustive as possible and that for a study of that scale to be completed at a draft stage within 7 months, called for tremendous effort on the part of both the Secretariat and himself. If there were jurisprudence elements from Member State case laws that would alter the classification of or shed new light on the interpretations that were given to national

legislation, Professor Seng called for Member States to contribute their input and contact the Secretariat so as to make the study better. Professor Seng urged the Member States to contribute to the WIPO Lex. Professor Seng expressed that he read Professor Richardson's studies and knew of other studies regarding that topic, taking place in various academic institutions. To answer the question on whether he would treat the Singapore fair dealing provision as fair use, Professor Seng stated that what he did as an academic writing actively in Singapore was to push for Singapore to eventually go with the American fair use doctrine. According to the systemic changes that Professor Seng made to Section 35, the equivalent of Section 107 of the U.S. Copyright Act, it was virtually and incrementally tweaked three times in the past decade, with the view to eventually map it, rightly or wrongly, to the U.S. 107 fair use provision. There were a number of differences for example it was fair dealing in Singapore, instead of fair use. Fair dealing in its historical heritage, as commonwealth was an enumerated closed kind of system, and in relation to fair dealing in the use of works. The use of works was particularized for very specific instance. Professor Seng stated that from an academic perspective, to have an open textured and inherently flexible provision that encompassed existing and future norms of plausible and possible limitations and exceptions, particularly in the education context, as legislators could not be expected to respond to requests for specific limitations and exceptions, was a necessary and achievable objective. As such, Singapore had adopted some of Professor Seng's recommendations and had enacted its provisions. With five factors as opposed to four, the Singaporean text was not quite the same as the fair use test in 107. In as far as the provisions on compulsory licenses, Professor Seng expressed that as compulsory licenses were quite difficult to read from the legislative provisions in question, he would welcome delegates to give him additional information, particularly the delegate from Nigeria. Professor Seng expressed that in the case of harmonization and cross-border issues, as that was not the focus of the study, he had not done any analysis on those issues nor did he do any substantial cross-border provisions dealing with educational exceptions in the study. Professor Seng commented that the data from the study was already available on the open access called WIPO Lex. Professor Seng thanked WIPO Lex team, who he stated were doing the least appreciated and most undervalued piece of important work in relation to the area of copyright research.

172. The Chair thanked Professor Seng and stated that the Committee was without any doubt, awaiting the final document with impatience once it had been enriched with the information which would be sent in by various delegations.

173. The Delegation of Brazil stated that it had asked Professor Seng about whether he was able to find or to identify the trends in the last seven years, since the presentation of the study in 2009, on changes of legislation in exceptions and limitations.

174. Professor Seng state that the trends would become clearer after the study was completed, which would make it easier to look at all the changes based on time scales. In light of the changes made for instance in the United Kingdom, there could possibly be a pattern drawn after the completion of the study. Professor Seng stated that he would not try to come up with any observable trends offhand. Out of the TPM and RMI provisions and distance learning provisions which were all definitely new, he was not able to come up with any definitive conclusions at that stage.

175. The Chair concluded that session.

AGENDA ITEM 6: LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES

176. The Chair opened Agenda Item 6, limitations and exceptions for libraries and archives. The Chair opened the floor for general statements regarding that agenda item. The Chair stated that the discussion was going to undertake a structured discussion in terms of a list of topics that was compiled in the previous two sessions particularly on the topic of preservation. In the previous session of the Committee, the delegates engaged in a discussion on the right of reproduction and safeguarding copies, on legal deposit and on library lending. In that session the three topics on the table were on parallel importations, cross-border uses and orphan works including, retracted and withdrawn works and works out of commerce. The Chair summarized the previous topics that had been discussed. On the topic of preservation, it was considered that in order to ensure that libraries and archives could carry out their public service responsibility for the preservation, including in digital form of the cumulative knowledge and heritage of nations, limitations and exceptions for the making of copies of works could be allowed, so as to preserve and replace work under certain circumstances. When such a task was undertaken, concerns to be taken into account were expressed, and those concerns were digital preservation, conversion or format shifting and unauthorized uses of preservation copies. To tackle those concerns, the suggested approach discussed was to either adapt or create a new exception for digital preservation and conversion, for the benefit of libraries and archives. Those exceptions should cover both the reproduction of works, printed works and in digital format, as well as born digital works. It was also argued that those exceptions should meet the three-step test. Other conditions which were mentioned regarding that topic were the not-for-profit condition when reproduction was made, but not for direct economic or commercial advantage and also the limitation to specific kind of works, whether published or unpublished. Some arguments were made regarding the inclusion of unpublished works. Related to the source, there was one possible condition mentioned that reproduction should be made from a legally or lawfully acquired source. There was some mention to the number of a single preservation copy or if there could be a chance to have multiple copies. Regarding the requirement that those works should be part of the collection that was something that had to be mentioned, as well. Regarding the format, it was discussed that the preservation could include or could be made in any format, which was also a condition mentioned. There were also mentions of the conditions of the current work, for example, if the work was damaged, lost or unusable, in full or in part or out of date. Finally, commercial availability was mentioned, as the right of reproduction and safeguarding copies. There was a discussion about the second topic on the right of reproduction and safeguarding copies in which limitations and exceptions for libraries and archives play an important role in instances of research. Concerns to be considered in terms of making those exceptions and limitations were based on protecting the role and public service of libraries to provide copies for patrons as well as to take measures in order to avoid unauthorized reproduction. At that point, it was suggested that some sort of flexibility should be taken into account considering the particular legal, cultural and economic environments that went to maintain the larger public interest. Then regarding the third topic of legal deposit, there was the need to consider its importance and to decide if it was going to be kept on the list of topics. In terms of the fourth topic, library lending, the delegations recognized the importance of addressing that issue through exceptions and limitations and considering the rights and licensing schemes. Different views were expressed regarding the digital distribution in the scope of library lending. Some suggestions supported the application of the principle of exertion and some measures to prevent unauthorized use of copies. There was discussion about the advantages and limits of the licensing schemes to tackle the needs related to that topic. Digital distribution was challenging in order to find a solution related to its important function of library lending.

177. The Delegation of Greece, speaking on behalf of Group B stated that it could not agree more with the important role of libraries and archives in cultural and social. As described by the studies presented during the previous session, many countries had already established their own exceptions and limitations for libraries and archives, which worked well in respective legal systems within the current international framework. The work of the Committee had to be shaped in a manner reflecting that reality and complimenting the well-functioning current situation. Regarding the working methods, the Delegation wished to discuss the charts. As no consensus for a normative framework existed in the Committee, Group B believed that the study by Professor Kenneth Crews could help the Committee as to a way forward and could as well inform the discussions. The discussion at objectives and principles level as proposed by the United States of America could too compliment such work. The Delegation stated that it would Group continue to engage in the discussions on exceptions and limitations for libraries and archives in a constructive and faithful manner.

178. The Delegation of Nigeria, speaking on behalf of the African Group, stated that an international instrument on exceptions and limitations for libraries and archives was important in meeting the ever expanding gap of human societal development. The Delegation stated that potential beneficiaries in a vast number of Least Developed Countries (LDCs) were excluded from that fundamental space, due to copyright frameworks. The digital environment had shattered any traditional concept of libraries and archives, including the medium of information and activities of its users. There was therefore a need for an international response to that dynamic environment. Indeed, the records of the SCCR were replete with Member State views. There were however representatives of libraries and archives, as well as other stakeholders, affected by obstacles faced by libraries and archives in fulfilling their public interest, knowledge, and teaching functions, as a result of intellectual property restrictions in the international environment, even in cases as simple as rare, unique and valuable works. The Delegation stated that it hoped that the discussions that week would take a cue from the progressive activities that had been undertaken by regional communities to facilitate learning and access to knowledge for their citizens. The Delegation thanked the Chair for its chart and welcomed the sharing of national experiences by Member States. The Delegation supported the Chair's proposal to hold regional meetings for exceptions and limitations to facilitate the SCCR on that topic.

179. The Delegation of India, speaking on behalf of the Asia Pacific group, reiterated its position on the issue of limitations and exceptions for libraries and archives. Limitations and exceptions were essential requisites for all non-setting exercises and understandings in the national and international fora. Those provisions were vital for achieving the desired equilibrium between right holders and public welfare in scientific and social progress, especially in developing countries and LDCs. The balance of interest as reflected in Article 7 of the TRIPS Agreement stressed that "the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information." Libraries and archives were two vital institutions of society, mostly operating on a non-commercial basis. In most developing countries and LDCs, they were often the predominant, if not the only, source of material for students and academics. In fact, people in all countries, irrespective of their level of development, benefited from exceptions and limitations for libraries and archives. An international agreement on exceptions and limitations for libraries and archives that addressed specific cross-border barriers was critical to ensuring equal access to information and supporting research, education and development. Such an agreement would allow those benefits to be for the good of all instead of restricting them to individual countries. That agreement would require uniformity and balance at a national level, including the harmonization of domestic laws and policies, which would also contribute to safeguarding and promoting the legitimate interest of all stakeholders. Members of the group also wished to reiterate their previous appointing of a facilitator or a friend of Chair, like other WIPO committees, to shape up the text to a full working text so that the Committee could make some visible progress. The Delegation stated that some of the members in the group wished to make specific points on the exceptions of limitations and exceptions. For that, the Delegation requested that the Chair give the opportunity to make their national position more clear on that important issue.

180. The Delegation of Latvia, speaking on behalf of CEBS, stated that it greatly valued the role of libraries and archives in fulfilling their public interest mission by preserving and disseminating cultural heritage. The CEBS Group was of the opinion that the existing international legal framework did not prevent the CEBS states from having accessory provisions on exceptions and limitations, in their national legislations. During the previous sessions of the SCCR in 2015, the Committee had seen two studies covering those topics and which had shown the existing legislations at national levels: The Crews Study on limitations and exceptions for libraries and archives and the study on limitations and exceptions for museums presented during the previous session by Lucie Guibault and Elisabeth Logeais. The Delegation expressed that those studies formed a good basis for the discussions in the Committee. It stated that the exchange of the best practices could guide Member States wishing to introduce limitations and exceptions deriving from international treaties, in their national legislations.

181. The Delegation of Bahamas, speaking on behalf of GRULAC stated that the topic of exceptions and limitations of libraries and archives was of great interest to the group. GRULAC looked forward to addressing the interests and priorities of all Member States and therefore supported an open and frank discussion on the limitations and exceptions for libraries and archives that, in order to reach effective solutions, did not prejudge the nature of the outcomes of the discussions. GRULAC was also very interested in the discussion on the proposal submitted by Brazil, Ecuador, Uruguay, India and the African Group, on the treatment of that topic. In order to promote the work on that topic, GRULAC supported the debate on the table proposed by the Chair, and also supported the holding of regional meeting seminars to advance the work on that topic.

182. The Delegation of the European Union and its Member States stated that libraries and archives played an essential role in the dissemination of knowledge, information and culture that went to preserve history. The Delegation believed that there was merit in discussing the balanced copyright framework that could enable those institutions to fulfill their public interest mission, and it was willing to continue to engage constructively in those discussions. The European Union and its Member States considered that the SCCR should focus on how exceptions and limitations could function efficiently within the framework of existing international treaties. As the Delegation had stated in previous sessions of that Committee, it favored the approach whereby WIPO Member States took responsibility for their own legal frameworks, supported by an inclusive exchange of experiences and best practices and, when necessary, had the assistance of WIPO. In that respect, the Delegation could not support work towards legally binding instruments. It believed that a meaningful way forward could be to focus on a more thorough and systematic understanding of the problems faced by libraries and archives against their needs, giving full consideration to the solutions provided by innovation and relevant markets, followed by an investigation of possible solutions available under the current international framework. A possible outcome of that discussion could be guidance regarding the national implementation of the international treaties in that regard. The Delegation hoped the Committee could work towards that general outcome.

183. The Delegation of South Africa supported the statement made by the Delegation of Nigeria on behalf of the African Group. 2015 was a milestone in the global calendar, as the Agenda 2030, which outlined 17 goals which are meant to promote sustainable development spur economic growth, and create a better life for all, was adopted. That was followed by the UNGA high level review, which affirmed the World Summit of the Information Society in creating an information society and a knowledge economy. The convergence of new technologies allowed for broader reach, as books and resources moved online. However, that benefit would only be able to produce tangible results if access to content was facilitated in a clear and hassle-free manner. Burdensome copyright restrictions could hinder such access and internal delay of development. As the world increasingly moved to distance learning and e-education, it was here that libraries, as custodians of knowledge, played a critical role in facilitating and improving access to knowledge. Those institutions had an important role in providing access to rich, scientific and cultural knowledge that was the common heritage of human creativity across the ages. The statute recognized that critical need and proposed that works were available for education. Copyright also took into consideration access to knowledge and made provisions for exceptions as evidenced by the study presented by Professor Seng the previous day. As previously indicated, the digital ecosystem was growing and producing knowledge that could be considered orphan works. It was very important that the Committee created appropriate exceptions that opened that vast and overflowing fountain of knowledge. Like the digital world, knowledge had no borders. And access to knowledge through libraries and archives had to be global. It was here that the Committee had a responsibility to promote cross-border use to facilitate equitable access to global knowledge from Ivy Schools in the North to dusty village schools in the South. The Committee had a responsibility to address outdated copyright restrictions so that each person had an equal opportunity to an education that could change his or her own life and achieve the global agenda of leaving no one behind. Africa had acknowledged that it needed to take charge of its transformational journey by empowering its universities to respond to new and emerging challenges by providing access to new technologies. However, that goal could not be achieved alone. It needed international collaboration as espoused by Agenda 2030. It was here that the SCCR could play a critical role in a responsive dialogue that could lead the Committee to address the challenges in the imbalance in copyright system, impeding full and access to knowledge in a globalized world. The Delegation stated that success would take the Committee one step closer to sustainable development, placing it firmly on the road to 2030. The Delegation supported the holding of regional meetings on exceptions and limitations.

184. The Delegation of Egypt aligned itself with the intervention made by the Delegation of Nigeria on behalf of the African Group. The Delegation stated that the Committee should not forget that it had a wider context of work within WIPO, namely, the Development Agenda, where there were specific items relating to limitations and exceptions and access to knowledge and bridging the digital gap. As the Committee was entitled to do norm-setting on copyright issues within the organization, that agenda was very relevant to its work. The Delegation stated that it was important to move forward on that normative aspect, so as to enable libraries and archives to fulfill their obligations and role in ensuring access to knowledge and dissemination of that knowledge. The absence of minimum standards of international exceptions and limitations would only render those institutions, which are the creators of knowledge, vulnerable to lateral or purely lateral negotiations, sometimes with a very high ceiling of protection or at exorbitant costs that were counterproductive to efforts aimed at disseminating knowledge and making it available within a wider context of SDGs as well as efforts at raising the standards of education and knowledge in different areas in each country. Limiting the Committee's discussions to national laws and legislation regulating such issues was not enough and could be limiting to the greater goal.

185. The Delegation of Uruguay recognized the important role of libraries and archives in the access and dissemination of knowledge and culture, especially in those sectors that were most in need. The Delegation stated that it attached greatest importance to knowledge as a tool for achieving development. The Delegation aligned itself with the statement made by GRULAC, the African Group and the Delegation of India. I also supported the need for a “friend of the Chair” and the proposal for regional seminars on those issues that affect libraries and archives, particularly in the digital environment.

186. The Delegation of Nigeria aligned itself with the statement made by the Delegation on behalf of the African Group. The Delegation believed that that libraries and archives occupied a position in the context providing access to global knowledge, cultural and scientific information. Access to that information and resources was no longer hampered by physical boundaries in view of the impact of emerging technologies, but there were obvious legal constraints, especially in terms of copyright. Those challenges were manifested in difficulties faced by libraries and archives in gaining access to and providing good faith dissemination of those resources, in line with their primary mandates. The Delegation supported the view expressed by other delegates that the challenges of libraries and archives would be significantly alleviated through an international instrument that continued to promote a fair balance between the rights of copyright holders and users of copyright works, that complimented existing international instruments. A call for the adoption of such an instrument did not necessarily preclude sharing of national experiences or discussions on principles and concepts, but that the sharing of national experiences would enrich the discussion towards the convergence of views on the necessary components of a possible instrument. The Delegation therefore continued to support ongoing discussions of identified clusters of issues and hoped that that would accelerate the move towards text-based work in future sessions of that committee. The Delegation also supported consideration of a consolidated text prepared by the African Group, and the Delegations of Brazil, Ecuador, India and Uruguay. The Delegation of Nigeria stated that it remained committed to engaging in good faith to work with the Chair and all Member States to advance the work of the Committee, with respect to that Agenda Item.

187. The Delegation of Senegal congratulated the Secretariat and thanked it for the work done. The Delegation emphasized its support for the idea of having regional seminars or conferences. That was all the more important in Africa at that moment because many countries were engaged in drafting legislation at a regional level. The Delegation stated that as far as certain regions in Africa were concerned, the decisions that would be taken would then be incorporated into national legislation. It was as such important that African countries got together and discussed those matters on exceptions and limitations.

188. The Delegation of Chile stated that it was important that the Committee found consensus on each and every one of those issues. The Delegation continued to be interested in finding an international solution to the problem, providing that it gave concrete solutions to exceptions and limitations for libraries and archives. The Delegation reiterated that it strongly believed that the basic aim of intellectual property and its development was to be able to find a balance between rights and obligations and access to culture, which was possible to achieve thanks to tools such as those limitations and exceptions.

189. The Delegation of Brazil aligned itself with the statement made by the African Group, GRULAC and the Asia Pacific group as well as the other statements delivered stating the importance of the subjects for development for access to education.

190. The Chair stated that it was ready to continue the structured discussion on the list of topics. The Chair invited the NGOs prepare their statements on those topics. The Chair stated that the Committee would discuss during that session, parallel importations, cross-border issues and orphan works, retracted and withdrawn works and works out of commerce. The Chair requested that the Committee prepare for that discussion.

191. The Delegation of the Republic Korea stated that it recognized that exceptions and limitations on copyrights were important in the spread of knowledge and in improving accessibility to copyrighted works. The Delegation supported that Member States share their own experiences and best practices of limitations and exceptions on copyright law with each other, through workshops and seminars. The Delegation wished to further discuss the availability of international norm setting on limitations and exceptions, as there were different environments and situations on limitations and exceptions of copyright law in different countries. The Delegation believed that it should respect domestic law which reflected each country's situation on limitations and exceptions.

192. The Chair stated that the Committee was ready to discuss Topic 5 on the list of topics. The Chair stated that although it usually gave the floor to Member States first, since the Committee needed the input from NGOs related to that specific topic and to help trigger the discussion on it, it was ready to have the NGOs speak first. The Chair requested that comments be related to the specific topic of parallel importations and not general remarks.

193. The Representative of the Karisma Foundation stated that it was a Colombian foundation which promoted balanced development of copyright for the interests of people with vision impairment. The Representative stated that parallel importation was problematic for libraries because it restricted their capacity in the market and impeded them from buying books if they were already available in their own country therefore making it difficult for them to source them from other markets, particularly for developing countries where the offer was very limited. That was a problem in countries like Colombia because the rights were not extinguished. Although copyright legislation stated that libraries had the right to distribute, that right had so far not been incorporated into national legislation on copyright, as it was one for cells in the United States. Right holders in Colombia therefore only tolerated the rights, but the rights were not actually established. Many of the universities, public universities, had to pirate copies in order to get hold of them because they were not able to get hold of them through libraries. The risk there was that rights holders got fed up with that kind of activity, which led to the problem of people not being able to get the necessary teaching materials through libraries. That was quite fundamental and therefore required some minimal international standards and conditions so that knowledge would not have limitations.

194. The Representative of KEI stated that its organization had taken a nuanced view on the issue of international exhaustion. The organization usually argued that for many types of goods, international exhaustion was appropriate. But it did make exceptions. In the area of textbooks or entertainment products or pharmaceuticals, where one would normally expect some price discrimination based on the income of the country, the Representative stated that it was appropriate to have restrictions on parallel trade between countries of lower incomes and countries of higher incomes. The Representative stated that it had submitted comments in a number of forums where it had said that countries should be generally free to do parallel trade in areas of those special works, for example, textbooks or pharmaceutical drugs, from countries of the same income or of higher incomes, but there should be restrictions on parallel trade from countries with lower incomes than their own incomes as a general rule. However, the Representative stated that it would make further exceptions in countries where, as was described by the previous speaker, there was a lack of available work in the country, and where there was an excessive pricing problem and other anti-competitive acts.

195. The Representative of the Electronic Information for Libraries (eIFL.net) stated that libraries bought books for users who needed the books to teach subjects, study for exams or conduct research. Some libraries specialized in particular subjects, and they built specialist collections around those areas. When a required work was not for sale at the local market, or could not be bought within a reasonable time or within a reasonable price or when the content of the imported edition was different from the locally available edition, a library needed to be allowed to legally purchase the work from another country. In other words, for libraries that was an issue of access to information. The problem was that national exhaustion rule meant that libraries were not allowed to import a book for noncommercial purposes because of rules designed primarily to regulate consumer markets, relating to the sale of goods. Ironically, libraries in the wealthiest markets and with the greatest abundance of information resources had among the world's fewest restrictions on importation. In 2013, the U.S. Supreme Court found that the U.S. Copyright Act provided an international exhaustion rule. Thus, if a U.S. library wanted, for its collection, a work that was for some reason not on sale in the United States of America, it could purchase a lawful copy of the work wherever it was sold, anywhere in the world, and could import it into the United States of America. It could then lend the work and do other activities that would be lawful within the copyright law. The European Union had adopted a regional exhaustion. That meant that if a library wanted a book that was not on sale there, it could purchase the copy wherever it was sold in the 27 other countries of the European Union. For the libraries in countries that had smaller markets, many books were not on sale there because that was not worth the effort for the publisher. Where a national exhaustion rule applied in that case, a library could not legally purchase and import legal copies of the works without negotiating a special import license with the publishers. And the transaction costs of obtaining such licenses were prohibitive, even if the library and the institution to which it belonged had the capacity to do so. EIFL.net as such welcomed the discussions at SCCR to facilitate archives and libraries to acquire and import legally purchased works. The works could either be purchased or obtained in some other way, for example, by gift or donation. The work must have been published and incorporated into the collection of the library. The Representative noted that the Australian government's independent research and advisory body, the Productivity Commission, recommended that all restrictions on parallel imports for books be repealed in its draft report published in 2016.

196. The Representative of the Association of Scientific, Technical, Medical Publishers (STM) stated that the discussion on parallel imports could benefit from clarifying what works and what formats of works were being discussed, and the distinctions between parallel imports of genuine gray goods and other articles. The Representative stated that it was a broad stroke to discuss that topic, as in the past, physical goods were considered more of a trade issue than an issue of copyright law. KEI Representative and the eIFL.net Representative made reference to some of the damaging effects that unrestricted parallel importations could have. That meant that a global price had to be enforced throughout the world, which with restrictions on parallel importation, was not a great way to solve the wide-as-possible access issue. The international framework, allowed every country to decide on how it wanted to deal with parallel imports. The Representative stated that one could consider that the issue at the table of discussion was an issue that as an issue of the distribution of genuine goods did not belong to exceptions and limitations. The Representative stated that the topic could benefit with a clarification on what was the discussion and that the topic could be removed from the agenda.

197. The Representative of the International Federation of Libraries and Institutions (IFLA) stated that the principle that a library should be able to lawfully import items from another country, without the permission of the copyright holder, was fundamental in enabling many libraries to fulfill their mission. The Representative gave an example of a book might be published in South Africa. The publisher grants distribution rights of that book to a specific publisher in the Bolivarian Republic of Venezuela, but a library in the Bolivarian Republic of Venezuela gets the books from another vendor in the country. That was a parallel import. Parallel importation was permitted under the TRIPS Agreement, Article 6 Exhaustion, as well as by the WIPO Copyright Treaty, Article 6 Right of distribution, whereby Member States could enact provision allowing for international exhaustion of the distribution right. Not all countries had taken advantage of that option, and those that did took different approaches. In some countries, works from outside the country could not be imported without the permission of the holder of distribution rights in that country, which was called national exhaustion. Some countries adopted a regional adoption, where once an item was made available in one country in their region, such as the example of the European Union mentioned earlier, then libraries in all areas of that region could obtain that item from within the region. Some, like Switzerland, provided a law that once a book was available for sale anywhere in the world, it could be imported into Switzerland; that was known as international exhaustion. Those were inconsistent with the needs and realities of a global information society. Without a right of parallel importation or international exhaustion, many libraries were unable to fulfill their core service mission. For example, the national libraries of many countries were mandated to collect works that were in their national language or were about their country. That included works published elsewhere. Academic libraries had to build foreign language collections that satisfied the scholarly pursuits of academics. For instance, literary scholars were often required to access all versions of a text in all languages; whereas, public libraries, with growing languages, needed to obtain works for all their patrons. In the United States of America alone, libraries contained 200 million books published abroad. And in research libraries in Brazil, more than 20 percent of the books required by undergraduate programs were not available in that country's market. IFLA was not seeking a broad right to import consumer goods, such as Swiss watches or consumer products; rather, it sought ability for libraries and archives of one country to acquire works from another country, and to share that content with their patrons as they do works lawfully acquired within their own country.

198. The Representative of the Electronic Frontier Foundation (EFF) wished to follow up on the comment raised by the Representative of STM on why parallel importation was generally considered as a matter of trade law rather than copyright law. The Representative wished to discuss how that discussion topic had been treated in recent trade agreements, most notably the Transpacific Partnership. The Transpacific Partnership Agreement allowed explicitly for countries to adopt a system of international exhaustion of rights. So if that issue of parallel importation was to be treated in the instrument that the Committee came up with, then that was the current international standard that should be followed. The Representative stated that the Representative of STM had made the point that since the law as it currently stood allowed a country to include a law of international exhaustion of rights, then it was not necessary to reproduce that in the laws the Committee produced. Certain countries had also said that the existing international framework did not prevent Member States from adopting appropriate limitations or exceptions for libraries, which was true, but in looking at the history of amendments to international legal frameworks, countries did not amend their law unless there was some kind of impetus from an international instrument, especially if it was a hard law instrument. For that reason, it would still be useful to enshrine the principle of international rights in the instrument of whatever form the Committee produced.

199. The Representative of the IPA stated that it wished to support the comments delivered by the Representative of STM. The IPI represented publishers as well as book publishers, and very much saw the discussion on hand as a trade issue. The Representative stated that it also agreed with the intervention delivered by the Representative of KEI on parallel imports. The Representative stated that, the Australian Copyright Law, as had been mentioned by the Representative of eIFL.net, was interesting in terms of parallel import restrictions because it allowed for libraries to unrestrictedly import two copies of books from anywhere in the world. That was purely a trade issue on the ground and in that sense, the IPI wanted to keep it as a trade issue. The Representative stated that the most appropriate way of dealing with parallel imports was at the national level, with the flexibility as the Australian Act.

200. The Delegation of Argentina stated that perhaps the Committee needed an international understanding of exhaustion of rights in terms of presenting a solution for a specific area. For library copies, the solution could be that for a certain number of copies, and for a specific reason, an exception and limitation enabling importation and re-importation could be made, but only for that. The Delegation stated that that seemed to be the problem that publishers were concerned about, and what it had just proposed could be a way around it.

201. The Chair invited comments on the topic and on the suggestion made by the Delegation of Argentina. The Chair opened the floor to delegations.

202. The Delegation of Brazil stated that together with the African Group and the Delegations of Ecuador, India and Uruguay, it had proposed in Document SCCR/29/4, a common approach that encompassed the necessary limitation to allow adequate and cost-effective access to books and other cultural goods for libraries and archives. The Delegation understood that it should be permissible for libraries and archives to acquire and import legally published works that could be incorporated into their collections, in cases where Member States or contracting parties did not provide for international exhaustion of distribution right after the first sale, or after other transfer of ownership of a work. The Delegation stated that that sort of provision would allow for access to culture for facilitated parallel importation and it was looking forward to hearing views on that proposal. And as a general comment regarding some elements that were brought by NGOs in the discussion, the Delegation stated that it would just like to affirm that the parallel importation was in fact a matter of trade as it was a matter of intellectual property. There was an aspect of intellectual property that was determinant for the facilitation of trade in that aspect.

203. The Chair summarized the discussion thus far and stated there had been some comments coming from NGOs, regarding the maintenance of the topic at hand within the list of topics, as well as a suggestion from the Delegation of Argentina to identify the material that would be a part of private importation so as to avoid unintended uses. During the conversation, there was also mention of the lawful acquisition of legally published works as part of the conditions of the circulation or distribution of those works under that parallel importation. The Chair expressed that the floor was still open for comments.

204. The Delegation of European Union and its Member States stated that as it had been stated, the international copyright treaties gave contracting parties the freedom to determine the conditions, if any, under which the exhaustion of right of distribution applied. The Delegation stated that in the European Union, an establishment of a single market which included as one of its fundamental freedoms the distribution of goods, led to the exhaustion of the right of distribution at the European Union level and in the countries which were parties to agreement on the European Economic Area after the first sale or other transfer of ownership in any country of the European Union or European Economic Area of the original or a copy of the work or the protected subject matter with the authorization of the right holder or with his consent. That had been mentioned by some of the NGOs, as well, earlier, but the Delegation wanted to stress that that had been possible thanks to the high level of harmonization within the European Union copyright legal framework, including the single court of justice and the possibility to open infringement actions in case of noncompliance with European Union Law. It was difficult to relate parallel importation to the traditional limitations and exceptions for libraries and the exhaustion of the distribution right in the European Union as it only happened with regard to the original or copies of the work where the sale or transfer was made by the rights holder or by its consent. It was a different matter than limitations and exceptions, which was about the possibility to exchange certain users without the consent of the right holder.

205. The Delegation of the United States of America stated that it had carefully considered the issue of parallel importations by libraries and archives of works for its collections, including the question of whether libraries and archives should be permitted to acquire and import published works where a Member State did not provide for international exhaustion of the distribution right after the first sale or other transfer of ownership of a copy. The Delegation joined other delegations in recognizing the complexity of the existing international framework for exhaustion of the distribution right. As other delegations had noted in prior sessions of the Committee, that framework was complex, involving significant differences in national laws, including regimes based on national, regional or international exhaustion, along with unresolved issues at the international level. In the United States, the law permitted the importation of lawfully made copies of protected works in certain circumstances, including, in limited quantities for nonprofit library lending or archival purposes. Against that background, the United States of America was interested in learning more about how countries had addressed that issue with respect to libraries and archives in their national law, if at all. It wished to know what the experience had been for other countries, with respect to importation by libraries and archives.

206. The Chair stated that even though some comments had highlighted the complexity of the issue through different forms of adoption of that instrument in national, regional or international exhaustion, it was interesting to know that it was not an unusual tool and that it was being used in several Member Countries or regions. The Chair then requested that the Secretariat make reference to the last time that the Committee had discussed cross border issues.

207. Based on the chart prepared the Chair some sessions ago, for Topic 6 on cross border uses, a number of delegations had expressed different views on how to enable libraries and archives to exchange works and copies of works across borders as part of their public service mission, particularly for education and research. The Secretariat expressed that a number of the aspects of the topic had been explored by delegations and observers.

208. The Chair opened the floor to NGOs on Topic 6 titled, Cross Border Uses.

209. The Representative of the International Federation of Library Associations and Institutions (IFLA) stated that in a world that was increasingly digital, there could be no more important over-arching principle than that cross-border uses were permitted for limitations and exceptions for libraries and archives, whether that was through lending, preservation, reproduction of copies, etc. The internet had no borders; therefore, the notion that libraries and its users should be forced to deal with 100+ national flavors of exceptions was unworkable, ludicrous, and a failure of the international copyright system. That proposed exception may be the most important of all those being considered by SCCR since it underlined many of the core library and archive activities. As the IFLA had often noted, libraries and archives sought the balance between users' and owners' rights, which had been fundamental to copyright since its inception. What desperately needed, however, was clarity and the ability to operate effectively in the digital environment. The Representative stated that it would elaborate with four examples. (1) A recent study undertaken by a Canadian academic found that 43 percent of the large body of research papers reviewed had been co-authored by scholars from 2+ countries: 1 paper, but multiple authors, multiple countries, and multiple copyright regimes was a recipe for confusion. As collaborative research and publications were now the norm, the lack of clarity and harmonization had become an increasing impediment and frustration to those who sought to advance and disseminate knowledge worldwide; (2) libraries needed to lend and borrow to satisfy the information requirements of users for works not available for purchase or for works lying outside the scope of a particular library's mission; but as the Crews study had demonstrated, many countries had no provisions for lending or for document delivery; and even if all did create their own, with different copyright exceptions, how would a librarian possibly keep abreast of rules in 180+ countries?; (3) librarians and archivists increasingly worked across borders to re-assemble digital archival collections documenting the various diasporas that occurred throughout human history; but varying laws governing lending, preserving, and copying those geographically dispersed collections forced archivists and librarians either to give up in despair or spend endless hours trying to determine, understand and cope with different countries' exceptions; and (4) many universities had campuses in multiple countries, which challenged librarians, faculty and students to know what rules apply, as they moved from campus to campus, for common activities like making copies for private use. The solution, which the Representative hoped the Committee would become serious about, was to move from discussion to action on proposals submitted years ago by the African Group and GRULAC, to provide the clarity, balance, harmony and rationality in copyright that libraries and archives needed to perform their public service missions in a digitally-connected world. The Representative stated that it remained completely mystified by the repeated assertions by some delegations that all of the problems it cited could be easily be solved within the "existing international legal framework," or at national level. The Representative stated that it saw zero evidence to support that claim. As a colleague had noted at a previous SCCR, nothing, pre-Berne, prevented member states from setting copyright term for a period of 50 years after the author's death. But Member States recognized the importance of an international norm. The Representative called on the Committee to recognize and accommodate the importance of international norms governing its cross-border activities.

210. The Representative of the International Federation of Reproduction Rights Organizations (IFRRO) stated that cross border uses should be allowed with permission and under a license with the right holders, or representatives such as, Reproduction Rights Organizations (RROs). Any international document delivery of copyright works should be conducted with the permission of the right holders, or their authorized representatives, in the country of supply and in the country of reception in the country of supply or reception or if performed under any exceptions complying with a three-step test in national legislation of the country of supply, of the country of reception, or of both countries, then at conditions agreed to and accepted by the right holders or their authorized representatives in both countries.

211. The Representative of SAA stated that its members managed billions of primary source works from across the globe. The members cared about copyright but were keenly aware that the copyright system failed to recognize the 21st-century needs of its users. Although Internet access could solve that problem, copyright laws as they stood made most cross-border delivery of such documents illegal. If one is unable to travel internationally, then his or her own country's heritage may be inaccessible. That no longer made sense. As the United States of America's "Objectives and Principles" stated, archives enabled citizens to "participate meaningfully in public life." The first principle for archives was that its materials must be made available. In today's world, if materials were not available digitally, they might as well not exist. The second principle was that most archival materials were never created for commercial purposes, despite being valuable cultural and scientific documents. Because of the very nature of such records, there could be no viable collective licensing for the billions of virtually anonymous authors found in today's archives. The third principle was that archives, by definition, held rare or unique works available nowhere else. Thus, they should be made globally accessible, usually through digital tools. To do otherwise meant to betray the public's trust. Those principles caused copyright jeopardy when it came to cross-border sharing of archives. The Representative stated that for instance, its university held the archives of a Dutch anthropologist who was the leading 20th-century expert on pre-Columbian Incan society. He also made extensive microfilms of local church records in the Chuschi district of Peru when researching intermarriage between colonizers and the native population. Because many of those churches and their original records were destroyed by later civil wars, his microfilms now may be the only copies existing anywhere. Where would a collective licensing find the rights for those records? Yet, as their custodian, the Representative had to be able to ensure that those apparently unique records could reach their rightful constituents half a world away. Their information needs were borderless. The necessary technological tools had existed for over 25 years, but national copyright laws had not kept pace, and it would be absurd to argue that licensing could fill the gap. Without the kind of cross-border exceptions only an international treaty could provide, the Representative stated that it could not help the millions of people worldwide who needed archives for preservation and heritage. Answering user requests and placing out-of-commerce documents on websites had to be permissible across borders. Archivists wanted to fulfill their mission without being deemed criminals. Copyright was not meant to lock up material never created for the commercial market. Cross-border exceptions were nothing more than common sense.

212. The Representative of Karisma Foundation stated that the existing copyright regime did not work for an increasingly interconnected world and that the problems that libraries, archives and their users faced everyday had a cross-border indisputable character. The Representative shared some examples. In 2014, The Harry Ransom Center at the University of Texas in the United States of America acquired the personal archive of the laureate, Colombian writer, Gabriel García Márquez. That collection was made up of more than 75 boxes of documents which included draft manuscripts of published and unpublished works, correspondence, 43 photographic albums, 22 scrapbooks, research material, notebooks, newspaper clippings, scripts for movies, the final typewritten copy of 'Hundred years of Solitude' and an unfinished novel, plus some personal items like his Nobel medal. Part of that collection will be digitized in the future. That collection was of great interest to Colombian academics, writers, historians and scholars of the work of García Márquez. For Colombia it was a shame not to have the collection at home. The options available to those who wanted to view and access that collection, in summary, were: first, they could travel to Texas to directly consult the collection; on the other, they could make a request for information to be provided via a local institution. The Representative stated given its high costs, traveling was not a feasible option for many researchers in developing countries such as Colombia, not bearing in mind the time needed for such travels. Instead, the cross-border supply of materials should be considered as the simplest alternative. But the current legal environment was a major obstacle to that option as a result of the inequity and disparity in national copyright laws. Those legal obstacles have hindered the development of the study of the Colombian national history itself, the production of new content and intellectual production, and the preservation of national historical and cultural heritage. Other examples also highlighted how the existing legal barriers had prevented the National Library of Colombia from sending a copy of a manuscript score, of a musical work, to a user abroad because the institution lacked the permission of the author to supply the work digitally. A similar situation occurred to an academic library where at the request of a PhD student, was prevented from providing necessary work for his doctoral thesis, because, although it was a document out of the market, the license paid by the institution only allowed them to copy 30 percent of the work. That license was certainly insufficient to meet the needs of that research or any other. Therefore, there was a cross-border problem, which required an international solution. The Representative stated that the Committee's work could help researchers nourish their doctoral theses by granting them access to knowledge sitting in libraries and archives anywhere in the world, and that the unfinished novel of Gabo, as was affectionately known in Colombia, would not be the last story told by the Colombian writer in his land.

213. The Representative of the Scottish Council of Archives (SCA) stated that archivists needed to be able to supply copies across borders. Primary Research Group Inc. published the International Survey of Institutional Digital Repositories in early May 2016. The survey indicated that, for U.S.-based repositories, 27 percent of downloads came from countries other than the United States of America or Canada. In the United Kingdom, the Chartered Institute of Public Finance & Accountancy had recently released the results of the 2015 Distance Enquiry Survey for local government archive services. The Survey found that 19 percent of the respondents who had used enquiries services at United Kingdom archives lived outside the United Kingdom. Funding within higher education was increasingly awarded to international consortia of research-intensive institutions, and partnership working across multiple countries and multiple institutions was now business-as-usual. Of the 188 states included in Professor Kenneth Crews study on limitations and exceptions for libraries and archives, only 61 states had exceptions for research and private study that included the copying of archival documents. That meant that cross-border supply of archive materials for research and scholarship often resulted in infringement: but how could infringement, however harmless, be the mark of a well-functioning copyright system? The system was not functional: it was dysfunctional. The uncertainty that it created was a burden for archivists and their users, and did nothing to maintain or improve the reputation of the law. Indeed, it created an unnecessarily negative perception of the law, especially for its users. The Representative stated that it agreed with the International Council on Archives (ICA), that recognition of the legality of a copy created by an archive in a Member State would be sufficient to address the problem. An international treaty was the preferred instrument.

214. The Representative of the European Bureau of Library, Information and Documentation Associations (EBLIDA) stated that document delivery of analog copies of journal articles or abstracts for research requests had been a vital part of cross border activities for many decades. However, doing that internationally had proved more difficult, especially now that digital delivery of soft copies was the norm. Within the European Union, library Member States that had implemented Article 52(c) of the Information Society could make copies of copyright works within the terms of that exception. However, if that copy were to be sent to a researcher in another Member State that had not signed and implemented that Article, then the copy would be an infringement. The Representative stated despite existing cross-border licensing schemes in geographically defined areas such as FIZ or Germany, and Austria, if a student wanted to consult an e-book held by another regional university library in Switzerland, e-books license prevents the Swiss library from making copies of the required pages and sending them across the border to Germany electronically, or in print, in response to the student's document supply request. Faced with that situation, the student would have no choice but to take the train, at significant cost of time and money, to consult the e-book in person at the Swiss library simply because of the artificial barriers put in place. If it had been a hard copy book, the whole book could have been obtained as an interlibrary loan, and the student could have made copies in Germany under German exception. Likewise, licenses for electronic content could impose blocking, a problem that the European Union was trying to solve by introducing legislation for portability with regard to certain goods or services within the international digital market program. A public library e-book user in Norway with European Union access to market could access e-books from their local public library service while visiting the United Kingdom but could not obtain the Norwegian literature because of the extended access terms to people located in Norway. Cross border licensing did not clearly work for library users. The Representative stated that the SCCR was the appropriate body to establish in the public interest, minimal international standards for cross border uses, and content that was protected by contract terms thereby removing the current restrictions on the legitimate flow of information across international borders, via libraries or cultural heritage institutions, and permitting those engaged in not-for-profit learning and cultural research activities to fully exploit the Internet's potential.

215. The Representative of eIFL.net stated that cross border document delivery related to requests from library users for information not available in their home institution or at any other library in their country. The Representative stated that it would give two examples of requests denied due to copyright and licensing restrictions. The first example was from a university lecturer in Armenia who wanted two chapters of a book on teaching using drama. The book, published in 1987, was out of print and not available anywhere in Armenia. The closest library with the book was 1,000 km away and the request to access the book was denied due to copyright reasons. The second example was from a patron at a United States of America university who needed two pages from an early twentieth century literary journal, found only at the British Library in the United Kingdom. The request to access those pages was denied as the library in the United Kingdom was not allowed to send the pages to the United States of America. In both cases, the users completely failed to understand the reasoning. The Representative noted that in 2012, the British Library, one of the world's largest research libraries, ceased its overseas copyright-based document service to protect the library from claims of copyright infringement. The service was replaced by a publisher-approved licensing scheme. Data showed that the service, a lifeline for hard-to-find information for the research community, had fallen off a cliff edge. The number of satisfied requests fell by over 98 percent from 38,100 in 2011 to just 635 in 2015. The number of countries served fell from 59 to 26 during that time. Librarians in the eIFL.net network, who benefitted from low cost access from publishers, began to complain that they could no longer get other articles their users wanted or that they were too expensive, for example, an article requested by a library in south-east Europe cost \$80. For many individuals, pricing was a barrier as a single pay-per-view article in a scientific journal cost around \$40. Also, a publisher could license only the material for which it held the rights. Considering all the other material in libraries, for which no license was available, there had to be a legal way to access that material. A recent article in Science Magazine, on Sci-Hub, the world's largest unauthorized site for academic articles, revealed 28 million download requests over a six month period from all regions of the world and covering most scientific disciplines. A publisher was quoted in the article as saying "It suggests an almost complete failure to provide a path of access for those researchers." The Representative stated exceptions, and libraries as an established access channel, can help prevent illegal ways of sharing. An exception as proposed in document SCCR/29/4 for cross-border uses for non-commercial purposes, made under an exception in national law, would provide such a safety valve.

216. The Representative of STM stated that on the subject of cross-border uses, he would like to suggest that either a closer definition of what is intended would be useful, or the topic could be submerged with some of the other topics. From all the interventions it had heard so far, it seemed that that topic overlapped with Topic 1 on Preservation and Topic 4 on Library Lending. The Representative stated that the title of Cross-Border Uses was so broad and that it overlapped with future topics such as orphan works or out-of-commerce works. The Representative of SAA had referred to out-of-commerce work uses and national heritage which should be available across countries. The Representative stated that STM would suggest that not all cross-border uses questions had the same answer depending on the context in which that issue arose. When examples came up of uses that seemed in themselves nonsystematic, rare type of uses with practically no market impact in the country of reception, then it was hard to generalize from that evidence basis to a general case, that would sometimes amount to basically substituting the information infrastructure in one country entirely and relying on the infrastructure of information of other countries by underfunding the local library system, which obviously STM would not be in favor at all. Cross-border uses, if not well defined, had tremendous impact and could destroy a country's information infrastructure. The Representative stated that for STM, the mostly raised issue of document delivery was always a supplementary form of procurement of information.

217. The Chair stated that since there was an invitation to set the boundaries of that topic in order to avoid overlapping with others, he would like to invite the delegates to consider ways to avoid such overlapping.

218. The Representative of KEI stated that he was not a library, he was not a publisher, but that he did do research and worked all over the world. The Representative stated that it was trying to get information of a legal nature in quite a few different countries including Canada, Germany, Scotland, Romania, Chile, Colombia, Egypt and South Africa. The Representative stated that KEI also had professional training for its staff and that sometimes involved education involving different countries. It was the case that people did business around the world and that their research required them to learn about things that happened in different places. Therefore, in terms of librarians, there was a very compelling case that their work was essential for them to support educational institutions, and that they were very usable channels for cross-border use of exceptions.

219. The Representative of the International Association for the Protection of Intellectual Property (AIPPI) stated that it would like to refer to educational and research institutions per se and their accessibility to libraries and archives. AIPPI's position was that exceptions and limitations should allow cross-border communication to teachers, public private partnerships, students and researchers of reasonable and limited portions of works for the sole purposes of receiving and giving instruction within their premises, and/or by making them available online in a restricted manner. In connection with the above activities, equitable remuneration should be paid to the copyright holder by the institution using the work. Such remuneration was either to be set through private agreement or through collective agreements with the representatives of the respective interest groups or, failing such an agreement, to be determined by a court or relevant authority. In determining the level of such remuneration, account should be taken of the particular circumstances of each case. There may be cases where no obligation for payment may arise.

220. The Delegation of Argentina stated that it understood that the solution suggested by IFRRO and also by the AIPPI might be suitable in many contexts because that was contemplated in some legislations. Even when countries hadn't provided for exceptions or secondary uses of works, the proper working of collective management was a desirable practice, including for other purposes apart from educational. The problem was when those were not recognized in some countries, when those contents had to be transferred. Therefore it was still important to have international solutions to exceptions and limitations because of different practices in different territories. The Delegation stated that it also wanted to make clear that that treaty was not intended to replace internal solutions, particularly when states had obligation under international treaties. There should be flexibility in the granting of rights. Sometimes there was no way of getting the full information of the needs of libraries. Together with collective management, there could be a minimum set of exceptions with rules for coordination. That could lead to a variety of different solutions that states would adopt nationally. And rather than be subject to the legislation of the country where the material was situated, the requiring country's legislation could apply.

221. The Delegation of Egypt, speaking on behalf of the African Group, stated that it was very interesting listening to all the interventions made by the NGOs. The Delegation stated that the African Group was supportive of allowing for the cross-border exchange of copyrighted material that was dealt with or acquired by a library, institution or archive in a legal manner, that it should be available to another library or archive in another Member State. And the legal provisions in an international manner would provide a basis for such an exchange without holding the library or the archive system accountable to infringement allegations in that regard that would hinder the proper functioning and carrying out of their original role and mandate.

222. The Delegation of Egypt, speaking in its own capacity, stated that the examples that the NGOs had cited represented a practitioners' guide on how the lack of international exceptions and limitations on libraries and archives represented a limitation in itself on the proper functioning of those institutions and, hence, denying access to knowledge and in the case of cross-border uses, blocking the free flow of information, especially when viewed from the angle of legitimate right to access for non-commercial uses, and thereby not constituting an infringement of copyright. That became more relevant in the digital electronic age where cross-border transfer should theoretically become easier but is, however, debilitated by the lack of international legal provisions governing those issues and ensuring the smooth utilization and functioning of the advanced tools that were themselves the product of human knowledge-based creation. The Delegation stated that the laws should not be used as a hindrance but, rather, as support of access to knowledge in that domain.

223. The Chair stated that in the previous session the Committee had discussed parallel importations. Although some delegations recognized that it was a cross-cutting sensitive issue, others emphasized that the choice for international, regional or national was left to national law by national copyright treaties. The Chair stated that a number of aspects of the topics were explored with the contribution and examples posted by NGOs. Regarding cross-border uses, the Chair wanted to continue the discussion.

224. The Delegation of South Africa stated that the digital revolution, which knew no borders, was supposed to facilitate free flow of information in an efficient and expedited manner. That was the promise of the digital revolution, but the Committee was constantly coming up against archaic barriers which impeded access to knowledge, fundamental to our development. In South Africa's opening statement, the Delegation had referred to Agenda 2030 its commitment to leave no one behind. The Delegation was in agreement that education was critical to human development, and as such, education was afforded the status of being goal four, which was to insure inclusive and equitable quality education and promote lifelong opportunities for all. The merits of education and distance learning had been lauded as a means to be inclusive, but lacked the necessary tools. That lack of access meant that there was a failure in the commitment to address developmental issues. In that Committee, librarians had expressed their frustration at being unable to fulfill their mandate. They had provided concrete examples of the problem and were told to find solutions under existing frameworks. If it really were that easy, then there wouldn't be a need for that discussion. It was obvious that national solutions were not sufficient in addressing that global problem. There was a need for certainty, minimum international standards so that libraries could fully exploit the opportunities provided by the digital revolution. A lack of certainty was not only disadvantaging people across the world, but causing harm to libraries and other legitimate markets. There should be legal clarity on cross-border issues. With regard the role of the Committee, delegates should remember that WIPO was a member of the UN and had a responsibility to assess Member States in their request for sustainable development. Access to knowledge across borders was both a driver and a key.

225. The Delegation of Brazil stated library lending promoted access to cultural education, it played an essential role in insuring inclusive and equitable quality education, and promoted lifelong learning opportunities for all. Library lending had two dimensions, library user lending and interlibrary lending. Library user lending was the most well-known activity related to libraries. Being that the traditional role of those institutions, interlibrary lending allowed for extended access of culture through interinstitutional cooperation. Those activities between libraries were circumscribed to national jurisdictions since exceptions and limitations that allowed for those activities were also circumscribed to national legislation. Likewise, archives faced similar situations. In order to allow for enhanced international cooperation among libraries and archives that could lead to improved access to culture and education through interlibrary lending, the Delegation of Brazil alongside the African Group, and the Delegations of Ecuador and Uruguay prefer a comprehensive approach. To allow for the existence in the development of libraries' missions beyond national borders, it proposed that Member States should provide a copy of a work or material protected by related rights if any format was available, made under a limitation or exceptions or in accordance with its national law, that that copy may be distributed, lent or made available by a library archive to another library archive in another Member State. The Delegation stated that that proposal answered to the Chair's call for set boundaries of discussion since it was clear that exceptions and limitations would be allowed for that interlibrary cooperation, as the boundaries of discussion under that topic.

226. The Representative of the International Council on Archives (ICA) stated that it agreed with STM that the topic was an overarching one that applied to many of the other topics being considered by the Committee. The Representative stated that it would address the issue of licensing and its lack of evidence to archives when the Committee considered orphan works. There were no doubt more, but there were two principle kinds of uses of archival material that involved cross-border transmission. One of those was research with the academic or personal, the other was pursuit of legal rights such as those relating to nationality, identity, and property. Both of those kinds of use would in many cases require cross-border activity, since the sources would be in other countries as a result of migration, trade or conquest. One example was the release last year by the Government of France of the archives of its counterintelligence service in Indochina in the 1950s. Clearly the researchers and individuals interested in investigating those records would mostly be in Asia, not in France. Another example was the creation of an archive of photography by the school of African heritage, Benin. That would be a rescue program for graphic archives that were liable to decay when stored in poor environmental conditions collected from 26 African countries. If prospective users of archival collections like those were to be permitted to do so in their own countries, rather than to travel long distances, they would need copies. It was undeniable that international law allowed individual states to introduce exceptions and limitations to copyright that permitted such copying. What happened though when those copies were sent to a state where the requirements of an exception were different and the copy did not meet those requirements. It was unlikely that anyone would be sued for an infringement of that sort, but that did not make it right, nor did it help the archivist or the user wishing to act lawfully. There were two possible outcomes. The archivist declined to supply the copy for fear of infringement or the archivist decided to ignore the law. Neither outcome was good for the law or the interest of rights owners or users. Cross-border solutions were regarded as essential within the European Union. Even though there was no international single market, they were also essential worldwide for very specific purposes which must be clearly defined. The alternative meant acceptance that archive services could not be cross-border or that they would be provided regardless of the law. A solution or archives need not be complex if all states recognize the legitimacy of a copy of an archive made in another Member State.

227. The Representative of IPA stated that on the matter of cross-border uses, the IPA fully supported the remarks made previously by the representatives of STM and IFFRO, but would like to make a clarification regarding the IPA's position. The IPA did not want to prevent the cross-border flow of information, but thought that it needed to be regulated according to five principles, the Berne Convention three-step test must govern any discussion of copyright exceptions including for library supply. Second, cross-border document deliveries by libraries and of the documents supplied should be governed by arrangements negotiated directly with publishers or their authorized representatives. Third, digital document delivery direct to end users was best governed and coordinated by rights holders. Fourth, document deliveries to individuals for private, non-commercial use should be subject to appropriate due diligence. And fifth, on-site print document delivery to non-commercial patrons was a good compromise.

228. The Delegation of the European Union and its Member States stated that the issue of cross-border use was a complex one. For one, it raised the question of the level of harmonization that was required among the laws of concerned countries on various aspects including, for example, the rehabilitation between exceptions and licenses, compensation possibilities, enforcement. It was a complex matter in the context of discussions in the European Union, despite the objectives founded in the treaties of the European Union, establishing a single market and more broadly the integration project that the European Union Member States had engaged. The Delegation noted the fact that more and more solutions through licensing agreement and interparty arrangements were available for the development of new ways for libraries to disseminate works and access to knowledge. That did not mean that all contractor solutions in place were necessarily always satisfactory, but those contractual solutions should not be outside of the picture in the discussion.

229. The Representative of KEI stated that it wanted to address some of the issues on the cross-border relationship exceptions. The Representative stated that the publisher had mentioned a three-step test but that there were three important exceptions that were not related to the three-step test in the Berne Convention and those would be dealing with education, news of the day, public affairs, quotations, and other particular exceptions within the Berne Convention. The Representative stated that it had earlier made reference to the fact that in the exceptions, which were implemented as a limitation on remedies as opposed to a limitation on right, the three-step did not apply at all. And there was a parallel to that in the patent side. In the patent side, the TRIPS Agreement had restrictions on exports under compulsory license. They were not a complete restriction, but they were as it was considered to be an important restriction. But those restrictions did not apply when the compulsory license was a limitation on remedy. In the United States of America, a lot of the compulsory licenses that were issued were limitations and remedies and often they were very substantial exports and in some cases the entire product was exported. And that could be done in the TRIPS Agreement because the compulsory license was done under a limitation on the remedy as opposed to a limitation on the right. In the copyright area, in the area of orphan works, the United States Copyright Office had recommended that the exceptions be implemented as a limitation on the remedy as opposed to a limitation on the right. And in the African Group proposal for in both the libraries and in the education area, they had proposals for implementing exceptions as limitations on remedies as opposed to limitations on rights. The Representative stated that it did not think that strategy necessarily worked with everything, but there were certain classes of cases where the cross-border thing could be effectively implemented as a limitation on the remedies as opposed to a limitation on the right.

230. The Chair noted that there had been one suggestion to focus on that topic and if the Committee found that useful. The Chair stated that in order to avoid possible overlapping, delegations should make an effort to have a common understanding that that topic should focus on what had been suggested. That would be useful for further discussions. The Chair opened the floor for comments on whether it was convenient to focus on one specific element of cross-border which could be that cross-border interlibrary corporation or cross-border interlibrary lending.

231. The Representative of IFFRO wished to remind everyone that the cluster topics were created by the Member States, and had a very useful framework for the SCCR discussions. The Representative stated that it welcomed suggestions along those lines and was happy to work with the Member States as well as the Secretariat in ways that would move the agenda forward more effectively.

232. The Delegation of Nigeria, speaking on behalf of the African Group, stated that the cluster topics were aimed at facilitating the work of libraries and archives, to serve their fundamental role of accessing information to the public. Therefore, how international cooperation through interlibrary lending or library cooperation could resolve that, was one of the questions. The Delegation stated that, as mentioned by other delegates, there could be an overlap of issues. The African Group would like to indicate that it would be difficult to discuss how that can facilitate cross-border uses without reflecting on related areas. The Delegation stated that even at the previous session, there were overlapping issues, therefore at the end of that session, it might be useful that the Committee listed to all of the topics it was able identify as overlapping and tried to maybe reduce the clusters or make them more specific and clearer, so as to aid the discussion of the Committee.

233. The Delegation of the United States of America stated that it very much appreciated the constructive engagement of other delegations and the references to its proposals that were set forth in the high level principles and objectives at the international level for copyright exceptions for libraries and archives. The Delegation stated that it believed that that principle approach provided a good basis for moving forward and furthering the goal of improving national copyright exceptions. It also noted that as others, that the Berne Convention did permit Union members to enact exceptions and limitations to advance national, economic, social, cultural and information policies including exceptions and limitations related to cross-border exchange and interlibrary lending. National copyright exceptions that supported lending among cultural institutions helped advance the important role libraries and archives played in providing access to works that comprise the works cumulative knowledge and cultural heritage. The Delegation stated that there was still a fair number of countries that had not yet enacted exceptions for those kinds of functions, however. In the 2015 update to the 2008 study on copyright exceptions and limitations for libraries and archives, Professor Kenneth Crews had noted a slight increase of national exceptions for document supply 17-21 and interlibrary lending from 6-9. The Delegation stated that it would be interested in learning more about the national experiences. It stated that in the United States, under the U.S. Copyright Act, libraries and archives could limit copies from their own collections to supply other libraries at the request of a user subject to specific limitations. That collaborative process allowed libraries to fulfill their mission to provide access to work in their collections while safeguarding the author's marketplace. Libraries and archives in the United States could also enter into interlibrary loan arrangements with foreign libraries and archives. The Delegation stated that it would be pleased to share information and views with other delegations on international interlibrary lending laws and practices, but it would emphasize that there were a number of topics that did come under that cross-border exchange. The Delegation stated that it would be concerned about too narrowly limiting them because, again, the emphasis was on that general topic area and it would need to have further discussions to delve more deeply into it.

234. The Chair stated that the Committee could now start discussing orphan works, retracted and withdrawn works and works out of commerce which was Topic 7. The Chair invited the Secretariat to share some of the conclusions in previous sessions related to that document.

235. The Secretariat expressed that as to Topic 7, as was indicated in the document in front of the Committee, orphan works retracted and withdrawn works and works out of commerce, the importance of addressing that issue was discussed, as that subject matter was under development and consideration in many countries. Some delegations were of the view that those categories of works should be treated separately bearing in mind their own particularities. A number of aspects of the topic were explored by delegations and observers.

236. The Chair stated that as reflected, the discussion was still ongoing. The Chair opened the floor to NGOs to contribute to the debate.

237. The Representative of KEI stated that it wished to speak as both a library and archives user, and as, from past academic work and research, a user of out of print and orphan works. The Representative stated that the combination of low standards for copyright protection, the elimination of formalities or requirements for registration, and the very long period of protection had contributed to massive sea of works, for which it was impossible to identify and locate the owner of the copyrights. Those orphan works included published, out of print and non-published works. There were no reliable estimates of the number of orphan works today. Certainly there were millions of books no longer in print, for which no one could easily locate the owner of the copyright. There were countless newspapers and magazine articles, papers, pamphlets and other protected works as well as untold works of photographs, recordings, film, personal letters and other items strongly protected by the civil and criminal statutes but which no one had a clear right to use or exploit commercially. The rise of the Internet and digital publishing possibilities had created enormous interest in new approaches to liberalize access to such work. And there were many different approaches, and we heard many of them under consideration to liberalize access to orphan works. Some involved the use of compulsory licenses granted by governments to allow works to be exploited subject to payment of fees to collection society or phones or authors. Others involved state mandated extended licensing agreements, which involved payments of fee to collection society. The Representative stated that Canada and Japan, for example, had a well-established system in place. In the United States of America, there were two different approaches that were considered in the 109th and 110th Congress. Those solutions were based upon limits of liability of infringement of orphan works and the European Union had issued a directive which was supposed to have addressed the issue of libraries and archives, but which had failed to make it easier for libraries and archives and their users. The Representative stated that KEI saw many flaws with the European Union Orphan Works Directive and to name just a few, it was limited to non-profit use and did not allow the cross-border exception outside of the European Union. It also required costly bureaucratic procedures and did not provide adequate protection to institutions involving digitization and dissemination of orphan works. Keeping record was certainly not foreign to libraries, but the new requirements to add to existing recordkeeping activities to a provision of a single publicly accessible online database was way too expensive for many public institutions already under resourced. By requiring a precise purpose or specific mission for using the orphan works the directive excluded a wide dissemination of use of orphan works by beneficiaries and end users. It was an example not to follow which restricted the access and use of orphan works and failed to provide flexibility needs for users by libraries and archives in the digital environment. The Representative stated that WIPO and the Committee had the opportunity to prevent what libraries and archives and their users could already call the digital black hole of knowledge where orphan works disappeared forever.

238. The Representative of European Bureau of Library, Information and Documentation Associations (EBLIDA) stated that Former EU Vice-President Viviane Reding had identified orphan works as the cause of the 20th century black hole on online digitized content from library collections. Those works formed a significant portion of library collections, but because it was difficult to locate the rights holders, or their heir, even ten years after publication, fewer were digitized. Despite their historical value, they were under used for online research, education or cultural purposes. The European Union Orphan Works Directive of 2012 was introduced to facilitate large-scale digitization projects and provide cross-border access in the collections of European libraries particularly to the flagship digital library portal. The Directive was the first to have cross-border application in the European economic area since an orphan work registered in one Member State was recognized in all. However, evidence was emerging that its search requirements were too burdensome. A report published the previous February, on research conducted in the United Kingdom, Italy and the Netherlands, from the EnDOW project at Bournemouth University Center for Intellectual Property Policy and Management, revealed evidence indicating the overly burdensome nature of the search requirement for institutions willing to make use of orphan works. Europeana had analyzed a 45 million object data set in order to establish the online availability of those collections. The Europeana fact sheet based on that analysis demonstrated that there was a clear gap in availability of digitized material from the 20th century. From the 1950's onwards, the amount of digital material that was made available online fell dramatically. While the first half of the 20th century represented 35 percent of the sample, the second half was only around 11 percent. Those findings reinforced Europeana's earlier search from 2012 and illustrated that cultural heritage institutions were hampered in their ability to make collections from the 20th century available online. The European Union experience showed the need for a carefully crafted legislative framework with cross-border impact which didn't impose a disproportionate diligent search burden. The question of online cross-border access to works would be better solved by enabling an exception for the mass digitization and communication to the public of library and archive held content. The international dimension of that lesson was that without the establishment of a minimum level of international norms or exceptions for the cross-border use of orphan works and out of commerce works, the digitization and making available on the Web of those works in the collections of the world's great libraries and archives would continue to be patchy without benefit to anyone.

239. The Representative of IFLA stated that culture and knowledge are not just about money. If they were, a work deemed unlikely ever to yield any commercial value would be abandoned. That was the case of orphan works, where the author or other relevant rights-holders was either unknown or could be contacted, let alone issue a license. In other words, where there was no available rights-holder, no 'parent'. Fortunately, there were libraries and archives, the adoptive parents. The Representative stated that to serve the public interest, libraries and archives must be permitted to proactively seek to collect those orphans – books, websites, records and other sources – and give the public access. Libraries and archives did not do that for money, but for the benefit of humanity. Orphan works posed a serious problem. They made up to 30 percent of some library collections and 70 percent of some archive collections. Those materials constituted a rich and growing source of information, most importantly digital, which could support and inspire understanding, science, education and creativity. Indeed, accessibility could lead to a welcome revival of interest, something much more important to rights-holders than money. But that only worked if they were available. As Professor Crews' study underlined, we are far from a situation where libraries and archives around the world were able to copy and give access to orphan works. Even in the European Union, there were still countries which had yet to implement the Orphan Works Directive. Exceptions were present only in a handful of countries elsewhere. In the rest, works, in particular digital ones, risked disappearing into a black hole. The Representative expressed that it understood that the attribution of 'orphan work' status needed to be taken seriously, in order to avoid dispossessing rights-holders who remained known and contactable. But the public interest demanded that a balance be found. An onerous, often-futile process meant that only the biggest and best resourced institutions could undertake the effort to find elusive rights-holders. We welcomed steps in the European Union for example to develop simpler means of performing that task, and looked forward to seeing results from that work. Elsewhere, however, the search for rights holders had been made infinitely more difficult due to the removal of recordation formalities and the extended terms of copyright protection. In terms of a solution, libraries and archives were therefore asking for a provision that allowed them, following a reasonable search for the author or rights holder, to be able to take appropriate steps to preserve orphan works and grant on-line public access. The moral rights of the creator, if known, had to be respected. And if they or another legitimate rights holder was subsequently identified, then there could be provisions to offer fair remuneration or removal of the work from on-line access. The text suggested in document SCCR/29/4 would address the problem to the satisfaction of libraries and archives. The European Union had led the way by providing that if a work, after a diligent search, was declared orphan, that decision applied in all other European Union Member States. Such a provision globally would free up vast amounts of knowledge internationally, boosting scholarship and creativity with no loss to rights holders.

240. The Representative of ICA stated that most archival materials were the accumulated records of governments, companies, charities, families and individuals. They consisted of things like letters, emails, accounts, and minutes of meetings, photographs, maps and plans. They were preserved to provide information on and evidence about what was done and why. Very few had any commercial value and very few had ever been published commercially. The creators of the records preserved in archives were not the people that deposited them in the archive. A letter or email was created in order that it may be sent to someone else. The creator owned the copyright, but the recipient owned the physical or electronic object. When an archivist was required to obtain permission to use copyright works, the archivist had to chase the creator not the depositor. The writers of letters, emails and minutes had no commercial interest to protect. Libraries and archives shared a great deal, but one thing they did not share was the relevance of collective licensing. Very few of the owners copyrighting archival materials were members of licensing bodies and most did not know that such bodies existed. As a result, collective licensing was not the answer for orphan works and archives. The Representative stated that as is implied by its name, extended collective licensing was a system under which the collective license was extended beyond a collective management organization's own members to rights owners who had not become members. In the countries where extended collective licensing had been introduced, a collective license could be extended to non-members if the licensing body could demonstrate that it represented a minimum proportion of rights owners for that category of works. Neither normal collective licensing nor extended collective licensing could be the answer for archives.

241. The Representative of SCA stated that in the United Kingdom, a licensing scheme had been introduced for orphan works, in addition to the European Union Directive, which provided an exception to copyright law. University of Glasgow Special Collections were testing the feasibility of the exception and licensing scheme through the digitization and making available of the Edwin Morgan Scrapbooks. Edwin Morgan was Scotland's first National Poet, also known as the Scots Makar, and he had spent his childhood and the early part of his career assembling 16 rich, vivid and surrealistic scrapbooks. As a poet, Morgan had worked in a wide range of forms and styles, and had also translated works from many languages. The scrapbooks contained a wealth of textual and visual resources. The project officer, Kerry Patterson, had estimated that diligent search for those items would take over 10 years, based on one person working seven hours a day, five days per week, spending 30 minutes on each search. The Morgan scrapbooks illustrated that diligent search for mass digitization of a collection like that was an impossible undertaking in terms of time, skills and resources. In addition, the project team attempted to clear rights in a small portion of the scrapbooks. Despite contacting relevant collective management organizations for the individual items, very few contact details were found for relevant rights holders. The addition of the registration process for the European Union exception database, and the application process for the United Kingdom licensing scheme, added further time to the overall project. A conservative estimate of ten-fifteen minutes per work added a further 3-4 years for registration to the existing 10 years for diligent search. As a result, neither the exception nor the licensing scheme adequately supported digitization of archive collections. Archivists found themselves in the situation where so-called 'solutions' to the orphan works problem were available in the United Kingdom and the European Union, but the safeguards built into those schemes were so burdensome that using them for large collections of archive material was impossible. Those were not solutions: they did not function in their current form, and they did not support a well-functioning copyright system. That would likely have a negative impact on the University's objective of making at least one of the Morgan scrapbooks available online. An international treaty that included an exception for orphan works along with a narrowly-defined limitation on liability for libraries and archives who made collections available in good faith, and took reasonable steps to comply with the law would make it easier for those institutions to provide access to their collections online.

242. The Representative of Karisma Foundation stated that it would like to share an example related to the type of problem that the National Library of Colombia had faced with regard to that topic and the absurd legal barriers in place, which impeded citizens getting access to culture and education. The Representative stated that in 2014, the National Library of Colombia undertook an inventory of two collections, one of novels of the violent period of Colombia between 1940 and 1960, and the other was known as the Samper Ortega Collection. That inventory was projected as part of the idea of developing content and web applications, recognizing the importance of those works on Colombia's 20th century history. As a result, the institution found itself up against strong restrictions for publishing and making available to the public the totality of those two collections. 30 percent of the authors of the collection of the novels, on the violence period (17 works out of a total of 53), could not be identified or located; 42 percent of the authors in the Samper Ortega Collection (93 of over 160 works) either couldn't be identified or couldn't be found. Those were works that were not available in the market, but were of great historical and cultural interest for Colombia and indeed anybody else who wanted to research on the topic. And in cases like that, it was very difficult. Therefore, licensing would be a real viable solution. The Representative stated that it needed to have guarantees from libraries and archives to make them available to the public, especially when it was not possible to locate or identify the authors or rights holders after a reasonable search.

243. The Representative of SAA stated that orphan works was an appropriate name for the everyday things that we all created -- diaries, business memos, and photos -- that we did not mark with our names and that, were created with no commercial intent. However, those were the very documents that made archives invaluable for research. Two recent studies showed why a copyright exception was needed for archival orphan works. One university in the United States of America attempted to identify 3,400 authors in the correspondence files of an early 20th-century politician, then determined death dates, then located descendants of those who died less than 70 years ago, then requested permission. After two years and thousands of dollars, most remained untraceable. Only four descendants were found. The archivists crossed their fingers and digitized anyway. Another university in the United States of America that worked with AIDS-related material from the 1980s through 2005 experienced the same cost-prohibitive searches even though the material was quite recent. In that case, 1,377 persons held the copyright but the works of nearly one-third of them could not be displayed because rights holders failed to respond to inquiries or could not be identified or located. Few of those documents were of a commercial nature, but reaching that result took 85 percent of the project's time. Unlike the other university, those archivists' risk aversion resulted in de facto censoring of materials where a contact could not be found or was unresponsive. Even if an archival item was originally created for the marketplace, it could still become an orphan. For instance, the SAA held an unpublished photo of a Puerto Rican sports team marching under the flag of the United States of America at the 1950 Pan American Games, two years after the team had marched under Puerto Rico's own flag. Despite knowing the Guatemalan photographer's name and address, the SAA could not trace him as the name was too common and multiple regime changes had altered street names and addresses. Should that clear orphan status prevent the SAA from making the photo available? Archivists were not experts in international copyright law; they should not be expected to make such decisions. No licensing scheme could equitably solve that problem. If an author as unknowable or untraceable, how could they be represented in a collective, and where would the licensing fees go? It certainly wouldn't go to the orphan authors because they couldn't be found. The problem was that copyright, like licensing, was conceived with the marketplace in mind, but it failed to adapt for the dilemma of works that were never in commerce or had drifted out of commerce with no trace. For those, finding a copyright holder could be nearly impossible. A one-size-fits-all "diligent search" requirement was unlikely to find rights holders for archival orphans, but it certainly would create unsustainable costs. Without exceptions, the world lost access to that huge treasure of historically important material.

244. The Representative of IFFRO stated that it supported initiatives that made available cumulative knowledge and cultural heritage, and recognized the role of libraries and archives in that respect. Before allowing such works to be made available, they had to be carefully defined. For instance, the works had to only be reproduced or made available under criteria agreeable to right holders, to insure that that did not conflict with the normal exploitation of the work or the interest of the authors. Solutions to enable the digitization and making available of orphan works and out of commerce works required a country-specific approach, considering legal and other traditions of the country. Orphan works legislation had to insure the right of withdrawal and remuneration for reappearing rights holders. The reproduction and making available of out of commerce works was best handled when voluntary stakeholder initiatives including licensing arrangements set the point of departure. Stakeholders had to have shown the ability to establish workable solutions for the digitization of and making available of such works. That comprised recommended tools including definitions criteria for the search for rights holders and model licensing agreements, as well as making decisions for rights clearance through the one stop shop represented by collective management. The stakeholder Memorandum of Understanding (MOU), on library digitization and making available out of commerce works, facilitated by the European Commission, and signed by the IFFRO and the European Library Authors and Publishers Association, was currently being implemented in a number of European Union Member States. The Representative recommended that, after all the stakeholders had signed it, WIPO Member States study and examine the out of commerce MOU. The Representative stated that as the coordinator of the task force, the IFFRO would be pleased to contribute to obtaining information from the various sectors.

245. The Representative of the Archives and Records Association (ARA) of the United Kingdom stated that in copyright terms, archival collections comprised significant quantities of orphan works that were works which were still in copyright but for which the copyright holder was not known or could not be traced. A recent legislative impact assessment in the United Kingdom suggested that 40 percent of the holdings of the national archives and the national records of Scotland were orphan works. The Representative stated that its institution, the National Records of Scotland, held a total of 80 kilometers of archival records and one of the largest collections of private papers in the United Kingdom. That was letters, diaries, account books, photographs, minutes, reports and so on which were still in copyright, but which were not created for commercial use. The diary was written to record the day's events not to be published, for instance. It was also said that orphan works were a problem for archives, but they were a problem for users of archives, researchers, students, historians, writers, private individuals. Those were the people who were using and reusing archives in order to help society to reflect on, understand and engage with past events. The government of the United Kingdom had launched an orphan works licensing scheme that sought to balance the needs of users with those of rights holders. In practice, however, the scheme did not function well. Applicants were required to submit evidence that they had carried out diligent search as part of their application and they had to consult specified sources. In the section on literary works, for example, there were more than 30 types of sources that users were expected to check, but they almost all related to published not unpublished archival works. So it was no surprise that less than 300 licenses had been granted in the 18 months in which the scheme had been running. There was an also European Union orphan works scheme for the use of libraries, educational establishments, museums and broadcasters, but the licenses only covered the European Union. And the scheme excluded artistic works which severely limited its use. Artistic work maps, plans, photographs, drawings were among some of the most fragile works held by heritage institutions and indeed some of the most important for global research. The disproportionate burdensome and limited nature of both the United Kingdom and orphan works licensing scheme demonstrated that the current framework for orphan works was not well functioning and also demonstrated why a proportionate orphan works exception at international level was required for libraries and archives.

246. The Representative of eIFL.net stated that libraries and archives had a mandate to preserve the public record for the future. In the analogue environment, exhaustion to the distribution right provided the legal means to ensure its basic operation. If an article in a print journal was withdrawn for any reason, the library had the hard copy to preserve and provide access for research or scholarship (subject to preservation exceptions). The rights holder could not remove the item from the library. In the digital environment, where the right of distribution did not apply, there were no such safeguards. Journal articles could, and did, disappear from databases. A well-known example arose in the case of the MMR vaccine in the United Kingdom in 1998. A paper published in the medical journal, *The Lancet*, claimed that the combined vaccine for measles, mumps, and rubella, known as MMR, caused autism spectrum disorders. The claims, which were widely reported in the mainstream media, led to a sharp drop in vaccination rates. As a result, there were increased cases of measles and mumps among children that led to deaths and permanent injury. The medical claims contained in the article were subsequently discredited. The research paper was partially retracted by the journal in 2004, and fully retracted in 2010. Researchers in epidemiology investigating the drop in vaccination rates would need to have access to that paper. If the article was published in the print version of the journal, it would be preserved in a library. If it was only published online, there was no guarantee. The principle behind the provision on retracted and withdrawn works therefore was to help achieve the goal of permanent access and preservation in the digital environment. Because if the library didn't have the item, it couldn't preserve it. The Representative thanked Member States for their proposals, addressing retracted works, and the consolidated text in Document SCCR/29/4. The Representative stated that the provision contained in Paragraphs 4 and 5 of Topic 7, provided an exception to the rights of reproduction and communication to the public for works that were previously communicated to the public. Since retraction concerned moral rights, Paragraph 5 provided for respect of moral rights. A Member State could limit the application of the provision, or could decide not to apply the provision at all. Paragraph 4 made it clear that the provision was subject to any court decisions in respect of a particular work, or as otherwise provided by national law. Libraries and archives worked to ensure that the public record was complete and accessible for the future, long after the work had lost its commercial value or the owner had disappeared. Unless libraries had legal backing, a proper record for digital material could not be guaranteed. The Representative stated that it wished to also present on orphan works. In others, such as the United States of America, libraries used 'fair use' to engage in the mass digitization of their special collections of archival material, photographs, and ephemera such as pamphlets and posters. For example, the New York Public Library had digitized its collection of materials relating to the New York World's Fair of 1939 and 1940. Those materials were now available online, and formed the basis of an educational curriculum. In contrast to the millions of likely orphaned works made available by the United States of America libraries under fair use, in Europe only 1,729 works had become available so far under the Orphan Works Directive that came into force in October 2014. That was because the requirements, in particular, the diligent search mechanism was too onerous to lead to real results. The Representative hoped that the shortcomings would be addressed in the Commission's review of copyright rules, in order to realize the aim of the Directive to "facilitate large-scale digitization of Europe's cultural and educational heritage." The Representative believed that libraries outside of the United States of America and the European Union should also have the opportunity to digitize orphan works. The Representative appreciated the consolidated proposed text addressing orphan works and withdrawn works in Document SCCR/29/4. Paragraph 1 in Topic 7 provided for an exception to the rights of reproduction, adaptation and communication to the public for works that the author or rights holder could not be identified or found after reasonable inquiry. The Representative noticed that the word 'copyright' seemed to be missing from the text. The text should have read "Libraries and archives shall be permitted to reproduce, make available to the public and otherwise use any work, or material protected by copyright and related rights." The following paragraph provided that if the rights holder subsequently showed up, it could claim equitable remuneration

for future uses, or could require termination of the use. The provision left it to Member States to determine whether commercial uses would require payment of a fee. The Representative stated that the orphan works problem was huge, that it affected every country in the world, and that the current situation was in no-one's interest. Making orphan works available supported education, creative industries and economic activity based on digitized cultural resources. SCCR was the appropriate body to address the orphan works problem and in doing so, would do a great service to copyright and the copyright system.

247. The Representative of STM stated that it perceived orphan works as a vertical issue and commerce works as a horizontal issue going across distribution channels. The Representative of STM stated that it sympathized with the concerns of archivists who dealt with unpublished materials that although of historical value, were not initially meant for publication, at the time that they were created. The Representative stated that it could be helpful to look at museum guidelines on interlibrary lending, as they could help create guidelines on best practices archivists' works that lacked a steward that did not have any ownership attached to them. The Representative stated that its concern as a publisher was on the elimination of false positives, which were works, after diligent search, believed to be orphan, but which turned out not to be. Irrespective of legislation, if an individual or group of individuals, in good faith believed a work to be orphan, then STM publishers agreed not to enforce any remedies for uses of the works that had occurred while the user was unaware that the work was in fact not an orphan work. The Representative stated that the issue with orphan works seemed to have been created by the Berne Convention's prohibition on registration of works, and by the term of copyright. The way STM understood the directive was that it was not intended to facilitate mass digitization of orphan works, because most digitization programs did not specifically seek out orphan works. They included orphan works by a statistical result. The extended collective licensing and other collective solutions if they were taken would simultaneously take care of the orphan works rights.

248. The Representative of IPA stated that when talking about the question of out of commerce works, it was necessary to how to define the circumstances under which pre Internet, but in copyright works, could be revived digitally by whom and in what territories. A good example of a collaborative solution between authors, publishers and libraries was the MOU in Europe to which the colleagues at IFFRO had referred to earlier on books, journals and photographs embedded in them. So how did the MOU attempt to deal with those constraints and enable a digital afterlife of past works? While ground breaking, the MOU was also modest. It was limited to sectors at the table and applied to books and journals that were first published in a European Union country. A book or journal was defined as being out of commerce when the whole work, in all of its versions and manifestations, was no longer commercially available in customary channels of commerce, regardless of the existence of tangible copies of work in libraries among the public including through secondhand or antiquarian book shops. Those included the right of authors and publishers to revive the book or journal exclusively themselves, a right to opt out from any access projects at all times, a general duty of collective management organizations to contact their rights holders, coupled with a specific obligation to do so if the works demand for a digital second life exceeded expectations. Finally, specific procedures had to be considered to reach rights holders whose works were used frequently or intensively across borders under a collective licensing scheme. The MOU did not attempt to set the trigger for those events thresholds or to determine the timeline for due diligence and procedures. Rather the MOU called for those factors to be negotiated at the national level in European Union Member States by those stakeholders who were best placed to make a sound judgment call on those issues affecting national literature and cultural heritage. The MOU presented an opportunity to revive as many books and journals as possible that predated the Internet but without interfering with legitimate right of expectation of authors whose creativity, energy, time and investment brought those works to life in the first place.

249. The Delegation of Italy stated that it had listened to the various criticisms with regard to the European Union Directive and the fact that it had not actually worked very well. The Delegation stated that it wanted to highlight that the Directive entered into force in 2014, so less than two years had passed, and now it was clear that there was a problem with orphan works and that was an enormous problem in terms of the number of works and the cost of looking at them in terms of diligent search and for their rights. The Delegation stated that the Committee should take into account that what it was talking about, rights, was covered by copyright, but that there were a huge number of other works which were not covered by copyright, but which too were very important and which too had to be digitized. For instance, the Italian National Library had an agreement to digitize works that were a thousand years old, works that were from the renaissance and some that were from the middle ages. It was extremely important to preserve those works, and also to make them available to researchers as well as other persons interested in looking at them. Considering the number of works available, it was evident that the amount of money, time and energy available for that was limited. The Delegation also wanted to highlight that in order to decide whether or not a work was an orphan work, it had to go through a process of verification, and that was costly as well as time consuming. That was something that could not just be left to the goodwill of one or another. The Delegation stated that there was a law case in the United States of America between Google and the American Publishers Association because Google had started to digitalize a lot of work without authorization, and among those works there were works by Italian authors, and other works by very well-known famous authors. For some reason those works were considered orphan works. An awful lot of care and prudence needed to be in the mix before deciding that something was an orphan work and with regard to that, under the Directive, if a work was considered orphan in only one country, then that was for the entire European Union. That meant that that activity was now shared or disbursed among the entire European territory, and only one diligent search was necessary, which was very useful. A choice had to be made, where there were works which were of public interest or of interest to the public and there are other works. The Directive foresaw that in certain cases it was possible to ask users to pay a certain sum for the use of the work just in order to cover the costs of digitalization.

250. The Delegation of Argentina stated that it understood the need at an international level because certain uses and practices could not be resolved in an internal level, and that a multilateral solution was needed for things that could not be resolved at a domestic level. The Delegation stated in order to facilitate the work in the international provision of service, and look at the extended use of non-published works, or works that were out of commerce and works that were never for commercial purpose, that that was necessary. A repository of all of the linked works was necessary and so was a collective obligation to ensure the rights of those who had rights to those works but also the rights of library and archive users. For those works where the author could be found or localized, it was under the individual responsibility of collectors which were required to use them in order to insure the respect of those rights. That was a system of licensing which meant that the libraries and their users were not the ones responsible for finding out who the authors were, but that was up to the authors and the authors' collectives.

251. The Delegation of the European Union and its Member States stated that since the Orphan Works Directive had been the subject of many contributions, it would like to use the opportunity to give an overview for its main features. The Orphan Works Directive 2012 showed exception to copyright for certain uses of public, cultural and educational institutions and of works that had been identified as orphan works, following a diligent search for rights holders. The beneficiaries of the Directive were publicly accessible libraries, educational establishments, museums, archives, film or audio heritage institutions and public service broadcasters. The Directive covered works in the print sector, cinematographic and individual works phonograms and works that were embedded or incorporated in other works and unpublished works. The Directive established that the beneficiary organizations must be entitled to use the orphan works to achieve aims related to their public intermission and were allowed to conclude private public partnerships with commercial operators and generate revenues from the use of orphan works to cover digitalization costs. The Directive foresaw the mechanism for reappearing rights holders to assert copyright regarding the orphan works status. And lastly, the Directive provided for a single European registry of all recognized orphan works by the European Union Intellectual Property Office, which had more than 1,729 works registered.

252. The Delegation of Italy stated that Article 15 of the Berne Convention dealt with works which were not published and where the author was unknown. Article 15, Paragraph 4, read that for unpublished works where the identity of the author was unknown, but where there was every ground to presume that those nations of the country of the Union it should be a matter of legislation that countries to the competent authority which shall represent the owner and entitled to protect and enforce his right in the countries of the Union. The Delegation stated the Berne Convention already had a rule for those instances where the author of journals or other works was unknown. That was a rule that could already be applied by every Member State.

253. The Delegation of Chile stated that in terms of orphan works, and considering the fact that the Committee was trying to find points of consensus on each of the topics, that an exception of that type would be greatly useful, in particular where it was impossible to discover the rights holder for a work. For instance, photographic works, the Delegation thought that an exception of that nature should be based on a reasonable search for a work through a regulated process, for instance, republication of search in an official bulletin or a national newspaper. An exception of that type made it possible that if an author was subsequently identified by a library which had used their work, the author would be able to demand some kind of remuneration for any future use.

254. The Delegation of Nigeria, speaking on behalf of the African Group, stated that one had to feel sorry for those orphan works. The Delegation stated that it liked the analogy drawn by the Representative of IFFRO who have assigned libraries and archives as adoptive parents and who had also shared concern for the adoptive parents that were not able to help those orphaned, adopted children fulfill their potential in society. The Delegation stated that it was interesting to note that orphan works formed a significant percentage of the works held by libraries and archives: 30 percent for libraries and 70 percent for archives. To the extent that licensing was preferred as a solution, the Delegation wondered who gave that license when there was no author to be found, and when there was no rights holder that came forward. The Representative stated that based on the exchanges that had been given by the representatives of libraries and archives, it was clear that there was a gap to be filled by a minimum standard international instrument. The African Group wished to reiterate the necessity for an international instrument on exceptions and limitations for libraries and archives including for orphan works retracted or redrawn works.

255. The Delegation of Brazil stated that it would like to its position to that expressed by the Delegation of Chile and also to the comments that were raised by the African Group regarding the importance of orphan works to the works of libraries and archives. Brazil had presented Document SCCR/29/4 that had also been mentioned by observers. In that document, the Delegation indicated that orphan works, libraries and archives should be permitted to reproduce, make available to the public and otherwise use any work or material protected by related rights for which the author or other rights holder cannot be identified or located after reasonable inquiry. It had to be a matter of national law to determine whether certain commercial uses of work or material protected by related rights would require payment or remuneration. Member States could provide that should the other right holder subsequently identify him or herself to library or archive, that right holder should be entitled to claim equitable remuneration for future use or required termination of the use in the same lines already expressed by Chile. Except as otherwise provided by national law or for the decision of a court in relation to a specific work, it should be permitted for libraries and archives to reproduce and make available as appropriate, in any format for preservation, research or other legal use any copyright work or material protected by copyright or literary rights which had become inaccessible but had been previously communicated to the public or been made available to the public by the other author or right holder. Also, the Delegation maintained flexibility to Members States that allowed for Member States to notify the Director General of WIPO a declaration to say in which cases it will apply those provisions.

256. The Delegation of the United States of America stated that it agreed that orphan works retracted and withdrawn works and works out of commerce were all important topics to consider for copyright in the digital age. The problem was orphan works in particular had long been a significant concern for copyright stakeholders in the United States of America. For good faith users of copyrighted works, the inability to identify or locality a rights holder from whom permission was required could create legal uncertainty. Many users may choose to forego the use of such use entirely rather than face the risk that the copyright owner could later emerge and initiate a costly infringement action. That in turn deprived the public of beneficial uses of copyrighted works. The challenges associated with orphan works had to be frequently addressed by libraries and archives which often sought to make use of orphan works within their collections. Yet, the orphan works issue extended beyond the needs of those communities. The risk of liability also discouraged commercial users from investing in projects involving orphan works from which the public could benefit. Informed by previous reports from 2006 and 2011 as well as legislative efforts in the 109th and 110th Congresses and recent fair use Jurisprudence, the U.S. Copyright Office issued a report on orphan works and the related issue of mass digitization in June 2015. The copyright office's report included a number of recommendations including the adoption of legislation that would limit the remedies available against a user of an orphan works who conducted a good faith diligent search for the copyright owner prior to commencing the use and complied with certain notice and attribution requirements. The copyright office's report also included specific provisions with respect to libraries, archives, and other non-profit entities engaged in certain non-commercial uses of orphan works. While the Delegation of the United States of America was still actively considering the copyright office's recommendations, it was interested in learning more about how member states were responding to the orphan works issue and how approaches such as the European Union's recent orphan works directive and other models were functioning in practice. The Delegation therefore welcomed the perspectives of other members regarding their efforts to address the orphan works issue in their respective jurisdictions.

257. The Delegation of the Russian Federation stated that it would like to point out that the problem of orphan works was a source of serious concern, particularly in recent times. And in fact it was extremely complicated to find the compromise between the interests of society, the interest of users and the non-use in the future of those works because of the risk of litigation by the authors. The Delegation expressed that the Committee produce clear recommendations which would enable without the fear of being punished, the legal use of such orphan works. It should clearly define who should be the beneficiary of those orphan works. The Delegation suggested that that should be done through collective management societies. They had the possibilities to search out to those authors. The Delegation supported the idea that in the case where the author was discovered, the author should receive the necessary or the corresponding remuneration. The Delegation also supported what had been expressed by the Delegation of Italy with regards to the Berne Convention. The Delegation expressed that the Committee should take as its basis, Article 15 of the Berne Convention and then adapts it to contemporary requirements suitable for the legal status of those orphan works because that was a very important subject.

258. The Representative from the German Library Association wanted to share two examples. The first was how Germany implemented the Orphan Works Directive. Germany was one of the very first countries in Europe to implement the Directive. The others were France and Poland. And after the law came into force, the German national library started a project to find out how to work with that new law in its daily work. The results had been published and were very positive as such, the concept of digitizing orphan works from a German point of view showed that it worked very well. The second, of practical importance, was the out of commerce works memorandum of understanding. That had been implemented in Germany into a law and the only weak factor of that implementation was that it covered only books published before 1966 which was a long time ago. Since that year, a lot of books had been published, but there were out of the system at that moment. The question of remuneration had also to be mentioned because in both systems, of course, there was remuneration paid to collecting societies which in fact went to the authors.

259. The Chair thanked the delegations for their contributions and summarized the discussion. The Chair expressed that the Committee had recognized the importance of tackling the concern of works whose authors were unidentifiable, untraceable, and works which were at some point out of commerce, retracted or withdrawn. The Chair stated that there had been some national and international efforts to tackle that concern, and that as the problem was not new, it was an interesting area of exchange and learning ground for the Member States. The Chair stated that in terms of the exclusion of responsibility and conditions of predictability for those who engaged with orphan works, particularly libraries and archives, it had been mentioned that some activities could be made, that would go to identify the authors, and rights holders, without so much as having those activities turn into impediments of finding a solution on the topic of orphan works. The Chair expressed that although getting into more detail was at that point premature, it was looking forward to more contributions from the delegates, so as to find common ground for exceptions and limitations on orphan works, retracted works, withdrawn works and works out of commerce. The Chair stated that the following topic on the Agenda was limitations on liability of libraries and archives, but suggested that the discussion continue in the following session of the Committee. The Chair closed Agenda Item 6 and opened the floor to the Secretariat for administrative announcements.

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

260. The Chair stated that the Committee was ready to continue its discussions on Agenda Item 7, which it had already introduced, with the presentation of the study by Professor Seng. The Chair opened the floor to regional coordinators.

261. The Delegation of Latvia, speaking on behalf of CEBS, expressed that the answers to that issue lie in the implementation of the existing international treaties and international legal framework. The Committee's discussions should focus on the best practices and flexibilities in the implementation of the international legal framework at the national level and how the international legal framework allowed application of limitations and exceptions for educational and research institutions and for persons with other disabilities. The Delegation thanked Professor Seng for his comprehensive study, and expressed that the study would enhance the Committee's debates.

262. The Delegation of Bahamas, speaking on behalf of GRULAC, expressed its gratitude for the study and wished to highlight the Sustainable Development Goals (SDG 4) and the fact that in the exceptions for research institutions and persons with disabilities, it supported and encouraged Member States to ensure the inclusive and quality education for all and to promote lifelong learning.

263. The Delegation of China stated that the study was very useful, and conducive for the discussion's development. The Delegation stated that in China, the government had attached great importance in the protection of the interests for persons with disabilities.

264. The Delegation of Greece, speaking on behalf of Group B, stated that it recognized the importance of the exchange of Member State experiences with limitations and exceptions for educational and research institutions. The Delegation stated that its group had observed that the Committee lacked consensus for the normative work, as is the case of limitations and exceptions for libraries and archives. It stated that the discussion should aim at a better understanding of the topics. The Delegation stated that it was looking forward to reviewing the final study by Professor Seng.

265. The Delegation of Nigeria, speaking on behalf of the African Group, stated that it believed that participants in the Committee did not question the fundamental role of education and how it adds value to its immediate environment and the global system. Founded on the need to balance the interest of right holders and the public interest, the Delegation welcomed the acknowledgment of intellectual property as relevant to sustainable development. The Delegation stated that the critical role of education was encapsulated in the Sustainable Development Goals (SDG 4) which called for collective efforts to ensure inclusive and equitable quality education and to promote lifelong learning opportunities for all. The digital environment had evolved the way education and knowledge could be assessed beyond the walls of a classroom or a specific space. In so doing, it had also brought more challenges for assessing learning opportunities for the public interest in a remarkable number of developing and least developed countries, including the Africa region. The Delegation thought that inclusiveness and partnerships were needed in order to develop exceptional teaching and research institutions. The Delegation stated that it would like to renew the call for focused, textual work toward an international legal instrument on educational exceptions that would fulfill the objectives of the 2012 General Assembly mandate on that topic. The Delegation stated that it did not view that the intellectual, legal and resources of rights holders should be indiscriminately breached in the quest to make knowledge and information accessible to demanders; rather, the call was to make necessary steps to promote access to information through a fair and just modification of the international copyright framework. The Delegation stated that it would continue to engage constructively in that discussion and looked forward to discussing the provisional working document SCCR/26/4. The Delegation reiterated its request for the preparation of a chart by the Chair, similar to the one that had been prepared on the discussion on exceptions and limitations for libraries and archives. The Delegation also welcomed the sharing of national experiences of Member States as useful information resources for the Committee's work. The Delegation showed support for the Chair's proposal to hold regional meetings for the exceptions and limitations and education research in that matrix. The Delegation stated that it would also appreciate more information from the Secretariat on the progress of the scoping study on exceptions and limitations for persons with disabilities other than print.

266. The Chair invited the Committee to make comments regarding the proposals made by the African Group.

267. The Delegation of Thailand, speaking on behalf of the Asia Pacific Group, thanked Professor Seng for his study and stated that it looked forward to seeing the complete study. The Delegation reiterated that exceptions and limitations had an important role to play in the achievement of the right to education and access to knowledge, actualization of which in many developing countries was hampered, due to access to relevant research and educational materials. The Delegation stated that it wished to constructively discuss that topic.

268. The Delegation of the European Union and its Member States stated that it was willing to continue to engage constructively in those discussions. The Delegation of the European Union and its Member believed that for that Agenda Item 7 the objective should be to enable WIPO Member States to draft, adopt and implement meaningful limitations in those areas within the current international legal framework. In that regard, the Delegation welcomed the research carried out by Professor Seng. The Delegation was willing to provide comments and updates to the study, if it was feasible, in order to make sure that the study could form a basis for discussions in the following sessions. It was important that WIPO Member States maintained certain degree of flexibility which was very relevant in the view of the different legal systems across WIPO's membership. In many Member States, licensing also played an important role either alongside the application of exceptions or instead of the application of exceptions. The Delegation did not think that working towards legally binding instruments was appropriate. With that in mind, it believed that exchanging best practices on that subject would be a useful exercise, particularly if conducted in inclusive and structured way to find efficient solutions to address any specific issues that were identified. A possible outcome of that exercise could be guidance regarding the national implementation of the international treaties in that regard. The work undertaken by that committee on the subject could have a meaningful outcome if the Committee shared the same understanding of the starting point and objectives of the exercise. Clarity on that aspect was important.

269. The Delegation of Tajikistan, speaking on behalf of the Tajik group, stated that it welcomed the study made by Professor Seng and looked forward to the final version of the study.

270. The Delegation of Nigeria stated that it aligned itself with the statement made by the African Group on that item. The Delegation welcomed the current limitations and exceptions for educational and research institutions made by Professor Seng. The information in the study would go to enrich discussions in the Committee on the subject of exceptions and limitations for educational and research institutions. It was clear from the study that there were gaps and disparate provisions in the national legislations regarding limitations and exceptions for educational and research institutions. A specific reference was made to TPM and RMI-related exceptions. There were only a few countries that had national provisions that addressed glaring disparities. In comparison, the study noted a predominance of implementation of provisions for compulsory licenses for reproductions and translations with the author rightly attributed to the benefit of a detailed set of rules at the international level for the adoption. The Delegation considered that provisional limitations and exceptions for educational research institutions in an international instrument would strengthen the framework for advancing the interests of education in a global context. The Delegation kept in mind that WIPO's fundamental mandates in international norm-setting were premised on the need to achieve greater harmonization and uniformity of laws and practices across Member States, while still leaving national policy space for national states. The Delegation stated that a consolidated text by the Chair with a chart on the elements of exceptions to be discussed, similar to the chart prepared by the Chair for discussions on exceptions and limitations for libraries and archives, would facilitate a structured discussion among delegates. The eight groups of exceptions identified in Professor Seng's study could serve as a guide in that respect. The Delegation expressed support for the limitations and exceptions for educational and research institutions as one of the issues for regional workshops.

271. The Delegation of Brazil aligned itself with the statement delivered by the Delegation of Bahamas, on behalf of GRULAC. The Delegation thanked Professor Seng for that study, and looked forward to its completion. The Delegation aligned itself with the calls that were made by the African Group for a presentation of the present status of the scoping study on copyright and persons with other disabilities. The Delegation also associated itself with the request for a chart drafted by the Chair based on topics that would better guide discussions under that Agenda Item.

272. The Delegation of Ecuador aligned itself with the statement made by GRULAC. The Delegation thanked Professor Seng for the very valuable study and awaited the final version. The Delegation also supported the statement made by the Delegation of Nigeria in terms of regional workshops in the framework of the work of the Committee.

273. The Delegation of Uruguay aligned itself with the statement made by GRULAC. The Delegation stated that it considered education and knowledge as particularly important for development, and its country had been making considerable efforts in that area. The Delegation recalled the Sustainable Development Goals (SDG 4) and stated that as members of the United Nations, the Committee could contribute to achieving that goal.

274. The Delegation of Tunisia aligned itself with the statement made by the African Group. The Delegation wished to stress the importance of education for development, both socially and economically. The Delegation expressed that regional workshops were of great importance for the in-depth debate on those issues, particularly with a view to adopt an international instrument on exceptions and limitations for educational and research institutions and of course for libraries.

275. The Delegation of Argentina thanked Professor Seng for his study and indicated that it gave it much food for thought. The Delegation expressed that without prejudice, all or any decisions made internally on the basis of the three-step minimum standard and "the question of quotes" was an exception and limitation which was decided at a particular time. The Delegation stated that educational practice and technology had however changed, and that the right to quote would undoubtedly be overtaken with new rules of coordination and new rules on quote. The agreement between universities and the authorities of a country had to have new agreements for the provision of text to the students in that country. The universities had to comply with the rules and had to assist the students studying abroad. Neither the student nor the university were able to determine whether, in fact, practice in one country was, in fact, accepted practice in another. Those standards in the country where the student lived should not affect the situation in other countries where the university had provided information.

276. The Chair stated that it would give the floor to the Secretariat in order to answer those requests related to the situation of the scoping study that had been mentioned in several statements.

277. The Secretariat stated that it would address both the status of the Seng study and the scoping study. With respect to the Seng study, a number of Member States had stated that they would like some further interaction with the Committee or presentation to the Committee about the study. The Secretariat stated that it had spoken with Professor Seng, who was very committed to finishing the study by the following meeting of the SCCR. The Secretariat stated that Professor Seng had been requested to update the slides and the presentation he made to reflect data from all Member States. The Secretariat indicated that it would set up a web page on which an accessible and searchable version of the study would be available. With respect to the scoping study on disabilities, the Secretariat stated that other than those covered by the Marrakesh Treaty, it expected the results or presentation on the results of that scoping study to be available at the following meeting of the SCCR. The Secretariat expressed that the scoping study was not an overall survey of all of the national provisions out there. It was a study of the range of interaction of copyright law and copyright issues with disabilities topics. It covered national laws, including potentially quite broad provisions on disabilities that were included in some copyright laws but could also reference, at least, the fact that some of those topics were dealt with outside of copyright laws. The scoping study was a legal analysis of what issues there were, for example, in the case of hearing impairment, there may be implications for copyright with respect to disabilities policy. The Secretariat stated that it had discussed with the research team, the possibility of a national law survey, as a number of Member States had indicated potential interest in that. One of the difficulties was getting the law of all the Member States, because that topic was not an exception that was so clearly defined in all national laws or most of them. One way around that would be for the Member States to fill out a questionnaire and send the information about the way those topics were treated in national law to the Secretariat. From past experience, the Secretariat stated that that probably would not provide a comprehensive survey of the situation, although it would be a good start. The Secretariat stated that it would then ask if Member States would want the Secretariat to commission a follow-up study where a team would be working on collecting that data from the WIPO Lex service. Another possibility was potentially working with the law school clinic so that a number of students, for instance, LLM students from different countries, could assist in finding those provisions and helping to put together the survey. The Secretariat stated that with regard to the more limited scoping study of the range of issues, it expected to have that presentation at the following meeting of the SCCR, the document would post at least one month in advance before the meeting.

278. The Chair opened the floor for comments to what it had summarized and to the suggestions and comments that were made by regional coordinators.

279. The Delegation of Argentina stated that it was not quite clear to it whether Professor Seng only used specific intellectual property standards or whether he had considered other issues, which could have an effect on the exchange of information or in educational activities. The Delegation stated that in its country, it did not have a law on institutional depositories where researchers had to make available the results of their research in electronic format even if they would be subsequently published in specialized publications, in scientific publications. If a country did not have regulations regarding reproduction and distribution, it was a way in which content could be made accessible, which was also what was ceded to the copyright industry. There was also something between the national rules and the contract signed with a publisher by the author which could be regarded defined as an exception. The Delegation wanted to know if that was considered specifically or whether it was not considered at all. The Delegation also wanted to know whether Professor Seng looked at other regulations which may have had an effect on the exceptions and limitations.

280. The Chair stated that since the Secretariat had been overseeing the work of Professor Seng, it could respond and tell the Committee what Professor Seng had said as far as the use of legislation or other regulations and also the mechanism whereby complimentary regulations can be considered.

281. The Secretariat stated that Professor Seng considered the legislation on copyright available in WIPO Lex. However, as was indicated in WIPO Lex, other countries did provide information about legislation, which while it was not specifically related to copyright, could nevertheless have an impact on copyright law. The Secretariat stated that it would be very useful to have the assistance of Member States in order to access the sources which would allow the Committee to analyze the results.

282. The Delegation of Uzbekistan stated that it was interesting to read the study by Professor Seng, and that it was ready to submit all the necessary updated information from its country to Professor Seng.

283. The Chair invited NGOs who had something new to take the floor.

284. The Representative of IFRRO stated that unremunerated exceptions must be limited to instances where primary and secondary markets could not fulfill a market need efficiently and effectively. In terms of copyright work, a nation should not rely on others through impact on published works. Local creation and publishing of materials should be enabled and that was particularly important in relation to educational material. Textbook publishing was also the motive in the publishing sector, accounting in some countries, for instance in South Africa, for up to 90 percent of the center's production. The creation and publishing of quality work at a national level required that the creator and the publisher were protected from infringement and claims to be rewarded for their efforts. Copyright was what enabled the creator to make a living and a nation to develop a viable publishing industry. The secondary market included uses authorized through collective rights management by RROs. It was best able to respond to local conditions, user needs, copying practices, domestic laws as well as deal with technological changes while at the same time delivering benefits to all stakeholders in the value chain. Existing changes to legislation which had led to interpretation had a strong negative impact on the national publishing sector, especially for educational materials. Students in Canada had complained that cancellation of agreements with the RROs had led to increased costs for educational material up to 300 percent. Copying available works under an RRO generally included Internet downloads or digitization of works and storing on internal networks or virtual learning environments TPM and RMI. Educational institutions formed a part of the ecosystem of published works. It was important that they were allowed and offered solutions to allow legal access to copyright works. The best way to arrange that was through direct licensing agreements with authors and publishers, combined with collective rights management by RROs.

285. The Representative of KEI stated that one of the challenges that governments had when they updated and modified their copyright laws was to address the issue of exceptions, including those in education. In the area of rights, the task was much simpler. If a treaty had a requirement that one provides a life plus 50-year trade agreements, life plus 70-year copyright term, that was a fairly unambiguous thing to address in drafting. But if there was a possibility but no clear direction on how to implement the exceptions to the rights in the area of education or other areas, the role of WIPO in providing advice in those cases was complicated because it involved a series of judgment calls. In the 1976 model law, Tunis Model Law and Copyright for Developing Countries, that was done collaboratively between WIPO and UNESCO, Section 7 of the 1976 model law titled Fair Use, had a series of recommended exceptions, including for education, in that section. It would be interesting to compare provisions on exceptions in Section 7 and other parts of the Tunis Model Law of 1976 with the proposals that had been made by the African Group and GRULAC. The Representative stated that Member States had now come to rely more and more on machine-generated translations of works that were published in languages that were not their primary speaking language. The Representative stated that it was important to avoid situations that made claims that Copyright would interfere with a machine-generated translation or that contracts would prevent that type of activity, which was something that could really expand access to works.

286. The Representative of the PIJIP stated that it was speaking on behalf of a larger network called the Global Expert Network on User Rights, a network of educators. The Representative stated that although it taught in a Northern school, in Washington, D.C., it had spent some time teaching in a major university in South Africa where the context of access to educational materials was very different. The Representative stated that when it taught an advanced constitutional class there of about 70 students, only about five or six of the students could purchase the learning materials. The rest of the other students had to huddle in the library and attempt to share and read the copies that were on reserve in that space. That was the reality around much of the world where textbooks were priced similarly in poor countries and rich countries; but because of the disparities in income, students in poor countries could afford their learning texts. That experienced was long before the advent of the Internet. Therefore, reprographic copies were really the only way students were accessing their materials, and it was very hard to find students who had done their full reading. The advent of Internet technology and digital duplication provided the opportunities for overcoming some of those barriers, but they could only be embraced in a copyright system that had adequate flexibilities to deal with those interests. Professor Seng's study showed the great breadths and uses that educational exceptions and limitations around the world serve. Through his studies, one could see that they often applied to all rights, not just reproduction; all kinds of works, not just literary works; all kinds of uses, including digital uses, not just analog uses; and all kinds of educational purposes, not just, for instance, teaching in the four walls of the classroom itself. That kind of openness, the openness to the various uses and works and rights and purposes was really likely the key to embracing the kind of advanced technologies that were defining the modern educational classroom. But that openness could not be found in all of the laws. Professor Seng found that 16 minority laws, but an important limit it to a single copy. It was difficult to match such exceptions to the reality of modern courseware that provided access to learning materials for much more people. Only 23 laws around the country addressed TPMs which could be critical to providing access to all kinds of materials within the classroom. To the point that all uses should be remunerated, it was useful to recall the intervention by the United States of America that exceptions and limitations fostered social, not just economic purposes. And Professor Seng's study showed that very few limitations, educational limitations and exceptions, actually required remuneration. That was a minority view within countries. Speaking about the furtherance of the study that was undergoing, as it was completed from a researcher's perspective, it would be of important value to know the relationship between more permissive and open copyright systems, particularly within the educational exceptions, and limitations as studied by Professor Seng and the availability and use of teaching materials and modern teaching technologies for learning. And towards that, it would be extremely useful if the study included the dates on which the various exceptions were adopted that appeared in the study so that researchers could look at the impact of those changes over time. Does the changing of copyright law in a particular country to make it more open, lead to or permit the greater use of technologies within that actual country? And it would also be very valuable to have the data from the survey in a spreadsheet or other kind of manipulatable format so that researchers could test the data against other impacts and information.

287. The Representative of eIFL.net stated that she would like to discuss the issue of exceptions for persons with other disabilities. It supported exceptions and limitations for persons with other disabilities such as persons who are deaf. Deafness was described as an invisible disability because one could not see it in the same way as someone who has a physical disability. But that did not make life any easier for those who were affected. The major barrier for deaf people was trying to communicate like everyone else did. Because of that communication difficulty, deaf people tended to rely on technology such as subtitles and captioning for communication and information. Many delegations had rightly described the Marrakesh Treaty and the access to information as a humanitarian issue. Yet the copyright issues that occurred in creating accessible format copies for deaf people, such as adding subtitles and captions to material, raised similar issues to those addressed in the Marrakesh Treaty. So that was an issue of parity. And libraries, such as university libraries and public libraries, must be allowed to serve all of their users equally, everyone who walked through the door of the library. And then in some countries like, for example, in Kyrgyzstan, a special library served both communities. So, for example, the Republic Library for blind and deaf people in Bishkek provided literature in the Kyrg language to both communities. The Representative stated that one way to achieve a quick result could be for the Committee to consider making a recommendation or an agreed principle to the general assemblies that the provisions of the Marrakesh apply to people with other disabilities. The Representative congratulated the Delegation of Chile, who had become the 17th country to ratify the Marrakesh Treaty.

288. The Representative of the International Association for the Protection of Intellectual Property (AIPPI) stated that exceptions and limitations regarding education should be adapted to the digital network environment so as to achieve a fair balance between the legitimate interests of the copyright holders and the public. Those should be consistent with the three-step test. With regard to educational and research institutions, the exceptions and limitations should apply to both public and private institutions only for noncommercial activities.

289. The Representative of STM stated that publishers also published in the field of academic textbook publishing all over the world. The Representative stated that in Professor Seng's work, it had come to fore that at least where multiple copying was concerned, a great number of laws, or voluntary licensing principles, applicable in countries, did in fact call for remuneration. Therefore, where the same work was copied substantially at the same time, and substantially for the same people, or made available to them on an e-reserve, without any form of remuneration, that could create a lot of damage. In that regard, the Representative presented a Georgia State University case in the United States of America. Pending on appeal, the case was one which the discussion was about e-reserve; and as a result of the engagement between publishers and the university, the university had decided to tighten its e-reserve policy and remove 6,700 items from its e-reserve, which it was previously claimed there had been fair use. In many instances, if there was no clarification by publishers that would have created great damage to the publishing industry.

290. The Representative of Karisma Foundation stated that at the beginning of that week, some people attending that session had an opportunity to watch the *Embrace the Serpent*, the Colombian film. A scene of that movie illustrated the importance of the issue at stake: When looking for medicinal plant, the main character, an ethnographer found an indigenous community in the jungle. And he showed them a compass and showed them what it was for. That was enough to awaken the curiosity of the leader, who then decided to keep the compass at the end of the visit of the ethnographer, the explorer tried to get back his compass but had to give up. The scene ended with a very revealing phrase from the ethnographer's guide, an indigenous person that said: 'You can't blame them for wanting to learn.' The Representative stated that that was extremely illustrative for the discussion, because that was what education faced: the desire to learn and access to education for personal and professional development, as well for the development of society and the possibility of sharing knowledge. Educational institutions were constantly facing major problems that made them infringers of the law or promoters of illegal activity from the point of view of copyright, especially Internet-provided education. That scenario might have arisen in unusual cases with considerable consequences as result of the existing systems. For example, today in Colombia, there was a case of Diego Gomez, an undergraduate young biologist from a rural area, who was trying to protect biodiversity and who was now standing trial and facing perhaps up to eight years of prison and fines because he shared master's dissertation on a digital platform without permission. He found that thesis on a social network, but officially it was only available in print at the university where the author completed his master's degree. Studying science in a remote area, long way away from a major city, represented a great obstacle in Colombia because libraries didn't have the means to pay the thousands of dollars required for access to specialized books and important bibliographic databases available throughout the world. In addition, museums and biological collections were fairly rare. And that limited access to education for students, researchers and teachers who were in remote regions. In that process, the Internet had been one of the major allies. That tool had reduced the educational gap between major cities and remote areas. However, having shared knowledge on the Internet, threatened the professional career of the person there. And that shows the imbalance in copyright, particularly in terms of the right to education.

291. The Representative of IPA stated that it wished to support what both the IFRRO and the STM had said in that part of the debate. He noted that between 80 and 90 percent of the publishing industry in the developing country was related to educational publishing. For that reason, the Representative categorized education as a strategic industry, the education publishing that formed the foundation for growing the ecosystem in the country. Exceptions and limitations, if they were not formulated very carefully, had the potential to stifle education publishing and therefore the broader publishing ecosystem that could then grow out of that. The Representative stated that the IPA was very strong in trying to create a diverse ecosystem in the publishing world. The Representative stated that it wished to see more authors and more publishers grow out of the local ecosystem and produce high quality works.

292. The Representative of the Electronic Frontier Foundation (EFF) stated that it wished to respond to an earlier intervention made by the AIPPI that copyright limitations and exceptions were subject to the three-step test. The Representative stated that that was not the case. It directed the committee to Article 9 of the Berne Convention where the three-step test was "established, it is to permit the reproduction of works in certain special cases provided that such reproduction does not conflict with the normal exploitation of the work and does not prejudice the legitimate interest of the author." However, that Article was followed by Article 10, which more specifically provided, "it shall be a matter for legislation in the countries of the Union and for special agreements existing or to be concluded between them to permit the utilization, to the extent justified, by the purpose of literary or artistic works by way of illustration in publications, broadcasts, or sound or visual recordings for teaching, providing such utilization is compatible with fair practice." Now Article 10 was not subject to Article 9, therefore "illustration for teaching" was not subject to the three-step test. That was often overlooked by rights holder representatives.

293. The Representative of KEI stated that it supported the statement by the Representative of EFF on that topic. The Representative stated that it should be noted from the 1976 Stockholm Diplomatic Conference and the events leading up to it, that that issue about whether or not the particular exception of the Berne Convention would be subject to the three-step test or not was discussed. And at that point, the conclusion was that the particular exceptions in the Berne Convention would have their own standards. And the reproduction right would have a different standard. And then subsequently when the WTO ruled in the case involving the United States of America versus the European Union, in the three-step case it was decided there -- the finding was that had the United States followed one of the particular exceptions that was in the Berne Convention, the three-step test would not apply. But the three-step test would be used under the WTO provisions of the TRIPS in areas where that person could not rely upon a particular perception. That note that there was a different standard for education that was more liberal than the three-step test. And also, the three-step test did not apply at all to limitations that were implemented in terms of limitations on remedies to rights, a topic that not only was addressed in the U.S. Copyright proposals on orphan works, but also reflected in some of the African Group proposals on education in their submissions to the Committee.

294. The Delegation of Nigeria, speaking on behalf of the African Group, stated that if the Chair could provide a chart that would help to facilitate and structure the Committee's discussions on exceptions and limitations for education, teaching and research institutions, it would be more helpful and provide more clarity to the discussion that the Committee can hold in the future. The Delegation stated that it recalled that the Delegation of Nigeria had mentioned the cost, as provided in the ongoing study by Professor Seng that could lead to discussion. The Delegation stated that it had confidence in the Chair's ability to discern and provide a document that the committee could use at the following session to structure and facilitate the discussions. Thank you, Mr. Chair.

295. The Delegation of Brazil stated that it wished to support the request made by the African Group. The Delegation stated that it understood that a chart, as presented for the discussions on exceptions limitations for libraries and archives, could give a good guidance for the discussions that the Committee was having.

296. The Delegation of Uruguay stated that it supported that proposal and also the Chair's idea of having a chapeau or some clarification.

297. The Delegation of Chile stated that it would like to associate itself with the statements expressed by the Delegations of Brazil and Uruguay and the African Group, in as far as having a chart so that the discussion could proceed in an orderly way.

298. The Delegation of Nigeria, speaking on behalf of the African Group, expressed that it didn't see that the conclusion of the study should impact the ability of the Committee to discuss the subject which had been on the agenda. The Delegation expressed that it failed to see how the inclusion of elements that had been highlighted in the study would prejudice any outcome. It was an invitation to have a structure for the discussion that was held in the Committee and to inform Member States' engagement in that regard. The African Group wished to hear more from Group B on how the inclusion of the elements in the study by Professor Seng for discussion, without prejudging any outcome, could prejudice the discussion on SCCR's discussion on exceptions and limitations for education and teaching institutions.

299. The Delegation of Brazil stated that it wished to refer to the points raised by the Delegation of from Greece, on whether it would be acceptable for the delegation to at least guide the discussion that the Committee was having, through topics that had already been agreed on the consolidated document, on education institutions, research institutions, and persons with other disabilities. The Delegation stated that those 11 topics would at least give the Committee some direction. The Delegation supported the proposal from the African Group.

300. The Delegation of Ecuador stated that it supported the African Group's proposal and the statements by the Delegations of Brazil, Uruguay and Chile to have a chart that would help the Committee make progress on that subject on exceptions and limitations for educational facilities.

301. The Delegation of Egypt stated that it wished to add to the comments made by the African Group and supported by the Delegation of Brazil. The Delegation Stated that it had flexibility on how the Committee moved ahead in that direction, so long as the Committee had guidance on how it was going to move ahead, as that was a very big study. Without direction, the Committee could fall into the trap of each country coming in to comment only on the section that related to its own legal provisions which would lead to a national context discussion that did not meet the objective on having a minimum standard of exceptions and limitations for educational institutions and other disabilities on a wider text and on an international basis.

302. The Chair stated that I was ready to use those alternative tools. The Chair stated that those tools where not fixed tools, but were dynamic. They changed in order to accommodate and reflect the consensus that came out from that room.

303. The Delegation of the United Kingdom requested that the Chair clarify what type of chapeau it had in mind for that Agenda Item.

304. The Chair responded that the chapeau was like that used for the chart related to exceptions and limitations for libraries and archives which read: "that chart is designed to serve as a useful tool to provide a structure to discuss the substance of each topic, drawing on the many resources before the committee. That will allow the committee to have an evidence-based discussion respecting differing views, understanding that the goal is not to guide the discussion toward any particular or undesired outcome, but, instead, to lead to a better understanding of the topics and of their actual relevance to the discussions and the intended outcome." The Chair stated that that been useful for previous topics and it was confident that it would be useful for the discussion on that topic.

305. The Delegation of the United States of America stated that on objectives and principles for exceptions and limitations for education, teaching and research institutions the Committee could find in Document SCCR/27/8 the general principle that appropriate exceptions and limitations to copyright for certain educational uses were an integral part of any balanced copyright system. Appropriate exceptions and limitations that were consistent with well-established applicable international obligations could help facilitate access to knowledge and learning and research and scholarship. At the same time, the commercial market for educational materials was an important component of the U.S. Copyright industries. The print publishing business for the educational market was estimated to be worth between 12 and \$14 billion annually in North America. And publishers had responded to the increased need for broader and more flexible access to learning materials through new and innovative licensing models and increased access to digital content. The United States of America was of the view that further work on limitations and exceptions for educational purposes should be focused on finding common ground on high-level objectives and principles and examining the full range of educational exceptions by nations around the world. To that end, the United States of America was interested in learning more about how other countries have implemented such exceptions and limitations into law, especially activities in the digital environment and how those countries had worked to facilitate and support the commercial educational market and the use of innovative licensing models to maximize the availability of high quality copyrighted works.

306. The Chair opened the floor to Agenda Item 8, Contribution of the SCCR to the Implementation of the Development Agenda Recommendations.

AGENDA ITEM 8: CONTRIBUTION OF THE SCCR TO THE IMPLEMENTATION OF THE DEVELOPMENT AGENDA RECOMMENDATIONS

307. The Delegation of Nigeria, speaking on behalf of the African Group, was pleased that the Committee was turning its attention to consider the contribution of the SCCR to the implementation of the Development Agenda recommendations. As in the past, the Delegation hoped that the Committee would provide such information and make a report to the General Assembly. The adoption of the Development Agenda recommendations in 2007 was an acknowledgment by WIPO of its role in facilitating socio-economic development of its Member States, especially developing and least developed countries. To mainstream development considerations in all WIPO activities was also a critical and conscious step by the Organization. Some of the recommendations, especially those included under Cluster B, were essential for helping to foster an inclusive and balanced IP system that took into account the different levels of development of WIPO Member States. The copyright system had an immense, well-documented contribution to make to socio-economic development. According to the Delegation, the SCCR had a very good record in that regard. Reference could be made to progress reached after 2007, such as the Beijing Treaty, the Marrakesh Treaty and potentially a broadcasting treaty. It hoped that the SCCR could change the pace of the negotiations, especially with reference to exceptions and limitations for libraries and archives and educational and research institutions. The African Group had immense concerns on the willingness or level of political commitment that had been demonstrated by Member States to advance on that subject, taking into account the important role played by education, knowledge and access to information for human and societal development. The Delegation also mentioned the Sustainable Development Goals, including a specific one on education and on providing life-long opportunities for all to learn. It drew the Committee's attention to Development Agenda Recommendation 17, which said that, in its activities, WIPO should take into account the flexibilities of intellectual property agreements, especially those which were of interest to developing countries and least developed countries. The Delegation also referred to Recommendation 22, which said that WIPO norm-setting activities should be supportive of the development goals agreed within the United Nations system, including the Millennium Development Goals that had been succeeded by the Sustainable Development Goals. There was a call to Member States to demonstrate the agreements that were possible within the wider framework of the United Nations system. The Delegation did not see any member of the SCCR that was not a member of the United Nations system and that did not agree to the adoption of the Sustainable Development Goals. Therefore, it hoped that the SCCR could turn a page and show more graciousness, tolerance and inclusiveness in dealing with the work on exceptions and limitations for libraries and archives and for educational and research institutions.

308. The Delegation of Brazil thanked the African Group for its intervention and for suggesting inclusion of that agenda item in the session. The Delegation highlighted, as presented by the African Group, Recommendations 17 and 22. Recommendation 17 stated that, in its activities, including norm-setting, WIPO should take into account the flexibilities of international intellectual property agreements, especially those that were of interest to developing countries and least developed countries. Discussions on broadcasting, exceptions and limitations for libraries and archives, exceptions and limitations for educational and research institutions and persons with other disabilities, as well as discussions on the GRULAC proposal on the digital environment (document SCCR/31/4) were good examples of the implementation of that Recommendation. Recommendation 22, for its part, stated that WIPO norm-setting activities should be supportive of the Development Goals agreed within the United Nations system, including those contained in the Millennium Development Goals, since they had a set of common sustainable goals. In that context, Sustainable Development Goal 4 to “ensure inclusive and quality education and promote life-long learning opportunities for all” was of special importance, specifically in regard to discussions for exceptions and limitations for libraries and archives, and exceptions and limitations for educational and research institutions and persons with other disabilities. The Delegation commended the WIPO Secretariat for addressing that Recommendation. In working documents for norm-setting activities and for other activities, there was an inclusion of issues such as potential flexibilities, exceptions and limitations and the possibility of additional special provisions for developing countries and least developing countries, as guided by Recommendation 22.

309. The Delegation of Greece, speaking on behalf of Group B, clarified that the additional agenda item on the contribution of the SCCR to the implementation of the Development Agenda Recommendations was included on an *ad hoc* basis. It underlined that the additional agenda item was not on the agenda in the recent past, and development-related activities in the field of copyright were undertaken by WIPO irrespective of the inclusion of that agenda item. The Group believed that the committees of WIPO, including the SCCR, had to focus on substance in order to comply with their mandates. From that viewpoint, the Delegation reiterated that development considerations formed an integral part of the work of the SCCR, as demonstrated by the subject matter under discussion.

310. The Delegation of Egypt aligned itself with the comments made by the Delegation of Nigeria on behalf of the African Group, and shared the views raised by the Delegation of Brazil. It emphasized that since the goal was the mainstreaming of the Development Agenda, which had a cluster on norm-setting, committees discussing substantive work should take into consideration development-related objectives and accelerate work in that domain. Otherwise it would be a default on global commitments related to the Sustainable Development Goals and to human rights because many of the issues that were under discussion were cross cutting with some human rights issues. For example, education was not only a Sustainable Development Goal but was also a basic right. That was relevant to the areas under discussion in the SCCR, and it hoped, therefore, that the work could move forward at a faster pace. In addition, there were other activities undertaken by WIPO, also under close observation by Member States, which were complementary and not mutually exclusive.

311. The Chair stated that looking forward, it hoped that the discussion would be guided by some of the contributions related to the implementation of the Development Agenda recommendations. The Chair expressed that statements that had been expressed during that session and that had been submitted to the Secretariat in writing by May 20, 2016, in relation to the contribution of the SCCR to implementation of the Development Agenda recommendations, would be recorded in the report of that session and would be transmitted to the WIPO General Assembly that year in the report of the SCCR to that body. The Chair stated that the Committee was ready for Agenda Item 9, Other Matters, which were the Proposal and Analysis of Copyright Related to the Digital Environment by GRULAC contained in SCCR/31/4 and the Proposal on Resale Right from the Republic of Congo and Senegal containing Document SCCR/31/5.

AGENDA ITEM 9: OTHER MATTERS

312. The Delegation of Bahamas speaking on behalf of GRULAC stated that the discussion on document SCCR/31/4, Copyright Analysis in Regard to the Digital Environment, should not negatively impact the three topics on the Agenda of the Committee. The Delegation stated that it attached great importance to the negotiations on broadcasting, limitations and exceptions for library and archives and limitations and exceptions for educational and research institutions and persons with other disabilities. That was the reason for which it had requested that proposal to be included on Agenda Item 9, Other matters and it expected a full exchange of views and ideas. GRULAC proposed the discussion of the new challenges arising from the use of protected works in the digital environment within the SCCR. The Delegation stated that its proposal sought to analyze the current scenario, identify challenges and problems to discuss common solutions to deal with the new digital services and technologies that had emerged since the adoption of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. As a result of technological innovations, both traditional IP rights and the right of making available to the public were not analyzed in the context of the new work in the digital environment. In addition, the growing number of companies developing new business models based upon the use of copyrighted works in digital platforms raised new realities at both national and international levels, particularly regarding transparency and the remuneration of authors and performers around the world. Another challenge was the difficulty in identifying and applying limitations or exceptions to copyright in the digital environment, which impacted fundamental rights such as freedom of expression and access to culture, knowledge and information and placed the user in the position of potential violator. The Delegation stated that those facts justified discussions on the topic within WIPO, so as to look for a common understanding on how to act in order to regulate the digital issue more effectively at the multilateral level, enabling fairer and balanced use of IP, intellectual works and the digital environment and favoring the digital market of protected IP. In that context, the document proposed three areas of work on copyright and related rights. One, to analyze and discuss how Member States legally framed the use of protected works in the new digital services. Two, to analyze and discuss the role of businesses and corporations who made use of copyrighted works in the digital environment and its mode of operation, including verification of the degree of transparency in business and remuneration of copyright and related rights of the various rights holders involved. And, three, to build a consensus on copyright management in the digital environment in order to deal with the problems associated with that matter. The Delegation saw value in an open debate that could shed light on those areas without prejudging any possible outcome of the discussion. That debate could also be helpful to the discussions in other topics included in the agenda of the Committee, such as broadcasting, and exceptions and limitations for education and libraries and archives.

313. The Delegation of Greece, speaking on behalf of Group B, believed that the Committee had the responsibility to consider issues that all the Member States faced in the 21st Century. The Delegation stated that the Conference on the Global Digital Content Market organized by WIPO provided useful insights into the digital market realities that confronted today's world. The Delegation believed that the recognition of the importance of copyright protection, as an engine for growth and cultural diversity, should constitute the basis for work going forward. The Committee could explore further the opportunities and challenges generated by the digital age, but that the basis for any future possible discussions had to be the shared experiences through an open and inclusive dialogue. The Delegation thanked the Delegations of Senegal and the Republic of Congo for the proposal originally submitted in SCCR 27, and stated that it would support further discussion on that issue in SCCR 33.

314. The Delegation of Latvia, speaking on behalf of CEBS stated that the proposal from GRULAC was a very interesting and relevant proposal, in the modern context. The Delegation stated that during that session, the Committee should focus on better understanding the intentions of that proposal.

315. The Delegation of the European Union and its Member States stated that the Conference on the Global Digital Content Market organized by WIPO provided useful insights into the market realities in today's world. The Delegation stated that the recognition of the importance of copyright protection as an engine for growth and cultural diversity should constitute the basis for the work, going forward. Before that topic could be discussed, the Committee could examine further the challenges generated by the digital age and reach an agreement on any possible future discussions. The European Union and its Member States thanked the Delegations of Senegal and the Republic of Congo for their proposal, first raised at SCCR 27 and tabled at SCCR 31. The Delegation stated that the European Union attached importance to the resale right and supported a discussion on the resale right at international level at SCCR 33 and onwards.

316. The Delegation of Nigeria, speaking on behalf of the African Group stated that it welcomed the opportunity to discuss both subjects. The Delegation welcomed the views expressed by the proponents and hoped that it did not negatively impact the work of the Committee in the area of exceptions and limitations.

317. The Delegation of China thanked the Delegations of the Republic of Congo and Senegal for their proposal on the resale right. The Delegation agreed to examine that topic while examining exceptions and limitations.

318. The Delegation of Brazil aligned itself with the statement given by the Delegation of Bahamas on behalf of GRULAC. The Delegation said that 34 countries had supported GRULAC's proposal for discussion in the previous session, and since then there had been a growth of interest in the proposal for copyright related to the digital environment. The Delegation stated that the time was ripe for Member States to make use of the SCCR to share concerns, ideas and solutions to common problems faced by copyright offices in the digital realm. Brazil's interest on that topic took into account creators, performers and some writers in relation to alleged low payment from digital services. The WIPO Copyright Treaty (WCT) and the WIPO Performance and Phonograms Treaty (WPPT) were the first to address copyright and related rights regarding intellectual works available for the Internet. The situation in the world was different from the one envisaged by the WIPO Internet Treaties. In 1996 downloading was the future, in 2016 it was streaming services rather than the storing of digital files. WPPT and WCT provisions may not suffice in terms of users of protected works. The protection of copyright and digital environment involved a diverse range of issues from difficulties regarding the legal classification of those new uses to the identification of limitations and exceptions. A first challenge was that uncertainty emerged from difficulties related to the comparison between the physical formats and the digital environment services. In the preliminary analysis, analogy between physical format in the digital environment seemed to be inappropriate. In the digital environment, there were particular features that hindered the effectiveness of fundamental principles applied to physical format such as exhaustion of rights in the principle of the reality. For example, the creation of any immaterial copy after the first sale made exhaustion of rights hardly impossible in the digital environment. Similarly, the absence of physical boundaries posed questions on the full scope of domestic law in relation to global business initiatives that made use of copyrighted works. Differences between physical formats and digital files also affected the legal classification of the usage of intellectual works in the digital environment. Traditional licensing rights such as reproduction and distribution of rights required interpretation to be applied to digital services because they were originally created to deal with physical formats. Additionally, the rights cited in the digital business models were interdependent which meant that each right must be an object of specific licensing in order for the digital service to work lawfully. The following uncertainty related to which rights were involved on different types of services, especially streaming services. There were also questions raised in the legal classification of streaming, either as trade of intellectual goods or as time bound rent of intangibles. Those definitions, either trade or rent, were fundamental for classifying the uses in terms of different licensing rights. That classification had direct results over the rules imposed in licensing agreements and consequently the proportion of remuneration reserved to rights holders. A second area that deserved Member States consideration was the activities of companies and corporations that made use of copyrighted works in a digital environment in their way of proceeding. The new business models had been the object of serious concerns from authors and the creative industries due to lack of transparency. In the case of streaming, for instance, there were two types of usages. A paid version based on subscriptions and a free version in which the revenue was obtained from publicity. Although, in addition to streaming services, increasing the number of subscriptions was still relatively small when compared to free access services. The situation meant lower remuneration of authors and performers and cast doubt on economic availability of that business model for smaller companies. Regarding the free versions, also called Freemium, the nonexistence of control over the monetization of those services and use of models in remuneration services that were difficult to understand were the main causes of concern. Since there was no specific regulation on those issues, there were questions related to the definition of a proper level of transparency in building methods and in the allocation of remuneration of rights. The situation became even more complex in the cases involving international contracts of licenses of repertoire. The consequence was the existence of multiple micro transactions in which artists and creators received only small fractions of revenues. A study promoted by the Berkeley Institute of Creative Entrepreneurship found that the capacity of payments and lack of accountability was likely to benefit intermediaries to the

detriment of artists and creators. The patterns of global licensing agreements contributed to re-enforce that thesis since there was a noticeable process of concentration and control over all the valid change by digital platforms and major record companies. One possible solution for that plight was the creation of a global database. That was one of the possible solutions that were raised in the document. A third area of interest was the discussion of global agreements. Global agreements usually imposed the law of a certain jurisdiction over the others without considering the particularities of each territory including violations of the provision of the Berne Convention and the TRIPS Agreement. Possible solutions to those problems included the creation of a global database and also the promotion of a competitive practice. Regarding fair remuneration for rights in the absence of a common understanding on rights management in the digital environment, a possible alternative was ensuring the right of equitable remuneration for authors and performers. In the case of performers that approach could guarantee better remuneration if their national laws considered equitable remuneration as an inalienable right that could not be negotiated in a contract. That was an option that should be discussed in the Committee. A fourth area of interest for the Delegation was the discussion of which limitations and exceptions were applicable to the digital environment. In that new context, and with that new technology it was very difficult to identify which users could be considered limitations and exceptions to copyright and digital environment. Technical protection measures often created a barrier to users that a number of national legislation considered as limitations or exceptions to copyright, for instance private copy. Technological constraints also limited the user space of action in a digital environment and played a key role in identifying fair or acceptable uses as limitations and exceptions for copyright. The three-step test did not seem to be sufficient to identify limitations and exceptions in the digital environment since its second step was not to conflict with the normal exploitation of the work, and was not conceived for business based and digital copies nor on digital services. Those factors had constrained the identification of limitations or exceptions applicable to copyright in the digital environment with possible downsides to the public interest such as objectives of protection of fundamental rights such as freedom of expression, and access to culture, knowledge and information. In the context of uncertain regulation the users were also placed in a position of potential infringers and the balanced copyright should also safeguard the legitimate interests of the users. In summary, the Delegation stated that it believed that there was much work to be done on a national and international level regarding copyright in the digital environment, including other visual works. The Delegation had identified four areas and it was open to analyze areas that had been identified by other Member States. The Delegation understood that WCT and WPPT provisions were not sufficient in providing solutions for the differing needs of rights holders and users in the real world. The Delegation wished to engage in a discussion as proposed by the countries of GRULAC, to find a common understanding in the most adequate legislative and administrative tools to copyright management in the digital environment. The Delegation wished to find mutual understanding and common understanding among Member States about how to deal with issues that arose from the digital environment, for the mutual benefit of all Member States without having to pre-establish an outcome that was different from the finding of that mutual understanding.

319. The Delegation of El Salvador supported the statement made by the Delegation of Bahamas on behalf of GRULAC. The Delegation stated that copyright in the digital environment was particularly relevant nowadays and the SCCR was the ideal forum to discuss that issue. The Committee had to ensure that legislation was practical and that it maintained a balance between the interests of authors and the general interest of society as represented by the Member States. The Delegation stated that the Committee should review the current systems of protection, and also look at the new training models which have been created thanks to the Internet. New practical issues surrounding copyright on the basis of broad and shared experiences had to be dealt with, in order to discuss the possible legal solutions that could regulate those new realities.

320. The Delegation of Ecuador supported the statement made by the Delegation of Bahamas on behalf of GRULAC. The Delegation thought that the effective management of rights in the digital environment was vital in the areas of culture, telecommunication.

321. The Delegation of Spain stated that it welcomed the proposals. The Delegation expressed that the Committee was a good space to discuss the proposals but that there was perhaps not enough time for all of the priority issues on that. The Delegation stated that in terms of broadcasting issues, there were very promising and interesting aspects, particularly those related to the digital environment and copyrights.

322. The Delegation of Argentina supported the consideration of the document presented by GRULAC. The Delegation stated that under those regulations, it could not think of a delocalized form of negotiation without taking into account negotiations between countries. The Delegation expressed that within public good, the defense of authors and their copyright was also an issue that needed to be dealt with collectively. Online distribution could not be outside of the laws that countries established for protection. The Delegation wished for that to be considered within the framework of a multilateral system.

323. The Delegation of Senegal thanked the Delegation of Brazil and GRULAC for having raised the issues, with regard to the digital environment. The Delegation stated that the problems that had been raised were very timely and from the point of view in Africa, authors and artists had many questions with regard to the digital environment. The Delegation stated that it favorably welcomed and without prejudging the outcomes, a discussion on those issues.

324. The Delegation of the United States of America thanked GRULAC for its proposal and stated that it believed that at WIPO, it was important to be able to discuss a range of timely and substantive copyright issues. The Delegation stated that it had in the past suggested that it could be valuable to identify new topics for the SCCR without prejudice to the existing agenda items. The main impediment to doing so was the perception that any SCCR discussions would inevitably predicate for norm setting. That made it difficult for delegates to be more willing to move forward with topics and prevented the ability to engage in productive and enlightened exchanges of ideas and experiences. If the Committee could reach agreement that it was not engaged in a process that would lead to treaty proposals or other norm setting, but rather that the goal was to enhance our common understanding, it would be possible to achieve consensus within the SCCR to take up new topics. Few issues such as those described in the GRULAC proposal could be the basis of productive discussions at future meetings. Issues other than those in the paper could also be fruitful to pursue. The Delegation emphasized however that a focus on policy issues rather than marketplace practices would be more appropriate for that Committee. The Delegation stated that several of the topics in the GRULAC paper had been the subject of considerable attention in the United States of America.

325. The Delegation of Chile stated that technological development had brought about new realities. The digital environment had led to a new reality and also new challenges for authors, artists, and creative activities. The users and creators had a new medium for reaching the public around the world. Users had immediate access to millions of different contents. In that context a discussion on the implications that had on copyright and related rights and exceptions and limitations, was pertinent and necessary. The Delegation stated that the Secretariat could also facilitate the drafting of a study which could lead to a better understanding of the various different legal frameworks and practical experiences related to copyright and that new reality.

326. The Delegation of Singapore stated that it supported GRULAC's proposal. There had been deliberations on the ways in which the digital economy had radically altered and disrupted business models in the market which have caused the copyright landscape to change. With an increased consumption of creative content and emerging novel business models in technology, the management of copyright in the digital arena had become even more crucial. It was imperative that the laws keep up with the pace arising from that changing landscape of the Internet.

327. The Delegation of Uruguay stated that it associated itself with the statement made on behalf of GRULAC. Given the technological changes in the last decades and the lack of clarity with regard to copyright in the digital environment, that was a very timely topic for the Committee.

328. The Delegation of Nigeria stated that it welcomed the proposal by GRULAC. The Delegation believed that a discussion of that nature could not be overemphasized in the current context of a dynamic evolution of creativity in the digital environment.

329. The Representative of Latin Artis thanked GRULAC for its proposal, which reflected the worrying situation with regard to authors and other performers in the digital environment. That was a precarious situation because of the contractual conditions that were submitted to them; artists very rarely received anything from that. The Representative stated that when authors or artists lost their exclusive rights, they lost the right to the possibility of participating and benefitting from the economic benefit of their material. Therefore, it was necessary to have a guarantee of their economic rights. That was the direction of the GRULAC proposal and the Representative hoped that the discussion could continue in the Committee.

330. The Delegation of Brazil stated that besides itself, the Delegations of the United States of America, Chile, Singapore, Ecuador, Uruguay, Nigeria and all the regional groups and the nontraditional groups had demonstrated a great interest in that topic. The Delegation stated that the proposal of discussion on copyright in the digital environment could be included as a new agenda item for the following sessions of the SCCR.

331. The Delegation of South Africa thanked GRULAC for their proposal and stated that South Africa had a vibrant and creative market, and had been monitoring trends on how to operate in the digital environment. The Delegation was studying new business models introduced by the technological architecture. The Delegation acknowledged the merit of that proposal and stated that that item would not negatively affect the progress of other issues in the Committee.

332. The Representative of Electronic Frontier Foundation (EFF) stated that it welcomed the proposal from GRULAC. The Representative stated that the proposal took a refreshingly clean approach to the challenges that the transitions to the digital environment posed to copyright owners and users. The paper, for example, acknowledged that the default assumption that reproduction of works required the premise of the copyright owner was a poor fit for the digital environment reproduction is a routine and integral feature of network. The Representative believed that a good place to start for GRULAC's proposal would be to look at the adequacy of copyright limitations and exceptions in the digital and online environment, and in particular the extent to which open, flexible and general copyright exceptions such as fair use are a more appropriate fit. The need for stronger protection of rights of users to bypass technological protection mechanism to act and use lawfully acquired content was a vital topic of concern. As to the issue of improving the transparency of payments made to artists by labels and online platforms the Representative stated that there may be merit in addressing that and encouraged the Committee to look at technical solutions to that problem.

333. The Delegation of the United Kingdom stated that it did not have any comment at that point, but believed that topics such as the digital environment were important for the 21st century and should stay on the agenda for the following session.

334. The Delegation of the European Union and its Member States stated that the Committee could examine further some of the challenges generated by the digital age. The Delegation stated that before any discussions, the Committee had to first reach an agreement on the basis of any possible future discussions as well as determine the scope and possible agenda of the potential topics that would help protect more effectively copyright in the digital era.

335. The Delegation of Brazil requested that the Delegation of the European Union and its Member States clarify if there was anything in GRULAC's proposal that was harmful to that Delegation, since the proposal already had three elements regarding analysis, and also about finding common solutions and identifying issues. The Delegation wished to know whether any of those goals were of interest to the Delegation of the European Union and its Member States.

336. The Representative of the Ibero-Latin-American Federation of Performers (FILAI) stated that within WIPO, there were treaties that went to protect copyright throughout the world and that also went to create standards for protection of those rights. Those IP rights and protecting standards were important for the Committee. In 1996 when the Committee was discussing issues of updating the phonogram Treaty, at that time, no one could have imagined that the digital environment would create so many different issues. In Article 15, communication and radio broadcasting were covered but Article 23 established that consideration had to be given to effective measures within legislation of the Member States against any action which infringed those rights. Now there was an infringement on a continual basis and that was undermining author's rights and copyrights. The Member States had to be convinced that that was an important issue as that wealth was going to the media rather than to the content providers; and it was impossible to calculate the income that had been generated by publicity on those platforms like YouTube. The Representative stated that that was a terrible inequality that was impoverishing the artists and that did not respect the importance of creativity. Catalogs and contracts were very outdated and did not keep pace with the digital changes in the marketplace. Thus, the proposal by GRULAC, which dealt with the current reality, had to be developed.

337. The Representative of the International Federation of Actors (FIA) stated that Document SCCR/32/4 provided information on the inadequate benefits to audiovisual performers. The Representative stated that on-demand services were viable business models for the overwhelming majority of performers who still relied on revenue from analog used to complement their inadequate and irregular performance income. The Beijing Treaty gave performers exclusive rights to their performances, made available to the public for on-demand use. However, most audiovisual performers in the world were about to be dispossessed of that right through buyout contracts where all exclusive rights were bundled together and transferred to the producer in exchange of an often symbolic one-off payment in the initial engagement contract. Audiovisual performers deserved a fair share of revenues generated by the online exploitation of their work. In light of their often weak bargaining leverage, the Representative believed that supplementary mechanisms could guarantee that artists got properly compensated for as long as their work was streamed, downloaded or otherwise made available to the public. The Beijing Treaty in Article 12 expressly recognized that possibility. FIA supported implementing provisions of the Beijing Treaty in such a way that those rights became meaningful to audiovisual performers and a source of reasonable income for them. The Representative stated that it was a strong supporter of solutions that respected existing industry business models and the collective bargaining process while it promoted a fairer Internet for performers as well as the just recognition of their contribution to the creative industry.

338. The Representative of International Federation of Libraries Associations and Institutions (IFLA) stated that together with the Association of Librarians of Uruguay it welcomed the proposal from GRULAC. The Representative stated that libraries were part of the value chain of creative industries. Those issues being discussed were also important for the library world and libraries often had to deal with copyright laws, which tended negating the digital revolution. Libraries and archives should be able to benefit from the advantages of technology. Librarians supported literacy, the love of reading and also promoted authors whose books library users bought. The Representative wished to have greater transparency as to how to recognize and remunerate value through that value chain.

339. The Representative of the International Federation of the Phonographic Industry (IFPI) stated that the proposal failed to reflect the progress that had been made so far, including by the music industry, in ensuring that rights holders benefit from the new commercial opportunities offered by licensed digital services. The Representative stated that the proposal did not reflect the fact that consumers worldwide had unprecedented access to licensed music through digital services. The Representative stated that as someone who worked in the music industry, it did not recognize much of the data or the anecdotes about the alleged industry practices referred to in the proposal. The Representative stated that while it thanked GRULAC for raising those important issues, it believed that instead of rushing into normative proposals or discussions in the Committee, there needed to be more work in order to gain a fuller understanding of the issues involved, and to allow sharing of data and information between and among all stakeholders.

340. The Delegation of Vietnam thanked GRULAC for the proposal and stated that the creation and exploitation of copyrighted work and related rights, was a big issue in many countries, as were the changes raised by the new digital environment, and the differences raised between physical and digital file formats. The exceptions and limitations to copyright and related rights in the digital environment and how the three-step test applied in the digital environment, was an important issue to be raised.

341. The Representative of eIFL.net stated that it aligned itself with the statement by the Representative of IFLA. The Representative supported the idea of having a big picture practical analysis of how copyright was or was not serving both groups. The Representative was especially interested in the management of copyright, limitations and exceptions in the digital environment, enforcement mechanisms, digital exhaustion, licenses, territoriality and the interpretation of the three-step test.

342. The Representative of the International Federation of Musicians (FIM) stated that it welcomed the GRULAC proposal as was one of the most important initiatives in the SCCR in recent years. Indeed more and more performers around the world expressed their concern about the inadequacy of the level of protection in the digital environment and also about the unsustainability of business models built on that inadequate protection. It was true that attention between the level of formal statutory protection also gained attention. GRULAC moved to explore that with an open mind and, as the Delegation of Bahamas stated, it was submitted without judging any possible outcomes. Topics offered for discussion seemed to fit very well in to the scope of activities in the SCCR and the topic related to the business environment of digital services added useful elements from various stakeholders that ought to be better understood. The Representative stated that it fully supported the idea of putting the proposal of GRULAC on the Agenda of the SCCR.

343. The Representative of Knowledge Ecology International (KEI) stated that the GRULAC proposal was important. Too often WIPO focused on protecting publishers and broadcasters from distributing their own work but not enough attention was given to those who created the works. That proposal, as well as the artists' resale right, was important efforts to look at how the copyright system worked for creative parties. One suggestion would be to have a study looking at some of the data that was presented in the GRULAC proposal and some questions that had been raised in the Committee. The Representative stated that it may also be appropriate to propose best practices in terms of transparency of licensing and business practices.

344. The Representative of the Alliance of Latin American Intellectual Property Broadcasters (ARIP) stated that it welcomed GRULAC's proposal. The Representative stated that the international framework needed to be updated from the bottom-up. In 1961 when Rome was negotiated, there was no cable, YouTube or Netflix. None of those were even dreamt of and broadcasts were broadcast over the air. The Representative stated that it supported the statements made by the Delegations of South Africa and Spain that the proposal should be included as agenda item only after the Committee had exhausted debate on those that were already on the agenda.

345. The Chair stated that in order to have time for the second topic in the section of Other matters, he wished to summarize that topic and start the discussion on the proposal related to the resale right put forward by the Delegations of the Republic of Congo and Senegal.

346. The Delegation of Senegal stated that during discussions on the resale right, many countries had supported its proposal, whilst others, although attentive and very open, had not necessarily wanted to go on with it. The Delegation stated that to lead to fruitful exchanges, the Committee needed a program of work that would enable it to undertake national measures on resale right and also to proceed to comparative analysis of impact studies in order to identify the associated issues and determine the appropriate solutions that can be brought in, particularly the role of WIPO in the establishment of appropriate solutions. The Delegation wished to submit the proposal of a first presentation which could introduce that process of study and analysis and it proposed making that presentation at the following SCCR in November 2016. The Delegation stated that the professor who had worked on that subject would be able to introduce it at that point.

347. The Delegation of France stated that it had worked on a program on the detailed discussion of that resale right and that it supported the proposal for a presentation on that to be made at the following session of the SCCR.

348. The Delegation of the United States of America thanked the Delegations of Senegal and of the Republic of Congo for introducing that proposal and recalled the discussion from the previous session of the SCCR that any number of countries already had in place the resale royalty right. The Delegation stated that other countries did not and the United States of America was one of those. There was an international norm in that area and that was Article 14 of the Berne Convention. At the domestic level, the resale royalty right varied from country to country. The Delegation of the United States of America, with the support of other Delegations, had called for the Secretariat to conduct a study on the resale royalty right in terms of laws around the world, their similarities and differences, how much they were used and what had been their practical impact on both artists and art sales, sellers of works, museums and auction houses. The Delegation stated that that rich body of evidence would help inform the discussions of that Committee. The Delegation took note of the study of Professor Ricketson which was a very systematic and informed analysis of the legal framework.

349. The Delegation of Latvia, speaking on behalf of CEBS thanked the Delegations of Senegal and of the Republic of Congo for their proposal. As the resale right was recognized under the Berne Convention as optional, the Delegation believed that exchange of national experiences on that matter would be beneficial. The Delegation supported the inclusion of the topic in the future work of the SCCR and also supported the presentation that was mentioned by the Delegation of Senegal.

350. The Delegation of the Russian Federation thanked the Delegation of Senegal for the proposal and stated that it would be useful to consider it in the future work of the Committee. The Delegation stated that since there was an understanding, it was perhaps not necessary to immediately continue the discussion, and stated that it was appropriate to invite the expert to speak to the following session of the Committee.

351. The Delegation of Japan thanked the Delegations of Senegal and the Republic of Congo for their proposal and stated that like the United States of America, Japan was one of the countries that did not have the resale right for the artist and did not have a concrete plan to introduce that right. In that sense, the information regarding that resale right would be beneficial for its future consideration of that issue. The Delegation supported conducting a study where it could learn from countries that had introduced the resale right.

352. The Delegation of Bahamas, speaking on behalf of GRULAC thanked the Delegations of Senegal and of the Republic of Congo for their interesting proposal and for the proposal on the presentation at the following session of the SCCR. The Delegation stated that it was concerned about the inclusion of the item on the Agenda because it desired adequate time for discussions on broadcasting and exceptions and limitations, which were of great importance to GRULAC.

353. The Delegation of Nigeria, speaking on behalf of the African Group, stated that the African Group did not have a position on that particular topic of Agenda Item 9. The African Group welcomed opportunities to hold discussions and any activities of the Committee that would help with the understanding of that subject within the SCCR.

354. The Delegation of South Africa stated that it did not have that provision in its law.

355. The Delegation of Canada supported the proposal from the Delegation of the United States of America, for the study on artist resale rights. The Delegation stated that there was much it could learn from those countries that had a resale right in place.

356. The Delegation of Nigeria stated that it noted the proposal from the Delegations of Senegal and the Republic of the Republic of Congo and was giving it appropriate consideration.

357. The Representative of the International Council of Authors of Graphic, Plastic and Photographic Arts (CIAGP) stated that it represented more than 80 countries around the world that recognized resale rights, which it believed was a great benefit to authors based on three main reasons. The first was the fact that that right, which was inalienable, was the legal right, linking the artist to the product of their art. That was a fundamental right under Article 27 of the Declaration of Human Rights. The second reason why the resale right was so important for artists was with regard to the economic conditions of artists and their creations. If compared with other creators in the sector, plastic arts, there was no industry behind the individuals behind the creators. Those were individuals creating and they had to finance the production of their own works by themselves. The vast majority of the works created were financed by the artists without knowing whether the creation would have economic value, enabling them to live. And that is why artists were so economically fragile, particularly because in addition to having to personally finance their creation, the creation only brought in small economic flows. For instance, one reproduction in a book, seeing it on television and having it exhibited in an art center could lead to public display of rights, but that would not enable the artist to live on that creation. That is why the resale right was created in France over a hundred years ago. There needed to be some kind of way to enable artists and plastic arts to receive some percentage of the resale of their art. And that means that within the value chain of artists and artworks, those who created them had to be able to benefit and live from them. And the third and final reason was because the art market was now completely global. That was a major change with regard to the situation in 1948 when Article 14TER of the Berne Convention was created. The Article recognized the resale right as an optional one and imposed the condition of reciprocity in national legislation. And that has very negative consequences for artists. Artists from countries which did not recognize the resale right were doubly penalized, not only did they not receive that right when their art was resold in their own country but also if their art was resold in a foreign country, even a country where the resale right existed. That was a situation prejudicial to artists and it was absolutely incomprehensible.

358. The Representative of the International Confederation of Societies of Authors and Composers (CISAC) stated that it supported that proposal and expressed its sincere appreciation for the statements made by the Delegations of France, Latvia, Russian Federation, the United Kingdom, Nigeria, China and Group B. The resale right was a fundamental right for artists. It was made from resale of their works in offices or galleries. It represented only insignificant sums to the sellers and auction houses. For many visual artists that remuneration was a vital part of their income and for all of them, the resale right was much more than that. The resale right was the only instrument that allowed visual artists to maintain a connection with the unique artworks that they created. It forced the art market to be more transparent; and therefore it helped visual artists to know where their works were and who owned them. It addressed the imbalance that existed in the art market between the weak position of artists and the strong power of those who exploited their works, and commercially benefitted from that exploitation. The resale rights made sense. When a work of art increased in value it increased in value because of the artist. It was the artist's growing reputation and popularity that led to an increase in the value of their work. It was only fair that the artists themselves would be able to share in that. Therefore, it was only just and equitable that the artist, and his or her family, benefitted from the works. In music or film, when the work was successful, more copies were sold and downloaded or streamed or communicated to the public. Those resulted in more royalties to the creator. In visual art, that was not the case. In visual art, work increased in value because it was the only copy available of that work. The resale right was first introduced in 1920. Since then it had spread around the world and today it was available in 80 countries. The intervention by the United States of America mentioned that some countries did not have the right, but that group is becoming smaller and smaller. It was recognized under international copyright law, but in an insufficient manner. It was included in Article 14TER of the Berne Convention. However it was not compulsory and it was subject to the requirement of reciprocity to the extent permitted by the country where that protection was claimed. That particular nature of the right in the Berne Convention represented a major obstacle for visual artists worldwide. Particularly it meant that artists did not get the right even in the country that recognized it if the right did not exist in the artist's own country. The situation was therefore that the availability of the right and the level of protection varied from one country to another and depended upon the nationality of the offer or their place of residence. Some countries that represented major art markets had not incorporated the right and impeded remuneration for a considerable number of artworks. Increased implementation of the right had been proven to be an important tool to foster creativity in visual arts but important progress had to be made in order to achieve effective harmonization of the resale right and secure its availability around the world. The Committee had already agreed to discuss the right. The Representative invited the comments within analysis of the shortfalls of the existing international framework on the right and addressed any needed updates to ensure that all creators wherever they were benefitted from the same protection and received a share when their works were sold by auction houses or galleries. The Representative stated that it listened carefully to the suggestion of the delegations. The recent comprehensive study on the right was published by a renowned copyright expert. The study clarified that the resale right was fundamental for artists and provided a framework for future agreement to update that framework. The study was presented at WIPO during the 13th session of the SCCR at a side event. Since then it raised the interest and attention of copyright specialists all over the world. It was also published in a prestigious legal journal. The Representative stated that the study could start substantive discussions within that Committee.

359. The Representative of the International Federation of Libraries Associations and Institutions (IFLA) thanked the Delegations of Senegal and the Republic of Congo for their proposal and requested that the inclusion of it as an agenda item should not negatively reflect on other Agenda Items.

360. The Delegation of Brazil aligned itself with the statement delivered by the Delegation of Bahamas on behalf of GRULAC and thanked the Delegations of the Republic of Congo and Senegal for presenting the proposal on resale right. The Delegation stated that it had a resale right in its legislation and supported the discussion of that topic. The Delegation requested clarification from the Chair on how the topics would be included in the following sessions.

361. The Delegation of Gabon supported the proposal by the Delegations of the Republic of Congo and Senegal and its inclusion in the Agenda of future work by the SCCR. The Delegation stated that its law dated back to 1997 and stated that it wished to know more as to how that legislation was implemented and how it impacted creators.

362. The Chair requested for suggestions on how to include those topics as part of the future work of the Committee.

363. The Delegation of Brazil stated that as most comments were related to requests for more information for clarity, perhaps an informal consultation process in order to draft recommendations for the General Assembly could solve that issue of the proposals onboard and allow Member States the necessary space to discuss, clarify ideas, goals and find a solution before the following General Assembly.

364. The Delegation of the Russian Federation stated that perhaps at the following SCCR session, the Committee considered the experts' evaluation without actually discussing the substance and without taking too much time. And if the expert's views were considered desirable, the Committee could call for an unofficial meeting, perhaps within the time frame of the session itself.

365. The Delegation of the European Union and its Member States stated that on the matter of the artist's resale rights, the European Union would not oppose the idea put forward by the Delegation of Senegal for a presentation by an expert.

366. The Delegation of the United States of America stated that there was already a very full agenda before the Committee and the two topics under consideration already covered to a varying extent issues included in the GRULAC proposal. In that regard, the Committee had already taken steps to confront that important set of issues. The Delegation stated that it was important and timely to be able to discuss a wide range of substantive copyright issues in that Committee including new topics related to copyright in the digital environment. With respect to the suggestion from GRULAC and others that the proposal be added to the 33rd Session of the SCCR, the Delegation would consult further in the coming months on that idea and indeed would also consider other potential topics for future substantive discussions on copyright in the digital agenda. With respect to the proposed presentation by Professor Ricketson, the Delegation stated that it welcomed that and thought that there should be time accorded to that without prejudice to the other important topics on the Agenda for the following session. The Delegation stated that the international legal framework was only one element of the empirical research that was needed to have a truly rich and substantive discussion on that topic.

367. The Delegation of Spain suggested that the Committee determine what it was going to do with those two proposals and decide whether it would need additional sessions. The Delegation stated that the Committee needed to know whether it was going to need regional meetings to deal with exceptions and limitations or to fix a date for hosting a diplomatic conference. If that could not be resolved at that session of the Committee, those issues should be transferred to the General Assembly so that the General Assembly could lend a guide.

368. The Delegation of Brazil stated that the GRULAC proposal did not encumber the other delegations with much additional work. The Delegation understood that the Committee could use an increased level of dialogue so as to clarify positions to sort out some issues that had been raised by the Delegation of Spain. If the Committee could not reach agreement at that session, the discussion would be taken directly to the General Assembly. For that reason, the Delegation had requested informal consultations so that the Committee could better understand each other and arrive at the General Assembly with clearer perspectives.

369. The Delegation of Argentina supported the statements made by the Delegations of Brazil and Spain. The Delegation stated that the Committee could come up with a timetable and a program on those issues before the Assembly, but that it would have been useful to have a special session on broadcasting in light of the progress that had been made.

370. The Delegation of the United Kingdom stated that the Committee should avoid the issue of having the General Assembly resolve issues that it could not. The Delegation stated that if there was no clear way forward, the items should be kept on the Agenda until the following session.

371. The Delegation of South Africa stated that considering time, that was not a good opportunity to discuss; perhaps special sessions, intersessional meetings in order to streamline Member State thoughts could be useful.

372. The Delegation of the European Union and its Member States stated that as the discussions had now moved on to the broader question of future work, the European Union stated that it would support a treaty on broadcasting for the 21st Century. The Delegation thus supported the calling for a diplomatic conference at the upcoming General Assembly, provided that a consensus could be found on a basic proposal including its scope, objectives and rights. The Delegation stated that the established sessions of the SCCR Committee provided the necessary time for further reflection and dialogue with all interested stakeholders and delegations in order to make progress towards a common understanding.

373. The Delegation of Nigeria, speaking on behalf of the African Group stated that the Committee could either keep the agenda as it was and not enable the Committee to discuss in-depth and exhaustively on the different subjects or the Committee could agree to the proposals on intersessionals to facilitate discussion on broadcast organizations and on exceptions and limitations. As far as there was consensus about a diplomatic conference in 2017, or at a time to be agreed by Member States for a diplomatic conference on broadcasting organizations, the African Group would welcome such a development, but it encouraged Member States to show flexibility and readiness to engage whether in intersessional on broadcasting organizations and for exceptions and limitations, which was very important for the African Group.

374. The Delegation of the Bahamas stated that it was in agreement to hold an Intersessional meeting on broadcasting, and now in light of the European Union's very ambitious plan, that would be in order. The Delegation supported regional seminars, and meetings in relation to the limitations and exceptions to forward the work of that Committee.

375. The Delegation of Nigeria, speaking on behalf of the African Group stated that it would not wish to support any proposals or changes in the working program on the Agenda, that would negatively impact the established work times or times that the Committee would allocate to broadcasting organizations and exceptions and limitations in any efforts to accommodate the new proposal which it welcomed.

376. The Delegation of Thailand, speaking on behalf of the Asia Pacific Group, supported holding the intersessional session for broadcasting organizations. The Delegation wished to emphasize that striking a balance between rights holders public interest was significant for access to knowledge and information. The Delegation stated that a regional workshop for limitations and exceptions would be a good forum to share experience and views.

377. The Delegation of Latvia, speaking on behalf of the Central European and Baltic States (CEBS) Group, stated that if any additional time had to be allocated outside the work of that Committee the priority had to be given to finalizing the broadcasting treaty. The Delegation stated that it valued the possible international protection of broadcasting organization. The treaty had been in discussion for 18 years and the Delegation believed that the aim of the treaty had to be defined in order to clarify where the shared objectives. That would enable Member States to have a realistic vision of achievable results in the framework of the Committee.

378. The Delegation of Uzbekistan declared that that was a very important issue in its legislation, and was worth considering in unofficial meetings, as long as that did not negatively impact on other issues.

379. The Delegation of China stated that to advance the discussions, it supported holding an intersessional meeting and regional seminars. The Delegation also supported holding a diplomatic conference on the issue of broadcasting.

380. The Delegation of the European Union and its Member States stated that the General Assembly would be a good opportunity for taking stock of the conversations about the future work plan. The Committee was very far from reaching consensus on a basic proposal for a broadcaster's treaty draft. The Delegation believed that the current scheduling of SCCR meetings and the General Assembly provided the right time frame for making progress, if possible, in the direction towards a diplomatic conference.

381. The Delegation of Greece, speaking on behalf of Group B, did not see the kind of progress needed to agree on a special intersessional on broadcasting that would be a productive use of time or resources at that stage. The Delegation stated that the treaty language did not have the sufficient maturity as it stood now. The Delegation would be open to convene an intersessional on the broadcasting at some point in the future if there was sufficient progress of the work.

382. The Delegation of Brazil wished that the dialogue continued. The Delegation observed that there was no strong opposition against the proposal from the Delegations of Senegal and the Republic of Congo and neither there was there any clear position against the discussion on copyright in a digital environment. The Delegation stated that on those two topics, there could be a dialogue to bridge the gaps before the following General Assembly. In terms of the effective use of time and of the impact on other topics, it suggested to have a conversation about the efficiency of the discussions taking place within the SCCR. During the first part of the meeting there were moments of very long silences without much participation of members and also with long coffee breaks. In order to have more time for discussion of those new issues it was possible to discuss about how to make those events more efficient and how to take full advantage of the experts that come from capital during SCCR meetings.

383. The Delegation of the United Kingdom stated that the Committee was discussing Agenda Item 8, Other matters, and that meant matters that were not broadcasting or exceptions and limitations. The Delegate said that, taking into account that Agenda Items 5 and 6 were closed, it was bit puzzled why the Committee was having those discussions at that time. Item 7 was open and the Chair was awaiting response from Group B.

384. The Delegation of Spain stated that it did not see why the Committee could not have that discussion on how to direct its efforts in the future. Regarding the General Assembly, as the Committee had difficulties coming to an agreement, it was clear that it could not have a shared consensus on the Agenda for the General Assembly. Those issues linked to the future work of the Committee could be debated by the General Assembly and that would help the Committee make some future progress. The Delegation stated that Spain did not have any problem with having a diplomatic conference in 2017 on a broadcasting treaty, but that the Committee needed consensus and agreement on essential aspects such as the object and the scope of protection. Without those elements being resolved, it was difficult to foresee that.

385. The Chair stated that the Committee was in agreement about convening a diplomatic conference once the Committee had reached agreement on the scope of protection. The Chair stated that there would be report of the SCCR to the General Assembly, and therefore the General Assembly had to be informed of what happened during the SCCR. The Chair wanted to foster some sort of coordination, in order to have ideas on how to solve the issue of new topics and come to a common understanding on how to proceed.

386. The Chair stated that the text for Agenda Item 9 had been sent to the Regional Coordinators and also that the Chair's draft summary had been prepared, and had been distributed to the delegations. The Chair gave the floor to the Secretariat to read the summary.

387. The Secretariat stated: "Standing Committee on Copyright and Related Rights, Thirty-Second Session, Geneva, May 9 to 13, 2016. Draft summary by the Chair. Agenda Item 1, opening of the session. The Thirty-Second Session of the Standing Committee on Copyright and Related Rights, SCCR or Committee, was opened by Mr. Francis Gurry, Director General, who welcomed the participants. Miss Michele Woods, WIPO, acted as secretary. Agenda Item 2: Adoption of the Agenda of the Thirty-First Session. The Committee adopted the Draft Agenda, document SCCR/32/1 prov, with the addition of an ad hoc nonpresidential agenda item on the contribution of the SCCR to the implementation of the respective Development Agenda recommendations. That new item was added as Agenda Item 8 before other matters which became Agenda Item 9, and the closing of the session, which became Agenda Item 10. The Secretariat continued: Agenda Item 3: Accreditation of new Non-Governmental Organizations. The Committee approved the accreditation, as an SCCR observer, of the nongovernmental organization referred to in the Annex to document SCCR 32/2, namely the Canadian Museum of History, CMH. Agenda Item 4: Adoption of the Draft Report of the Thirty-First Session. The committee approved the Draft Report of its Thirty-First Session, document SCCR 31/6, as proposed. Delegations and observers were invited to send any comments on their statements to the Secretariat at copyright.mail @ WIPO.int by June 15, 2016. Agenda Item 5: Protection of Broadcasting Organizations. The documents related to that Agenda Item were SCCR 27/2 Rev, SCCR 27/6, SCCR 35, SCCR 31/3, and SCCR 32/3, as well as informal charts and nonpapers prepared by the Chair. The Committee welcomed and considered document SCCR 32/3 prepared by the Chair, titled Revised Consolidated Text on Definitions, Object of Protection and Rights to be Granted. Some delegations requested further clarification on the document and others suggested amendments to the text. The Committee requested that the Chair consider the textual proposals and clarifications made during the session with respect to definitions and object of protection with a view to integrating them in document SCCR 32/3. The Committee decided to continue discussions on a revised version of document SCCR 32/3 that would be prepared by the Chair for the following meeting of the Committee. That item will be maintained on the Agenda of the Thirty-Third Session of the SCCR. Agenda Item 6: Limitations and Exceptions for Libraries and Archives. The documents related to that Agenda Item were SCCR26/3, SCCR26/8, SCCR 29/3, SCCR 30/2 and SCCR 30/3, as well as an informal chart prepared by the Chair. Discussions were based on the chart introduced by the Chair on, "exceptions and limitations for libraries and archives." That chart was designed to serve as a useful tool to provide structure to discuss the substance of each topic, drawing on the many resources before the Committee. That will allow the Committee to have an evidence-based discussion respecting differing views and understanding that the goal was not to guide the discussion toward any particular or undesired outcome, but instead, to lead to a better understanding of the topics and of the actual relevance to the discussions of the intended outcome. The Chair highlighted some of the elements that were drawn from the views expressed in comments and submissions of members of the Committee on the topics of preservation, the right of reproduction and safeguarding copies, legal deposit and library lending during previous SCCR sessions. Members of the Committee also exchanged views regarding several of the topics listed on the Chair's chart, namely, parallel importations, cross-border uses, and orphan works retracted and withdrawn works and works out of commerce. In addition, concerns that could arise when considering limitations and exceptions related to those topics and possible measures to address such concerns were expressed. Suggestions were also made for alternative approaches. That item will be maintained on the agenda of the Thirty-Third Session of the SCCR. The Secretariat continued: Agenda Item 7: Limitations and Exceptions for Educational and Research Institutions and for Persons with other Disabilities. The documents related to that Agenda Item were SCCR 26/4 prov, SCCR 27/8, and SCCR 32/4. The Committee heard the presentation by Professor Daniel Seng on the draft study on copyright limitations and exceptions for educational activities contained in document SCCR 32/4. The Committee welcomed the presentation and delegations and observers participated in a question and answer session with Professor Seng. Professor Seng announced that he

intended to complete the study for all WIPO Member States for SCCR 33, and requested assistance from Committee members to obtain additional information about national laws. The Committee requested the updating of the information contained in the presentation of Professor Seng for the following session of the Committee, and many members agreed to send information on their national laws to be used for the completion of the study. Delegations were invited to send amendments and clarifications to the Secretariat, [copyright.mail @ WIPO.int](mailto:copyright.mail@WIPO.int) by June 15, 2016. A scoping study on limitations and exceptions for persons with disabilities other than print disabilities would be presented at SCCR 33. A survey on national laws on that subject would be prepared for SCCR 34. The Secretariat would request information from Member States in order to provide data for the survey. The Committee held discussions on the topic of limitations and exceptions for educational, teaching and research institutions and their relationship with the fundamental roles of education in society with reference to the existing documents including the draft study prepared by Professor Seng. Some members requested the preparation, by the Chair, of a chart like the limitations and exceptions chart for libraries and archives to be used as a tool to focus discussions on that topic. The Chair agreed to prepare such a chart, using the categories identified in the draft study prepared by Professor Seng as a starting point. That would allow the Committee to have an evidence-based discussion respecting differing views and understanding that the goal was not to guide the discussion toward any particular or undesired outcome, but instead to lead to a better understanding of the topics and of their actual relevance to the discussions and the intended outcome. That item would be maintained on the agenda of the Thirty-Third Session of the SCCR.

388. The Delegation of Greece, speaking on behalf of Group B, stated that it did not remember the Committee having discussed in plenary or having taken a decision on a survey on national laws on limitations and exceptions regarding other disabilities to be prepared for SCCR 34.

389. The Chair requested that the Secretariat clarify that point.

390. The Secretariat stated that with respect to the scoping study on limitations and exceptions, the Secretariat was asked for further clarification regarding that work, as some Member States were confused as to what was included in the proposal. The Secretariat indicated that the scoping study would provide a survey of the legal issues that national laws addressed at the intersection of copyright and disabilities, which would be ready and presented at the following session of the SCCR. The Secretariat noted that the team working on that study, had said that a survey could naturally be a second study leading on from the scoping study, and that one way to obtain data for that, would be to request Member States to provide that information. The Secretariat clarified that that process would be completely in the hand of Member States and it was essentially for Member States to validate or not, taking that following step.

391. The Delegation of Nigeria, speaking on behalf of the African Group, stated that it had made a suggestion for Paragraph 20, the second sentence, to include language referring to elements contained in document SCCR/26/4/prov. The idea behind that was that the Chair could undertake the preparation of a chart that would be based on the working document SCCR/26/4. The Delegation believed that the work and the provisions contained in that document should be reflected in the chart to help to structure the discussion of the Committee. The Committee should not lose sight of all the discussions that took place during the previous three years. Using one document and to focus solely on the categories identified in the study. The Delegation requested feedback from regional groups and stated that hopefully Member States could support the inclusion of that in the Chair's summary.

392. The Delegation of Brazil, in response to the request from the African Group, seconded the proposal and stated that it had actually requested that the basis be document, SCCR/26/4/prov. The Delegation was very glad to see that the scoping study would be part of a sequence of works. The Delegation supported the text in Paragraph 18.

393. The Delegation of Bahamas, speaking on behalf of GRULAC, did not have objections to add words related to the elements of SCCR 26/4/prov into Paragraph 20, as suggested by the African Group.

394. The Delegation of Greece, speaking on behalf of Group B, stated that with regard to what was discussed, and what was explained by the Secretariat, it had some wording to propose. The Secretariat had described the process by which a survey on national laws would be prepared, so as to reflect the discussion held in the plenary. In terms of Paragraph 20, and the request to insert elements contained in document SCCR/26/4/prov, the Delegation preferred Paragraph 20 to remain as it was.

395. The Delegation of Nigeria was curious to know why there was no support to include a basis document that the Committee had used for discussing exceptions and limitations for educational and research institutions for a number of years, and on the other hand there was willingness to support an ongoing study that was incomplete at that point, and to accept the categories contained in that study. The Delegation requested clarity from Group B on the reasons why the Committee could not support the Chair's inclusion of a document that the Committee had engaged with for a number of years, but could support elements identified in an ongoing study that were not yet complete.

396. The Delegation of South Africa aligned itself with the statement made by the Delegation of Nigeria. The Delegation stated that the Committee should not lose sight of the fact that SCCR/26/4/prov remained the basis document for discussion. The Delegation supported the inclusion and reference to the document.

397. The Delegation of Egypt stated that it would insist on making reference to the basic document that had taken up much time in the Committee. The study, as much as it would be good, substantive and scientifically done, was still under consideration, and couldn't be used as the only basis for future work on that agenda item on that specific issue. The Delegation stated that in the absence of willingness to provide clarification, it would suggest that the reference to the document, be kept.

398. The Delegation of Greece stated that the discussion was on a paragraph requesting the Chair to provide a chart for that. The Delegation was not sure that there was an agreement in the plenary at that time to have a chart. Nevertheless, it did not object to Paragraph 20 as it stood. The Delegation stated that Group B gave its consent but did not give it to an additional item element.

399. The Delegation of Nigeria, speaking on behalf of the African Group, stated that it still did not have an understanding based on the response that had been provided by Group B on the reasons for the graciousness that had been shown towards the study, could not extend to a document that the Committee had worked with for more than three years.

400. The Delegation of the United States of America believed that the eight categories adopted appeared to be a coherent framework for understanding that topic. The understanding was not that in adopting any chart, it would be exclusive of any other content that that Committee had undertaken in the past. On Paragraph 20, the Delegation made an intervention with respect to the United States of America objectives and principles approach document and it would appreciate having a reference to document "Objectives and Principles for Exceptions and Limitations for Education, Teaching and Research Institution", document SCCR/27/8.

401. The Delegation of South Africa stated that it was in favor of the inclusion of document SCCR/26/4.

402. The Delegation of the European Union and its Member States stated that in Paragraph 20, the Chair had taken the language of the chapeau of the charts for libraries and archives and reproduced it. The Delegation stated that it could be helpful to clearly indicate that the language would be included in the chapeau of the charter itself, to avoid any misunderstanding, and to clearly state that would be framed by the principles. The Delegation stated that on the chart of that topic, if the item of the agenda had both exceptions for Education, Research Institutions and Persons with other Disabilities, was taken out, it would be clearer to indicate what topic they were referring to in a new paragraph.

403. The Delegation of Brazil reminded the Committee that during the discussions, even Professor Seng had mentioned that he had started with 5 classifications, and then he had to expand them to 8 and that if he had one additional week, he would have come up with more definitions. The Delegation stated that the Chair could use that, and further seconded the proposal by the African Group and GRULAC.

404. The Delegation of the United Kingdom stated that in relation to the chapeau, it would like support the comment made by the Delegation of the European Union and its Member States. The Delegation stated that it had kindly asked the Chair to clarify that point during the discussions under that item. On the issue of the proposal made by the African Group, the Delegation would not object to any reference in that part, under the condition that that actually reflected what was discussed under Agenda item 7. The Delegation stated that based on its recollection of discussions that was in reference to the study by Professor Seng.

405. The Chair stated that it had finished receiving Member State contributions on Item 7 and would move on to Items 8, 9, 10.

406. The Secretariat stated: "Agenda Item 8: Contribution of the SCCR to the Implementation of the Respective Development Agenda Recommendations. Several Delegations made statements regarding that Agenda Item, which was added to the Agenda on an ad hoc non-presidential basis. The Chair stated all statements including those submitted to the Secretariat in writing by May 20th, 2016, in relation to the contribution of the SCCR to the Implementation of the Respective Development Agenda Recommendations, would be recorded in the report of the Thirty-Second Session of the SCCR and would be transmitted to the 2016 WIPO General Assembly in the report of the SCCR, in line with the decision taken by the WIPO General Assembly related to the Development Agenda Coordination Mechanism."

407. The Delegation of Greece stated that in Paragraph 23, Agenda Item 8, it would like the sentence to stop after the words 2016 WIPO General Assembly in the report of the SCCR to that body.

408. The Delegation of Brazil stated that it needed clarification on the reason behind the request from Greece.

409. The Delegation of Nigeria asked the Delegation of Greece the same question that had been posed by the Delegation of Brazil.

410. The Delegation of Greece stated that deleting the last part of the sentence reflected the discussion held in the plenary. To its recollection, the Chair had stated that the report of the 32nd Session would be transmitted to the 2016 WIPO General Assembly, it did not remember any reference to the coordination mechanism.

411. The Delegation of Egypt stated that the Chair had mentioned that the written submitted statements would be included in the report, and then it corrected itself and stated that the statements expressed in the room during the discussion, would also be included, as is in accordance with the coordination mechanism as mandated by the WIPO General Assembly.

412. The Delegation of the United Kingdom requested that the Chair kindly reference the minutes of the discussion.

413. The Chair requested that the Secretariat read the Chair's Summary for Agenda Item 9.

414. The Secretariat stated: "Agenda Item 9: Other Matters. Documents related to that Agenda Item were SCCR/31/4 and SCCR/31/5. The Committee discussed the proposal for analysis of copyright related to the digital environment, document SCCR/31/4 submitted by the group of Latin American and Caribbean countries, GRULAC. Members of the Committee and observers acknowledged the importance of the subject and offered comments on and reactions to the proposal. Many members welcomed future consideration of the topics raised in the proposal and made various suggestions as to how that could proceed. A proposal was made to add the topic to the SCCR Agenda as a standing agenda item. The Committee discussed the proposal from The Delegations of Senegal and the Republic of Congo to include the resale right in the agenda future work of the Standing Committee on Copyright and Related Rights of the World Intellectual Property Organization, document SCCR/31/5. Members of the Committee and observers acknowledged the importance of the subject and offered comments on and reactions to the proposal. Many members welcomed future consideration of the proposal and made various suggestions as to how that could proceed. A proposal made to have a presentation at SCCR33 of an external study prepared by Professor Ricketson was supported by some members. The Secretariat would organize that presentation for SCCR 33 or SCCR 34. Some members suggested the commissioning of an SCCR study on the topic. Those topics could be maintained on the agenda of the Thirty-Third Session of the SCCR. The Committee made and discussed various proposals for accommodating all proposed agenda items and considering future topics for the Committee's work. Further consultations on the topics would be arranged. Paragraph 29, some members expressed support for the Chair's proposal to hold an extraordinary session of the Committee on pro protection for broadcasting organizations. Some Regional Groups supported the proposal. Others were of the view that an extraordinary session on protecting broadcasting organizations should follow the agreement on the scope, objectives, objective proposal of the treaty. Some considered it unnecessary or premature to hold sessions in addition to the ordinary sessions of the Committee. Some Regional Groups expressed support for the Chair's proposal to hold regional meetings on the subject of limitations and exceptions for Libraries and Archives. One of the groups expressed a preference for the regional meetings to include the subject of Limitations and Exceptions for Educational and Research Institutions and Persons with other Disabilities."

415. The Delegation of Bahamas, speaking on behalf of GRULAC, stated that it wished to make a comment in relation to Paragraph 26, about organizing a presentation for SCCR 33 or SCCR 34. The Delegation noted that during the plenary, while it thanked the Delegations of Senegal and the Republic of Congo for their proposal, it expressed concern that the inclusion of another agenda item on the SCCR may have a negative impact on the timeframe for adequate time for discussions on broadcasting and exceptions and limitations. The Delegation stated that it did not remember an agreement that that would happen and that even if it was not opposed, but needed to understand.

416. The Delegation of Latvia suggested merging the two first sentences of Paragraph 29.

417. The Delegation of Greece stated that it required clarification in terms of Paragraph 28. It stated that it was not sure the way it was drafted, reflected the reality.

418. The Delegation of the European Union and its Member States stated that on Paragraph 25, there should be an insertion of the very successful WIPO conference that was held on the global digital market. Many interventions did make reference to that particular event. At the end of the sentence, some of the words could be removed, to make it more general, and cover the proposal by GRULAC and issues raised on the global conference on the global digital market. On Paragraph 29, the Delegation stated that the fourth and fifth sentence could be merged. The Delegation stated that it could be better to separate the last section of Paragraph 29 and give it a separate numbering, Paragraph 30, where the paragraph would start with some regional groups expressed support for the Chair's proposal to hold regional meetings on the subject of limitations and exceptions.

419. The Delegation of Brazil stated that it would like to see the intervention by the International Federation of Musicians (FIM) reflected in the summary of the Chair. The Delegation stated that Paragraph 25 should depict the strong support and discussion of copyright in a digital environment. The Delegation requested for clarification on Paragraph 26.

420. The Delegation of the United Kingdom did not understand in Paragraph 28, the first sentence, or at least the first part of the sentence, as the Committee had discussed various proposals for accommodating all proposed agenda items. In Paragraph 30 the Delegation requested that the Chair clarify if there was some kind of conclusion.

421. The Chair requested that the Secretariat read the following remaining part of the Summary by the Chair.

422. The Secretariat read "The Committee took note of the contents of that summary by the Chair. The Chair clarified that that summary reflected the Chair's views on the results of the Thirty-Second session of the SCCR and in consequence was not subject to approval by the Committee. Agenda Item 10: Closing of the session. The following session of the Committee will take place from November 14 to 18, 2016."

423. The Chair thanked the delegations for all their contributions that were helpful in reflecting on what had been said. The paragraphs read by the Secretariat, were the Chair's summary and reflected the Chair's views and the results of that session. The Chair stated that it took note of all the recommendations and would have them reflected in the Chair's final summary. The Chair clarified that the summary of the Chair's views and the results of the Thirty-Second Session of the SCCR were not subject to approval by the Committee. Regarding Agenda Item 7, the Chair stated that there were two issues related to the survey. The first one was effectively communicated in Secretariat's report. Regarding the preparation for one specific deadline or occasion, that was usually a matter of announcement by the Secretariat and its inclusion in the agenda was always a matter for coordination of regional coordinators. The Secretariat had effectively described the process and mechanisms to which with Member States participation and information, it could make a survey for potential future work. As far as the concern if the mentioning of a specific session of the SCCR implied a change in the agenda, the Chair stated that that was still undecided because it had recognized that there would be consultations on how to tackle the future work on the agenda. In terms of the suggestions on Paragraph 20, there was a discussion on whether the chart was considered officially as a good tool to use for further discussions. The Chair stated that it would take the criteria and the way the information was considered using the last intervention from the Delegation of the United States of America. The Chair accepted the suggestion to clarify the last sentence, which would lead to a better understanding of the topics. On the topic of Limitations and Exceptions for Educational and Research Institutions and the need to clarify the use of the language in the chapeau of the previous chart, the last sentence was there to explain the framework in which the Committee will undertake that discussion. Regarding Agenda Item 8, there was a question on whether the Chair had mentioned that submissions in writing were not enough. The Chair stated that that comment was right, and that was why it was changed to say that all statements, including those submitted to the Secretariat in writing would be reflected. Regarding the suggestion to remove the last part of the last sentence in line with the decision taken by the WIPO General Assembly related to the Development Agenda Coordination Mechanism, the Chair stated that as it was in the records it would be kept. On Agenda Item 9, other matters, and the suggestion that some Delegations highlighted the importance and relevance of the digital environment conference, the Chair stated that since that was recorded in the records of that session, it would be included. Regarding the mention that the Secretariat would organize the presentation for SCCR33 or SCCR34, the Chair stated that it would be necessary to take some further steps. Regarding Paragraph 28 on accommodating all proposed agenda items, the Chair stated that it would try to be more precise. Regarding the clarification required to the term topics at the end of that paragraph, further consultations on those topics would be arranged. The Chair stated that future topics were those topics that Member States decided to consider as future topics. Regarding the suggestion to merge the first and the second sentences of Paragraph 29, the Chair stated that that reflected properly the discussion and would be merged. Regarding the separation, for reasons of clarity, on the treatment to bring to the topic of broadcasting and the topic of Exceptions and Limitations for Libraries and Archives, the Chair stated that it did not see any problems in that separation. The Chair stated that it would take note of what the Member States had suggested, in the way that it had just described, and reminded the Committee that the summary reflected the Chair's views on those matters.

424. The Delegation of Brazil stated that in terms of the proposal from GRULAC, it thought that mentions to the conference on digital content would not be included. As the document was presented under the responsibility of the Chair, the Delegation stated that it would follow the Chair's lead. The Delegation stated it was expecting a different kind of approach regarding the discussion of other matters.

425. The Delegation of Nigeria, speaking on behalf of the African Group, stated that it may not have completely grasped the Chair's explanation of Paragraph 20 in Agenda Item 7. The Delegation requested that the Chair explained again or give us some information.

426. The Delegation of the European Union and its Member States thanked the Chair for its hard work with the suggestions it would insert in the document.

427. The Chair stated that in terms of the clarification in Paragraph 20, he would follow the approach explained by the Delegation of the United States of America, which stated that it was not a matter of how the Committee would work, but just as a way to use the presentation by Professor Seng as a tool to prepare without impacting the categories expressed in previous documents. Regarding the suggestion to mention the digital conference, the Chair stated that it was objectively reflected in the record that it was mentioned in the context of the discussion of that Agenda item.

428. The Delegation of Nigeria, speaking on behalf of the African Group stated that taking account the summary was under the Chair's authority, it had to also be factual as well as reflective of the concerns that had been raised by Member States. The Delegation stated that it was baffled that the summary would have details about including reference to a document that the Committee had worked on for a number of years and was essential to the discussion.

AGENDA ITEM 10: CLOSING OF THE SESSION

429. The Delegation of Bahamas, speaking on behalf of GRULAC, thanked the Chair, the Vice-Chair, the Secretariat and the wonderful interpreters for their hard work. The Delegation stated that there were some lively discussions in the Committee, and that even though the Committee didn't come to agreements, it looked forward to more discussions. The Delegation reiterated its support for the proposals to convene an extraordinary session and hold regional seminars in relation to the extraordinary session on broadcasting and regional issues and exceptions.

430. The Delegation of Latvia, speaking on behalf of CEBS Group, thanked the Chair and Vice-Chair for their skillful guidance. The Delegation stated that it valued the possible treaty on broadcast organization protection that took into account the digital developments and the current needs.

431. The Delegation of China thanked the Chair, the Vice-Chair, and the Secretariat for their hard work. The Delegation stated that everyone played an active part in that meeting, despite the differing points of view on the exceptions and limitations for education and research institutions.

432. The Delegation of Thailand, speaking on behalf of the Asia Pacific Group thanked the Chair, the Vice-Chair, the Secretariat and the interpreters for their hard work. The Delegation stated that the issues of limitations and exceptions and the protection of the broadcasting treaty were important to the Delegation.

433. The Delegation of Nigeria, speaking on behalf of the African Group, thanked the Chair and the Vice-Chair for their skillful, tireless effort and commitment to moving the work of the SCCR forward. The Delegation thanked the Secretariat and the interpreters for their hard work, as well as the NGOs for their contribution. The Delegation hoped that the time until the following meeting of the SCCR would be used by Member States to deeply reflect on the nature of the Committee's commitment to universally agreed goals.

434. The Delegation of Kazakhstan, speaking on behalf of Group of Central Asian, Caucasus and Eastern European Countries (CACEEC) thanked the Chair and the Secretariat for organizing meeting, as well as the interpreters for their work.

435. The Delegation of Greece thanked the Chair, the Vice-Chair, the Secretariat and the interpreters for their hard work

436. The Chair thanked the Delegations for their commitment, hard work, ideas and for defending strongly, passionately and firmly their positions. He thanked the Secretariat, the Vice-Chair and the interpreters.

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

438. The Chair closed the Thirty-Second Session of the SCCR.

[Annex follows]

ANNEXE/ANNEX

LISTE DES PARTICIPANTS/LISTOF PARTICIPANTS

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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.

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