

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

**Twenty-fourth Session**  
**Geneva, July 16 to 25, 2012**

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 twenty-fourth session in Geneva from July 16 to 25, 2012.
2. The following Member States of the World Intellectual Property Organization (WIPO) and/or members of the Berne Union for the Protection of Literary and Artistic Works were represented in the meeting: Algeria, Argentina, Australia, Austria, Bangladesh, Barbados, Belgium, Brazil, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Georgia, Germany, Greece, Guinea, Haiti, Hungary, India, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Japan, Jordan, Kenya, Latvia, Lithuania, Luxembourg, Madagascar, Malaysia, Mexico, Montenegro, Myanmar, Nepal, New Zealand, Niger, Nigeria, Norway, Panama, Paraguay, Peru, Poland, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Senegal, Serbia, Singapore, Slovenia, South Africa, Spain, Sudan, Sweden, Switzerland, Thailand, Trinidad And Tobago, Tunisia, Turkey, Uganda, Ukraine, United Kingdom, United States of America, Uruguay, Uzbekistan, Venezuela (Bolivarian Republic of), Viet Nam, Zambia and Zimbabwe (87).
3. The European Union (EU) participated in the meeting in a member capacity.
4. The following intergovernmental organizations took part in the meeting in an observer capacity: African Union (AU), *Organisation Internationale de la Francophonie* (OIF), United Nations (UN), United Nations Educational, Scientific and Cultural Organization (UNESCO), International Labour Organization (ILO), South Centre, World Trade Organization (WTO) (7).
5. The following non-governmental organizations took part in the meeting in an observer capacity: *Agence pour la protection des programmes* (APP), American Council of the Blind (ACB), Asia-Pacific Broadcasting Union (ABU), *Asociación Internacional de Radiodifusión* (AIR), *Associação Brasileira de Emissoras de Rádio e Televisão* (ABERT), *Association IQSensato* (IQSensato), Association of Commercial Television in Europe (ACT), Brazilian Association of Intellectual Property, British Copyright Council (BCC), Center for Performers' Rights Administration of Geidankyo (CPRA), Central and Eastern European Copyright Alliance (CEECA), Civil Society Coalition (CSC), *Comité national pour la promotion sociale des aveugles et amblyopes* (CNPSAA), Communia International Association on the Public Domain (COMMUNIA), Computer and Communication Industry Association, Co-ordinating Council of Audiovisual Archives Association (CCAAA), Copyright Research Information Center (CRIC), Electronic Frontier Foundation (EFF), Electronic Information for Libraries (eIFL.net), European Broadcasting Union (EBU), European Dyslexia Association, European Federation of Joint Management Societies of Producers for Private Audiovisual Copying (EUROCOPYA), European Federation of Journalists, European Law Students' Association (ELSA International), European Network for Copyright in Support of Education and Science (ENCES), Fédération internationale de la vidéo/International Video Federation (IVF), Inclusive Planet Foundation, International Association for the Protection of Intellectual Property (AIPPI), International Bar Association (IBA), International Centre for Trade and Sustainable Development (ICTDS), International Chamber of Commerce (ICC), International Confederation of Music Publishers (ICMP), International Confederation of Societies of Authors and Composers (CISAC), International Council on Archives, 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 Group of Scientific, Technical and Medical Publishers (STM), International Literary and Artistic Association (ALAI), International Publishers Association (IPA), Internet Society, Knowledge Ecology International, Inc. (KEI), Library Copyright Alliance (LCA), Max-Planck-Institute, Motion Picture Association

(MPA), National Federation of the Blind (NFB), Nigeria Association of the Blind, North American Broadcasters Association (NABA), *Organização Nacional de Cegos do Brasil* (ONCB), *Organización Nacional de Cegos Españoles* (ONCE), Public Knowledge, Royal National Institute of Blind People (RNIB), *Sociedade Portuguesa de Autores*, Society of American Archivists, Software and Information Industry Association (SIIA), South African National Council for the Blind (SANCB), The Japan Commercial Broadcasters Association (JAB), Transatlantic Consumer Dialogue (TACD), *Union francophone des aveugles* (UFA), *Unión Latinoamericana de Cegos* (ULAC) and World Blind Union (WBU) (64).

6. Mr. Francis Gurry, the Director General of WIPO, opened the meeting and stated that it was a great pleasure to welcome all delegations and to open the 24th session of the Standing Committee on Copyright and Related Rights. It was the first occasion to meet in the copyright community since the Diplomatic Conference on Audiovisual Performances that had taken place in Beijing. In recalling that happy occasion he expressed once again his thanks to the Delegation of China for the wonderful organization of the Diplomatic Conference which contributed in large measure to the successful outcome of the Conference. He also thanked all other delegations for their extraordinary engagement in the Diplomatic Conference in Beijing. And if success was achieved it was because of that engagement of all delegations which was certainly something to remember at the start of discussions for the 24th session of the SCCR. Many delegations in their concluding statements at the Diplomatic Conference in Beijing underlined the importance of the result for multilateralism. And they also expressed the wish that the spirit of cooperation and engagement that prevailed in Beijing should continue in the future work program of WIPO. There were several important questions to consider in that SCCR session. It was important to recall the collective intention assembled in Beijing to carry forward that constructive spirit in the discussions over the next days on important questions. The conclusions reached in November 2010 at the 21st session of the SCCR recognized that some areas in the general field of exceptions and limitations were more advanced and more mature than others. In those decisions a desire was expressed to see the mature areas advance while maintaining a global and inclusive approach to the questions. In the annex to those conclusions a timetable had been established for the various questions under consideration. In examining that timetable it was easy to assess that the discussions were exactly one year behind. That delay underlined the importance of making progress at present as the timetable had foreseen that the Standing Committee would have made a recommendation to the General Assembly on the question of print disabled persons in September 2011. It also foresaw that the Committee would make a recommendation to the General Assembly of WIPO on the other questions of exceptions and limitations, notably education materials and libraries and archives in September 2012. In consequence one year had been lost. It was necessary to ensure that there was no further delay and that success was achieved in making a recommendation on the question of print disabled and other reading disabilities to the General Assembly of WIPO, which would take place in the first week of October 2012. As far as broadcasting was concerned there was a clear mandate of the General Assembly that reaffirmed the commitment to continue work on a signal-based approach towards developing an international treaty to update the cable casting and broadcasting organizations in the traditional sense. While the mandate was clearly there, no success had been registered in moving forward sufficiently quickly with it yet. It was hoped that a single text could be agreed that would facilitate progress and enable to move forward at a reasonable and quick pace. The Director General recalled that the 21st session elected already a Chair for the Standing Committee, namely Mr. Darlington Mwape of Zambia, who was invited to preside over the meeting.

7. The Chair congratulated the members of the Committee for the success witnessed in Beijing. And as the Director General had rightly stated it was necessary to keep the Beijing spirit alive in the Standing Committee and to ensure that success extended to other issues.

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

8. The Chair turned to the proposed agenda in document SCCR/24/1 and invited the Secretariat to describe the work plan agreed to with the coordinators so the Committee could adopt it.

9. The Secretariat informed delegations that in the discussion with the regional coordinators about a work plan, it had been agreed to start as follows: July 16, 17, and morning of 18, on limitations and exceptions for educational and research institutions and other persons with disabilities. The afternoon of July 18, on broadcasting organizations with presentations of the two proposals submitted for the meeting. July 19 in the morning, limitations and exceptions for educational and research institutions. After that had been completed, the meeting would focus on the topic of visually impaired persons and print disabled persons for the remainder of July 19. July 20, on visually impaired persons and persons with disabilities. July 23, on broadcasting organizations, and July 24 in the morning on libraries and archives, visually impaired persons and persons with print disabilities. July 24, on broadcasting issues again. July 25 in the morning on libraries and archives, and the afternoon would be devoted to the discussion about and adoption of the conclusions. That was the work plan that had been endorsed by the regional coordinators meeting.

10. The Delegation of Brazil spoke on behalf of the Development Agenda Group (DAG). With regard to the adoption of the agenda, the DAG proposed a new agenda item 8 after the current agenda item 7 in order to ensure that the SCCR complied with the decision of the General Assembly of 2010 with regard to coordination and implementation of the WIPO Development Agenda in all WIPO development bodies. It would read as follows: "Contribution of SCCR to the implementation of the respective Development Agenda recommendations."

11. The Delegation of Italy indicated that Group B, in a sign of flexibility could accept the request of Brazil as a document request. However, the item requested should not become a permanent item in the agenda of the Committee.

12. The Delegation of Mexico emphasized that the possibility existed in the SCCR of achieving tremendously important agreements. Although they appeared to be rather distant, in fact, they were within grasp. Exceptions and limitations were of particular interest to the Delegation. The Delegation had with others been very involved in the issue in trying to find consensus that would enable the Committee to continue to make progress. Technical aspects relating to exceptions and limitations, particularly as regards the VIPs, were fairly simple and within the grasp of the meeting.

13. The Chair announced the adoption of the agenda as modified pursuant to the discussion with the addition of new agenda item 8.

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

14. The Chair moved to agenda item 3, and explained that document SCCR/24/4 listed the additional NGOs that had requested observer status in the SCCR. The Chair announced the accreditation of the new non-governmental organizations. They were: Society for the Collective Administration of Performers' Rights (ADAMI), Communia International Association on the Public Domain (COMMUNIA), German Federation of the Blind and Partially Sighted (DBSV),

Featured Artist Coalition (FAC), International Authors Federation (IAF), International Association of IT Lawyers (IAITL), Society for Media for Blind and Partially Sighted People (MEDIBUS) and The Secretariat of the African Decade of Persons with Disabilities (SADPD).

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

15. The Chair called for the adoption of the report of the 23rd SCCR meeting and gave the floor to the Secretariat.

16. The Secretariat stated that, with respect to document SCCR/23/10, the draft report for the 23rd session of the SCCR, all delegations were invited to send any corrections or revisions by the end of the week, July 20, to the e-mail address [copyright.mail@wipo.int](mailto:copyright.mail@wipo.int). It was not necessary to provide those kinds of clarifications or corrections from the floor.

17. The Chair announced that the report had been adopted.

#### **General Statements**

18. The Chair opened the floor for general statements from Member States, indicating that it was expected that statements would be restricted to regional coordinators.

19. The Delegation of Egypt was pleased to speak on behalf of the African Group. The African Group believed that the 24th session of the SCCR was particularly important, as it would have three working days dedicated to limitations and exceptions for education and educational institutions. Moreover, SCCR/24 had been requested to submit recommendations to the 2012 WIPO General Assembly pursuant to its authority on limitations and exceptions for that important subject matter. The Committee was expected to conduct work regarding exceptions and limitations for education and research based on the African Group proposals contained in document SCCR/22/12, entitled Draft WIPO Treaty on Exceptions and Limitations for the Persons with Disabilities, Educational and Research Institutions, Libraries and Archives. The discussions in the Committee had been preceded by extensive technical work culminating in several studies prepared or commissioned by WIPO, which mapped different limitations and exceptions in many different countries. Those documents and studies including a questionnaire on exceptions and limitations, and five major studies were presented and discussed in previous sessions of the SCCR. In other words, the Committee would benefit from a long track record of technical work and expertise conducted throughout the past years. It was well documented that African countries needed access to educational materials and resources in order to ensure development of human resources as well as overall cultural and socioeconomic development. In that regard the international copyright system should contribute towards achieving the African development priority through agreeing on a minimum standard of international harmonization for exceptions and limitations. In that same direction, SCCR/24 was also expected to advance the discussions regarding other exceptions and limitations for libraries, archives, peoples with print disabilities and/or other disabilities. The Group looked forward to engaging constructively on those important issues in order to assist libraries and archives to continue their crucial role in the diffusion of human knowledge and the development of platforms to facilitate access to information for all societies and communities. There was a need also to advance the progress on exceptions and limitations for people with print disabilities and/or other disabilities to ensure their welfare and development, to empower them with a treaty that captured effective limitations and exceptions allowing them to fully exercise the right of access to information and knowledge. In regard to the protection of broadcasting organizations, the two days allocated to the issue should be used effectively to advance the work of the Committee. In conclusion, at that important juncture at the work of the SCCR the African Group recalled the guiding principles

that had served the Committee well in its positive deliberations. Those principles included the commitment to the WIPO Development Agenda recommendations, to follow a global, transparent and inclusive approach, to ensure equal treatment for all exceptions and limitations, and to acknowledge the needs and priorities of developing countries for cultural and socioeconomic development. The Group strongly believed that the SCCR should remain committed to those important principles so as to further the common objective for an international copyright system that was balanced, development-oriented and capable of incentivizing creativity in developing countries.

20. The Delegation of China stated that in June the Diplomatic Conference on the Protection of Audiovisual Performances had been successfully concluded in Beijing with the adoption of the Beijing Treaty on Audiovisual Performances, which had hugely improved the international protection of audiovisual performances but also had established a balance between the interests of performers and producers of audiovisual content. It was a very significant achievement for safeguarding performers' rights and the health and development of the audiovisual industry. As the host of the Diplomatic Conference the Chinese Government wholeheartedly thanked WIPO and all delegations for their support. At the same time it was hoped that delegations could carry out their work at SCCR in the proactive and cooperative spirit seen at the Diplomatic Conference in Beijing in advancing the consultations on all agenda items substantially.

21. The Delegation of the Islamic Republic of Iran spoke on behalf of the Asian Group. The Asian Group was pleased to see that significant progress had been made in the substantive areas covered by the Committee. The Delegation congratulated WIPO and its Member States for the successful conclusion of the Beijing Diplomatic Conference and hoped that the same energy, commitment and compromise could be transferred to other Committees in WIPO and especially to the SCCR. As a result the SCCR would be able to contribute substantially in the areas of limitations and exceptions to copyright and move forward to a more balanced and efficient international copyright system for the benefit of rightsholders and public policy concerns. The norm setting in WIPO should not be seen as limited to IP rights and protection but should reflect the broader social and development context. Therefore great importance was attached to the norm setting on exceptions and limitations to copyright. The commitment of the Committee to the development of a comprehensive and inclusive framework on visually impaired persons, libraries and archives and educational and research institutions was greatly welcomed. It was a common responsibility of all delegations to find effective and swift solutions to all those topics and ensure access to educational and informational materials and guarantee the sustainable accessibility of all persons to copyrighted works. A new international instrument could be a significant step toward achieving those valuable objectives. On the issue of limitations and exceptions for libraries and archives, the document containing textual suggestions toward an international legal document was welcomed as a good basis for text-based work for developing an international framework on limitations and exceptions for libraries and archives. The same method of work could be applied to the deliberations on education and research institutions. The objectives of that process should lead to holding a diplomatic conference on the issue. On the issue of broadcasting organizations there was a need to protect broadcasting organizations and prevent signal piracy and therefore to establish a new treaty to protect broadcasting organizations as mandated by the General Assembly in 2007. The mandate of the 2007 General Assembly was to build an effective and technologically neutral treaty to prevent signal piracy. The new treaty should be balanced and take into account the legitimate interests of all stakeholders. A clear timetable was also needed to develop a treaty on the protection of broadcasting organizations according to the mandate of General Assembly.

22. The Delegation of the Czech Republic, speaking on behalf of the regional Group of the Central European and Baltic States, hoped that the success of the Beijing Treaty would resonate during the session of the SCCR and long beyond. The Group assigned high

importance to all items that were to be discussed in the course of the meeting. Regarding the protection of broadcasting organizations, the regional Group was of the view that adequate protection at the international level should be assured. By following the work plan drawn up at the 23rd session of the SCCR sufficient time should be dedicated to the discussion on the topic of protection of broadcasting organizations. During the last few SCCR sessions there had been a strong emphasis put on the improvement of the access to copyright and related works for persons with print disabilities. It was hoped that the SCCR could expedite the work to achieve equal access to education for persons with print disabilities.

23. The Delegation of Italy, speaking on behalf of Group B, praised the result of the Diplomatic Conference held the previous month in Beijing, which proved that important results could be reached in advancing the international IP system when there was a commitment towards a common goal. Group B hoped that substantial progress would be reached on other outstanding issues which had been the subject of extensive work both in previous sessions of the Committee and in informal consultations between sessions. In that respect Group B reaffirmed its work on the international instrument for visually impaired persons and persons with print disabilities. The international IP system could enable full participation of visually impaired persons and persons with print disabilities in civic and cultural life while ensuring the effective protection of the rights of the creators. Group B was equally strongly committed to the work on the protection of broadcasting organizations with a view to reaching further consensus towards the adoption of a treaty with a signal-based approach. Group B would continue to constructively participate in a discussion started in the previous session of the Committee on archives and libraries.

24. The Delegation of Peru, speaking on behalf of GRULAC, stressed the significant outcomes of the recent Diplomatic Conference which concluded with the adoption of the Beijing Treaty on Audiovisual Performances. The Diplomatic Conference demonstrated that it was possible to reach multilateral agreements in favor of creativity and innovation. It was hoped that the success in Beijing would be reflected in all the negotiations that take place in the SCCR and especially in bringing about an international instrument on exceptions and limitations for the visually impaired. GRULAC recognized the importance of a balance between copyright and the public interest, particularly where education, culture and access to information were concerned. It was particularly important to engage in discussions about exceptions and limitations with a view to facilitating access for the visually impaired.

25. The Delegation of Mexico reiterated the constructive spirit and the atmosphere of inclusion and reconciliation which had characterized the work of the Committee and invited all delegations to continue with those efforts. The Beijing Treaty allowed the settlement of a historic debt which we owed to the major players in the new cultural and media reality which we share; namely performers. The Treaty represented a major step towards a new international standard for Copyright which would be fairer, more inclusive and above all in line with reality. Along with South Africa, Mexico put forward a text for the protection of broadcasting organizations and their signals. During Mexico's chairmanship a document on the visually impaired was also submitted with a number of footnotes and that text was ready to be negotiated.

26. The Delegation of the European Union and its Member States stated that all of the issues on the agenda of SCCR/24 were important to the European Union and its Member States. In line with the conclusions of SCCR/21 the Delegation hoped to have a fruitful discussion on limitations and exceptions for educational and research institutions and to have an exchange of views on national experiences in that area. It would participate constructively in the debate started at the last session in the Committee on limitations and exceptions for libraries and archives. Based on that debate, the European Union and its Member States had submitted a document which clarified some of the exceptions and limitations that existed in European legislation. The European Union and its Member States also were ready to achieve further

convergence in the discussions on a possible international instrument on exceptions and limitations for the visually impaired. The European Union and its Member States had appreciated the opportunity for informal consultations with delegations from other countries and believed that there was a much better understanding of the key issues that needed to be addressed in order to progress in the discussions. Finally, the European Union and its Member States looked forward to making progress on the protection of broadcasting organizations. A WIPO Treaty on that matter remained a high priority for the European Union and its Member States.

#### **ITEM 5: LIMITATIONS AND EXCEPTIONS: EDUCATIONAL AND RESEARCH INSTITUTIONS AND OTHER PERSONS WITH DISABILITIES**

27. The Chair moved to agenda item 5, limitations and exceptions for educational and research institutions. There was a proposal by the African Group contained in document SCCR/22/12. Following the pattern followed in the previous SCCR sessions comments and national experiences on the nature and implementation of those particular limitations and exceptions could be exchanged among delegations.

28. The Delegation of Egypt, speaking on behalf of the African Group, reminded the meeting that the African Group indicated in its statement that it was a really important moment to capitalize on the expert work and the technical work done before in the previous studies. Building on them it was recalled that the African Group had made the current proposal which was contained in document SCCR/22/12 and aimed to conclude a WIPO treaty on exceptions and limitations for the benefit of educational and research institutions. The policy objective of the proposal was to ensure that developing countries have access to multiple educational and research works at affordable prices as well as to ensure availability of those copies in local languages so that the young generations, the students and learners, could exercise the right of education which was recognized in the international treaties. The proposal was based on the principle of nondiscrimination and equal opportunity and equal access to education, culture and education. The proposal recognized the role played by limitations in preserving cultural and scientific knowledge. The proposal built upon and strengthened already existing exceptions and limitations in the Berne Convention for the benefit of education and research, especially in regard to reproduction and translation rights. As an example mention was made of paragraphs 1 and 2 of article 10 of the Convention. In addition, there was a Berne Appendix for the benefit of developing countries. However that instrument had proved difficult to utilize and was not fulfilling the needs of many developing countries to have such access to educational resources at affordable prices.

29. The Delegation of the European Union and its Member States stated that educational and research institutions played an important role in society with regard to the dissemination of culture and research. It was important that the copyright framework enabled those institutions to fulfill such roles both in the analog and digital world. Thus the European Union and its Member States were ready to debate and exchange views on the issue. In European legislation there was a range of possibilities for Member States to establish limitations for the benefit of education and research. The framework for those exceptions and limitations was largely provided by Directive 2001/29/EC on the Harmonization of Certain Aspects of Copyright and Related Rights in the Information Society. The exceptions had an optional character and allowed for a degree of flexibility which was particularly important in view of the different legal systems and traditions of the 27 Member States. Moreover, licensing also played an important role either alongside the application of exceptions or instead of the application of exceptions. The European Union and its Member States looked forward to discussing the systems in which those limitations and exceptions function in Europe and in the rest of the world and how they were used in practice.



30. The representative of the Electronic Frontier Foundation (EFF) indicated that education should be accessible for all without reference to space, time or price. Digital technologies from portable computers to mobile phones to tablets were being introduced as crucial educational tools. The market for educational materials was becoming digital and it was necessary to take that into consideration when drafting the exceptions and limitations that were appropriate for the next generation. The expansion of the open access and open educational resources movements had proven that a knowledgeable society needed the right to use, remix, and collaborate over educational resources. UNESCO had recently in a declaration from June 2012 encouraged open licensing of educational materials produced with public funds. All such changes should have been seen as opportunities to guarantee access to quality education both to formal institutions and to informal learning environments, to all learners including those with disabilities. However the opposite had happened and increasing limitations were being developed. Prices of books and textbooks were still high, even when the cost of reproduction was close to zero and the return on investment happened after a few months of sale. The first sale doctrine was being put in check due to the change of textbook publishing to a service based environment where libraries and users rented copies instead of owning them. Problems were also registered with access to public domain materials or open access materials. Exceptions and limitations and fair use and fair dealing frameworks should be based on the right to access and on user rights and should not just be a defense. For all those issues WIPO member countries were urged to move forward into a process to adopt concrete and digital friendly exceptions and limitations for education, taking in to consideration that every space was a space of learning. The session of the SCCR should aim at the adoption of a working document regarding limitations and exceptions to the benefit of education, teaching and research institutions or persons with other disabilities. Specifically Member States were urged to consider the following clusters and general provisions: foster recommendations of the Development Agenda and specifically cluster B; no civil or criminal liability in the case of circumvention of TPMs; open licensing materials or access and use of works in exceptions and limitations; use of works in the public domain should not be limited by any means either legal or technical; consider limitations on remedies for infringement. Further limitations and exceptions may be subject to the three step test. However the three step test should be interpreted so as to ensure proper and balanced limitations and exceptions. Limitations must allow the reproduction, translation and distribution of entire out-of-print works and must allow production of publicly funded works, considering that the public sector has supplied materials without demanding anything in return. Access to copyright protected works for education and research proposals must be facilitated by strengthening exceptions and limitations.

31. The representative of Knowledge Ecology International (KEI) stated that the work program as it related to education should be a comprehensive look at the things that WIPO did or should do or could do that relate to education. That would include identifying areas of research that could continue to advance the work in that area and taking a look at the kind of technical assistance that WIPO provides to countries that were amending their laws to better understand why there was such a lack of education exceptions in many developing countries. The African Group in a statement mentioned that the Berne Appendix had not been an effective method of making works available at affordable prices in developing countries. It was necessary to take a look at what the Berne Appendix did and did not deliver in terms of exceptions and to try and understand why. It was important to sort out some of the issues about the three step test as it related to education exceptions so people had a better understanding of how the three step test interfaced with other parts of the treaty framework. It was important for people to know when they were constrained by the three step test and when they were not, as well as to look into areas such as the first sale doctrine, control of anti-competitive practices, the special internal flexibilities and the Appendix to the Berne Convention itself. And finally there was the issue of the limitations on remedies which was a flexibility that was not really part of the Berne Convention itself because it did not say much about the enforcement of rights. However, Article 44, Paragraph 1 and Paragraph 2 of the TRIPS Agreement contained relevant provisions limiting remedies available to adequate compensation or remuneration.

32. The representative of the Library Copyright Alliance (LCA) observed the discussion of the limitations and exceptions for educational institutions with intense interest. Libraries instructed teachers on the use of new technologies and licensed online resources for teaching and learning. In most higher educational institutions libraries served as resources for copyright, educational outreach, and compliance activities. For those reasons the Library Copyright Alliance supported a framework for limitations and exceptions for educational institutions. WIPO should support the rights of libraries to make the reproductions necessary to fulfill their noncommercial educational mission. In the U.S. Copyright Law, the fair use provisions specifically referred to purposes for teaching including multiple classroom use, scholarship or research. WIPO should clearly express opposition to the adoption of a public lending right by countries that had not yet enacted one. Instead WIPO should articulate strong support for the concept of the exhaustion of the distribution right upon the first sale of a copy, notwithstanding the spread of digital technology. Millions of Americans continued to check out books and other materials from libraries. Libraries of all types purchased billions of dollars in printed and e-form books. WIPO should support cross-border uses by libraries, particularly interlibrary loan arrangements between libraries and countries. WIPO should support exceptions for orphan works. Importantly a solution to the orphan works problem should rely on limitations and exceptions. Collective license approaches would be too expensive for libraries. Moreover collective licensing was too cumbersome an approach. WIPO should support provisions against infringement of distribution rights and public display rights that were implicated by online production. WIPO should support broad library exceptions to prohibitions on the circumvention of technological measures. WIPO should provide library exceptions surviving contractual restrictions because of the enormous consolidation of the academic journal market. Publishers' refusal to license materials in electronic form to libraries raised public policy concerns. Four of the six largest trade publishers, for example, refused to license many of their e-book license titles, thus preventing public libraries from lending their materials in e-form.

33. The Delegation of Kenya supported the statement made by Egypt on behalf of the African Group. Kenya was committed to achieving the mandate as set out before the Committee and assured the Committee of its undivided support.

34. The Delegation of Senegal supported the statement made by Egypt on behalf of the African Group and reminded everyone of the importance of that proposal for developing countries because it was aimed first at enabling better access to knowledge, to libraries and archives.

35. The Delegation of South Africa aligned itself with the statement by Egypt. There were two important issues to highlight from that statement. One was the need to develop a text. The mandate was to undertake text-based work on exceptions and limitations. The other issue was the sharing of information or the exchange of views, which was especially important in regard to a number of cases which had been completed in that area, especially in developed countries such as Canada.

36. The Delegation of Nigeria supported the statement made by the African Group and emphasized the need to build upon the current proposed documents that had been circulated.

37. The Delegation of the Republic of Guinea supported Egypt's statement on behalf of the African Group. In its national economic, social, and cultural development program the Republic of Guinea implemented close collaboration with specialized agencies of the United Nations.

38. The Delegation of Cameroon echoed the statement made by Egypt and encouraged all to work on those areas.

39. The representative of the World Blind Union (WBU) stated that the preferred current

model of education for students with disabilities was the inclusive education model where students with disabilities attended their neighborhood school in their home community alongside their sighted peers. They were enabled to do that because the concept of inclusive education included a total package of support to neuter the effect of any disability that a student might experience. In the context of the Committee's work, that was in the context of where copyright might be a barrier for students with disabilities, it was important to highlight, for example, the question of textbooks which students with visual impairment and print disabilities needed on their desks on the first day of term just like their sighted peers. But it was not only textbooks, exam papers needed also to be on the exam desk at the beginning of every exam in an accessible format. And third, libraries form a very important point for students to research issues in every educational institution. And therefore the libraries needed to have access to works in accessible formats that were relevant to the study courses of students with print disabilities. The treaty proposal on visually impaired persons contained provisions which would provide accessible formats for all students working at institutions. The education initiative needed to bear in mind the needs of disabled students including the print disabled students and actually to make reference to the hope for a print disabled treaty. Likewise with the library treaty underway in the Committee a provision for print disabled students was built into it and they would also be covered by the WBU's own proposal.

40. The Delegation of Zambia supported the African proposal and stressed that access to education was a fundamental right. The Delegation looked forward to constructive engagement on the important topic of education, research institutions and libraries and archives so that an international framework consistent with the Berne Convention could be developed.

41. The Delegation of Chile stated that in 2004 Chile presented before the SCCR the first proposal to have limitations and exceptions for educational purposes, libraries, and the disabled. That proposal and the subsequent proposals from Chile were based on the understanding that limitations and exceptions were tools which allowed the definition and protection of a base of public goods and a space for freedom to access the fruits of human creativity which was necessary to guarantee the human rights involved in cultural activity and scientific and economic progress. It was also necessary to promote the creative work of authors in the cultural industries. The agreement in the Beijing Treaty on the relationship between technological protection measures and the implementation of limitations and exceptions was especially significant. The Chilean law expressly permitted the reproduction of extracts of works for educational purposes. It also allowed the reproduction and transmission of small extracts of photographic or visual nature for educational purposes and only for illustrating certain aspects of such works within formal educational institutions or accredited institutions. Following the reform of the copyright law it also became possible to reproduce a work for the purposes of research or teaching so long as that did not constitute illicit reproduction of the work. So that law ensured that there was a significant space for the research and educational institutions to carry out their activities. Those points were considered when Chile analyzed limitations and exceptions in the copyright area. A specific analysis was carried out at an APEC Forum for which a report was produced. The report could be found freely on the APEC website and it had already been downloaded around 50,000 times.

42. The representative of the Motion Picture Association (MPA) strongly believed that the licensing of legal content around the world was the best way to deal with the range of challenges faced by the copyright sector, including piracy. MPA supported a balanced and workable system of copyright including not only strong exclusive rights but also limitations and exceptions, in particular in the field of education. MPA had significant experience in working with relevant bodies in the audiovisual sector such as archives and film schools. However, any movement at the international level on that matter must respect the international copyright framework including the three step test. That framework already provided significant flexibility to introduce a wide range of exceptions and most Member States have done so. The three step test applied very broadly across a range of treaties and national law. It was not a constraint but

it was about flexibility. That test was applied all the time by national parliaments and courts around the world and, of course, the TRIPS Council as well. In examining the balance inherent in copyright we must be careful not to make changes that undermine the incentive to create and invest in new works. Technological measures were very important to the copyright sector, particularly for the development of new business models. Allowing circumvention of TPMs without sufficient restrictions could make the exceptions swallow the rule and was inconsistent with the legal protection required by the WCT and WPPT. However Member States under the existing legal framework had been able to develop innovative methods to address the issue of the interface between exceptions and technological measures. An example was the agreed statement to Article 15 in the Beijing Treaty. Those treaties did not protect works in the public domain and they did not extend to technological protection measures attached to such works.

43. The representative of the International Federation of Reproduction Rights Organizations (IFRRO) reminded the meeting that the Universal Declaration of Human Rights gave everyone the right to the protection of the moral and material interest resulting from any scientific or artistic production of which he was the author. Exceptions that conflict with normal exploitation of the work and also broadening of educational exceptions without adequate information to authors had a negative impact on the continued creation and commissioning of works for the educational market. Access to copyright material from academic works, newspapers, novels and illustrations through agreements with writers and RROs was the best way to meet the needs of educational institutions to access material. RROs began their activities in response to requests from educational institutions for the licensing of large numbers of copies of scientific and cultural content for teaching and research purposes. Educational institutions were still the main beneficiaries of RRO services. Students, teachers and researchers needed good local educational resources. Local educational publishing needed financial stimulation and adequate protection. Studies had shown that authors and publishers relied on income from secondary uses of their works. In the UK, for instance, the income to publishers from secondary uses equaled more or less their budget for investment in new works. Increased opportunities for local authors to create good works and for local publishers to invest helped to build a sustainable national industry and a range of teaching materials adapted to local and special user needs. That enabled a nation to educate its population in a sustainable way that was founded on local culture and traditions. The main focus needed therefore to be on maintaining a strong local publishing industry where it existed and building or strengthening it where it was weak or inexistent. IFRRO had experience from cooperating with WIPO and with local stakeholders. It offered its collaboration and expertise in collective management to develop solid infrastructures to enable the strengthening of national educational publishing.

44. The representative of the International Publishers Association (IPA) looked forward to a constructive debate on limitations and exceptions for educational and research institutions. Countries at different stages of development faced different challenges. Institutions for primary and secondary education were very different in their needs from those providing tertiary education. Countries with the greatest access to educational content were not countries with broadest copyright exceptions but countries with strong local educational publishing industries. That included countries in the developing world such as Mexico, Kenya, South Africa, Nigeria, and Egypt, all of which exported educational content to countries in their respective regions. There was one overarching theme, namely how technology had changed and continued to change access to education. Any person with access to the Internet had potential access to countless educational resources. Those may be provided by governments, by philanthropists or by publishers. In all cases it was copyright and licensing that enabled the old and new business models. The representative of IPA believed WIPO should listen closely to the deliberations and recommendations of the education experts gathered in UNESCO and the declaration that was earlier referred to from the 22nd of June. In that recent declaration, the Paris Declaration, the experts called for further work to promote understanding of licensing frameworks and sustainable content. No mention was made of copyright harmonization, change of key international treaties or the introduction of new copyright exceptions. IPA would be delighted to

assist the delegates at WIPO SCCR in understanding the relationship between publishing, licensing and access to educational resources. Publishers in developing countries were best placed to develop educational content for their students. The greatest challenge was not the lack of copyright exceptions, nor the lack of harmonization of those, but to deliver local relevant content through licensing. Broad exceptions would strengthen the post-colonial dependence on foreign content providers. Strong copyright would enable all to invest in education. The Kenya Publishers Association, for example, had concluded an agreement with the Department of Education that enabled the creation of accessible format copies for visually impaired students. That was just another example of how licensing enabled collaboration and access. IPA welcomed the progress that was made during the WIPO SCCR/23 on the instrument for persons with print disabilities. IPA supported a separate international instrument for persons with print disabilities including an international treaty, provided the wording improved access in practice. The SCCR Chairman's text and the proposal brought forward in subsequent informal discussions required further refining to meet those requirements. For the international exchange of digital e-books, persons with print disabilities and their charities had made it clear how important it was that they had an easy access. Equally rights holders asked for fairness and transparency and that their digital files be handled with due care. That requirement must be reflected in an instrument that reflects the way digital files were managed today around the world. The debate during the last SCCR had demonstrated the wide range of issues and the different solutions that individual Member States have found to address copyright exceptions and limitations for libraries and archives. That great diversity was a result of different history, different library infrastructure, and different levels of experience and experimentation in the digital environment. IPA would be happy to provide further examples of how libraries were addressing those current challenges. Those differences among the Member States were not likely to converge in the future. Further exchange at WIPO would assist Member States to assess how they need to develop their copyright laws in that area.

45. The Delegation of Paraguay recognized copyright as a human right with two main features. One of them was access to culture and knowledge and the other was respect for the moral and economic rights of the authors. That fair balance made it necessary for the developing countries to have tools permitting access to knowledge and culture without infringing copyright. It was necessary to update national legislation, which could be done only through an international instrument, particularly in the area of education. Legislation in Paraguay contained exceptions and limitations for education and culture. Those permit the making of single and personal copies and the use of copies for educational purposes. However the new challenge was the situation that arises in the digital environment, and consequently Article 10 of the Berne Convention, the WCT and the TRIPS Agreement should be brought in line with the new situation through an international instrument.

46. The Delegation of Peru indicated that the Delegations of Ecuador, Uruguay and Peru had the honor of making a proposal for text on exceptions and limitations. The proposal was presented as document SCCR/24/6.

47. The Delegation of Brazil supported the contribution made by Ecuador, Peru and Uruguay. Brazil also had a submission which was presented as document SCCR/24/7.

48. The Delegation of Ecuador supported the proposal that the work on exceptions and limitations should be undertaken by grouping the topics into thematic clusters. The following groupings were proposed: (1) Obligations or proposals to update exceptions of a general nature; (2) provisions on interpretation of the scope of flexibilities, including the three step test. Articles 40 and 44 of TRIPS, and others; (3) Technological measures; (4) Relationship with contracts; (5) Performances for educational purposes; (6) Communication to the public and interactive making available for educational purposes; (7) Translations, adaptations and transformations; (8) Reproduction for educational purposes; (9) Distance learning; (10) Special education for persons with disabilities; (11) Exceptions and limitations permitted only

for developing countries”.

49. The Delegation of South Africa lent support to the proposals by Ecuador and Brazil in identifying clusters to guide the work of the Committee.

50. The Delegation of the United States joined in the sentiment expressed by the Distinguished Delegate of South Africa in supporting the idea that the many clusters presented by the Distinguished Delegations of Brazil and Ecuador would be a good starting point.

51. The Delegation of Uruguay said it was necessary to seek balance between copyright and human rights of men and women for access to education, culture and knowledge. Uruguay had promoted dialogue and cooperation on limitations and exceptions in the SCCR. In 2008, it presented the document SCCR/16/2 with Brazil, Chile and Nicaragua, on a proposed way of working on exceptions with peoples with disabilities and for libraries and archives. Uruguay also sponsored in the twenty-second session of the SCCR work on exceptions for education. In 2009 the Minister of Education and Culture of Uruguay, with the sponsorship of UNESCO, organized the first regional dialogue of educators on the implications of copyright for education and teaching in which various Ministries of Education of Latin America participated. In that meeting, it became evident the necessity to take action with regard to exceptions on that issue. The work, begun by the African Group, Brazil, Ecuador, Peru and other members of the Committee, was going to achieve important success in agreeing on limitations and exceptions for education, which was required urgently

52. The Delegation of Egypt, speaking on behalf of the African Group, understood that the new document was going to include all the existing articles proposed in document SCRR/22/12. It announced that was going to submit additional textual proposals in written form to the Secretariat. They included new text for the preamble: “Mindful of the challenges of human development and for the fulfillment of persons with disabilities with regard to access to education; mindful of the increased economic impact of exceptions and limitations in distance learning using digital technology; noting that access to knowledge protected by copyright works was integral to the goals of copyright system; recognizing that copyright laws must strike a balance between the interests of the public and the interests of authors and other right-holders to fulfill the fundamental purpose of encouraging learning and the dissemination of knowledge; recognizing the need for a global approach to copyright exceptions and limitations and a minimum level of international harmonization of limitations and exceptions in order to reduce the legal uncertainty to which stakeholders in education and researchers expose themselves in the event of mobility, and the need to ensure the lawfulness of cross-border activities and the global flow of information that posits the use of modern means of communication; recognizing that inadequate use of, or lack of harmonization of the exceptions and limitations adopted under domestic laws have created undesired obstacles to access knowledge and compromises intellectual resources”. In terms of the additional other operative parts, regarding the authorized actions, it proposed a new article on actions related to reproduction: “The use of works for the purpose of teaching and research authorizes individuals or institutions referred to in this Treaty to: Reproduce by any means, including on a computer disk, by a researcher, teacher, pupil or student; reproduction remains permissible if it allows researchers, students or pupils to learn about the work at any time and any place individually chosen; make teaching or educational purposes compilations of works extracts limited to the goal to be attained when those were freely available to pupils or students. The Group also proposed another article on actions related to representation: “The use of works for the purpose of teaching authorizes individuals or institutions referred to in this Treaty to: Represent by any means, including diffusion of fixed works by means of broadcasts or television; representation remains permissible if it allows students or pupils to learn about the work at any time and any place individually chosen. Insert the work or extracts from the work in educational broadcasts and to fix such broadcasts; the use of works for research authorizes researchers to represent them by any means, provided that such representation was intended for the scientific community to which belongs the

researcher who has initiated the presentation, excluding any other public". Another proposed article would be dealing with the issue of transformation and translation: "To the extent required for educational purposes or research, the use of works authorizes individuals or institutions referred to in this Treaty to translate, adapt or transform the work, when those translations, adaptations and transformations are carried out for teaching or research and are not made available to the public". Finally it also proposed an additional article on distribution: "The use of works for educational purposes shall authorize individuals or institutions referred to in this Treaty to distribute a copy or copies of all or part of the work, including making available to pupils or students, the original or copies thereof the work, or copies when those are necessary to illustrate the teaching".

53. The Chair asked Egypt whether those textual proposals were supposed to be incorporated to the original document SCCR/22/12.

54. The Delegation of Egypt explained that because a document was going to be developed using the different proposals from Brazil, Ecuador, Peru, and others, it wanted to have the original provisions of document SCRR/22/12 on education and research in addition to the articles read in the previous interventions.

55. The Secretariat asked to confirm whether it was requested to prepare something similar to the document on libraries where proposals and interventions had been reflected and divided under the different themes.

56. The Delegation of Egypt expressed a preference for having textual proposals, and not just statements.

57. The representative of the International Federation of Library Associations (IFLA), with the support of the Electronic Information for Libraries and the Canadian Library Association thanked the Secretariat for having commissioned and published interesting and informative studies on exceptions for education that highlighted the role of libraries in supporting education. An excellent education service depended on good libraries, which were not only physical spaces but were usually also the source of teaching and learning materials. In rich countries, there was already little distinction between physical and virtual classrooms, because the use of virtual learning environments in education was very common. As technical infrastructure improved, many developing countries could expand online teaching especially for distance learning. Among the copyright issues having a profound impact on the role of libraries supporting education there were the following: making copies of extracts from films, sound recordings and broadcasts for study and research; communication to the public, storing and making available images, films, sound recordings and broadcasts in a secure online environment; making past exam papers available online; allowing for the inclusion of third party content in study projects, dissertations and theses made available online; text and data mining for research; copying for class handouts; licenses for educational materials undermining copyright exceptions when publishers had not licensed works under an open education resource license as recommended in UNESCO's 2012 Paris Declaration; and restrictions to content distribution across borders for distance learning and courses run by multi-institutional partnerships. Education and lifelong learning were key public policy issues which could be properly addressed only through international norms. Libraries benefited from statutory exceptions for educational purposes in many countries. As the Library Copyright Alliance noted, it was clear that most library exceptions as outlined in the proposals discussed at the SCCR/23 session by the Africa Group, Brazil, Ecuador, Uruguay, and the United States of America, had a strong impact on libraries' ability to support educational needs. It urged the Committee to move forward expeditiously to recommend a Diplomatic Conference on the treaty for visually impaired and print disabled people, as well as on the proposals made by Member States concerning libraries and archives and education.

58. The Delegation of the European Union and its Member States expressed the interest to contribute to the exchange of views and to the exchange of best practices and the situations in different countries. Education and training were not only essential for the European economy in order to evolve as a knowledge society and compete effectively in the globalized economy, but also permitted the full exercise of fundamental freedoms, such as the rights to education which was enshrined in a charter of the fundamental rights for the European Union. In the EU, educational policy was decided by each Member State, but together they established joint goals and shared best practices. Copyright protection was required, in order to incentivize the creation of not only educational contents but also works in general which were at the very heart of the functioning of teaching activities. Thus copyright protection was required so that educational establishment in the EU had access to top quality works, such as teaching material. It was therefore vital that a fair and sustainable balance was achieved between copyright protection on the one hand, and the achievement of public interest objectives on the other. As for many other sectors in the society, the development of new technologies had changed the educational sector in the EU and deeply modified teaching methods. The Internet had nowadays become an essential instrument of knowledge transmission, be it via the traditional teaching classroom, distance learning, or in the framework of private study. In all cases, works and other protected subject matter were frequently used by teachers and it was important that the copyright framework enabled educational establishments and professionals to fulfill their role in the digital age. The Berne Convention provided for specific exceptions to allow uses of copyright works for the purpose of quotation and teaching. The same types of exceptions were permitted under the WIPO Copyright Treaty, and as far as the related rights were concerned, under the Rome Convention as well as the WIPO Performances and Phonograms Treaty. Those exceptions provided a significant margin of freedom to Members for those conventions and treaties in their implementation. It was for individual countries to apply the framework provided at the international level, to put it into practice via the national legislation and adapt it to the local conditions, while respecting the three step test as provided for in the conventions and treaties. The EU copyright framework provided Member States with the possibility to establish in the legislation exceptions to copyright and related rights for the benefit of educational establishment and for teaching purposes, including the possibility for Member States to decide on whether to provide for fair compensation for rightholders when applying such exceptions. The EU copyright framework allowed the necessary degree of flexibility by permitting Member States to incorporate exceptions in their legal systems, in accordance with their educational policy, legal traditions and market specificities. Finally, the framework also ensured that the application of those exceptions would fall within the framework of the three-step test. The Directive established the possibility for an exception to the reproduction rights, right of communication to the public and right of making available for the sole purpose of illustration, purpose of illustration for teaching or for scientific research, which was commonly considered at EU level as the main exception for the activities of teaching undertaken by educational establishments. At the EU level, Member States implemented in all 27 Member States the quotation exceptions, in different ways, according to the tradition and legal frameworks of each country. Not in all but in many countries there was also a private copying exception and reprographic copying as well. For the education purposes, there was an article in the Directive which reflected the Berne Convention language. The Delegation was ready to discuss again other aspects of its legislation and its implementation of the Berne Convention.

59. The Delegation of Ecuador thanked the African Group for the proposals and said it was waiting to be able to study them before providing comments.

60. The Delegation of Egypt thanked the EU for sharing its experience on the issue and its views regarding exceptions and limitations on education that did exist under the Berne Convention. It requested clarification regarding one particular statement, which was that all exceptions and limitations fell under the three-step test. In that regard, it wanted to know how the EU interpreted Article 10(2), because the three-step test which was captured in Article 9(2), did not have any legal connection with rights, other than reproduction. Article 10(2) gave wide exceptions permitting utilization of literary and artistic works, by way of illustration, in



publications, broadcast, or sound or visual recordings for teaching. In addition Article 10 established two legal requirements such as the rule of fair practice and the mention of the source.

61. The Chair reminded that the Secretariat had received textual proposals from Brazil, Peru, Ecuador and Egypt. The thematic clusters had been prepared in advance, before receiving the latest proposals.

62. The Delegation of Ecuador said that the document indeed captured the spirit of the proposal put forward by Ecuador.

63. The Delegation of Brazil believed that its proposal was well captured in the document provided by the Secretariat under document SCCR/24/7.

64. The Delegation of Nigeria proposed to include additional clusters: subject matter ineligible for copyright protection, public domain; social rights; provisions for educational and scientific decisions for private import of educational materials; provision dealing with limited liabilities for Internet Service Providers; specific exceptions for science; assertion that support development of open educational resources; personal use rights for study; use of protected work for public health and public security; inclusion of the work or subject of related rights in educational materials; and access to public funded research.

65. The Delegation of the United States of America was pleased to look at the lists of clusters from the distinguished Delegations of Ecuador and Brazil. It asked the Chair whether it was the right time to propose some suggestions for consolidation or merger of the lists. For example, both lists mentioned technological measures; there was a situation similar with the subject on use for pedagogical and teaching purposes.

66. The Chair encouraged that kind of exercise in order to narrow down the clusters. Consolidation of similar proposals was not harmful.

67. The Delegation of Ecuador thanked the United States of America and agreed with the proposal of the Chair. Regarding technological protection measures there was no doubt, but in other instances, although they looked similar, the proposed clusters were not exactly the same; therefore there was a need to clarify it with Brazil.

68. The Delegation of Brazil agreed with the merger on technological protection measures, but proposed to have a discussion with Ecuador on the other matters.

69. The Delegation of Chile asked a clarification on what kind of comments the delegations were supposed to provide at that moment; because it had some new proposal to put forward for the consideration of the Committee.

70. The Delegation of the United States of America in response to the comments by Chile, recommended that the Committee should get as many possible clusters and ideas as possible at that stage, and try to reduce them at a later time. If the Committee wanted to consolidate proposals, it was not helpful to have Member States bringing new ideas at a later stage.

71. The Chair thanked the United States of America for the proposal. The only issue about that proposal was that it was not possible to have all the proposals on a single document to analyze and compare at that stage.

72. The Delegation of Chile reminded the Committee that it was the first time the delegations had the opportunity to look at the list; therefore it proposed to have preliminary comments and suggestions and have a compiled version of the document for the next day.

73. The Chair said that the only proposal for additional clusters had come from Nigeria; therefore once there was a consolidated version, it was enough to add the African Group's proposals
74. The Delegation of Brazil informed the Chair that more time was needed to clarify the issue and proposed to revert to the Committee at the beginning of session of the following day.
75. The Chair suggested that the Secretariat worked on the basis of the clusters already received and the consolidation exercise could be undertaken the following session.
76. The Delegation of Chile asked whether it was possible to send in writing to the Secretariat a new proposal to be included in the list.
77. The Chair confirmed it was possible and advisable to send proposals in writing to the Secretariat.
78. The Delegation of Ecuador agreed with the proposal of the Chair to have a comprehensive document ready for further session, on the basis of which, negotiations could take place.
79. The Delegation of Egypt asked whether the European Union was ready to answer its question.
80. The Delegation of the European Union and its Member States clarified that it did not respond to the Egyptian question because it believed that it was not the role of the European Union to discuss the interpretation of the Berne Convention in that forum. It just reminded Member States that the three-step test under Article 13 of TRIPS, Article 10 of WCT and Article 16 of WPPT applied to all exceptions and limitations. Furthermore, in accordance with all those obligations to respect the three-step test, the European Union legislation made all exceptions and limitations under Directive 2001/29/EC subject to the three-step test.
81. The Chair invited the Secretariat to run the delegations through the document and explain the approach taken in compiling the various proposals that were received the previous day from various delegations.
82. The Secretariat explained that it had incorporated all the materials received, including both thematic topics for discussion and text proposals and tried as much as it could to come up with headings that reflected the content. The document was entitled Draft Compilation on Limitations and Exceptions for Educational and Research Institutions. It opened with some general provisions on page 2 that came from the proposal from the African Group including the preamble, definitions and beneficiaries, articles that were used within the specific education research limitations and exceptions in the following section. Those materials incorporated both the original text and the additional material in those sections that were given yesterday. The general section went from page 2 through 4. On page 5 the provisions on the specific education and research limitations and exceptions were included. Basically the proponents of the various proposals, whether they were text or thematic topics for discussion, were taken in alphabetical order and listed with their respective proposals. Beyond the consolidation, no attempt was made to consolidate topics. That section contained the proposal from the African Group, including Article 15 and the authorized actions, the Brazil proposal on what would not constitute a violation of copyright. And then proposals from Chile, Ecuador and Nigeria on thematic topics and the proposal from Ecuador Peru and Uruguay on updating and expanding limitations and exceptions in the digital environment. After that on page 8 specific topics were contained that were related to but were not specifically directed to educational and research institutions. Software and databases, related rights, technical protection measures, contracts, importation and exportation, orphan works, withdrawn or out-of-print works, open educational resources and publicly funded research. Those were all topics for which various Member States gave us either text or proposed thematic topics that should be encompassed with the discussion of research

institutions. On page 17 there were other topics. Those were other proposals received that were more general in nature.

83. The Delegation of the United States of America considered that the document provided a useful guide to the issue under discussion. In reflecting on the comments of the Delegation of South Africa, it was important to share experiences and to work on the document in setting out the issues in the clusters to be addressed in an international framework.

84. The Delegation of South Africa clarified that there were two important issues to undertake under exceptions and limitations for educational institutions and research. One was a compilation of textual proposals; the other was sharing of experiences.

85. The Delegation of the United States of America agreed with South Africa that the document was an excellent basis for the development of ideas and proposals for a legal framework.

86. The Delegation of Egypt stated that that the African Group proposed two new clusters regarding education and research institutions. The first one regarded computer programs and was captured in Article 16 of the African Group proposal SCCR/22/12 so it would suffice to add that textual proposal as part of the document. In addition the group also proposed a new cluster titled limitations on remedies for infringement.

87. The Delegation of Brazil thanked the Secretariat for preparing the draft compilation on limitations and exceptions for education and research institutions comprising all of the textual suggestions made so far.

88. The Delegation of Ecuador requested the Secretariat to take into account in the proposal submitted by Ecuador, Peru and Uruguay that the cluster or specific proposal be entitled scope of the three-step test.

89. The Delegation of the European Union and its Member States raised some concerns regarding the working method that was adopted for libraries and archives, whereby a list of thematic clusters was first to be agreed, which would then enable the document to be structured. However, the document had titles corresponding to themes. And under those titles the thematic clusters proposed by Brazil, Ecuador, Nigeria were included as subcategories. It seemed that the Committee was working on a proposal from Ecuador and Brazil to merge the themes and that we were going to agree first on that merge and then use that as a basis for the structuring of the documents. Moreover, as was indicated by the U.S. Delegation, the European Union also began the previous day to present its experiences and would like to continue sharing its experiences with the Committee.

90. The Secretariat explained its understanding of the European Union suggestion, namely, to break down the specific education and research limitations and exceptions into thematic topics. The document would end up with 30 or so thematic topics under which to put material. That was certainly a way to organize the document but it seemed that some proponents wanted to keep their text proposals together.

91. The Delegation of Egypt indicated that the nature of the exercise was to make textual proposals. Other statements or interventions or declarations of course would be recorded in the Committee. But in terms of the document, it needed to be only focusing on the textual proposals submitted by all countries.

92. The Delegation of Peru requested to know exactly the work plan in the coming days.

93. The Chair indicated that, since the document had just been circulated and the groups did

not have an occasion to study it in the respective groups, they would need to consult on the document. In respect to the question of the national experiences, they must be shared in the context of the textual proposals. For instance, if there was a topic that had been captured in the draft, it could be explained in terms of the national experience.

94. The Chair invited delegations to continue with the meeting after consultations on the document.

95. The Delegation of Brazil indicated that, regarding the clusters that were proposed by Brazil and also by Ecuador, a GRULAC position had been reached. The coordinator from GRULAC would report to the Committee on the proposed merger language for some clusters.

96. The Delegation of Peru indicated that GRULAC tried to simplify the initial proposals. Notably on page 6 where there were five clusters from countries in the region that GRULAC proposed to merge into a single one. The cluster should be entitled as follows: "For pedagogical teaching or educational purposes, including, but not limited to performances, reproductions, distribution of protected works or fragments of protected works in classrooms, translations, adaptations and other transformation". On page 10 of the Secretariat's document the Brazilian and Ecuadorian proposals were very similar and an agreement was reached to merge them into a single heading: "Technological protection measures".

97. The Delegation of the Islamic Republic of Iran, speaking on behalf of the Asian Group, indicated that the list of proposed clusters was non-exhaustive and they welcomed any further textual addition at that preliminary stage of work. While welcoming any kind of experience sharing from Member States, it would not be appropriate to insert those experiences in the compilation text. Proponents of text in cluster based discussions were invited to clarify and explain more their proposal with a view of seeking some sort of convergence and narrowing down the different options in the text.

98. The Delegation of Italy, speaking on behalf of Group B, considered some of the proposals a bit broad and overlapping. The Group requested to have the views expressed by delegates reflected in the document.

99. The Delegation of Pakistan supported the cluster based approach and proposed the addition on page 7 of another cluster, which would be named as follows: "Strengthening of existing flexibilities and introduction of new flexibilities in the copyright system to ensure access to textbooks and educational material at affordable prices". Moreover, it also requested the addition of another cluster as follows: "Access to publicly-funded scientific research". The broad idea behind that issue was that most recently in some of the countries for example the UK, there had been a move to make available the publicly funded scientific research so that it was available to the universities and research institutions.

100. The Chair asked whether the second proposal of Pakistan was different from the one on page 16.

101. The Delegation of Pakistan indicated that it was not specifically the same one but it could work with the proponents of that proposal to have common language reflecting its concerns.

102. The Delegation of Egypt stated that the African Group supported the statement made by the Asian Group. Indeed the proposed new clusters were useful to the discussion, especially access to publicly- funded scientific research. The African Group would like to add some words to the title so it would read draft compilation on textual proposals on limitations and exceptions for educational and research institutions and also people with other disabilities. Regarding the definitions, at that stage the definition or references relating to libraries and archives should be deleted because those would be dealt with under a different document. On page 10, the Group

could change the title to technical protection measures. A new chapter for limitations and exceptions for Persons with Disabilities was also proposed and in that regard it was proposed to include the text captured by the African Group proposal SCCR/22/12, in particular Articles 5, 6, 7, 8 and 9.

103. The Delegation of Nigeria indicated that the compilation was a very good basis to start discussions on exceptions and limitations for education and research. The Nigerian delegation would like to see the proposal from Nigeria at page 17 which was under items 42, 43, 44 and 45 reflected on the specific educational research limitations and exceptions. It introduced text-based language on some of the clusters, namely Cluster 2, exhaustion of rights. Cluster 5, specific exceptions for science. Cluster 4 dealing with limited liability for Internet service providers. Cluster 10, access to publicly funded research. Cluster 13, rights to facilitate teaching, scholarship and research. Cluster 14, limitations and exceptions to database protection laws

104. The Delegation of the European Commission, speaking on behalf of the European Union and its Member States, supported the intervention just made by Group B. The EU felt that the compiled working document should have reflected, as it happened for the one on libraries and archives, not only textual suggestions but also comments. Concerning the approach to the clusters, there was a lot of overlap in between clusters and lack of clarity on what specific clusters encompassed. Some explanations were needed from the proponents and some examples. Some clusters went beyond the scope of the work under that topic, such as, for example, contracts, withdrawn works or translations.

105. The Delegation of El Salvador endorsed the GRULAC statement concerning the proposal for condensing down some of the clusters. It proposed that two additional clusters be included. One would relate to information on rights management and effective technological measures of protection. A more detailed explanation into the substance of those additional clusters would be provided at the appropriate time. The second cluster related to best practices and experiences, including the sharing of experiences and the application of exceptions and limitations.

106. The Delegation of the Czech Republic welcomed the effort made by GRULAC on the consolidation of a number of clusters in the document. Unfortunately there were additional clusters introduced which represent additional overlaps. In that regard the number of clusters and the clusters themselves needed to be consolidated, clarified, and specified in some cases. The contributions by Member States were not exhausted or should not be limited. The space to introduce written contributions should still be in place and the form of those written contributions should not be limited.

107. The Delegation of the United States referred to the proposal by Egypt for the title of the document. The Committee had spent a great deal of time on the title of a document from a prior session of the SCCR. The title could be: "Provisional working document containing comments on and textual suggestions towards an appropriate international legal instrument (in whatever form) on exceptions and limitations for libraries and archives". The Delegation would regret to get into the kind of long discussion on a title of the document as it happened in the last SCCR session. A smaller group of regional coordinators could talk about the title of the document.

108. The Delegation of Egypt said that the two issues at stake were different. The title for the working document for libraries and archives got into that issue because of discussing the nature of the instrument. On the case under current consideration the nature of the instrument was not discussed. It was just a textual proposal. And also in addition, Egypt proposed to add the category of other disabilities to the title.

109. The Delegation of the United States agreed to the inclusion of other disabilities in the title of the document and again recommended that the regional coordinators or regional coordinators

plus some work out the exact wording of the title. While there was some difference in the nature of the documents, it was very important for the United States that the library and archive discussion be treated equally with the discussion of educational limitations.

110. The Chair took the point from the EU that if there was no explanation from the proponents on the clusters it would be very difficult to even go in the exercise of trying to merge some of those clusters that were seemingly overlapping. It was important to start with the exercise of trying to explain those clusters at least in brief terms so an attempt at merging or at least understanding those clusters that have been proposed could be shortly thereafter undertaken. The first set of clusters was on page 6. It was proposed by Brazil, then Peru, Chile and Ecuador.

111. The Delegation of Peru explained that the GRULAC proposal tried to consolidate the previous proposals to shorten the list of those different clusters and try to draft a title of the cluster that may include those previous related clusters. So in that sense in consequence, it was understood that the Cluster Number 3, a previous Brazilian proposal, use for pedagogical and teaching purposes was closely related to those specific uses that were part of the Ecuadorian proposal and one specific cluster proposed originally by Chile. Those uses for pedagogical and teaching purposes were the reproduction for educational purposes previous Cluster 8; the performance for educational purposes previous Cluster 5; the translations, transformations and adaptations, previous Cluster 7; and the distribution of protected works or fragments of protected works in classrooms, previous Chilean proposal 3. In that sense those were specific uses for pedagogical, teaching, or educational purposes and it was possible to consolidate them because either a reproduction or a performance or a transformation or distribution, the four of them were different types of uses. So at the end there was a general mention to uses for pedagogical and teaching and educational purposes and the mentioning of four of them, but without limiting the possibility of other kinds of pedagogical and teaching purposes. There was another consolidation regarding the technical measures, but it did not deserve major explanation because the two previous clusters were on that topic and there was just a difference of the use of the term "protection".

112. The Chair indicated that there were some proposals from Ecuador that still required explanation.

113. The Delegation of Ecuador referred to the clusters on page 6 which had not been included in the joint statement by GRULAC. The first of them was Cluster 6, which referred to making available on an interactive basis a communication to the general public as referred to in the WCT and the WPPT. That was a theme that should be dealt with separately because of its implications for the digital environment. The other cluster which had not been included in the GRULAC consolidation was Cluster Number 9 which was on page 7 of the document and focused on distance learning. That, too, was a form of use of works for educational purposes which had its own identity. Cluster Number 10 on the same page, which referred to the exceptions that were needed for special education for persons with disabilities. Finally, Cluster 1 related to obligations of a general nature because they referred to undertakings taken by members of the Committee to update their laws from a systemic point of view. The other clusters may be considered ways in which states met those obligations because Cluster Number 1 did not refer to specific exceptions or specific uses that should be exceptions. It merely referred to a situation where states reached general agreement on exceptions.

114. The Delegation of India supported the statement by the Distinguished Delegate from Ecuador. The cluster should include the making available and communication to the public right and also transmission because those were very important, especially in the distance learning environment. The second item was the topic of research. The member countries had included very important aspects in Cluster 3, use for pedagogical and teaching purposes. But one cluster should exclusively cover the research purposes. As regard databases the focus should be on original databases, not on the non-original databases. Copyright was an expression of original ideas in a material form. So the database also enjoyed copyright protection if it was

original. Another important definition was the term “work”. The definition was very narrow. It should cover any work and include not only the literary and artistic works but also the cinematographic and sound recording and other multimedia works. Analog and digital works should both be included.

115. The Delegation of Nigeria noted quite a bit of redundancy in some of the proposals. My understanding of the word “cluster” was a grouping of items that were linked together by some theme. I’m wondering if some of the things that were referred to as clusters were in fact not requests for specific provisions identifying or dealing with a specific item. It could be possible to put more coherently those clusters together and identify four or five different kinds of exceptions and limitations. One would be a cluster along institutional lines indicating who would be rightfully able to use the limitations and exceptions. The second would be the kinds of uses that would be allowed. The third would be distance education which would deal with transmission, databases, TPMs, etc. And the fourth would be research. Virtually all of the proposals for clusters fell under one or all of those four general themes. In the interest of time and efficiency the Nigerian proposal was placed under two of the cluster headings mentioned. The first proposal was to establish specific exceptions for scientific research for scientists to be able to access databases for the results of scientific research, whether publicly funded or in journal documents to be easily available within the educational and research context. Related to that was Cluster 7, namely personal usage rights for study and research. That included personal use both for researchers and teachers themselves, but also for students within educational institutions. In the process of the educating function, particularly in traditional classrooms, the rights to facilitate teaching, scholarship, or research should not represent a cluster per se. With regard to Cluster Number 9, protection for incidental inclusion of a work or a subject of related rights in educational materials, that really related to the capacity and ability of both teacher and students in either a traditional class or in the distance learning process to capture copyrighted works or works subject to related rights as part of a teaching research or study exercise. There was a need to ensure that those sorts of incidental inclusions were not the subject of a violation. That was particularly important in the context of countries that did not have the fair use doctrine, which would normally excuse such incidental inclusion in any regard. Finally, the reproduction of works, including broadcasts, under Cluster 11. As explained by India that was really about the capacity to be able to transmit digital works and content for distance education, but also for in-class use. While those were important rights, they were not clusters per se. They were aspects of one of the four or five clusters suggested.

116. The European Commission, speaking on behalf of the European Union and its Member States, concurred with the remarks by Nigeria that there was a certain degree of confusion due to use of the term clusters, which was normally defined as things that belong together. Some of the clusters overlapped or talked about the same from different angles. So in that respect a further effort to try to rationalize the clusters would be very welcome. But trying to get further clarity and within the first group that you had identified which was specific education and research limitations and exceptions, and starting by the explanations by GRULAC, it was useful to try to regroup together some of the clusters as it had been done, the use of works for pedagogical and teaching purpose was a very large title in any event. They all seemed to relate, the first one being a very general basket. The others seem to relate to different rights that may be affected by a limitation or exception for the benefit of teaching and maybe research. There was one, however, which originally was on the point number 12, Cluster 7, which read “translations, transformations and adaptations” for which further guidance from GRULAC would be appreciated. Moreover further clarification from Ecuador would also be welcome as regards to Cluster 6 that referred to availability on an interactive basis and communication to the general public for education purposes. When talking about limitations to rights for the purposes of teaching or education, one normally tended to identify the institution or the particular use of the particular user or beneficiary. That seemed to be very large when referring to the general public.

117. The Delegation of India added one more item to the Cluster 7, the earlier cluster that was part of the quotations, should include both quotations and citations. The Indian Delegation appreciated the important issue raised by the Distinguished Nigerian Delegation, especially on 18, that was Cluster 7. That was the personal use rights for study. The personal use and private study by individuals were very important because, once the exceptions for teaching purposes and pedagogical purposes had been covered, the student went back from the classroom to concentrate on studies consolidating what he had learned from the classroom. The publicly funded material, open access or open educational resources deserved a separate cluster, due to its importance not only in the developing countries, but also in the developed countries. Finally the beneficiaries should not be only the public, the government, educational institutions. The private universities and research institutions run for noncommercial purposes should also be covered.

118. The Delegation of Ecuador indicated that the clusters were just a heading with respect to which specific text of proposals was added. As to Cluster 7, translations, transformations and adaptations, the rubric would include specific proposals of exceptions for educational purposes that have to do with a work that was one language and would be translated into another language in order to facilitate the educational process. As regards transformations, the change would be made to the work in order to make it more understandable or apt for educational purposes. An extensive work, for example, which would be summarized so that it could be used for education for children in basic education. Then adaptation, very simply we were thinking about situations, for example, a poem in which the professor in class proposed a small representation of the poem by changing from a literary genre to another. Then as to Cluster 6, which was availability on an interactive basis and communication to the general public for educational purposes, there was an ambiguity which was generated by the translation.

119. The Delegation of Brazil referred to the clusters it had proposed, namely, Cluster 3, 4, and 5. It confirmed that Cluster 3 was merged with other clusters proposed by GRULAC. Cluster 4 and Cluster 5 covered two important issues that should be addressed by the new instrument. New language regarding those clusters had been coordinated. On the Cluster Number 5 on quotations, it was worth mentioning that there was already a provision in that same spirit in the Berne Convention but the issue needed to be addressed in the new instrument as well especially in view of the new digital environment.

120. The Delegation of the United States of America concurred with the sentiment in the room that the word "clusters" had perhaps led us astray in the discussions and perhaps what were really intended were topics. In following up on the European Union's exchange with Ecuador concerning topic number 11, which was Cluster 6, merit was found in the explanation of the Distinguished Delegate of Ecuador that the problem related to an imprecise translation from the Spanish. Further clarifications would be welcomed on what the difference was between the Ecuadorian Cluster 6 and the concept of distance learning, which was Cluster 9. As to the remarks of the Distinguished Delegate from India, it was not clear what the problem was in copyright about citations. Under American copyright law there would be no protection of citations from which you would need an exception. In addition the question was put to the Distinguished Delegate of Pakistan in regard his proposal on access to publicly funded scientific research, which was also a topic that occurred as number 38 on page 16 from a Nigerian proposal previously. The first impression was, from the title of the topic or cluster, that the issue was not a copyright exception or limitation. The United States had a robust practice of seeking the public dissemination of publicly funded research and it was perhaps the world's largest funder of scientific research. The United States did not normally conceive of that as a copyright exception or limitation but as a government policy regarding funding of scientific research. Finally, the Delegation understood completely what the Brazilian Delegate meant by reproduction of lectures and conferences. On a personal note the Delegation appreciated that he would prohibit the publication of notes from professorial lectures even if the students had the right to take the notes.



121. The Delegation of Nigeria sought clarification from a few comments that the Distinguished Colleague from Ecuador made. With regard to the explanation to item 12 on page 6, which was listed as Cluster 7, translations, transformations and adaptations two distinct arguments had been mentioned. The first was that there might be a need to make a copyrighted content usable in the classroom by a teacher or a student, perhaps in an abbreviated format for educational purposes. However that might perhaps be a little bit different from the notion of a teacher or professor or lecturer taking a work and distributing it in the classroom, perhaps just in an excerpted form. The way the Distinguished Delegate was understood was that those transformations and adaptations appeared to be something done on a wide scale, perhaps encroaching on what was a well-established secondary market for what was referred to as derivative works. Clarification was needed about the distinction between translations, transformations and adaptations for purposes of teaching versus the creation of a wholesale derivative work which was perhaps outside of the context of the teaching environment. The second point went to the Distinguished Colleague from the U.S on the proposal to enhance the African Group proposal on access to publicly funded research. The U.S. was in fact the largest funder of research and certainly scientific research and access to those works or to the results of those research outputs were often mandated by the granting agency. There had been a new requirement by government agencies in the U.S. that the results of government-funded research by the NIH ought to be available, certainly in preprinted final publication form. The African Group proposal and the enhancement from Nigeria sought to ensure that, as a minimum standard of international copyright, access to such research was made available. The traditional justification for the copyright system did not apply when the incentive to create and to publish the results of the research had been funded by the government, not by private investment.

122. The Delegation of Senegal agreed with Nigeria in that here was a problem of functionality because in fact the heading did not always reflected the reality of the content. In view of the Delegation, having only five or six categories would enable to go faster in the context of that reflection process. India's proposal to have a special cluster on research was also acceptable as extremely convenient for developing countries. That cluster should also encompass translation of research from one language to another.

123. The Delegation of Finland presented the implementation of the Information Society Directive of the European Union in Finland as regarded educational activities. That information could be useful to several clusters presented today, but specifically under the one proposed by Brazil, namely clusters 3, use for pedagogical and teaching purposes. The Finnish Copyright act dated back to 1961 and had since its beginning reflected the needs of education as well as libraries and archives needs. In fact, the exclusive rights given to authors must be, according to Finnish law, read with various limitations and exceptions. The exceptions were limited to the non for profit context. As regards education, the provisions were built on limiting the public performance right of the author on one side and the reproduction right on the other. According to Finnish law, a published work might be performed in connection with education. That provision did not concern the dramatic or cinema graphic works except for purposes of research and higher education on cinematography. As regards reproduction rights, when a work had been made public and performed by a teacher or a student in a classroom, the work might be recorded for temporary use in the classroom. Furthermore, it was possible to make an anthology of literary or artistic works in a compilation of works, consisting of the works of several authors. The exception allowed for printed anthologies only. It was especially indicated that works made for education were not covered by the exception. The authors had the right to remuneration for that type of use. In addition to limitations in the law Finland had also from the beginning of the 1960s developed a specific mechanism called the extensive collective licensing system. Based on that system it was possible to negotiate about the use of works for educational activities or for scientific research between the users and the right holders in a flexible manner. Such uses include uses in the digital context as well.

124. The Delegation of Ecuador referred to the question put by the Distinguished Delegate from Nigeria with regard to whether Cluster 7 referred not to the secondary market or if the issue of translation, transformation, adaptation related to a case-by-case decision by a teacher only for that particular class. If one teacher in one day of the school decided to make a poem, to make it into an art work, that would be a case-by-case approach. Of course a case also existed where the publisher decided to provide materials adapting a longer work to make it more accessible for young children. Indeed there was a different kind of transformation or adaptation that would imply creating a secondary market of books. So the answer was that Cluster 7 was neutral and covered both approaches. And to the second question put forward by the Distinguished Delegate from the United States, if the same Cluster should apply to the making available and to distance education, the answer was that that there could be making available in occasions other than for distant learning. For instance, a face-to-face class where interactive access was provided for some specific content. Cluster 6, Cluster 13 and 21, all covered reproduction and could be brought under one group. The preparation of anthologies and publication by schools and institutions was also an important issue for discussion. Finally, the treaty should focus on uncompensated exceptions. Chaining exceptions and limitations with the licenses and compensations would defeat the very purpose of giving support to the growing knowledge society.

125. The European Commission, speaking on behalf of the European Union and its Member States, referred to the general framework that had been established at European Union level and that was followed by the 27 Member States of the European Union for limitations and exceptions. That framework was probably quite interesting to keep in mind at the SCCR. The European Union was composed of countries with very different traditions and ways to approach copyright protection. The European framework in the same manner as the Berne Convention, allowed for a catalog of limitations and exceptions to be voluntarily adopted by the Member States. It was a framework that provided for a degree of flexibility which was very important in areas such as the possibility or not to provide for fair compensation or to apply formulas as the extended collective licensing mentioned by the Finnish delegate. The catalog of limitations and exceptions that was available at EU level contained a general exception for teaching, which was normally considered to be for the sole purpose of illustration for teaching. It also applied for scientific research. Another possibility for limitations existed for the purposes of quotation which was relevant in that context; also for the purposes of private copying and reprography; also in regard the reproduction right for libraries and educational establishments for purposes such as preservation. Also an exception to the reproduction right and the making available right and the communication to the public right existed for research and private study, in terminals located on the premises of educational establishments. In regard the main or the more general teaching exception, basically what that exception covered was the use of works or other subject matters, for instance phonograms or broadcasts, for the sole purpose of teaching. The use could be only done on condition that it was for noncommercial purposes. It was also required to indicate the source and name of the author of the work unless that was not possible for practical reasons or otherwise. The rights that could be affected by such limitations or exceptions as implemented by Member States were very varied, depending on each limitation, including the reproduction right, the general communication to the public right, but also covering the making available right and the distribution right. Implementation was subject to the three-step test. Limitations could apply to face-to-face teaching but also to distance learning. As regards not the rights but the works and subject matter that could be covered or affected by those limitations and exceptions, again, the European framework provided for great flexibility. It was an open-ended exception in the sense that it did not pose any specific limitations as to the nature of the work or other subject matter that could be subject to the limitation or exception. It was for Member States to implement it again taking into account the application of the three-step test. And the same approach applied to the type of beneficiaries. The use had to be for noncommercial purposes, but beyond that the exceptions and limitation did not limit the institutions that could benefit. It could be public or private.

126. The Delegation of Peru reminded all delegations that Cluster Number 7 which originally corresponded to an Ecuadorian proposal on which clarifications had been asked was merged into the GRULAC proposal. In the original proposal there was not the special relationship with the purposes of teaching or education but when it was merged into the GRULAC proposal that connection was made. In regard the comments made by the EU on the need for “flexibility” the joint proposal from Ecuador, Peru and Uruguay was aimed at providing that flexibility. So the purpose of that tripartite proposal from Ecuador, Peru and Uruguay was to make clear that there was a commitment by the parties, an obligation to update and expand exceptions, in particular for educational purposes.

127. The Delegation of Burkina Faso referred to Cluster 7 on the issue of translations, transformations and adaptations. It would be a good idea to know what the real dimension was of those subheadings, in other words, translations, transformations and adaptations. The transformation of the work might have to do with the authorization of the original creator as a derivative work was created and to the moral right of the initial author who created the work.

128. The Delegation of Nigeria, in response to some of the comments made by the European Union, stated that the technology and the social and human development interests of all countries were moving the system towards greater openness. The capacity to ensure that future generations were adequately educated, that the most impoverished nations of the world had an equal access to learn, and to be fully engaged as citizens in a global economy, were no longer debatable. To the extent the copyright plays a fundamental role in both the creation and the dissemination of knowledge, and of scientific progress, that particular discussion today was vitally important because knowledge no longer had boundaries. The copyright system could no longer simply be reactive. It could no longer simply be a system that protected rights without a purpose. Copyright in and of itself existed to promote the progress of science and the useful arts. Accordingly, the EU laundry list of limitations and exceptions that covered in fact all of the things under discussion had had a disparate adoption by Member States. The result was a patch work system in which some Member States had certain limitations and exceptions and others did not. The situation in the EU was being mirrored across the world. As a consequence, teachers were never quite sure what they could access and under what conditions. That uncertainty represented a barrier to teaching and progress. There were two strong traditions represented in the room with regard to limitations and exceptions. The Continental or European tradition that listed very explicitly what uses were permitted and those who were compensated or uncompensated. There also was the common law or Anglo- American tradition which combined very short lists with a huge flexible instrument called the fair use doctrine in which particular uses were evaluated against the public or social purpose and the amount of content that was used. The proposed framework that was being discussed would find a bridge between those two systems, neither of which were ideal but both of which were functioning for some. It was important to have a harmonized minimum mandatory approach not just because particular sectors needed it, but because the entire economy required some flexibility in order to advance the progress of science and the useful arts. What the enhanced proposal by the African Group had suggested was the slight modification of the EU list of exceptions and limitations to be combined with a provision that was addressed by the proposal from the Distinguished Delegate from Ecuador, which looked at the possibility of a provision that facilitated an updating of limitations and exceptions for education. The text in essence allowed countries to enact new limitations and exceptions consistent with the Berne Convention and established practice according to the latest developments in jurisprudence.

129. The Delegation of Germany stated that the German copyright law was based on the EU directive on the harmonization of certain aspects of copyright and related rights in the information society. Limitations were all subject to the three-step test contained in the Bern Convention. The German law had no special limitation or exceptions for the purpose of education or research, where some limitations on copying could apply. First, every student at

school or at university had the permission to make copies of a work for the purpose of education. It was also permitted for a third person to make copies on behalf of the student. Second, any teacher or professor was allowed to make copies for every pupil or student in his class, but only for part of the work or of a short work. If a longer work was involved, the permission was for ten to 15 percent of the total work. If it was a shorter work, such as a poem or a picture, the whole book could be copied. As an exception to that limitation it was not permitted to copy books with a special school books. In cases of copies made by the student or copies made by the teacher, the rightholder would get remuneration. Anyone selling a copying machine had to pay a certain amount to the rightholders collecting society. It was further permitted to make a work available to the public for the purpose of education or research but universities,, schools or research organizations had to ensure that the work was be used only by students or by its members, not by the general public, and only about ten to be 15 percent of the work could be used. The copyright owner received remuneration for that kind of use following a contract between the representatives of the school, university, and research organizations and the rightholders collecting societies. The expression performance had very different meanings. It was permitted to recite a play or a poem in class when there was no auditorium and it was permitted to show a video or a broadcast in class if it was a private video or broadcast brought by the teacher. It was further permitted to communicate or perform a work for school events, for example a school theater and school orchestra. If the auditorium did not pay an entry fee or similar fee, the performance was without responsibility to pay remuneration to the rightholder. The German copyright law allowed quotations according to the purpose of the quotation which meant the use of the small part of the work but in certain rare cases it also meant the whole work.

130. The Delegation of the United States of America stated that its educational system was supported by a vibrant commercial market for education and research materials as well as a set of exceptions and limitations in the copyright law including the doctrine of fair use and specific provisions for teachers and students. The commercial market through licensing and voluntary agreements and the exception limitations and exceptions in the copyright law provided for the critical access to information, research, and creative expression needed to enable full participation in the information society. The commercial marketplace included both major publishers and nonprofit press and served a number of educational institutions and audience, public and private. Exceptions and limitations were an important part of the copyright balance worldwide and at the national level. Appropriate and balanced exceptions that met the three step test required careful study and consideration of all circumstances which differed from country to country. In the United States, there was a set of targeted exceptions for education codified in section 110 of the U.S. copyright act but it was very hard to map exceptions on to the specific clusters which had been discussed. For example, with respect to Cluster Number 5, performance for educational purposes, Section 110 allowed instructors or students to display or perform copyrighted works provided they did so as part of classroom activities in a nonprofit educational institution and provided that the work was a lawfully made copy. With respect to Cluster Number 9, on distance learning, in the late 1990s, the United States had engaged in an extensive process to promote the development and growth of distance education and to help ensure that the copyright law exceptions for education reflected the realities of the digital age. As a result in 2002, it had enacted the Technology Education And Copyright Harmonization Act, also known as the TEACH Act which amended Section 110 to allow for the inclusion of performances and displays of copyrighted works in digital distance education under appropriate circumstances and subject to certain limitations. Specifically, the TEACH Act expanded the categories of works that were covered by section 110 of the Copyright Act and removed the concept of the physical classroom as a requirement to qualify under that provision in favor of the concept of mediated instructional activities under the supervision of an instructor. At the same time, the TEACH Act had acknowledged the inherent risk for copyright owners in the digital environment by incorporating a number of safeguards to protect them against the unauthorized distribution and reproduction of copyrighted works. Under the TEACH Act, only accredited educational institutions or government bodies could avail themselves of that exception and only

students officially enrolled in the course were authorized to receive transmissions of copyrighted works. Educational institutions were generally prohibited from interfering with technological measures taken by copyright owner to prevent retention and distribution of the accounts used. Under the TEACH Act, the exception provided under the law did not extend to use of copyrighted works developed specifically for online educational uses, textbook materials, or other materials typically acquired by students for their interest use. The Committee should ensure that the needs of educational institutions were balanced with appropriate responsibilities on the part of educational institutions. With respect to clusters 27 and 28 its law also provided certain flexibilities for education with respect to those measures. Under section 1201 of the U.S. Copyright Act, nonprofit educational institutions as well as libraries and archives were permitted to circumvent access control measures solely in order to make a good faith determination whether to acquire an authorized copy of a work. Also, under section 1201 the U.S. copyright office conducted administrative proceeding every three years and in consultation with the Department of Commerce to develop exemptions to the laws, prohibition on circumvention of technological measures to control access of works for certain types of works. Through that process, the United States has permitted the circumvention of technological measures in order to permit the incorporation of portions of films into new works for the purposes of criticism and comment by college and university professors engaging in educational uses. Finally, the doctrine of fair use could in specific circumstances allow third-parties to make limited use of copyrighted works, including for purposes of teaching, scholarship or research. That doctrine had been codified in Section 107 of the U.S. Copyright Act and set four nonexclusive factors for courts to determine when assessing whether a particular use would be fair. The considerations of those factors often required a complex analysis of facts and circumstances of each individual case. That brief description had shown that the U.S. had experience in limitations and exceptions which fell under some of the cluster headings proposed by the Delegations of Brazil, Peru, Ecuador, Nigeria, but on the other hand, it had little or no national experience in some of the topics proposed in relation to education, such as public health or security, liability, orphan works or computer programs.

131. The Delegation of France stated that under the French legal tradition, a teaching exception had been set up, in the context of the WIPO Berne Convention and also in the context of the 2009 EU Directive. The pedagogical exception was contained in provision L1025 (e) of French Intellectual Property Rights Law. Under the pedagogical exception the authorized acts were representation, reproduction of extracts of works with the reservation of works conceived for teaching purposes. Musical partitions and digital written works aimed for illustration purposes in the context of teaching and research purposes, and excluding all recreational activities as long as the public to which that representation or reproduction was aimed was composed mainly of students, classroom students or teachers or researchers directly concerned. That representation and that reproduction didn't give rise to commercial use and were compensated by remuneration negotiated on a lump sum basis. The French legislative framework was based on five pillars: The first one was that the compensation did not affect all materials such as books used for teaching, musical partitions or digital works. That included school books as well as university textbooks which also constituted an exception in many foreign legislative frameworks.. A protocol agreement had been negotiated with rights holders for the use of books and printed music, as well as periodic publications just for teaching purposes. A license was granted parallel to the use and it was important to consider how the license model could be combined with an exception, which constituted the second pillar under the French regime of exceptions. Representation or reproduction of protected works could only be used to illustrate a teaching course or the work of the researcher from primary schools to university education, public or private, distance learning. No distinction was made between regular teaching and distance learning. Research included all research in public institutions and the criteria of absence of commercial use excluded research carried out in private companies. The third pillar targeted the public as the pedagogical exception referred to the use of a particular public which was the general public made up of students and researchers directly concerned. The fourth pillar referred to the absence of commercial purpose as included in the

EU Community directive of 22 May 2001, which was essentially addressing a general cultural interest objective. The last pillar was the same as in German law, constituted by remuneration. The exception could only be provided against remuneration negotiated on a lump sum basis.

132. The Delegation of Chile expressed perplexity about the Committee's procedure as it had understood that the session would be devoted to the presentation of clusters or topics and it was hoping for an opportunity to introduce its proposal on reverse engineering. It also reminded the Committee that the work plan had provided to make a recommendation to the General Assembly on those issues and was worried about the limited time available to reach that agreement.

133. The Chair stated that the Delegation of Chile could then introduce its proposal on reverse engineering.

134. The Delegation of Chile stated that the proposal came under the heading of software and databases as it was directly connected to research. Reverse engineering was an activity which made it possible to improve the functioning of computer programs. The country had provided some legislation which enabled reverse engineering to be carried out on computer programs as much as the computer program had been obtained legally in a legitimate way and that reverse engineering process was carried out for the purposes of research or development. In addition, the information obtained during the process of reverse engineering of a computer program could not, be used to produce or commercialize a computer program that was similar or which was infringing rights protected by law. It was proposing it as one of the topics for discussion in the context of that meeting.

135. The Delegation of India was of the view that reverse engineering was an important topic for research which had been provided as an exception under the Indian Copyright Act. The WIPO Secretariat had undertaken significant studies on education which covered 157 national laws and which had pointed out several clusters. In that context skills development was an important issue on which the government of India had been focusing on, which was meant for even the slightly educated people who wanted to improve their skills. Instruction was therefore a more important principle than teaching and had to be included in the cluster. Exceptions for fair use and fair dealing had already been covered and the Secretariat analytical document had addressed the scope of educational exceptions. The next item which required discussion was the kind of works and rights which were covered for educational exceptions. Exceptions for the use of educational content for teaching in university, schools and other educational should help institutions. Conservative practices for implementing exceptions had to be set aside and the Hargreaves Review had provided interesting examples of relevance for not only developed countries but also for the developing countries.

136. The Delegation of the United Kingdom thanked the Delegation of Egypt for requesting an update on the access to research policy group. The Government had just announced a new policy to open up access to publicly funded research as it believed that making it possible to access publicly funded research would provide real economic and social benefits. That announcement was the result of the work between publishers and research organizations which had recognized that open access publishing, while not a direct copyright issue, had broad benefits and costs for publishers. It was important to note that the announcement did not involve any change to the U.K. copyright framework. It would make further comments at the appropriate time in the proceedings in relation to the clusters and headings the Committee would discuss and in response to the comments made by the Indian Delegation it would include some recent developments taking place in the U.K. copyright law.

137. The Delegation of Egypt, speaking on behalf of the African Group, said it was pleased to see a high level engagement on the important subject matter and supported the Chair's statement to follow a focused process of discussions to advance text based work on limitations

and exceptions for education, research, institutions and people with disabilities. Accordingly, the group requested the Secretariat to update the working document and other textual proposals submitted by Member States and to submit a revised document to be once again reviewed in the plenary session. The Group was also working on some textual proposals.

138. The Delegation of the Islamic Republic of Iran supported the suggestion put forward by the Egyptian Delegation.

139. The Delegation of South Africa requested clarity about the proposal from the Delegation of Nigeria requesting to address four clusters.

140. The Chair stated that the Committee was dealing with topics and it would continue with that format of dealing with topics and not clusters in the strict sense.

141. The representative of the International Publishers Association (IPA) stated that the Committee had been discussing educational exceptions for educational institutions and research institutions which was already a gigantic topic. It was also important to remind the Committee of the international and copyright consensus which had recently been reconfirmed in the Beijing treaty and member States would need to decide whether it would be wise under the heading of copyright and education to revisit all the issues that had been just confirmed three weeks ago as an international consensus. Member States were also reminded of an important principle related to the fact that the work should be evidence-based. It was important for educational and publishers to understand where there were specific problems with access to educational content or to content in general and to understand and to share experience on where copyright exceptions had been introduced to overcome the lack of access and what effect those copyright exceptions had had and whether they had in fact resolved the issue or whether they had not been able to do so. It was expecting to hear and share more about the reality of education and access to educational content in particular in primary and secondary education where access was all about local content and local languages and relevant material that were supplied by local publishers.

142. The representative of the Scientific and Technical Medical Publishers Association (STM) stated that the topic addressed was education and research, but that the wider issue of public access had been addressed. Open access was a new way of publishing and many of the STM members already had a viable and sustainable business model associated with that form of publication. The issue of public access didn't need to be addressed through exceptions or through the business model of open access. STM was closely associated with a program called research for life which had been presented to the SCCR on several occasions and, for instance, in over 100 countries more than 9,000 resources were free to the user, free to the researcher and available in a vast majority of countries that would be considered least-developed at absolutely no cost. Government-funded research policies which had been referred to didn't have any real implications on exceptions as they were an illustration of rights holder consent and licensing, working to the benefit of enhancing public access. None of those policies had questioned the need to seek consent from the author or the rights holder to make works available in preprint format, post publication format or at any later stage in the dissemination process. Copyright was an incentive for the creation and for the dissemination of knowledge.

143. The representative of Knowledge Ecology International (KEI) stated it was possible that some delegations believed it had exaggerated the extent that the three-step test currently was relevant to exceptions. It was an important test for exceptions which was not relevant to some other exceptions which were evaluated on a different standard. As the meeting proceeded, it looked forward to clearing up some of the confusion over how the three-step test applied in relation to the Berne Convention as well as some other areas such as remedies or control of competitive practices. It referred to the statement made by the Delegation of Nigeria which had indicated that the goal was access to knowledge for all which had to be an objective shared by

all delegations in the same way as the objective of access to medicine was discussed and shared within the World Health Organization. India had addressed the issue of remunerated and non-remunerated exceptions which played a different role. The model of remunerated exceptions had been attempted in the Bern Convention Appendix where it had failed but the model had been successful in Finland in some areas. It was important to get the right balance between access to education materials, access to knowledge and the development concerns of developed countries on one hand and visually impaired people concerns. It looked forward to moving forward with the visually impaired treaty which would be a great achievement and a confidence-building process while at the same time advancing on access to knowledge issues in the area of education and development

144. The representative of the Motion Picture Association (MPA) recalled the purpose of IP law to incentivizing the creation and distribution of new works to the benefit of all stakeholders around the world, copyright owners, users, research institutions, film makers in Nigeria, film makers in Hollywood, film makers in India and everywhere. It expressed doubts in relation to the issues raised in the document on the balance between the rights of authors and other rights holders on one hand and the interests of beneficiaries of exceptions and supported balanced exceptions which were vital to the system. It had many questions about proposed definitions and highlighted that exceptions as well as the fair use doctrine were defenses, not rights while in relation to technological measures solutions had already been found at WIPO. A number of issues required further discussion such as orphan works, exhaustion, and contracts, out of commerce works, other disabilities, and interpretation of the three-step test. The current international framework provided considerable flexibility for Member States to implement balanced exceptions. However in order for exceptions to exist, corresponding rights were required. National solutions also required some discussions in the Committee and recent decisions in the United States, Canada, and Europe had demonstrated the necessary flexibility. However a number of pressing issues around the world were not going to be solved via copyright exceptions which could not be considered a panacea. Exciting developments and growth of digital technology and networks had challenged the copyright system and also demonstrated the important role that content played. Continued step needed to be taken to incentivize the creation and distribution of new works for the digital environment.

145. The representative of the International Federation of Reproduction Rights Organizations (IFRRO) recalled the importance of access to cultural content for the educational sphere, research and libraries. Authors, publishers and clearing centers worked in order to further that possibility. Authors created the best possible works for training in schools, research, and also for recreational purposes of citizens which required support which could only be done through proper compensation of their works. Publishers made the necessary investment to distribute works, whether in paper or digitally and facilitated the use of collectives to use fragments of works in innovative ways allowed by technology. That value chain would be broken with non-remunerative exceptions and publishers wouldn't be able to work the way they had been doing. That would mean a tremendous step backwards and publishers would not be able to continue to invest in the medium and long term. It was necessary to maintain the necessary balance between copyright of authors and other rightholders and the requirements of users who had appropriate needs access content including digital content as highlighted by the Delegations of the European Community and its Member States and of the United States of America.

146. The Chair indicated that according to the discussions held on the previous day, they were to produce a document capturing the previous day's discussions in terms of textual proposals and comments that were not textual. He indicated that at that stage while the document was being printed for distribution, he would ask the Secretariat to explain what had been done. He also asked the Delegation of Egypt if they could make the presentation they have indicated they would do on other disabilities.



147. The Delegation of Egypt on behalf of the African Group indicated they had formulated that morning additional textual proposals not only limited to people with other disabilities but also to other topics that were captured within the compiled working document. It added they were at the Chair's disposition to present said additional proposals.

148. The Chair indicated that the Secretariat would explain what had been updated in the document and afterwards he would give the floor to the Delegation of Egypt so it could present their proposals.

149. The Secretariat indicated that it had prepared another version of the working document they had on the previous day, dividing it into two sections. The first section incorporated additional textual proposals into the document namely, additional articles, definitions and/or proposals, which were no longer been called clusters but topics. Topics were not renumbered or moved around pending the completion of the ongoing discussions that were held the previous day, where the various topics had been explained by the proponents. The second section reflected comments made during the discussions taken directly from the transcript. It indicated there had not been an attempt to match up those comments or parts of them with the topics at that time.

150. The Chair indicated that it was only fair that they expected meaningful engagement on that document once everyone had it in hand as to what the updating had been done.

151. The Delegation of India indicated to the Secretariat a correction at page 4: original database means original collection.

152. The Chair asked the Delegation of Egypt to present the African Group's proposals.

153. The Delegation of Egypt called upon the Delegation of Nigeria to present of the additional proposals of the African Group.

154. The Delegation of Nigeria on behalf of the African Group proceeded to present the additional proposals of the African Group by indicating that: the first proposal dealt with a subject matter that was "non-eligibility for copyright protection". That proposal reflected existing standards in the Berne Convention, the WIPO Copyright Treaty, the WIPO Performers and Phonograms Treaty as well as the agreed statements to those international treaties. It stated that non-original database were not eligible for Copyright protection and also included that legal acts and official texts of administrative, legal or regulatory agencies, were also not eligible for Copyright protection and reinforces the provision in the TRIPS Agreement that ideas, procedures and processes were ineligible for Copyright protection. In essence it was a provision that supported and ensured a robust public domain at the international level. The second proposal by the African Group dealt with "exhaustion of rights". The TRIPS Agreement did not resolve that issue due to differences in approach to exhaustion in the EU and the U.S. The African Group was proposing a provision on the exhaustion of rights and in particular the capacity of developing and least developed countries to utilize within that access of exhaustion the provisions already provided for in the Berne appendix. The third proposal dealt with specific exceptions many of which they had discussed on the previous days. Those specific exceptions borrow significantly from the European Copyright Directive, the European INFOSOC Directive, the fair dealing and fair use traditions of the United Kingdom, the United States of America, India, Nigeria and Israel. That provision addressed specific exceptions that would deal with temporary acts of reproduction which were transient or incidental but were an integral part of the technological process where the sole purpose was to enable a transmission in a network by an intermediary for any lawful uses defined in the act or treaty or law. It also covered reproductions with the exception of sheet music; reproductions for private use and personal study when the ends of that use and study were neither directly or indirectly commercial; ephemeral recordings of works made by broadcasting organizations; and reproductions of broadcasts made by social

institutions for noncommercial purposes such as hospitals or prisons and that may be subject to the right of fair compensation. Uses for translation, teaching, testing, study or scientific research as long as the rights of attribution were recognized where possible. Reverse engineering or decompilation of a computer program done for the purpose of achieving interoperability. Uses for the benefit of people with a disability as long as such use was related directly to that disability and was of a non-commercial nature and required by that specific disability. Reproductions by the press or communications to the public that deal with articles of current economic, political or religious topics or other things that were affiliated or reflective of the exercise of free speech and freedom of the press. Quotations for purposes of criticism or review. Uses for purposes of public health or public security, otherwise referred to as Government use in the legislation and practice of the European Union, the United States of America, Canada and the United Kingdom. Uses for the purposes of ensuring the proper performance and reporting of administrative parliamentary or judicial proceedings. Uses of political speeches or public lectures in terms of extracts that may be circulated. Uses for the purposes of caricature parody or parish. Uses during religious celebration or official celebration in which educational institutions want to expose their works. Incidental inclusions of a work. Uses in connection of the demonstration or repair of any equipment. Uses for communicating to the public or making available for the purposes of research collaborations or private study, as long as they were done at dedicated terminals in the premises of publicly accessible libraries. In addition, the African Group wanted to submit a proposal that in essence stated that notwithstanding the lists of exceptions that have been expressed so far contracting parties shall be permitted to enact new limitations or exceptions necessary to facilitate the goals stated in the proposed statement as long as they were consistent with the Berne Convention and establish state practice including access to educational material and the benefits of scientific research. It also expressed that it was the position of the African Group that contracting parties may introduce the fair use practice. The fourth provision proposed by the African Group was uses by libraries, archives, museums and galleries to make copies of a work in their collection to procure missing parts of a work. To make copies of a work available in formats that make it accessible, certainly both translation or for persons with a disability. To make copies of a work where the permission of the author could not be obtained after reasonable endeavor and that could be subject to the right of fair compensation. To make copies of a work available for lending and those rights should be applicable only when done for non-commercial purposes. It also included that for archives, libraries, museums and galleries, copies made could be used for personal use or study and could be lent to users. Libraries should be entitled to each other by post, fax or any other means copies of works that may be missing with some caveats for deletions if they were printed in a permanent form. The fifth provision was for educational institutions to be able to exercise the rights that were currently guaranteed under the Berne appendix which include the right to make a translation to reproduce and publish the translated work and to make the work available to persons with disabilities that were registered in those educational institutions or registered users in those libraries and then an educational institution or a research organization should be entitled to import or export lawfully acquired copies made pursuant to those provisions. The sixth proposal was related to contracts that would attempt to override or void limitations and exceptions that were recognized in international law or by national law that there should be a provision that deems such contracts inconsistent with copyright policy. The seventh proposal was specific exceptions for science that deals with scientific research reproduction, reuse by search ideas, reuse of facts, data or conclusions and the ability to circumvent technical protection measures in order to access those works for scientific purposes defined very narrowly. There was a condition proposed that for cases where the scientific organization or research organization was a for-profit organization, such uses must be subject to reasonable compensation to the rightholders. Non-profit educational institutions and non-profit research organizations would have the freedom to use those and contracts limiting the rights of scientists to access those works should be deemed null and void. Those provisions should also apply to database protection matters. The proposal on technical protection measures simply facilitated access to works, whether or not copyrighted, that were protected by technical protection measures when that access was for private non-commercial

use, private study or research, reverse engineering or decompilation use for the benefit of persons with a disability or uses to enhance public health and public security, those same provisions would apply to digital rights management (DRM). Given the importance of distance education and the importance of adequate access to digital content, the role of Internet service providers was particularly significant and there was a proposal for a limitation on the liability of ISPs. There was a proposal for access to publicly funded research which in essence simply suggested that there would be a provision in the proposed instrument that would allow research financed in whole or in part from public funds of a Member State to be made available within 12 months of its being fixed in a permanent or stable form. Where such disclosure or access would harm national security interests or other vital public interests, a contracting party should decline for specific things. For persons with disabilities those limitations and exceptions were proposed to be extended to them as long as they were for non-commercial purposes and a provision that also extended those rights to persons with disabilities for personal use. Two proposals had to do with libraries and archives and the capacity for libraries and archives to purchase works and to supply copies from one to the other and to facilitate the cross-border uses of works that were produced under an exception or limitation. Also, to allow libraries to reproduce works for users for personal or private purposes; to translate works for educational institutions or research organizations by requests; to preserve the works and to allow national repositories where specific libraries or archives can serve as designated repositories in which copies of works could be submitted. Lastly, the proposal covered retracted or withdrawn or inaccessible works and orphan works to make sure that libraries, the vast majority of which in Africa were in educational institutions, should be able to preserve and to utilize retracted or unavailable works, including orphan works.

155. The Delegation of the European Union and its Member States indicated that after listening to the list of topics mentioned they had a couple of questions. It noted that it should be taken into account the mandate that they were dealing with at the moment which was limitations for educational, teaching and research institutions and also persons with other disabilities. It also stated that in the list of topics there were a number of them that seemed to be related to different discussions and different documents discussed in the past like libraries and archives. It also mentioned that there were some other issues that had been raised linked to any topic under the mandate of that SCCR, what seemed to be timid to put in somehow for reliability. It requested some clarity to make sure that they were not reaching out to cover everything and anything and going beyond the mandate they had, because they wanted to have a useful and focused discussion.

156. The Delegation of the United States of America indicated that the Delegation of the European Union and its Member States had already asked some of the questions it had. However, the Delegation indicated that the question for them was that the mandate of the meeting they were working on, pursuant to their agreement in the conclusions of SCCR/21, was focused on limitations and exceptions on educational, teaching and research institutions and persons with other disabilities. It stated that in listening to the Delegation of Egypt who was the coordinator for the African Group, it was clearly heard that the African Group was going to introduce some additional ideas, suggestions and textual proposals concerning persons with other disabilities. However, in listening to the Delegation of Nigeria, it heard: reproduction of the press, concerns for hospitals, public domain materials, limitations on ISPs, private non-commercial use, which did not seem to be related to educational, teaching and research institutions. For those reasons, it requested some clarification from the Delegation of Nigeria on behalf of the African Group. It indicated that that proposal had sounded a proposed replacement for document SCCR/20/11 and its progeny. It stated that in that case the Delegation of the United States of America would welcome looking at a new proposal from the African Group, or asked if whether there was something in there that was actually a proposal specific to what they working on at that moment.

157. The Delegation of Nigeria indicated to the Delegations of the European Union and its

Member States and the Delegation of the United States of America that it was talking about education in the African context and not in the context of the European Union or the United States of America. It indicated that the concern of the African Group was to ensure that educational opportunities, in particular taking advantage of the digital innovation that was cascading through the continent, was able to be used productively for educational purposes. It stated that while the proposed topics by the African Group may have seemed to be unrelated to education because of the Forums and institutions that delivered educational material, they were very much about the educational process. It finished by indicating that the new proposals would be integrated into the original African Group proposal, in a new text reflecting a combination of new and old provisions.

158. The Chair asked Member States to present their comments and proposals on the new document prepared by the Secretariat on the previous day that had been distributed at that moment among them.

159. The Delegation of the European Union and its Member States highlighted that there was still further rationalization of the topics of discussion at the moment to be made, as there was a fair amount of overlap and a fair amount that no matter how different education and research was in other countries, continued to seem totally unrelated to the topics they were discussing. It stressed that what was important for them was clearly that they could come out there in a position to have a document that helped the discussion going forward and reflected in a balanced and inclusive manner the comments and positions that had been taken. It observed that they had to be sure that interventions made on specific topics without taking a pretty language from but being text-based suggestions, should be appropriately reflected in the document, in a certain manner in accordance to the mandate they had and the practice they had already adopted with their prior document on libraries and archives. In that sense when the open was document it could be possible to see on the same footing those texts proposals which had been put in the form of a treaty language and those text proposals that would reflect the positions from different Member States as regards the different topics.

160. The Delegation of Egypt, on behalf of the African Group, indicated in relation to the first point of their proposal regarding beneficiaries that they had requested on the previous day the differentiation between libraries and archives as that last subject matter should be dealt under a different document. It also proposed that statements and interventions made by the different delegations should be included in a different document from the one containing the textual proposals from the national laws that would allow such exceptions and limitations for educational, research and people with disabilities, in order to have a comprehensive document.

161. The Delegation of the Islamic Republic of Iran, on behalf of the Asian Group, indicated that the document as it stood made sense and was rational. Regarding the comments to be reflected, it stated that the comments were the positions of Member States and would be included in the report of the session or could be annexed to the document, as it considered all of those topics as non-exhaustive. It expressed its concern that the insertion of the comments in the document could complicate further negotiation of the text, been non-compatible with the mandate of the General Assembly of that Committee, which was to undertake a text-based work. It proposed that if Member States wanted to share their experiences, the Secretariat could prepare an information document for the next session of the SCCR.

162. The Delegation of Italy associated itself with the other delegations by thanking the Secretariat for the hard work made in preparing the document they had in front. It indicated their preference for one document and in that document having comments together with textual proposals, having as a model the document approved for libraries and archives.

163. The Delegation of the Czech Republic aligned itself with the Delegations of Italy, the European Union on behalf of its Member States and others, as it also thought that one

document was the way that they should go, as it would be logical to have all relevant information in one place for each of the segments of the document. It proposed, as the Delegation of Italy had suggested, to follow the format used for the libraries and archives document.

164. The Delegation of Chile suggested that in order to avoid the lengthy discussion to reach a final outcome that had been held during the previous SCCR when working on the document on libraries and archives, that document and its format should be seen as a basis on which to carry out the work on exceptions for education and research. It explained that it did not mean to take the format in its exact form, but perhaps to make improvements or bring clarifications on certain areas of the document which were being prepared that day. In light of that, it proposed as the first step to have a shared understanding about what topics should be discussed, which topics should be contributed to by the various delegations as legal contributions, comments or in whatever form, according to what the delegations themselves judge appropriate. It concluded by presenting examples of certain ways to underscore the fact that there were a few various different simple ways to reduce the topics, to boil them down to something that could be more accessible and easy to understand for delegations.

165. The Delegation of Ecuador proposed to differentiate in the document the two proposals: the “three-step test” and the “scope of the three-step test”, and also to add the topic of limitations to remedies into the text.

166. The Delegation of South Africa pointed out that it appreciated that comments were separate from textual suggestions. It indicated that its understanding was that the mandate given to the Committee was to develop a text-based work, for which comments should just be annexed to the document, as the comments would actually be reflected in the report of the Committee as an illustration of what Member States said during the discussions.

167. The Delegation of Algeria endorsed the statement made by Egypt on behalf of the African Group and subscribed the previous proposal made by the Delegation of South Africa. It expressed that they were particularly keen for the document which would emerge from their work on limitations and exceptions for education and research institutions to be a clear document that could permit delegations to work efficiently. It highlighted that it would also like to have the comments made by Member States separated from the text itself. It concluded by indicating they were flexible as to whether that should be two documents or one document with an annex.

168. The Delegation of Ghana supported the statement made by the Delegation of Egypt on behalf of the African Group and the preceding comments made by South Africa and Nigeria, by endorsing the proposal to have the text separate from the comments that were made, and comments moved to an appendix. It stated that that could help and assist them into arrive to a decision as to which proposals they could accept or reject.

169. The Delegation of Indonesia supported the intervention made on behalf of the Asian Group as well as by the Delegation of Algeria, regarding the need to separate comments from texts. It proposed to separate them as an information document or appendix, in order not to complicate the text for discussions and negotiations and to help move forward the discussions on that matter.

170. The Delegation of Senegal endorsed the statement made by the Delegation of Egypt on behalf of the African Group, and indicated that the document should be separated into two. The comments should be a separated document all together. It recognized the importance of comments but stated that given the mandate they needed a distinct, separated text so they could better understand the document and work on it more efficiently.

171. The Delegation of Nigeria supported the statement made on behalf of the African Group and the statement made by the Delegation of Algeria, Ghana and South Africa, by emphasizing that they needed to fulfill the mandate to produce proposals and to separate the text from the comments.

172. The Delegation of Tunisia aligned itself with the statement made by the Delegation of Egypt on behalf of the African Group regarding the document. It indicated it was of great importance for them to ensure that limitations and exceptions for educational, teaching and research institutions could be worked at an international level, beyond the vague language which was currently being used in the international instruments which exist such as the Berne Convention. It stated that it was crucial if they were able to restore the balance between the interests of rightholders and the public interest, and the right to access culture and knowledge, especially in developing countries. It indicated they needed practical solutions for an action plan and that they also needed to develop practical tools such as guides on limitations and exceptions flexibilities, copyright professional good practice and contracting modes.

173. The Delegation of Kenya rendered support to the statement made by the Delegation of Egypt on behalf of the African Group with regards to the separation of the comments from the text. Further I also wish to support and reiterate the submissions made by the Distinguished Delegate of Nigeria as an enhancement of the African Group's proposal. We cannot overemphasize the importance of issues raised therein in an effort to end the book famine. The discussions we had in the morning with regard to the topics submitted would no doubt achieve that objective.

174. The Delegation of India suggested that each delegation should indicate to the WIPO Secretariat which part of their comments should be move to the main part of the text under a particular topic and which ones should remain in the general comments part.

175. The Delegation of Brazil on behalf of the Development Agenda Group indicated that their Group preferred to keep separate the text from the comments to make the document easier to read. It recognized it was the first attempt of the Secretariat and that also goes along the lines and then you have text and suggestions and have comments, and to have comments outside the text it makes it easier to read the document and for people to have a good understanding of the text itself.

176. The Delegation of Peru invited delegations to take into account the fact that they were at a preliminary phase when they were making their suggestions. It also proposed that they should leave the structuring of the comments on all of those topics to the Secretariat. It called upon all delegations to be involved in that line of work by collaborating with the Secretariat by identifying the links between the comments on the one hand and the topics on the other.

177. The Chair described a suggestion made by Regional Coordinators for working on the rationalization of the document with the help of some friends, in order to have a better structure. He finalized by indicating that they would proceed in that way and be able to discussed on the next day on the basis of said restructured document.

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

178. In accordance with the agenda, the Chair turned to item 7 on the protection of broadcasting organizations and recalled that at its 23rd session, the SCCR had agreed on a work plan to make progress in the discussions with a view to making a recommendation to the next session of the WIPO GA (GA) in September 2012. To achieve that objective, the Committee had agreed to seek agreement towards a single text as a basis for the discussions. While taking into account various documents and submissions which had been presented on

the subject matter, two new documents had been tabled for the consideration of the Committee: document SCCR/24/3 from the Delegation of Japan and document SCCR/24/5 from the Delegations of South Africa and Mexico. The proponents of those two proposals were invited to introduce them to the Committee.

179. The Delegation of Japan stated that the main purpose of its draft proposal was to move forward the discussion for the adoption of the new treaty while not all the provision contained in that proposal necessarily reflected Japan's position. Therefore, the government of Japan reserved its right to make amendments for further proposals based on subsequent international or domestic discussion. The new draft proposal on the protection of broadcasting organizations basically narrowed down the alternatives contained in SCCR 15/2. Since the second special session of the SCCR in June 2007, the Committee had been discussing the protection of broadcasting organizations for almost five years. Although there were many alternatives in SCCR/15/2, it considered that the alternatives in document SCCR/15/2 could be narrowed down based on past SCCR discussions. For the establishment of a new treaty, the Committee had to finalize the object, objective and scope of protection in accordance with the mandate of the 2007 WIPO GA. As to the objective, the new instrument would grant protection against piracy of signals submitted by broadcasting and cablecasting organizations in the traditional sense. Furthermore, consensus had almost been reached that the objective was the signal transmitted by broadcasting and cablecast being organizations in that sense. Differences of opinion only remained on the scope of protection. Fortunately there was a proposal from South Africa and Mexico document SCCR/24/5 for discussion but the scope of application was different from that of SCCR/15/2. In the proposal from Japan, webcasting, including simulcasting by broadcasting organizations was excluded from the scope of the treaty. It hoped that a narrowed-down version of SCCR/15/2 could continue to promote discussions by comparing those two proposals. Article 2, on definitions was the same as the one contained in document SCCR/15/2, consistent with the mandate of 2007 WIPO General Assembly. Transmissions over computer networks were excluded from the definition of broadcasting. Most of the other Articles were the same wording and same explanation of SCCR/15/2. For example, Article 9, the right of reproduction was completely the same as Article 12, alternative HH, of SCCR/15/2. The most flexible alternative had been chosen to allow for most Member States to agree. In relation to Article 12, the right of making available over fixed broadcasts which originally was Article 15 in document SCCR/15/2, the most flexible alternative had been chosen. For some of the Articles new alternatives had been provided in order to provide more flexibility. For Article 13, on the protection in relation to signals prior to broadcasting two alternatives had been provided which allowed more flexibility than alternative 1 which was the same as Article 16 contained in document SCCR/15/2. Document SCCR/15/2 included proposals from member countries and there was no intention to exclude options or alternatives, as a Member State could add possible options and alternatives. The Committee needed to discuss first the scope of protection and the definition of broadcasting as the main difference between the various proposals was related to the scope of protection and the definition of broadcasting. In order to facilitate the process a comparative chart of the proposals of South Africa, Mexico and Japan and of the comments provided had been provided which would be distributed to the Committee.

180. The Delegation of South Africa stated it would attempt to summarize the submissions it had received from Member States and how those had been included in the revised proposal. Seven submissions had been received from the Delegations of Brazil, India, Islamic Republic of Iran, Japan, Monaco, Senegal and Switzerland. It also recalled that various informal consultations had been held in Geneva as well as in Beijing with over 15 countries from various regions attending them. South Africa and Mexico had both met the Delegation of Japan three times to discuss how to move together on the issue. It showed the degree to which both Mexico and South Africa were flexible in accommodating everyone's concerns. The Delegation of Brazil had indicated that there should be more direct treatment of the issues identified by the GA in particular the objectives and the scope as well as the object of protection. It was clear that the object of protection was the broadcast signal and not the broadcast, especially within a

signal-based approach. The scope had been defined in the proposal and was in line with the beneficiaries and the object of protection. In relation to the interplay between protection and cultural diversity and the need to protect public interest's concerns some amendments had been made. The proposal had also tried to address the concern relating to the definition of broadcasting organizations which differed from the one provided for in other treaties, such as the WPPT. The concern relating to safeguards had been addressed in Article 3.1. The comments received from the Delegation of India had expressed the need to limit the scope of the treaty to traditional broadcasting media and subject to contractual relationships. It recalled the position of the Delegation of the Islamic Republic of Iran stating that the mandate did not necessarily address traditional technologies but only traditional broadcasting organizations. India further submitted that on-demand services were not protected which was reflected in Article 3 of the revised proposal. The views of India had also been accommodated with respect to Article 6. Regarding Article 8, various alternative terms of protection had been provided to take into account the various views. The submission from the Islamic Republic of Iran related to the definition of broadcasting signal and signal which it had tried to define in the new proposal. The comments submitted by the Delegation of Japan addressed whether the scope of protection should exclude transmissions over computer networks or be based on a technologically neutral approach. Under Article 2B, Japan had requested clarity on whether "broadcast" as defined in the proposal included transmissions over computer networks or video on demand by traditional broadcasting organizations. Under Article 2D, the scope of broadcasting organizations had to be limited to traditional entities based on the 2007 GA mandate. Under Article 7 Japan had indicated preference for the wording of paragraph 16 of the WPPT on limitations and exceptions. The Delegation of Monaco had emphasized the need to take into account technical developments and under Article 7 it had submitted that exceptions for educational purposes should be designed to strengthen educational uses as well as the need to define short excerpts and current events. The Delegation of Senegal had submitted a proposal on the need to safeguard the rights of content owners in case of unauthorized content use as well as the need also to balance the interests of Broadcasting organizations with the public in the interests of education and information and the need to respond to the concerns of visually impaired persons as well as the needs of archives and libraries which would need to be looked at to find a middle ground. It had also raised the need to protect the interests of content owners. The last submission from the Delegation of Switzerland requested a precise definition of a "prebroadcast signal" and it had been addressed in the list of definitions. When the Delegation of South Africa had submitted its first proposal it had taken into account the various submission that had already been made to the Committee including concerns such as access to information which had been addressed through the provision on limitations and exceptions in Article 7 to take into account the uniqueness of broadcasting as a sector and its social democratic role. WIPO's role was to adopt treaties which were forward looking and not obsolete. Significant research and meeting activities had taken place which had led to the conclusion that signal piracy occurred to a large extent on non traditional platforms and therefore limiting the protection would mean ignoring that problem. It was not possible for the time being and by the time the treaty would be adopted to specify what kind of technology would be affected by signal piracy and the treaty should not specify the technologies involved. As long as some technologies for transmitting broadcasting services were used by traditional broadcasters, those would have to be included in the scope of protection. It had provided in the new proposal a definition of "traditional broadcasting organizations" and anything that didn't fall within that definition would not be included in that scope. The issue of technological neutrality was a forward looking approach. It supported a signal-based approach and the need to develop treaty language in line with a signal-based approach where the object of protection would be the broadcast. The technologically neutral approach was endorsed at the regional consultation for African countries hosted by the Republic of Nigeria and at the meeting held in Johannesburg in 2011. With respect to the revised proposal some modifications had been made. Under paragraph three of the Preamble the rapidly changing digital environment. had been acknowledged and the need to balance the rights of broadcasting organizations with those of the public under paragraph 4 of the Preamble, while in paragraph 5, the need to safeguard right



owners rights had been addressed. Paragraph 6 was new language borrowed from the recently signed treaty on the protection of audiovisual performances. Under Article 2 on definitions, new items had been provided such as broadcast in paragraph A, and transmission in paragraph F. Paragraph G, included communication to the public, and paragraph H had pre-broadcast. Under the scope of application, Article 3, paragraph 1 and 2, the language of the proposal from Japan had been included. Under paragraph 4 an opt-out clause for a period of three years had been provided for those countries willing to extend protection only to traditional broadcasting organizations. Under Article 4 some clarity had been provided regarding the issue of satellite around uploading and downloading. Article 5 remained likely the same. In Article 6 alternative A had been deleted as it was not reflecting a signal-based approach. As regards the term of protection three alternatives had been provided. Under Article 9 on technological protection measures Paragraph 2 had been strengthened as it had been suggested by India and paragraph 3 had been deleted. Under Article 10, "distribution" and "making available to the public". Although a successful Diplomatic Conference regarding the rights of audiovisual performances had taken place, the protection of audiovisual performances would be meaningless if a treaty to protect against signal piracy was not adopted soon given the rate at which broadcasting piracy was happening, and the broadcasting treaty would indeed benefit the content industry and the public. The intention was not that Member States approve its proposal in its entirety but it had tried to accommodate the various views of all countries. Therefore it suggested that the South African /Mexican proposal could become the Committee's text for further discussions and to accelerate the pace of work. All Member States that had contributed to the process, whether formally or informally were thanked for their contributions.

181. The Delegation of Mexico stated there was no need to recall the importance of the issue of broadcasting. It was well known that was a difficult issue only by looking at the quantity of documents published on that subject for more than 10 years. It was technical, there were no clear definitions and many different positions had been expressed, some of which were contradictory. A vast amount of effort had gone into the issue over the past ten years. South Africa had done a lot of work as well as many other delegations and that had resulted in making some progress and in producing a much more streamlined and comprehensive document which actually reflected flexibility and constituted a real road map for future work. WIPO had provided assistance in that work and made significant efforts over the years. The issue of signal piracy was a serious problem and the protection of signals was a vector for the further protection of copyright works and for performers' rights. Signals carried the content in which were embodied the rights all copyright and all related rights. Consequently, the whole phenomenon of piracy had a direct impact on copyright and all related rights. The signal was like a road on which copyright and related rights travel. That had to be recognized as the Committee sought to move on along the lines of the Beijing spirit.

182. The Chair informed the Committee it had held consultations with the proponents and had received an indication that they were not in the position to engage in a discussion but were able to receive comments and questions that might be put to them.

183. The Delegation of India provided initial comments on the mandate of the 2007 GA to have a treaty for broadcasting organizations on a signal-based approach in the traditional sense. He recalled the 2011 informal meeting held in Geneva followed by SCCR/22 during which several delegations had raised the need to change the mandate of the 2007 GA as the technology was moving faster and technologies converging. India supported the view there was no need to change the mandate but not the technologically neutral approach of platforms where the content was exploited. Technological development in the traditional platform had taken place and signals had shifted from analog to digital. The Indian government had received a mandate to digitize conventional cable networks through fiber optics networks. In relation to the technology-neutral approach it supported the statement made by the Delegation of Japan that neither webcasting nor simulcasting was included in their proposal. Those platforms could not be covered under the current treaty and could be covered at a later stage. There was no need to

change the mandate of 2007 GA as the Committee had to restrict discussions to a signal-based approach in traditional sense to the established platform, not the computer networks. With more than 800 television channels India was also concerned with signal piracy and wanted to update protection to broadcasters on traditional platforms. It didn't support a rights based approach for broadcasting organizations because the Indian film industry and the Indian music industry had opposed it and said broadcasting organizations should not be given any overlaying rights over already the rights of the content owners.

184. The Delegation of Senegal stated that that was an attempt to protect a fairly human principle, namely, the principle of equality. The principle of equal access to education and training which was reflected in the draft text proposal from South Africa and Mexico. The protection of the signal was a better approach to take. Concerning the clarification which had been requested regarding Articles 11 and 12, Article 11 was only a reminder about the balance which it was trying to strike between exceptions and rights-holders-rights. As regards Article 12 it wanted parties to the treaty in their domestic regulation to set up sanctions and procedures to move from the civil to the criminal system.

185. The Delegation of Brazil stated that it had taken note of the presentations and thanked the proponents for having explained their texts. It requested clarification on the process to be followed regarding the other items on the Agenda of the SCCR. Broadcasting was an important item that had been discussed for a long time. In the last SCCR, the Delegations of Mexico and South Africa had presented a new proposal. In that session, the Delegation of Japan was also introducing what was called a renewed version of the draft-based proposal for the WIPO treaty on the protection of Broadcasting organizations, document SCCR/15/2 rev. It supported the principle to have adequate time to discuss the new proposals, but didn't share the view that special procedures had to be followed for those new documents at such an early stage of discussion. The GA's mandate had to orientate the work being carried out by WIPO and the Committee had to agree on objectives, specific scope and object of protection, following a signal-based approach and confine the future instrument to broadcasting organizations in the traditional sense. It was not sure the new proposals were in line with the GA mandate and those had to be first discussed in Plenary before Member States could engage in formal consultations on other specific exercises. With regard to the proposal made by the Delegations of South Africa and Mexico, the Delegation of Brazil was of the view that some questions still applied to the revised version of the proposal in relation to the definitions and scope of application especially with respect to broadcast signals and broadcasting organizations as the proposed language seemed to go further than the limits established by the GA mandate. It also asked which definitions provided in the submission were aligned with the concept of, "in a traditional sense" as established by the GA mandate of 2007. It also requested the meaning of the new Article 9.2 with "any electronic information". With regard to the proposals from the Delegation of Japan, it reserved its right to provide comments and make comments to the proponents at a later stage.

186. The Delegation of Peru expressed its gratitude to the Delegations of South Africa and Mexico and of Japan for the presentation of their proposals. There was a need to harness all of the work which had been undertaken to prepare the foundations to make progress with all issues currently being discussed in the Committee. If the Committee was to achieve progress on that item, there was a need to work on the basis of a consolidated text. Alternative texts would dilute progress as that was a very technical and difficult area and called upon all delegations to show flexibility, especially those which had put forward proposals, in order to consolidate those proposals. Concerning the terms of the mandate of the GA it was willing to be flexible but needed clear guidelines about how to move forward with that issue. As had been stated by the Delegation of South Africa the so-called Internet treaties regarding copyrights, protection of interpretations for phonogram and then audiovisual performances had already been adopted and the development of new technologies and challenges relating to those had to be dealt with and analyzed regardless of other lines of work going on. The Committee should

not be reluctant to include those challenges relating to new technologies in all the lines of work to ensure that whatever instrument would be adopted would be a true Twenty-First century one.

187. The Delegation of the Bolivarian Republic of Venezuela stated it was much too early to talk about a treaty on broadcasting as developing countries were not particularly interested in that issue. It recalled that on the issue of visually impaired persons still no agreement had been reached although such agreement was in line with the implementation of the United Nations Millennium Development Goals. It requested that the item of protection of broadcasting organizations be left aside and the Committee to focus on other items related to education, the right to development of individuals, and the right to culture.

188. The Delegation of Zambia stated that in order to have constructive discussions on the protection of the rights of broadcasting organizations the Committee should work towards a single text to achieve its work. It believed that the proposal submitted by the Delegations of South Africa and Mexico would constitute a good basis to develop a single working document.

189. The Delegation of the European Union and its Member States thanked the Delegations of Japan, South Africa and Mexico for their efforts to achieve convergence, as that was an important step towards advancing an issue that has been on the agenda of the Committee for a long time. It had a number of questions and comments related to definitions, scopes and rights which could be raised during upcoming discussions on that issue to achieve full clarity as to the beneficiaries of the treaty, the effects of that treaty, including on other rights-holders which would require substantial work on matters such as definitions, where coherence and clarity were very important. It was also heartening to hear about the Committee's concerns about piracy and the effects of piracy.

190. The Delegation of Monaco recalled it had put forward a number of preliminary comments about the original proposal of South Africa and Mexico which had been taken into account. Concerning the format of the work it believed the joint proposal constituted a perfect basis for fruitful discussion and progress on the basis of a single text.

191. The Delegation of Egypt, speaking on behalf of the African Group, expressed its support for the joint proposal of the Delegations of South Africa and Mexico and welcomed the Committee's commitment to continue its work on that signal-based approach, consistent with the GA mandate and also emphasized it was time to work on a signal text in order to expedite the negotiations for a speedy conclusion of that issue.

192. The Delegation of Senegal took the floor with reference to the statement made by the Delegation of the Bolivarian Republic of Venezuela and stated that it was referring to equal education and not equal access to education, teaching and research.

193. The Delegation of Algeria supported the South African/Mexican proposal as the basis of the Committee's work.

194. The Delegation of the United States of America believed it was important to take discussions forward from a single text as soon as possible. It hoped that the proponents of the proposals could reach agreement on what text could be used as the basis for further work. As to the contents of the proposals it would be studying the details very carefully and would provide specific comments as the process moved forward. It expressed appreciation that both proposals' referred to a signal-based approach as reflected in the GA's mandate and was interested in exploring further the deletion of any rights in already fixed signals as a technique for achieving that mandate. On the issue of the term of protection, it noted the point that had been made by the delegations of India and the option in the South African and Mexican proposal to delete any set term on the grounds that it may not be necessary if only broadcast signals were protected as opposed to the reuse of fixations. On the question of the application

to Internet activities it understood and agreed with the concerns that had been expressed about respect for the GA's mandate. At the same time, it had noted the distinction raised by the delegation of South Africa between protection for traditional broadcasting and limitation of the treaty coverage with respect to traditional technologies that may be used. A treaty that did not provide protection against signal theft using new forms of technology would not be worth concluding in the 21st century. Any treaty had to be technologically neutral in the sense the piracy was accomplished. That was a different question from which entities were covered by the treaty. The latter was an issue of subject matter protection while the former was an issue of scope of rights. Those delegations that were not yet ready to go beyond protection for traditional broadcasters could nevertheless find it important to protect their traditional broadcasters against unscrupulous actors who streamed their signal over the Internet.

195. The Delegation of Switzerland thanked the Japanese, South African and Mexican Delegations for their contributions to the work of the Committee on the issue of broadcasting. As it had been mentioned on a number of occasions since last year, the South African proposal submitted in spring of 2011, which had been reworked in a number of different versions since then and was joined with the Mexican proposal in December of 2011 had been a useful means of moving toward solutions in that area. The proposal from South Africa and Mexico has sought to take into account the various different comments made to move forward with that line of work. On a preliminary basis and without going into the content, the delegation stressed the sense of commitment it felt towards developing a single shared document as the best way to move forward efficiently the work in the Committee and that was in line with the mandates which had been set at the last SCCR meeting.

196. The Delegation of Zimbabwe paid tribute to the proponents of the two proposals and supported the statement made by the delegation of Switzerland. It believed that the Committee should consider working on the basis of one document as it was difficult for those delegations technically challenged in that subject matter to be referring to two different texts. Having listened to the presentation made by the delegation of Japan it noted that only two distinct differences in the text had been outlined by Japan itself. Those related to the scope of protection. It expected delegations to consolidate their positions and report to the Committee to produce one single text which could be used as the basis for further engagement.

197. The Delegation of El Salvador thanked delegations which had presented proposals as they had made significant contributions to the work of the Committee. It attached significant importance to exceptions and limitations in the work of the Committee and the same level of importance to the protection of broadcasting organizations. After ten years of discussions been working in that Committee it was time to provide due protection to the activities of those organizations' work. The two proposals from South Africa/Mexico on the one hand and Japan on the other were on the right track and in line with the mandate of the GA.

198. The Delegation of the Islamic Republic of Iran stated that in order to meet the decision of the General Assembly, it was important for the proponents of the various texts to try and merge their proposals in a single text to form the basis for negotiations in the Committee.

199. The Delegation of Kenya extended its support to the views expressed by the Delegation of Egypt on behalf of the African Group. It was clear there was an urgent need for Member States and WIPO to act swiftly by concluding an effective and comprehensive instrument for the protection of broadcasters. It joined the other delegates who had expressed views in favor of a single-based document.

200. The Delegation of Nigeria expressed its appreciation and support to South Africa and Mexico for the significant amount of work which had gone into the text and content of the proposal. Nigeria had a very strong broadcast history and was deeply committed to seeing a

single text emerging from that session. It emphasized the principle of technological neutrality which was vital for any treaty that emerges thereafter.

201. The Delegation of South Africa referred the proposal from Japan and requested clarification about the disclaimer on its first page indicating that not all the provisions contained in the proposal necessarily reflect Japan's position and wanted to establish which provisions in the Japanese proposal effectively reflected their proposal and positions.

202. The Delegation of the Republic of Korea stated that those proposals could contribute to the discussions: It was looking at the text and studying it and would take into consideration the domestic circumstances and stakeholders' opinions.

203. The Chair thanked all delegations for the statements made and contributions and questions posed to the proponents and recalled that the conclusions of SCCR/22 stated that in order to expedite the discussions and with a view to making recommendations to the 2012 WIPO GA on the possible scheduling of a Diplomatic Conference, two working days of the SCCR 24 would be dedicated to the protection of Broadcasting organizations with their objective of reaching agreement on a single text to pursue text-based discussions at the SCCR 24th session. The Committee had set a target for itself to reach a single text in that session. Consultations held with many delegations had shown the need to go into some informal discussions on broadcasting which would be held under his chairmanship. The configuration for the informal consultation would be the proponents, Coordinators, plus three. It also announced it would gather a group of friends of the Chair to assist him harmonizing the document which was being compiled on education

204. The Delegation of the Bolivarian Republic of Venezuela expressed concerns that NGOs would not be included in the informal consultations and questioned on whether there was a need to move into informal consultations.

205. The Chair replied his task was to make sure some progress was made on every issue. He was willing to listen to any specific recommendation from any country in that respect.

206. The Delegation of the Bolivarian Republic of Venezuela stated that the issue was not a lack of trust in coordinators but it had doubts on whether the informals would allow progress.

207. The Chair opened the meeting and informed the Committee that the draft compilation on limitations and exceptions for educational and research institutions had been distributed. He also informed he constituted the group of the Friends of the Chair and invited Group coordinators to provide nominations.

208. The Secretariat presented the second revision of the document, prepared on the basis of the work undertaken by the group of the Friends of the Chair. The title was changed to be in line with the document on libraries: "Provisional Working Document Containing Comments on and Textual Suggestions towards an Appropriate International Legal Instrument (in whatever form) on Limitations and Exceptions for Educational, Teaching and Research Institutions and Persons with other Disabilities". Due to the limited timeframe some further discussion and refinements might be required. It also noted that the African Group proposal was not included in the document because it was received after the document was already sent for printing and confirmed that insertion was to be done at a later stage. The Group had decided to do not discuss the preambular and definitional provisions but rather to focus on substantive topics. However, it was understood that there might be a request to insert the proposed preambular and definitional language back in the document. Some text was repeated in the document because it was relevant to more than one topic. The general structure had two broad categories of topics with some subcategories beneath. The first topic was uses and under that framework of uses, there were a number of categories. The subtopics were: institutions, meaning

educational research and teaching institutions; classroom uses; uses outside the classroom; uses for distance learning; and uses for research. Then the other topic was called broader topics with implications for education and research that included a lot of the topics applicable across the board to whatever form. Those topics were: technology; orphan works and withdrawn or out of print works; public domain; contracts; ISP liability; importation and exportation; and public health or security. Then there was another category generally applicable across all of the uses. Those considerations were: flexibilities; the Three-Step Test; obligations and proposals to update exceptions; the ongoing WIPO work plan; and best practices and experiences. Furthermore there was a final topic on persons with other disabilities. No changes were made to the treatment of the comments.

209. The Delegation of Peru said that the Friends of the Chair tried to simplify the document on the basis of the structure proposed. The basic idea was to try and reduce the number of topics.

210. The Delegation of India appreciated the work of the Secretariat and agreed to continue working on that document. There was one possible inaccuracy on page 13 paragraph 21: reverse engineering should be placed under research. The Indian Delegation had also asked to add a cluster on anthologies. A WIPO study prepared by Professor Singh on Asia-Pacific countries provided examples of domestic laws which included the exception for the creation of anthologies and collection of excerpts from works.

211. The Delegation of El Salvador agreed that the document was better structured, but some of the issues that had been discussed were missing. For instance the topic of Rights Management Information was missing and it proposed to include it under Topic 2.

212. The Delegation of Chile believed the document was much simpler and easier to read than the previous version. It expressed support for the request of India regarding the issue of reverse engineering and its inclusion under the Topic of research.

213. The Delegation of United States of America stated that the new document was a vast improvement in terms of organization and clarity. It also asked whether the comments to present had to be limited to considerations on the form and the structure of the document.

214. The Chair confirmed he was seeking comments on the work of the Friends of the Chair.

215. The Delegation of the European Union and its Member States said in terms of structure the new version was a great improvement. It also repeated that some of the issues placed under Topic 2 were not related to the subject under discussion and therefore not in line with the mandate of the SCCR which clearly referred to educational, teaching and research institutions and persons with other disabilities. Topics such as ISP liability were difficult to see as related to education.

216. The Delegation of Zimbabwe agreed that was a valuable and well-organized document. The Delegation took part in the informal consultation and engaged in constructive silence and appreciated the results. Regarding the content, it believed that the document did not reflect the opinion of the African Group. The Delegation hoped to engage in further conversations on the substance.

217. The Delegation of Kenya echoed the sentiments expressed by the Delegation of Zimbabwe to point out that the current document was incomplete as the updated African proposal had not been included and therefore it requested to modify it accordingly.

218. The Chair reminded the Committee that the Secretariat had already addressed that issue.

219. The Delegation of Ecuador appreciated the willingness of the group to work constructively

to achieve a very balanced and useful document. It pointed out that in the first version of the document on page 6 under Item 11 there was a proposal from Ecuador, called Cluster 6 availability on an interactive basis and communication to the general public for educational purposes; that proposal was not included in the new version, therefore it was proposed to include it under Topic 1 specifically referring to uses in classroom and classroom uses. The issue of the interpretation or the scope of the Three-Step test had also been raised but it was missing. In addition, it expressed support for the proposal by India about including the issue of anthologies and what was said about Right Management Information.

220. The Delegation of Nigeria reiterated that it was really difficult to make substantive comments since the updated proposal from the African Group was not reflected.

221. The Delegation of the United States of America sympathized with the concerns expressed by Nigeria. It also expressed the concern that the mandate reflected in the conclusion of SCCR/21 was to engage in additional working days dedicated to exceptions and limitations for educational and research institutions and persons with other disabilities while the issues covered by the document, for instance Topic 2 were much broader. Many of those topics were written in a broad way that seemed clearly outside the mandate; therefore it was not the most appropriate way to move forward that item. Moving small things was easier than moving big things.

222. The Delegation of Pakistan understood that some comments from the African Group were left out, but it believed that they would be subsequently inserted. It also requested to insert a word on page 3 close to the mention to beneficiaries. It quoted: "Contracting Parties shall provide exceptions and limitations granted in this treaty for the benefit of Persons with Disabilities public and private educational teaching institutions". It stated that in some of the systems there was a distinction between educational and teaching institutions.

223. The Delegation of Nigeria said that even if the updated language from the African Group was not yet reflected, it wanted to echo the intervention of Pakistan. All Member States sharing the heritage and legacy of the United Kingdom had a system where educational institutions were in fact distinct from teaching institutions and had many teacher training colleges. It therefore supported the insertion of the word teaching.

224. The Delegation of India agreed with the proposal of the Delegation of Pakistan and Nigeria to include the separate word teaching institutions.

225. The Delegation of the European Union and its Member States understood that the Committee was invited to make other comments on the document and that some proposals were missing. It pointed out that Member States were still to discuss the structure of the document as such. In that respect, the view of the European Union was to strive at achieving a number of objectives. The text needed to be, first of all, useful. The text needed to be inclusive of all views and also respectful with all views. There shall be no hierarchy and all text-based contributions shall be treated on an equal basis; in that way the document could be labeled a document of the Committee, otherwise it would have been a document sponsored by some proponents only. It was important to ensure that all contributions were reflected in an appropriate manner, i.e. all of them together depending on the topic and within the topic depending on the issues for discussion. The precedent to follow was reflected in the document SCCR/23/8/Prov on the exceptions and limitations for libraries and archives.

226. The Delegation of South Africa, speaking on behalf of the African Group, reaffirmed its preference to maintain the comments separated from the main text; because the mandate was clear, the Committee had to engage on text-based work. By focusing on precedence, it was necessary to take three texts, including the one on visually impaired, and compare them. Each one had a different format.

227. The Delegation of Brazil, speaking on behalf of the Development Agenda Group (DAG), reiterated that it favored to separate comments from text. Some of the comments were of general nature, so it was difficult to try to link it exactly with a specific part of the text and keeping them separate was better for the readability of the text.

228. The Delegation of Senegal said that the previous day it stated there was a need to have greater clarity in the text. It thought that the text as such should be separated from comments made on the text. It also wanted to point out that unlike, certain other Delegations, believed that Topic 2 was fully within the SCCR mandate, therefore it should be left in the text and it should be discussed

229. The Delegation of Sudan said that the document was useful, but the issues under discussion were not so clear. Possibly there was too much information and the content was not easy to understand.

230. The Delegation of the Islamic Republic of Iran emphasized again the importance of being respectful to the mandate of SCCR/21 and keeping the textual work nature of the document. It believed that the text should be conducive to upcoming negotiations and facilitate the objective of reaching international instruments. For that reason, it thought that the insertion of the comments in the text was not appropriate and should be separated and the relevant comments in the textual format could be inserted as an annex.

231. The Delegation of Ecuador highlighted the importance of having a document easier to understand and read. The Committee needed to have a document that included the actual text proposals, representing the basis of the work and in an annex all the comments made by the Delegations.

232. The Delegation of the United States of America regarding the matter of remaining within the mandate established by SCCR/21, reminded that one element was to engage in text-based work and everyone respected that decision. The other element was to focus on educational teaching and research institutions and the needs of Persons with Disabilities.

233. The Delegation of Angola reaffirmed the importance of implementing the mandate of SCCR/21. Because it was a working document it suggested deleting in the title the mention to "in whatever form" and leave international legal instrument without any prejudice. Regarding Topic 1 letter B on institution and beneficiary, the proposal made by the African Group and the one by India seemed to be very similar, therefore it was proposed to merge them. Finally Angola expressed the preference to separate the comments from the text.

234. The Delegation of El Salvador stated its commitment to continue working within the mandate and supported the intervention of Senegal on that matter. Being at very preliminary stage, it was necessary to have a more detailed discussion on the Topics before eliminating them. The objective for the session was to have a document easy to read reflecting the real status of the discussions; therefore the comments should be kept separated. The Delegation had two additional suggestions; regarding Rights Management Information proposed to add the following language: "educational and research institutions that apply the provisions of this instrument in good faith and not for commercial purposes, shall not be subject to legal remedies relating to information on management of rights". The other proposal on best practices and experiences read as follows: "the Contracting Parties agree to share on a periodic basis best practices and experience on the effective implementation of the provisions of those instruments".

235. The Delegation of Ecuador was grateful for the statement made by the Delegation of the United States and asked whether it was the right moment to discuss the scope of Topic 2 in



relation to the mandate.

236. The Delegation of the United States of America, reserving the right to provide a more complete response at a later stage, said that a number of topics were very broad and therefore raised a lot of complicated issues. They went well beyond the scope of the specific concerns about educational institutions. Many of them were things that could affect educational and teaching and research institutions but only in a very specific way. They were huge topics influencing other important areas such as the topic of ISP liability and also the public health or security one.

237. The Delegation of Peru in response to the question raised by the Delegate of Ecuador, said that at that stage they were simply working on the structure of a working document on the basis of which Member States would have the opportunity to discuss substantive issues, including the scope of the proposals at a later stage. It was not the time to delete issues, in fact the section was named "broader topics with implications for education".

238. The Delegation of United States of America appreciated very much the intervention of Peru in clarifying that the document represented a list of topics that people had expressed interest in and that it still required further discussion to determine which issues were to be taken further.

239. The Delegation of Nigeria recognized that the mandate was obviously an important issue for all Member States. It did not want to go beyond the mandate; the idea was to consider the role of universities acting as ISPs. The Delegation remained open to the discussion to determine what was relevant for education and what was not relevant.

240. The Delegation of Egypt, speaking on behalf of the African Group, said it wanted the document to reflect only the new language proposed by the Group and not the old one. Regarding the title it expressed the preference for the old version. It also asked explanation on a note in page 2 which excluded the Group's proposal regarding the preamble and definitions part.

241. The Secretariat explained that the Friends of the Chair had decided to use the title agreed upon after extended discussion for the libraries document, in the hope of avoiding one more time the same lengthy discussion. With respect to the preamble and definitional clauses, it was understood that the African Group was asking for those to be reflected again in the new proposal.

242. The Delegation of the United States of America appreciated and shared the concerns expressed by the Delegation of Nigeria. It reaffirmed it wanted to honor the mandate agreed to in SCCR/21. The Delegation made clear it did not want to oppose the prerogative of Member States to bring new topics on the Agenda.

243. The Delegation of Egypt thanked the Secretariat for the clarification and said it was preferable to retain the other title until the issue was resolved and also to insert the preambular parts and definition clauses.

244. The Delegation of the European Union and its Member States said that it strongly preferred the new title because better reflected the contents of the document. Comments needed to be included as they represented the contributions of many Member States.

245. The representative of the Library Copyright Alliance (LCA) recognized the continuing need to balance rights holders and the larger public interests and access to information through all media formats. Exceptions for libraries and educational institutions were not abstract issues in the United States or Canada where there were three ongoing copyright cases relating to library

uses at educational institutions. In the United States educational institutions did not pay for the right to screen films in their library collections and classrooms. Libraries did not pay for the right to provide accessible copies of works in their collections to print disabled students. Those rights were codified in copyright laws limitations and exceptions and fortunately the pre-digital concept of fair use applied well to the digital environment. Contrary to suggestions made during the discussion, fair use was not just a defense; it was a right recognized by the U.S. Supreme Court as one of copyright laws built-in commodities to the U.S. Constitution's right of freedom of expression. The argument for licensing digital works for educational uses, when they were already covered by limitations and exceptions when in analog format, emerged from a desire to create secondary markets. That market was predicated on the ability of some entity to pay the monumental cost of licensing of vast number of works. Already unable to afford rising journal prices and to pay for existing services it was unlikely that libraries could find funding to pay license fees for the right to make convenient course compilations of materials they already purchased, to stream video they already purchased or to index the books already purchased for their collections. Technical protection measures were creating barriers to elementary or secondary education and the process to solve that problem was expensive and time consuming. In summary the LCA was encouraged by the discussion of Member States to update and appropriately extend into the digital environment, limitations and exceptions in their national laws and device new limitations and exceptions that were appropriate to protect educational and research activities.

246. The Delegation of Senegal said it was necessary to keep the former title. It reminded that during the previous discussion the vast majority of Member States wanted to separate the text from the comments, but it was not done; in the same spirit, the title should have not been changed.

247. The Delegation of the Czech Republic, on behalf of the Central European and Baltic States Group, said that if there were specific comments to the topics, they should be included under each topic. It also reminded the horribly lengthy discussion that took place during SCCR/23 on the same issue of the title and hoped that was not repeated.

248. The Chair asked the NGOs willing to make a written statement to send it directly to the Secretariat. The Secretariat had noted the comments made by various Delegations on the document and working with the Friends of the Chair, was going to attempt to consolidate the texts submitted. As to the issue of the title, he reminded all Groups that they were invited to participate in the meeting of the Friends of the Chair, which finally agreed on the latest version. The next step was to complete the document by adding the proposals from the Africa Group and Ecuador. In respect of the statements that appeared from page 22, he proposed that Member States had to indicate under which topic they wanted their proposals to be inserted. Another meeting of the Friends of the Chair was to be announced. Once those things were done, the document was going to be discussed again in plenary.

249. The Delegation of India said that the Chair proposal was excellent. The Committee should deal with the comments mentioned beyond page 22.

250. The Delegation of the United States of America was prepared to follow the suggestion from the Chair as an approach and to divide the previously submitted comments by subject matter in an attempt to help move the process forward and follow the structure that was agreed. Some of the comments would need to be placed under a paragraph on general overview.

251. The Chair said that the place for general comments was the back of the document, while specific ones would be inserted directly under the different topics.

252. The Delegation of the United Kingdom said that the comments, currently found on page 35, should be placed on page 11 below Paragraph 18 which was headed access to publicly

funded research.

253. The Chair re-adjourned the session and convened a meeting of the Friends of the Chair.

## **ITEM 6: LIMITATIONS AND EXCEPTIONS FOR VISUALLY IMPAIRED PERSONS/PERSONS WITH PRINT DISABILITIES**

254. The Chair opened item 6 on the issue of limitations and exceptions for visually impaired persons or persons with print disabilities. The Working Document on an International Instrument on Limitations and Exceptions for Visually-Impaired Persons or Persons with Print Disabilities, SCCR/23/7, formed the basis for discussion, in line with the conclusion of the previous session of the SCCR..

255. The Delegation of Australia said that the Committee was discussing a significant and real issue for those millions of people around the world who had a print disability. Access to works in an accessible format was key to ensuring that those with a print disability were able to seek, receive and impart information and ideas of all kinds on an equal basis with others. The Australian Copyright Act already recognized that important public interest, by providing statutory licenses and free use exceptions allowing accessible format works to be made available to persons with a print disability. Australia had also recently signed a memorandum of understanding with WIPO on the terms of a 2 million dollar donation to WIPO for IP and development issues. Some of that money had been set aside for the TIGAR project. Australia saw TIGAR and an outcome from the SCCR as complementary strategies, both based on willing partnership with publishers and organizations assisting the print disabled to achieve an effective and sustainable framework for access to copyright works. The Committee had made good progress towards agreement on text that could potentially deliver better access for persons with a print disability and recognize the legitimate interests of authors and publishers. Audiovisual performers waited many years for their moment in Beijing, but Australia hoped the following General Assembly would provide the breakthrough for which persons with a print disability had been waiting. For that to happen, that session must keep the momentum towards an agreement. Much had been said about the form of the instrument that the Committee was considering; Australia's view was that the instrument could be developed as a treaty to provide proper recognition of the legitimate needs of persons with a print disability. Australia considered that the outcome of the Committee's work should be a treaty which could operate where there was market failure in the supply and distribution of works in accessible formats for persons with a print disability, not hindering technical advancements for commercial distribution of works in accessible formats, encouraging a harmonized international approach to copyright limitations and exceptions, safeguarding the legitimate commercial interests of authors and publishers, and being based on the three-step test. Australia could support a recommendation to the General Assembly to consider whether to convene a diplomatic conference to conclude a treaty, and it remained committed to contributing to the work of the Committee over the coming days on that important issue.

256. The Delegation of the Islamic Republic of Iran, on behalf of the Asian Group, was fully committed to the successful result of negotiations on exceptions and limitations for the benefit of visually impaired persons. A new international instrument could make a significant step in alleviating the challenges of the visually impaired persons. It was a common responsibility to find an effective and swift solution to the challenges of visually impaired persons and assure their access to educational, cultural and informational materials and guarantee sustainable accessibility of those persons to copyrighted work. For that purpose the Group was prepared to continue text-based work on establishing an international instrument on the basis of document SCCR/23/7, which would be the base of any formal and informal text work in the Committee. It was important to recommend to the General Assembly to convene a Diplomatic Conference. It was an imperative of all Member States to engage in good faith and in an inclusive and

transparent way in such negotiations. The Asian Group looked forward to a creative and inclusive discussion in order to advance the work with the final objective of bringing all Member States on board. It remained open-ended and flexible on the format of discussion, bearing in mind that any fruitful outcome needed to have the blessing of all parties. Furthermore, the nature of those documents had to be discussed at some stage. It believed that any informal process to develop working documents should be open-ended and inclusive.

257. The Delegation of Peru, speaking on behalf of the GRULAC, pointed out its major interest in concluding an instrument on exceptions and limitations for visually-impaired persons. It was one of the principal objectives of the work of the session and it considered the SCCR could produce a recommendation to the General Assembly with a view to convening a diplomatic conference on the issue. Consistent with that proposal, the GRULAC suggested adopting a working methodology to achieve the objective without replacing the plenary sessions. The plenary sessions were for every country to make their presentations, and they would be followed by work in the regional Groups where Members would be able to work with a view to harmonizing their proposals, in order to advance and enable in a third moment to have sessions in which the regional Groups could achieve agreement. All the issues under discussion were equally important, though it considered the text on the Visually Impaired was more mature.

258. The Delegation of Uruguay supported the statement of GRULAC and considered that it was essential for WIPO to display leadership in removing the obstacles that affected the visually impaired. At that time, the production of knowledge was increasing in an exponential way, and new tools would enable the dissemination of knowledge to all humanity; it was not a good signal if a badly designed copyright did not provide the necessary flow of information to the most vulnerable persons who relied so much on technological progress. Copyright had to guarantee the legitimate moral and economic interests of creators and authors and provide access to works to serve the needs of all society, in a cycle of mutual benefits; minimal standards of exceptions and limitations offered the possibility of guaranteeing the individual and public interests. The task of perfecting the copyright system to provide a speedy and fair solution to people with print disability was urgent, because it was essential to maintain the international legitimacy of the copyright system, which was based on the harmony of all human rights. In that regard, it reminded that WIPO, as a United Nations (UN) specialized agency, had to seek a solution to those urgent problems, as provided in the United Nations Convention on the Rights of Persons with Disabilities. In fact that Convention required that Parties must adopt the relevant measures to guarantee access to persons with disability in equal conditions with others to information, communication, and systems of technology, and improve the dissemination of works through technological methods in accessible and fair methods. To address those needs it was necessary to establish international standards for exceptions and limitations to the benefit of disabled persons. International copyright law was still unsatisfactory because it did not specifically consider the need of persons with print disability and because the exceptions that the states had established at the national level were limited and of an ad hoc nature. Finally, an expression of common minimum standards which responded to everyone's interests could only be achieved with international collective work. The implementation of the mandate of the UN Convention on Rights of Persons with a Disability within the copyright framework was the work of the SCCR. It recalled that since 2009 there was a text adopted by the Committee, in 2011, document SCCR/23/7 was adopted. It understood that consensus was within reach, therefore it was the right time to make a recommendation to the General Assembly to convene a Diplomatic Conference.

259. The Delegation of Egypt, speaking on behalf of the African Group, supported the urgent call for a Treaty for the Visually Impaired. The Group welcomed the working document on an international legal instrument on limitations and exceptions for visually-impaired persons, adopted by the Committee in its last session, to constitute the basis of the text-based work for SCCR/24. It recalled that according to the conclusions reached in SCCR/23, the aim of SCCR/24 was to agree and finalize a proposal for an international legal instrument on effective

limitations and exceptions for visually-impaired persons. There was a need to advance the work in order to ensure the welfare needs and development of visually-impaired persons and people with physical disabilities, in Africa and all over the world, to empower them with a treaty that captured effective exceptions and limitations, allowing them to fully exercise the right of access to information, education and knowledge. In that regard, the Group recalled the Convention on the Rights of Persons with Disabilities and in particular Article 21 stating that Member States shall take all appropriate measures to ensure that persons with disabilities can exercise the right of freedom of expressions and opinion, including the freedom to seek, receive and impart information through all forms of communication of their choice, including accessible formats and technologies appropriate to different kinds of disabilities, in a timely manner, and without additional cost. In addition, Article 24 of the convention recognized the rights of persons with disabilities to education, and obliging Member States to ensure the education of persons, in particular children who were blind, deaf or deaf/blind, as delivered the most appropriate languages and modes and means of communication. The African Group had always supported the needs of visually impaired persons and people with other disabilities to have a WIPO Treaty with effective copyright limitations and exceptions to ensure the right of full and equal access to information, culture and communication. The majority of visually impaired persons lived in developing countries, and the Group had actively engaged in all phases of the negotiations, and submitted a Treaty proposal for the benefit of visually impaired persons and people with other disabilities. As SCCR approached the final stages of negotiations, the Group reaffirmed its commitment to ensure the needs of visually impaired persons were satisfied in the WIPO Treaty with effective exceptions and limitations. In that regard, SCCR/24 was invited to reach a collective decision regarding a number of issues, including the nature of the instrument and ensuring the accessibility to use the permitted exceptions and limitations, especially in relation to the rights of free production, translation, distribution, and cross-border exchange of accessible format copies and protection measures. Therefore, it emphasized the need to reconsider the definition of authorized entity in a more flexible way. In the same vein, the definition of reasonable price for developing countries must be affordable, and subject to national variations, so that each developing country could have the flexibility to determine what was reasonable price. There was also a need for a new article on the nature and scope of obligations, so as to ensure contracting parties shall adopt appropriate measures to implement the permitted exceptions and limitations, and that the treaty provisions would be implemented, taking into account the special needs of developing countries, as well as different levels of development of contracting parties. The right to exercise the permitted exceptions and limitations for the benefit of visually impaired persons should not be constrained or rendered difficult to use in practice. Therefore, there was a need to clarify the relationship or scope of application of the three-step test. The clarification should account for the distinction between exceptions which required no denomination as determined by the nonprofit nature of the use, and those limitations that were subject to some form of reasonable remuneration because of the convention or for-profit nature of the use at issue. While, it welcomed the significant progress of negotiations on exceptions and limitations for visually impaired persons and people with other disabilities, the African Group expressed its desire to achieve significant advances for exceptions and limitations for libraries, archives, education and research. The Group reserved the right to submit additional remarks during the course of negotiations, and emphasized its readiness to engage constructively with all negotiating parties so as to realize the important objective of the Committee.

260. The Delegation of India indicated that during the previous SCCR/23 it was agreed to work on document SCCR/23/7 and move towards a meaningful treaty. It proposed to start discussing the document article by article and reminded that if any delegation was not ready to post a document either during the informal discussions or during the plenary, it could always come out with the changes made to a particular article or paragraph in the preamble when the discussions started. That way they could be ready to work towards finalizing that treaty. It also stressed that if they did not finalize their work during the SCCR, they could not go to the General Assembly in October that year. Otherwise, they would be losing their time during the following

SCCRs in November 2012 and June 2013, as they would have to wait till the following year for the next General Assembly. It concluded by requesting the Chair to guide them to start the text-based article by article discussions, so they did not go back empty-handed, facing the 15 million blind population in India, which was almost 50 percent of the total world blind population of 37 million.

261. The Chair took note of the suggestions made by the Indian Delegation.

262. The Delegation of China recognized the progress made on limitations and exceptions for persons with print disabilities. It indicated that the Chinese government continued to attach importance to the exercise of cultural and educational rights for persons with disabilities, including persons with print disabilities, as they had a great deal of regulation in that area. In accordance with their regulation, limitations and exceptions were for persons with disabilities, including those with print disabilities. It also mentioned that the government of China continued to support further discussion on the topic, especially those on how to improve the way in which persons with disabilities could enjoy access to information. It stated that that discussion should be dealt under the auspice of the SCCR with the view of moving towards a Diplomatic Conference.

263. The Chair provided the list of delegations that had requested the floor for making their general statements before moving to textual work.

264. The Delegation of Brazil supported the statement made by the GRULAC on the issue. It stressed that before starting with the text-based work on the drafting of a legal instrument establishing copyright exceptions and limitations for persons with print disabilities, they should put negotiations on the issue into a historical perspective, as they seemed to be needed at that stage for at least two reasons: First, most people directly involved in the drafting and approval of the work program on exceptions and limitations prepared at the SCCR in November 2010, were no longer there that day. The natural rotation of officers among delegations to the SCCR did not unfortunately contribute to the loss of collective and institutional memory. The second reason, in close link to the first one, was the fact that there seemed to be a good deal of misunderstanding in the air about the process they were engaged in there. Rumors seemed to be prevailing over facts. Even seriously specialized media that usually were well-informed on ongoing IP discussions, international organizations, seemed to be misinformed, and thereby fueling even inadvertently that hot air. They were surprised to read in one of them, IP Watch, that there were secretive inter-sessional processes on a treaty for the visually impaired that were going on in the run-up to that session. It stressed that Delegation of Brazil was not aware of any secret process. It indicated that it would then provide information to all of them on the nature of the process as it saw it from its angle, as a Delegation that from the very beginning had been directly involved in the negotiations as one of the chief demanders on behalf of organizations gathering blind people across the world. It stressed that they had to set a record straight if they wanted to make progress, as it believed all of them wanted to. It underscored that all relevant information on the entire process on negotiations including proposals by Member Countries could be found in the reports of the SCCR, which were fully available to anyone interested on WIPO's Website. The work program adopted in November 2010 provided for negotiation of an international instrument or instruments in four areas, following a global and inclusive approach, while at the same time recognizing the need for advance the more mature areas. The work program had always been negotiated and approved as a sequential or incremental undertaking; moving forward according to different levels of maturity and never meant to be a proceeding according to different levels of priority. Since the approval of the work program, negotiations on exceptions and limitations for people with print disabilities recognized as the more material area from the start, evolved swiftly. Considerable progress was made in relatively short time, in spite of difference regarding the scope of the exceptions and limitations and the nature of the instrument under negotiation. Indeed, by June, 2011, a limited set of issues stood in the way of a conclusion of an international instrument. To help that process,

interested delegations met informally during the first half of 2011, twice at the Brazilian mission. Brazil always invited several delegations and anyone interested was more than welcome. It stressed that they had always wanted a multi-lateral instrument that included all parties. In the SCCR session held on the previous year, more work was undertaken which resulted in working document SCCR/23/7. That was and remained the basis for their text-based work starting that day. What happened since the previous session of the SCCR was the following: In a spirit to help further advance the negotiations, some delegations, including Brazil, the European Union, Mexico and United States of America, decided to meet informally to try to narrow down differences on the basis of the existing working document SCCR/23/7. Brazil hosted one of those informal meetings and the European Union hosted another, to which were invited countries from all Continents. In order to ensure transparency, consistency, continuity, the then incoming Chairman of the SCCR, Ambassador Darlington Mwape from Zambia, was also invited and attended informal meetings. The results of the meeting in the form of possible amendments to certain provisions of the working document were circulated to participating countries, with no restriction whatsoever to its distribution among other members. It indicated they were looking forward to sharing those results with all members during that session of the SCCR. It stated that the swift progress in the VIP negotiations was made possible because of a strong underlying consensus prevailed among Members concerning the special nature of the issue they were negotiating. It was a copyright issue that had a clear human right dimension. The need to ensure that copyright was not a barrier to equal access to information, culture, and education for people with print disabilities, reading disabilities. Negotiations so far had been focused on technical aspects of the proposals and the working document. Throughout those almost three years of negotiations, they saw no proposals to establish any conditional linkage between the negotiations on the treaty for the visually impaired on the one hand and negotiations on the other topics in the SCCR agenda or in other bodies of WIPO on the other hand. Any such linkages would not be justifiable on ethical grounds when the issue at stake benefitted the integrity of disabled persons. The Delegation of Brazil acknowledged that the audiovisual treaty had to be concluded before the instrument for persons with print disabilities. In fact, the current session of the SCCR had to be postponed so as to allow the organization of the Beijing Conference earlier in June 2012. Regarding the VIP negotiations and the one for broadcasting organizations, it underscored that there was no possible cross-linkage between an instrument with a clear human rights dimension and one motivated by essentially business interests. The only effect of tying those two issues together would be to undermine the confidence built in the WIPO process in Beijing and to threaten to block the whole SCCR agenda. It stressed that had happened in the first half of 2010 in the SCCR and that because of that they have not agreed on any conclusions at all. It hoped they should avoid that happening again. For that reason, it welcomed the delegations not to hide behind supposed flaws in process, as there were no such difficulties in process. It asked them to move positively towards the conclusion of a treaty on exceptions and limitations for persons with print disabilities.

265. The Delegation of the Bolivarian Republic of Venezuela associated itself with the statement made by the representative of the GRULAC, except for putting at the same level a treaty on broadcasting with treaty on VIPs. It underscored that Venezuela considered that the VIP issue was much more mature than the broadcasting one. It stated that the only way WIPO could be considered more human, more social and inclusive, was related to an outcome on visually-impaired persons. It was necessary to that Committee to guarantee the right of VIPs to have access to materials protected by copyright, so that they can have free development of their personality, access to education and culture, among other human rights recognized in the human rights charter. It stressed that its Region, which placed special emphasis on visually-impaired persons, wanted to see results on that issue. It requested a modification on document SCCR/23/7 regarding Venezuela's comment, in page 52 of the Spanish version the words "other public interests" should be deleted and in the English version in footnote 34, page 51, the letter "s" from the word "publics" should be deleted.

266. The Delegation of Singapore observed that the Committee had been striving over a

number of meetings to address the need of the visually impaired and persons with print disabilities to have access to copyrighted works. It recognized there were complex issues to be addressed as the Committee worked towards creating much needed limitations and exceptions for deserving beneficiaries while dealing with stakeholders in an equitable fashion. It highlighted that due consideration must be given to the technical and other interventions contained in SCCR/23/7, as they moved forward with their work. It underscored that for the Delegation of Singapore limitations and exceptions were critical parts of the overall framework of copyright protections to better serve their people. It hoped that while they sought to protect the legitimate interests of authors, performers and other stakeholders, they should also secure the well-being of the underprivileged with a balanced copyright regime. The proposed treaty contained in SCCR/22/16 and thereafter incorporated into SCCR/23/7 formed a good base for further discussions. For that reason, Singapore supported continued work on the issues of limitations and exceptions for the visually impaired and persons with print disabilities. It urged WIPO and all Member States to build on the success of the Beijing treaty and work to expeditiously towards resolving all outstanding issues on that topic. They had a commitment to deliver a recommendation on a treaty for the visually impaired and persons with disabilities to the General Assembly, noting that they were already one year behind the agreed time line set out in the conclusions of the 21st SCCR. Singapore concluded by calling for the Committee to finally put an end to the book famine as so trenchantly was described by the World Blind Union.

267. The Delegation of Kenya supported the statement made by Egypt on behalf of the African Group. It informed that the situation on the ground was that about 1 percent of the blind in Kenya had no access to knowledge or the larger part of the group was illiterate. That therefore resulted to unequal provision of the right to education. Therefore, the conclusion of the VIP instrument on exceptions and limitations would be most welcomed and they assured its support to the Committee. However, it underscored that the document should be seen to provide for the situation on the ground where they were not only dealing with VIPs in the cities, but also in villages, where they were mostly disadvantaged by limited media access to information.

268. The Delegation of the European Union and its Member States highlighted that in the last twelve months, they had made considerable progress to find a solution to those very specific problems with the specific objective of removing barriers which prevented the access of the visually-impaired persons to works in accessible formats, and to help in a secure manner the cross-border distribution of such special formats. It believed that document SCCR/23/7 WAS an important contribution to the future work. In between the sessions of the SCCR, the European Union and its Member States had participated in informal consultations with delegations from other regional groups. Those consultations had been joined by an increasing number of Member States and the European Union and its Member States welcomed those widening of consultations and found them very useful, for which they looked forward to continuing the discussions and contributing in a constructive manner. It considered that the way to make further progress on that file was to continue working on a solid text that enhanced the availability of works in accessible format to visually-impaired persons, while being mindful of the need to have effective protection of the rights of creators. It indicated they were ready to achieve further convergence in their discussions and believed certain effective balance and flexible text should be within reach.

269. The Delegation of Paraguay indicated the time had come, as it could not be possible that more than 300 million visually-impaired persons because of legal issues related to their national and international legislations, were unable to have access to knowledge and culture. Those persons had and should enjoy the same rights as normal persons. That was why the Standing Committee on Copyright and Related Rights in its 24th session had an historical responsibility to give a signal which would gave rise to an international mechanism to protect those persons. Paraguay had co-sponsored the initiative right from the start because of its sensitivity and interest on the issue. Paraguay had thousands of persons who had no access to culture or to learning, simply because of legal matters. For that reason it urged the Committee to work and



take a step forward, make progress. For it, the General Assembly in 2012 should convene a Diplomatic Conference, and thus have a legal valuable instrument which could serve to all parties with disability.

270. The Delegation of the United States of America aligned itself with the Delegation of the Islamic Republic of Iran on behalf of the Asian Group on its commitment to engage in good faith in a process as transparent and inclusive as possible. It also highlighted the statement made by the Delegation of Egypt on behalf of the African Group for identifying the areas of concern that were important to the African Group. It stressed that the Delegation of the United States of America participated actively in the informal consultations after they had become possible in 2011. It pointed out that the problem of those meetings was not the lack of inclusiveness; the problem was often getting national delegations to come. It underscored that they do not believe the Committee had important work to do for business interests, because business interests created economic opportunities, created educational opportunities, and were the drivers of much of the wealth that all of their people enjoyed. They do not accept any form of linkage between the effort on behalf of the world's print disabled people and any other project. For them, such a linkage between the print disabilities effort and an effort for business affairs would be unprincipled, unethical and the United States would not have any part of it.

271. The Delegation of Chile indicated it had three brief points to mention: First of all, they believed that all issues on the agenda of the Committee responded to the interest of one or more delegations. However, for it, the visually-impaired person's issue did have a greater value than other issues on the agenda. It aligned itself with the Delegations of Brazil and the United States of America by indicating that they did not believe that that issue should in any way linked with other discussions in the framework of the Committee, certainly, the discussions on broadcasting organizations. Secondly, the Delegation of Chile subscribed itself to the need during that session of making a recommendation to the General Assembly, to convene a Diplomatic Conference on visually-impaired persons. Thirdly, during that session they should make as much as possible progress in achieving consensus on the text and for that, the Delegation of Chile considered delegations and NGOs should have the opportunity to express their views and comments in plenary. It also proposed that a small open-ended group to all interested delegations could work in discussing certain areas in which there was not yet complete agreement.

272. The Delegation of South Africa aligned itself with the statement made by Egypt on behalf of the African Group. It expressed its total support for the work on exceptions and limitations for the visually-impaired persons. South Africa was committed to their needs to the point that it was a constitutional matter with a special ministry for the people with disabilities including the visually impaired. It underscored that South Africa was of the view that whatever was the nature of the instrument that was adopted, it should take into account the developmental challenges faced by various Member States' origins. It concluded by expressing it's committed to working in a constructive manner and in the spirit of compromise and flexibility with all partners in assuring a successful outcome to the process.

273. The Delegation of Switzerland associated itself with all delegations preceding it, to point to the importance of speedily achieving a result on the question of exceptions and limitations for visually-impaired persons and persons with print disability, meaning a conclusive result during that session of the SCCR. It highlighted that the Committee had worked in an in-depth matter on the subject in the preceding sessions, for which a draft text for an international instrument had been able to emerge, which was document SCCR/23/7. Although very advanced, that document was not yet at a stage of full maturity to be adopted by the Committee. Otherwise, they would have already done it in preceding sessions, as improvements were still necessary to reach the necessary level of comfort and maturity that would enable a positive decision on the part of the Committee that week. It pointed out that various delegations that had been very active in the negotiation had contributed to document SCCR/23/7, during the inter-sessional

period to have the draft instrument progress further towards a consensus instrument. It expressed its support to the Chairman's work for speedily beginning examining the various articles of the draft instrument, while recognizing and fully supporting the principles of transparency and inclusiveness. However, it pointed out the utility of pursuing their work also in a more restricted group, including all interested parties, following the instructions that the Chair had set up on the previous day, so as to work speedily and concretely towards finalizing the text.

274. The Delegation of Argentina associated itself with the statements made by the Delegation of Peru on behalf of the GRULAC, as well as the Delegations of Uruguay, Brazil, India, Singapore and Chile. It congratulated the Delegation of Australia for its confirmation that a treaty was the real and effective solution for visually-impaired persons. It hoped that during that session, the last one before the next General Assemblies, they would be able to take the decisions in order for visually-impaired persons, who had been waiting for that for such a long time, to convene a Diplomatic Conference to find a legal framework, a legal solution to a real problem. It highlighted the existing political will from the part of all members to finalize the text. It stated that its Delegation Argentina had consulted and discussed with the various interested parties in their country before attending that session and they were ready to discuss the text at that moment with interested parties, in order to achieve a result that could be sent to the General Assemblies that year.

275. The Delegation of Ecuador indicated that as one of the three proponents with Brazil and Paraguay, which initiated the draft text for a treaty on exceptions and limitations for visually-impaired persons, it should applaud the work done by members of the Committee, the effort and sacrifice of civil society organizations, in particular the World Association of the Blind, for inspiring and accompanying them in that long trip, being then certain that they were very close to their destination. It underscored that for the Delegation of Ecuador it was a moral and legal imperative in light of human rights, such as the International Convention for Persons with Disabilities. As was mentioned by the Delegation of Uruguay, it was time to take the remaining step for the Committee and agree on a text that would serve as a basis for a treaty, so that a Diplomatic Conference could be convened by the General Assembly. It noted that Ecuador had just adapted its legislature on June that year, to recognize exceptions and limitations for visually impaired persons, what make them feel full of pride and happiness. They then hoped anxiously to celebrate an international treaty which provided protection to all persons with disability, which deserved that protection not only in certain countries but throughout the world.

276. The Chair followed Rule 17 of the proceedings, by announcing and closing the list of speakers; the Chair indicated that Ecuador was the last speaker of the session. The Chair indicated they had all heard about their commitment and determination to proceed to work on the text as expeditiously as possible. It highlighted the existing spirit of cooperation among, which would help them be able to agree on the text and reach a conclusion for a recommendation. He highlighted the positive statements but indicate they would be more meaningful if they were translated into real work. The Chair invited the delegations to present their contributions starting with the preambular section.

277. The Delegation of Brazil proposed that the first preambular paragraph should be modified on the following way: "Recalling the principles of non-discrimination, equal opportunity, accessibility and full and effective participation and inclusion in society, proclaimed in the universal declaration of human rights, and the United Nations Convention on the Rights of Persons with Disabilities".

278. The Delegation of the United States of America indicated it wanted to propose a streamlining and clarification for the second preambular paragraph, which referred to freedom of expression and freedom to seek information. It noted that after having mapped the description of the freedoms and rights onto existing international conventions, researching in the United

Nations Declaration on Human Rights and the recent United Nations Convention on the Rights of Persons with Disabilities. It proposed the following substitution for the second preambular paragraph: "Mindful of the challenges that are prejudicial to the complete development of persons with visual impairments/print disabilities, which limit their freedom of expression including the freedom to seek, receive and impart information and ideas of all kinds on a equal basis with others including through all forms of communication of their choice and their enjoyment of the right to education". It stated that the freedom of expression and the freedom to seek, receive and impart information and ideas came from article 19 of the U.N. Declaration of Human Rights, while the right of education came from article 26 of the U.N. Declaration of Human Rights, as well as from article 24 of the U.N. Convention on the Rights of Persons with Disabilities. It also proposed to use the phrase "persons with visual impairments/print disabilities", in the preamble and throughout the document, subject to the Committee afterwards deciding on a final phrase, or staying with that phrase.

279. The Delegation of Mexico proposed to amend the third preambular paragraph on the following way: "The importance of copyright protection as an incentive and reward, artistic creations and enhancing opportunities for everyone including persons with visual impairments/print disabilities. Persons with visual impairments and print disabilities, life of the community to enjoy the arts, enjoy scientific progress and its benefits".

280. The Delegation of India provided its reactions to the initial amendments proposed to paragraphs 1, 2 and 3 of the preamble. On paragraph 1 it had no objection. On paragraphs 2 and 3, it stated that the expression "persons with visual impairments/print disabilities", had been explained under the "Beneficiary person" in Article B. It proposed that instead of mentioning again persons with impairment and print disabilities, they could simply mention beneficiary persons in all the paragraphs of the preamble. It also noted that the proposal made by the Delegation of the United States of America stopped abruptly the right to education. It should include the "right to education and research", as it was on the original text.

281. The Delegation of the United States of America indicated to the Delegation of India that it had not found the "right to research" when they were examining the conventions. However, it expressed to that Delegation its willing to look for the precise language to track what the status of freedom of research was. It stated it was mindful of the definition of "Beneficiary person" included in Article B. However, it noted that as it referred to the preamble, it was read the beginning of the document, before any of the definitions in the articles. For that reason it indicated it did not consider appropriate to refer to the "Beneficiary person" at the beginning of the text.

282. The Delegation of Brazil endorsed the proposal for amending the language of paragraph 2 of the preamble.

283. The Delegation of Australia noted that during the inter-sessional informal discussions, part of the exercise undertaken was to look at the preamble and to look for duplications between the 17 existing paragraphs. For that reasons it proposed streamlining or merging paragraphs 5, 6 and 8 into a new fourth paragraph. The paragraph would read as followed: "Aware of the barriers of persons with visual impairments/print disabilities to access published works and the need to both expand the number of works in accessible formats, and to improve the circulation of such works". The reason they came to that formulation was that they had found some duplication between concepts, for example the concept of accessibility appeared in the fifth and eighth paragraphs of the existing text; the concept of equal opportunities, which was in the existing fifth paragraph, was already encompassed in paragraph 2; and the effective protection of rights of authors was already encompassed in paragraph 14; the concept of barriers which was in the 6th paragraph they incorporated, and the concept of expanding the number of works which was at that moment in the 8th paragraph, was also incorporated.

284. The Delegation of Pakistan supported the insertion proposed by the Delegation of Brazil regarding paragraph one. Regarding the proposal for the second paragraph, it also noted that the paragraph stopped at the right of education and proposed to add “and opportunity to conduct research”. It believed it was important that the element of research was also included, but there was the limitation that they did not have the right to research specifically mentioned in any of the declarations. It indicated its proposal could help them move forward while also capturing that aspect.

285. The Delegation of Egypt speaking in its national capacity supported the proposal made by the Delegation of Pakistan on the reference to research. With regard to the reference to beneficiaries, it proposed to solve the issue through referring to the beneficiaries as defined in article B, without repeating the concept each time. It also noted that in article 21 of the U.N. Convention there was a reference to the right of freedom of expression.

286. The Delegation of Senegal endorsed the proposal made by the delegations of Egypt, India and Pakistan. It indicated that the concept of research was one that they would like to highlight. It recognized that there was no right to research as such in theory. However, in practice there was after all freedom of education the right to education, which included education and research.

287. The Delegation of Nigeria on behalf of the African supported the comments made by the Delegations of Pakistan, India and Senegal regarding research and its importance. It indicated to the Delegations of Australia and the United States of America that the historical language in the Berne Convention for the right to research, debated during the Stockholm conference, should be inserted. It also proposed a new language for the new paragraph fifth (formerly seventh). The previous paragraph should read: “aware that the majority of persons with visual impairments/print disabilities live in developing countries”, replacing the words “aware that” for “taking into account”.

288. The Delegation of the Islamic Republic of Iran referred to the proposal made by Delegation of Australia and proposed to make some additions to the second sentence so it read: “aware of the barriers of persons with visual impairment/print disabilities to access published work, and to achieve equal opportunities in all spheres of society, and there continuation of the paragraph”.

289. The Delegation of the United States of America proposed a sixth preambular clause, resulting from the merge of clauses ninth, tenth and eleventh, as they existed in document SCCR/23/7. It pointed out that at the informal group meetings held in March and May that year, they were aware that those three preambular clauses had all a common theme on new information and communication technologies. They also had the theme that despite the development of those new technologies, the national nature of copyright meant that the new technologies were not being exploited to their maximum benefit for the benefit of persons with print disabilities. On that basis, the Delegation of the United States of America proposed a new 6th preambular Clause which read: “Recognizing that despite the differences in national copyright laws the positive impact of new information and communication technologies on the lives of persons with visual impairments/print disabilities may be reinforced by an enhanced legal framework at the international level”. It also indicated that regarding the question of “research”, they were open to explore it.

290. The Delegation of the European Union and its Member States noted that regarding preambular clause number 12, on their impression it was not correct to refer to a large number of countries having established limitations and exceptions, but that it was more adequate to refer to many Member States. It read its proposed language for that clause: “Recognizing that many Member States have established exceptions or limitations in their national copyright laws for persons with visual impairments/print disabilities, and yet there was a continued shortage of

available works in accessible formats for such persons". It also noted the proposal made by the Delegation of Egypt regarding the use of "beneficiaries, or beneficiaries" as defined in that instrument, but indicated that It would still read very strange in preambular language.

291. The Delegation of Switzerland referring to preambular clause number 7 proposed to add at its end: "That considerable resources are required for the effort of making works accessible to those persons, and that the lack of possibilities of cross-border exchange of accessible formats necessitates avoidable duplication of these efforts".

292. The Delegation of Brazil proposed that former preambular clause 13 should read: "Recognizing that the preference is for the right-holders to make their works accessible to persons with visual impairments/print disabilities and that, to the extent that the market is unable to provide such access, appropriate copyright exceptions and limitations are needed". It indicated that the idea was to simplify the language and to remove a qualifier that was creating confusion on how it should be interpreted and implemented.

293. The Delegation of the European Union and its Member States proposed preambular clause 14 should read "Recognizing also the need to maintain a balance between the effective protection of the rights of authors and the larger public interest, particularly education, research, and access to information, and that such a balance must facilitate effective and timely access to works for the benefit of persons with visual impairment/print disability".

294. The Delegation of Mexico proposed an amendment on the basis of the order that was changed through all the suggestions made. It proposed a new clause 10, formerly 15, that should read: "Member States on the existing international treaties on the protection of copyright, and the importance and flexibility of the three-step test to limitations and exceptions established in article 9.2 of the Berne Convention and other international instruments".

295. The Delegation of Colombia indicated that preambular clause 13 imposed excessive responsibilities on copyright rights-holders, which in their system did not exist. They had enshrined free enterprise and private individuals decided which way that right was exercised. It proposed for said reason and alternative wording to the 13th preambular clause which should read: "Recognizing that it has been expressed that it would be ideal for copyrights holders who should publish their works in the format which is accessible to persons with print disability, but to the degree that the market cannot provide access to works to persons with print disability, they have to have alternative measures to improve this access".

296. The Delegation of Brazil proposed to substitute the words "needing" with "seeking" in new preambular clause 11.

297. The Delegation of India asked the delegations, specially the leader of the Development Agenda Group, if they should follow the same formulation from the Beijing Treaty on Audiovisual Performers (BTAP) on the Development Agenda.

298. The Delegation of Brazil supported the suggestion of the India Delegation to follow the same formulation from the Beijing Treaty on Audiovisual Performers (BTAP) on the Development Agenda.

299. The Delegation of Nigeria on behalf of the African Group proposed a new preambular clause 12 to replace preambular clause 17. It should read: "Desiring to harmonize and enhance national laws on such limitations and exceptions through a flexible international framework, consistent with the Berne Convention, in order to facilitate access to works protected by copyright by persons with visual impairments/print disabilities".

300. The Delegation of the United States of America aligned itself with the statement made by

the Delegation of Brazil regarding the proposal made by the Delegation of India. It agreed that they should take a look at the language from the Beijing Treaty and determine what modifications could be appropriate of what was then new clause 11th, formerly 16th. It also indicated to the Delegation of Colombia regarding its proposal for new clause 8th, formerly 18th, that it did not understand the difference in how the wording suggested by that Delegation would have difference in meaning from what was proposed.

301. The Delegation of the Bolivarian Republic of Venezuela proposed to continue working and to show the edits on the screen.

302. The Delegation of the European Union and its Member States proposed to add to the preambular clause 12 presented by the Delegation of Nigeria on behalf of the African Group, a reference to the WCT, taking into account that the rights that fell within the remedy of that instrument included the making available right that was established in that Treaty. It also supported the proposal made by the Delegation of Switzerland regarding the new preambular clause 7.

303. The Delegation of Egypt supported the proposal made by the Delegation of the Bolivarian Republic of Venezuela on using the screen. Regarding the reference to the WCT in preambular clause 7, it indicated that as some WIPO Member States did not join the WCT it would make it more difficult for them to consider joining that treaty. For that reason, it proposed to limit the reference to the Berne Convention.

304. The Delegation of India supported the note raised by the Delegation of Egypt, that as most of the countries were not members of the WCT, mentioning it in the new preambular clause 7 could be problematic. It stated that it fully supported the proposal made by the Delegation of Nigeria on behalf of the African Group as it originally was made. It proposed to follow the Beijing formula for dealing with the nonmembers of WCT, WPPT and TRIPS.

305. The Delegation of the European Union and its Member States responded to the concern expressed by the Delegation of Egypt, supported by the Delegation of India. It indicated that it was not the intention of a reference to a treaty made in the preamble to make it compulsory the ratification or accession to that treaty. It also highlighted that it was a concern during the Beijing Diplomatic Conference to give reassurance to some Member States as to the fact that the Beijing treaty did not imply a need to ratify, in that case, the WPPT. The reference made in preambular clause 7 was for the sake of consistency, as that instrument referred to the making available right, a right that was established by the WCT.

306. The Delegation of the United States of America noted the suggestion made by the Delegation of India and proposed to study the formulas used in the Beijing Treaty to address similar issues. It also proposed for the new preambular clause 7 to use the formulation included in the new preambular clause 10, which stated: "in reference to the three-step test, as established in article 9.2 of the Berne Convention and other international instruments".

307. The Delegation of Nigeria aligned itself with the Delegations of Egypt and India and proposed to adopt the formula proposed by the Delegation of the United States of America. It also indicated that the reasons for not including treaties by name beyond the Berne Convention were that the making available right was not recognized in several jurisdictions and it should be recognized independently in a treaty or an instrument such as that one, without requiring any reference to the WCT. It also pointed out that as a legal matter, when the phrasing talked about consistency with the Berne Convention and a specific treaty, it did introduce interpretive norms that it considered they should try to avoid.

308. The Delegation of Peru regarding the proposal of merging previous preambular clauses 5, 6 and 8 in a fourth paragraph, suggested the inclusion at the end of the words: "and to achieve

equal opportunities in all spheres of society". It also supported the proposal made by the Delegation of India regarding the inclusion of the term "research". Regarding the discussions on the use of the term beneficiaries instead of persons with visual impairments/print disabilities, it associated itself with the Delegation of the United States of America. It explained that at that preambular stage, it made sense that they had a direct express mention of persons with visual impairments/print disabilities so that subsequently. After future article B they should always use that term. It also associated itself with the proposal made by the Delegation of India on the use of the paragraph of the Development Agenda, product of the consensus reached in the Beijing Treaty. It proceeded to read the text of the paragraph: "Development Agenda recommendations adopted in 2007 by the General Assembly of the convention establishing the World Intellectual Property Organization (WIPO), which aim to ensure that development considerations form an integral part of the organization's work".

309. The Delegation of Egypt recalled that in the Beijing Treaty there was an agreed statement indicating that contracting parties who would join the Treaty would not be obliged to join the WPPT treaty. It raised the question if they needed an agreed statement there to be sure that if contracting parties were not party to other international instrument, they would not be obliged to accede to them.

310. The Delegation of the United States of America indicated to the Delegation of Egypt that the question he raised was a fair one and that it should not worry about it at the preamble.

311. The Delegation of Chile suggested on former preambular clause 13 of the preamble, currently 8, to replace the current text with: "Recognizing that together with important role of right-holders in making their works accessible to persons with visual impairment/print disabilities, appropriate copyright exceptions and limitations are needed, comma, including when market is unable to provide such access".

312. The Delegation of the United States of America proposed to substitute the streamlined preambular clause 12, replacing preambular clause 17. Preambular clause 12 would include the suggestions made by the Delegations of Colombia, Chile, Pakistan and India.

313. The Delegation of the Islamic Republic of Iran asked if there was any technical problem with the screen after two Delegations had asked to see the new proposals in the screen.

314. The Delegation of the United States of America indicated they were trying to figure out the best way to present those new ideas as well as the suggestions of Delegations like Colombia, Chile, Pakistan, India and others. It stated that one possibility could be to produce a non-paper showing preambular clause 12 with the suggestions. Another one could be to produce a document SCCR/23/7 Rev., showing preambular clause 12 with the suggestions, presenting its previous version as well as the new ones. It requested the Chair to indicate them how they should proceed, as everyone in the room need to see proposals for replacing former preambular clause 17.

315. The Chair indicated he could not answer for the Secretariat but he did not believe there was any technical problem with the screen. He also indicated that as it had been requested, some proposals that had been presented in the floor had also been submitted to the Secretariat in writing and requested to submit those made orally that had not been sent yet. It suggested receiving them as soon as it was possible so the Secretariat could revise the Preamble, without stopping their work and moving to the next stage. The Chair ordered to move to the next section.

316. The Delegation of Pakistan supported the proposal made by the Chair, as the progress made in the discussions needed to be captured. It suggested that document the Secretariat would work on should not replace the current document, as by infiltrating in they would make it

more confusing. It also supported the proposal of having a non-paper, capturing all the comments made from the floor.

317. The Delegation of India aligned itself with the Delegation of Pakistan. It indicated the abilities of the Secretariat were well known and that it could come with a document any time in the early morning of the next day. It also supported the suggestion made by the Chair to continue with the next step of the discussions that was the definitions.

318. The Delegation of Mexico supported the proposal made by the Chair and stated that it considered it was the right road forward for making progress in the Committee. It urged to the delegations that had made proposals on the clauses of the preamble to submit them to the Secretariat.

319. The Delegation of Brazil aligned itself with the proposal of having a revised document including all the comments made that day and the proposal of moving forward with the discussions on the text.

320. The Delegation of the United States of America proposed to continue with the discussions on the definitions of the terms “work” and “accessible format copy”, including for that last one the suggestions made at the informal meetings. It also proposed to leave the discussions on the definition of the term “authorized entity”, for discussing it in an informal meeting to be convened by the Chair, perhaps on the next day.

321. The Chair informed delegations they would have Spanish and French interpretation for the following hour, and invited them to proceed with the discussions on definitions. He asked if they could continue working that additional hour.

322. The Delegation of Egypt on behalf of the African Group indicated they were ready to continue working. It requested to have the possibility to see the text on the screen to follow up on the different proposals and formulations.

323. The Delegation of Mexico expressed its readiness to continue the work that day as long as necessary.

324. The Delegation of the European Union and its Member States supported the proposal made on tackling the beginning of the definitions and then giving them a pause to reflect and to assess what they had achieved. After having done that, it proposed the work should be resumed on the next day.

325. The Chair indicated that the screen requested by the Delegations of Venezuela, the Islamic Republic of Iran, and Egypt would be available on the next day. He invited delegations to start the discussions on the first part of the “definitions” section.

326. The Delegation of Mexico proposed a new wording for the definition of the term “work”, based on the previous one included under the footnote number 16. The proposed definition read: “literary or artistic work within the meaning of the Berne Convention in the form of text, notation, and/or related illustrations whether published or otherwise made publicly available in any media”.

327. The Delegation of India indicated they could only partially accept the amendments proposed by the Delegation of Mexico to the existing definition, as they could not accept the inclusion of the words “in the form of text, notation and/or related illustrations”. It indicated they could accept the amendments within the definition of the Berne Convention, but not limited only to those kinds of works. Otherwise, it would restrict those exceptions in such a way making them unacceptable.



328. The Delegation of Brazil indicated to the Delegation of India that the idea of the definition was not to restrict its implementation, but rather to make for instance books that had graphs, charts, or equations, also covered by the definition of work. It was relative to having a complete take on what was contained in a book.

329. The Delegation of the United States of America indicated they would discuss ideas with the Delegation of India regarding the different ways to approach the definition of work.

330. The Delegation of Nigeria supported the comments made by the Delegation of India and proposed the following wording for the definition of work: "literary artistic, scientific works, works of research, are all covered, as they are under the Berne Convention".

331. The Delegation of Senegal supported the text proposed by the Delegation of Nigeria. It also indicated it had reviewed the proposals made for paragraph 16 by the Russian Federation, Brazil, the United States of America, Egypt and Switzerland and considered they could be condensed. It stated they had a problem with the definition of "work", as they for not really providing a notion of it but just it by saying "they are literary, scientific or artistic".

332. The Delegation of Argentina indicated its doubts on the way the term "work" was defined in document SCCR/23/7, as they wanted to have a list of specific works as established in the Berne Convention. Nonetheless, it stated that a broad-ranging reference to the Berne Convention included other types of works and they were not sure that all of those works were completely relevant to the problems that they were trying to resolve. It requested to the proponents so explain the reasoning behind that.

333. The Delegation of Ecuador stated it did not want to be restrictive regarding works, for instance the formats for reading-impaired persons. It did not want to be too restrictive as opposed to what was normally used in relation to the Berne Convention. It indicated it would be more comfortable with a solution that in addition to talking specifically about literary and artistic works also mentioned the word "scientific", which was the wording they normally use with regard to the Berne Convention.

334. The Delegation of the Egypt supported the statements made by the Delegations of Nigeria, Senegal and Argentina with reference to the importance of including in the definition scientific works, being consistent with their desire to make available scientific works to visually impaired persons. It stated they would like to capture that in the definition.

335. The Delegation of India indicated it was not able to understand why the nature had been included in the definition of work. It asked why that had to be imposed on the 37 million blind population. Why was the extensive definition established in Article 2 of the Berne Convention being restricted for the world's blind population?

336. The Delegation of the European Union and its Member States indicated that it had deleted from the definition of "work" the reference to the words "whether published or otherwise made publicly available in any media". They failed to understand the idea behind that request and were concerned that it would be understood as the possibility of imposing limitations on published works. It stressed that the deletion of those words in the definition of "work" would create problems.

337. The Delegation of the Islamic Republic of Iran indicated it would like scientific works to be reflected in the definition of work included in the Working Document.

338. The Delegation of the Bolivarian Republic of Venezuela aligned itself with the Delegation of Ecuador and indicated it would not like restrictions to be imposed.

339. The Delegation of the United States of America stated that the addition of the word “scientific” did make some sense. It aligned itself with the Delegation of the European Union and its Member States on its question and concern regarding the reasoning that “published or otherwise made publicly available in any media” was established to recognize that unpublished works or works being kept private by someone, should not be subject to Exceptions and Limitations until they were made public or published. In relation to focusing on texts, notations and other related illustrations, it highlighted it was critically concerned in crafting a solution to the book famine, that of the educational needs and needs to access to information for persons with print disabilities. It recalled that one of the key things they would face when discussing the definition of “authorized entities” was the notion of schools because schools and education were partly at the focus of what they were doing there. It aligned itself with the Delegation of Argentina and stated that there was a value in focusing on the problem they were trying to resolve. It asked the Delegation of India how accessible copies could be made from architectural or sculptural works. It finished by stating that it should be recognized the target of the efforts for making accessible format copies and not just everything that was included in the Berne Convention.

340. The Delegation of China proposed to delete from the current definition of “work” the word “protected” and to indicate that “work” means “a work within the meaning of the Berne Convention,” as the Berne Convention was the basic convention usually used for defining “work”. It also proposed to add “whether published or otherwise made available to the public media”.

341. The Delegation of Nigeria proposed to include in the definitions section the term “published”, which was a central tenet obviously of copyright law and was repeated many times through the document.

342. The Delegation of Ecuador provided an example of why it was important that the Committee did not restrict the benefit of the exception to certain kind of works. It asked how a blind person could have access to the Statute of Liberty. Or how could a blind child be taught about the Taj Mahal? It stated it was not possible only to rely on other senses, it was necessary to provide a model, which would need to be an adaption or transformation of a work. It concluded stressing that it was important that the restrictions to what could be transformed and under which conditions that would be part of the specific exceptions that they were providing, was not limited from the start to those works that might be under an exception.

343. The Delegation of the European Union and its Member States indicated to the Delegation of Nigeria that there was already a definition of “publication” in the Berne Convention. It recognized that the interpretation of that concept in the digital environment was complex, but those of them that were there in the negotiations of the 1996 treaties had some memory of it, even if it was quite a while ago. It remembered that the definition of “publication” was one of the most difficult to discuss, even if they attempted to get to a solution, the problem was precisely that issue, the issue of publication in relation to the digital environment. It concluded by stressing that if they did not want to negotiate for other five years, they should not attempt to get to the definition of the concept of publication in that instrument at that time.

344. The Delegation of Nigeria indicated to the Delegation of the European Union that there was a difference between “published” as a term in copyright and “publication”. It indicated the reference it had made was to the term “published”. If “published” was a qualifying criterion for what was covered by the statute, instrument, treaty, whatever they ended negotiating, that certainly needed to be defined so countries know exactly what they were committing to. It indicated that in the United States of America they had a dual system of works that got certain kinds of rights when they were published and works that did not.

345. The Delegation of the Bolivarian Republic of Venezuela referred to the statement made by the Delegation of Ecuador and asked to the Delegation of the United States of America how could it indicate there were no difficulties with architectural works when that country was making such quick technological progress. It stressed they should leave the space open for legislations for the fact that technological progress could lead them into situations they were not aware yet.

346. The Delegation of the United States of America referred to the statement made by the Delegation of Nigeria where it indicated that a definition of “published” or “publication” should be necessary. It observed that it was conscious of the problem for which it said: “published or otherwise made publicly available in any media”.

347. The Delegation of India supported the statement made by the Delegation of the Bolivarian Republic of Venezuela on the technological progress in the future. Regarding the debate on “published works”, it indicated that at the moment it was in a fixed format that they had for copyright to come into existence. When it was not published, unpublished works were protected. It observed that the Indian Copyright Law even when applications were given for the unpublished works, it was whether it was a screenplay, script of the film, unpublished work, no one could get a copy of it under the Right to Information Act because they respected the copyright of that person. However, once it was published, it was available for the creation of any accessible format under the exception. It recognized the importance of published and unpublished and stressed there was a need for protection of unpublished works.

348. The Chair asked for suggested amendments to the definition of “accessible format copy”.

349. The Delegation of the United States of America observed that the text of document SCCR/23/7 recognized that even while one sought to respect the integrity of the original work, there could be some compromises of that integrity that were needed to make the accessible format copies completely accessible. It proposed to move the definition under Article C to the definitions section of the document, and replace the existing text with that one that read: “Accessible format copy” means a copy of a work in an alternative manner or form which gives the beneficiary person access to the work, including to permit the person to have access as feasibly and comfortably as a person without visual impairment/print disability. “Accessible format copy” is used exclusively by beneficiary persons and it must respect the integrity of the original work, taking due consideration of the changes needed to make the work accessible in the alternative format and of the accessibility needs of the beneficiary persons”.

350. The Delegation of India indicated it also wanted to propose a similar change to the one proposed by the Delegation of the United States of America. It indicated its acceptance of the proposed changes.

351. The Delegation of Nigeria asked for clarification from the Delegation of the United States of America regarding the second sentence of the previously mentioned paragraph, “accessible format copy is used exclusively by beneficiary persons”. It asked if that was intended to be a definitional aspect of that provision or if it was merely descriptive of the follow-on part about the integrity of the work?

352. The Delegation of the United States of America asked if the choice was between “definitional” or “descriptive”. It noted it was not sure about the difference but took “descriptive”.

353. The Delegation of Nigeria indicated that the Delegation of the United States had answered its questions and if it was descriptive they did not had any comments and simply subscribed the comments made by the Delegation of India.

354. The Delegation of Algeria requested to the Delegation of the United States of America to repeat its proposal for the first paragraph.

355. The Delegation of the United States of America read the text “Accessible format copy” means a copy of a work in an alternative manner or form which gives the beneficiary person access to the work, including to permit the person to have access as feasibly and comfortably as a person without visual impairment/print disabilities”.

356. The Delegation of the Algeria asked to the Delegation of the United States of America if the definition previously read also covered digital works and not just printed ones. It also asked if the proposed change took its Delegation’s comment into account.

357. The Delegation of the United States of America observed the first sentence was technology-neutral in the sense it did include digital. It raised the question if they were talking about the originating copy of the work or the accessible format copy? It indicated that for them the technologically neutral definition of “accessible format copy” in the first sentence clearly meant that an accessible format copy could be a digital version such as the DAISY format. It also observed that in the United States of America a substantial amount of accessible format copies were in digital formats. It highlighted it was not their intention to limit in any way without the specification. It finalized by recommending that in that kind of areas it was better to have a general definition and not to try to start specifying for the exact reason that technology developed.

358. The Delegation of Algeria indicated that the comment it had previously made still stand because the Delegation still believed that it was important to define the scope of definitions or to make clear the scope in an international instrument and it would like the Committee to take into consideration that. Even though it was neutral, it was ambiguous without a mention of access to digital works.

359. The Delegation of Ecuador indicated regarding the question raised by the Delegation of Algeria that to its understanding, the definition of “accessible format copy”, did not preclude the possibility of making a digital copy from an originally work, originally published in digital. So they could have two possibilities: A print work in analog format could be put into digital format, or they could have a work originally published in a digital form and copied to be accessible for a person with print disability or visual impairment in digital format. They could go from digital to digital or print to digital or digital to print in the most analog form.

360. The Chair indicated that there had been a suggestion to deal with the definition of “authorized entity” at a later stage. It asked if the definition should be dealt with at that stage. Or it they should proceed with the definition of “reasonable price for developing countries”.

361. The Delegation of the United States of America asked the African Group if it preferred to present their ideas on “authorized entity” at that time or if they would be more comfortable presenting them on the next day?

362. The Delegation of Egypt indicated the African Group wanted to have a fresh look to that important issue on the following day.

363. The Chair asked again if the Committee should leave “authorized entity” and still proceed, or would they get to “authorized entity” on the next day?

364. The Delegation of the United States of America indicated to the Chair answering its question that the Committee should leave “authorized entity” and then perhaps adjourn the session as by moving to “reasonable price”, some countries would have a suggestion for a reformulation of an Article that preserved sensitivity in relationship to developing markets without the need to use the concept of reasonable price at all. They would not need a definition in Article 1 if they had a reformulation later in the text that preserved the sensitivity to market

conditions in developing countries but did not require the definition.

365. The Delegation of the Bolivarian Republic of Venezuela proposed to break so they could come on the next day with a clearer mind and be more coherent.

366. The Chair informed to the delegations that the Secretariat would prepare for the following day a document including all the proposed amendments.

367. The Delegation of the Islamic Republic of Iran asked if document SCCR/23/7 Rev. 1 would be available the following day.

368. The Chair informed delegations that they would not have a document SCCR/23/7 Rev. 1. He indicated they would have a document with the Preamble and part of the definitions incorporating the proposed changes. He stated they would revise document SCCR/23/7 once they reached a stage where it was necessary to do so.

369. The Delegation of the Islamic Republic of Iran stated it was complicated to continue in the suggested way as there would be two documents and in order to make negotiations easier the Delegation proposed to have document SCCR/23/7 Rev. 1 and have it published.

370. The Delegation of the United States of America suggested having a document SCCR/23/7 Rev. inserting the first six pages that had been discussed to the previous SCCR/23/7 document.

371. The Delegation of the Bolivarian Republic of Venezuela indicated it did not agree with the proposals made by the Delegations of the Islamic Republic of Iran and the United States of America, as they should only rename the document once they had entirely finished working on it and then call it Rev. 1.

372. The Chair indicated the document would be called Rev. 1 once it was entirely reviewed.

373. The Delegation of Egypt asked the Chair about the release date of the document on education.

374. The Chair said that the revision of the working document had covered various proposals from delegations on the preamble and on the definition of "work". Later, the revised document would be screened up and delegations that had textual suggestions or proposed amendments to document SCCR/23/7 would be able to present them. The Secretariat would capture them so as to follow discussions in an informal meeting.

375. The Delegation of India said that the definition of "authorized entities" was overall acceptable but a small correction was necessary. In the second sentence, instead of "persons with print disabilities," the word "beneficiary persons" had to be added.

376. The Delegation of the European Union and its Member States stated that its thinking of that matter had evolved after some months of work. The definition of "authorized entities" had to be a sensible definition that, on the one hand, allowed for effective means for the organizations representing the blind to serve the constituencies and, on the other hand, offered a level of security in relation to the activities of those organizations, in particular regarding the exportation and importation clauses in Articles D and E of the text. Basically, the definition of authorization meant a governmental agency in a non-profit entity or a non-profit organization that had as one of its primary missions or activities to assist beneficiary persons by providing them with services relating to education, training, adaptive reading or information access needs. Those entities would establish and follow rules and procedures in order to, first, confirm that the persons it served were beneficiary persons; secondly, limit to only beneficiary persons and

authorized entities the distribution and making available accessible format copies; and, thirdly, discourage the reproduction, distribution and making available of unauthorized copies and, when necessary to address it, stop the supply of accessible format copies. Authorized entities should maintain reasonable care in, and should record, the handling of copies of works, and should make possible the transmission of anonymous and aggregated data of records of rightholders on request.

377. The Delegation of Nigeria, on behalf of the African Group, said that its definition of authorized entities meant that those were governmental or non-governmental entities and organizations, as well as educational or teaching institutions, including organizations enabled by governments, that assisted persons with print disabilities and provided them with services related to instructional and adaptive training or information to meet their access needs.

378. The Delegation of the Islamic Republic of Iran, on behalf of the Asian Group, supported the statement by the Delegation of India. Paragraph 2 and 4 of the text were not related to a definition and should be deleted. It did not agree with the proposal by the European Union that describing rules and procedures of authorized entities was related to a definition, and proposed to move that reference to another part of the document. It also agreed with the proposal made by the African Group.

379. The Delegation of India said that any explanation about the implementation of rules and procedures should not be part of the definition, but elsewhere. It also supported the definition made by the Delegation of Nigeria. It expressed a little discomfort in accepting the proposal by the Delegation of the European Union, especially because the term “primary use” did not include educational institutions and other organizations that could cater the needs of blind students. The word “primary” was not acceptable.

380. The Delegation of Argentina proposed to replace the words “primary mission” by “activity”.

381. The Delegation of the European Union and its Member States referred to the remarks of preceding delegates. It fully agreed with the comment by the Delegate of the Islamic Republic of Iran that the definition should not contain certain elements. That was the case not only for “authorized entities” but also for the definition of “accessible format copy”. It was not the nicest and cleanest classical drafting but it allowed work to continue on the definitions part rather than creating new articles. Therefore, the Delegation would not oppose the idea of transferring some of the conditions described in the definition of “authorized entity” to a separate article. As to the remark of the Delegate of India, it explained that if a University had a department that took care of the special needs of students with print disabilities, then the latter and not the first would be the authorized entity regarding the primary missions or activities. Authorized entities were going to play a particular role regarding the cross-border exchange of files of accessible format copies and Member States would remain free to have national exceptions and limitations for the benefit of the print disabled. Conditions imposed on the function of authorized entities did not need to affect the domestic situation and the functioning of relevant local bodies.

382. The Delegation of the United States of America said that that was the perfect kind of subject for informal discussions. It concurred with the views expressed by the Delegate of the European Union, as well as the Delegate of the Islamic Republic of Iran. It was important to remember that at one point in the deliberations it had been considered that the definition of a “beneficiary person” should not be in the definitions in Article A, but in a separate Article. It had no problem discussing with everyone how an “authorized entity” definition should be moved elsewhere.

383. The Delegation of Egypt said that the definition of “authorized entity” should be workable and flexible. It supported the proposal made by the Delegations of India and Nigeria.

384. The Delegation of Brazil said that the definition of “authorized entity” could be part of a conceptual discussion in an informal consultation. As to the reference to rules and procedures that would apply to authorized entities, it expressed some concerns regarding the unnecessary creation of liabilities on authorized entities. Delegations could work on a language, especially regarding item C, which was to discourage the making and distribution of unauthorized copies.

385. The Delegation of Nigeria, on behalf of the African Group, referred to a similar exercise done for the TRIPS Agreement which was to make clear that the reorganization or establishment of new institutions simply to address or to fulfill a particular substantive requirement would not be necessary. That was the creation of institutional bureaucracy and therefore the reference to rules and procedures should be eliminated, or the word “may” should be added. The text would read that “an authorized entity may maintain rules and procedures”. Any sort of administrative burden would simply make an unworkable and inaccessible treaty which would be an irony.

386. The Delegation of Barbados believed that paragraph 3 should be deleted and should be replaced by a clear statement of duties and responsibilities of authorized entities. It questioned how Government agencies would go about getting the trust of copyright holders, or what if the copyright holder was against improved access to copyright works for the print disabled, or what if the copyright holder was on sabbatical and could not be located. The Delegation did not understand what it meant that authorized entities had the trust of others.

387. The Delegation of the Czech Republic, on behalf of the Group of Central European and Baltic States, supported the proposal made by the European Union regarding “authorized entities.

388. The Delegation of Peru, on behalf of GRULAC, endorsed the statements made by the Delegations of India and Brazil regarding the question of primary missions of authorized entities. The idea was to develop inclusion policies to assist public libraries and educational institutions with shared services to facilitate access to information, and not establishing ghettos for persons with disabilities. It understood the legitimate concern to try to avoid a generalized uncontrolled use of works and declared itself flexible to supplement the definition with some other elements that indicated that libraries or educational institutions could also develop activities to assist persons with print disabilities.

389. The Delegation of the European Union and its Member States said that the structure of the document clearly left all the freedom necessary in Article C for Member States to decide on how to implement a limitation or exception for the benefit of the visually impaired. It would be totally understandable if a Member State decided to impose certain limitations as to the function of public libraries or schools or universities. Where authorized entities played a role was regarding Articles D and E through which the required rules and procedures made sure a minimal degree of responsibility for the handling of files in a manner that was not prejudicial for the rightsholders. Small schools or big universities, when they served their local or national community, would not necessarily be affected by those rules and procedures.

390. The Delegation of Nigeria, on behalf of the African Group, said that it failed to see the link between Article C and D and the definition of authorized entities.

391. The Chair observed there was obviously some more conversation that needed to take place on the definition of “authorized entities” in an informal setting. It invited delegations to comment on other definitions.

392. The Delegation of the United States of America stated that an adequate formulation of Article C and D could help to make unnecessary a definition of “reasonable price”. If when

going through the instrument, delegations found places where new definitions were needed, then Article A would be revisited and new definitions could be added.

393. The Delegation of Barbados supported the deletion of “reasonable price for developing countries”. The definition spoke about prices that were affordable in the market. It questioned how it could be determined what was affordable in differing markets of developing countries, whether the *per capita* income would apply, what would happen if the affordable level in one market was lower than the cost of production and who would pay the difference

394. The Delegation of Egypt stated that the African Group had a proposal of definitions of “work” and “reasonable price for developing countries”.

395. The Delegation of Nigeria, on behalf of the African Group, said that the proposed definition of “reasonable price for developing countries” read that “is a price at which the accessible format copy of the work is available under conditions and prices that reflect national economic realities”. The definition of “work” should be as “meaning a creation of a literary, artistic or scientific nature protected by copyright”.

396. The Delegation of the European Union and its member States said that at that stage it was not necessary to have a definition neither of “Member State” nor of “Contracting Party”. The binding nature of the instrument was still pending but treaties did not have a definition of contracting parties in the chapter of definitions. The reference to the definition of “Copyright” should be also deleted.

397. The Delegation of Egypt, on behalf of the African Group, said it was flexible regarding the European Union proposal. If the definition was retained, then it would propose to add “/Contracting Parties”.

398. The Delegation of the Islamic Republic of Iran, on behalf of the Asian Group, wished to retain the definition of “reasonable price for developing countries”. The last part of the definition should take into account the needs and disparities of the persons with disabilities.

399. The Delegation of India joined the proposal of the Islamic Republic of Iran to retain the definition of “reasonable price” and the new formulation suggested by the Delegate of Nigeria on behalf of the Africa Group. It was flexible as regards the deletion of the definition of “Member State” and “Copyright” as suggested by the Delegate of the European Union.

400. The Delegation of Nigeria, on behalf of the African Group, said that the definition of “copyright” could easily be removed from the document. The amendment of “reasonable price” proposed by the Islamic Republic of Iran was also accepted.

401. The Delegation of Senegal supported the position of India regarding the definition of “reasonable price”. It also welcomed the definition of “work” provided by Nigeria on behalf of the African Group.

402. The Delegation of Ecuador did not agree to withdraw the definition of “Copyright”. The clarification that “copyright” included also related rights was necessary.

403. The Delegation of Islamic Republic of Iran, on behalf of the Asian Group, asked to retain the definition of “copyright”.

404. The Chair noted that the Committee had exhausted comments on Article A and suggested moving to Article B on beneficiary persons.



405. The Delegation of the United States of America recommended some small cleaning up. It believed that a perceptual disability was the same thing as a print disability and recommended that “or any other print disability” be deleted from the definition of beneficiary persons.

406. The Delegation of Japan stated that, as regards Article B, paragraph C, it needed further consultation as to the beneficiary person who had a reading disability. Interpreting the concept of beneficiary persons should take into account the domestic situation.

407. The Delegation of India requested a clarification regarding the proposal from the United States to delete “any other print disability”. It wondered whether the standard definition of print disability included visual, physical, perceptual, developmental, cognitive or learning disabilities.

408. The Delegation of Senegal made a textual proposal on Article B on behalf of the African Group. It read that “A beneficiary person is a person who is blind, has a visual impairment and perceptual or reading disability. And so is a) unable to read works to the same degree as a person without an impairment or disability, b) is unable because of physical disability to hold or manipulate a book, to use it or access the world, c) perceptual, the same degree as a person without an impairment or a disability, d) a person who assists in facilitating the activities under subsection A and C for disabled person”.

409. The Chair asked whether there were comments on Article X.

410. The Delegation of Egypt, on behalf of the African Group, said that the exact textual proposal of Article X presented by the Group had been captured in document SCCR/23/7.

411. The Delegation of the United States of America said that it had an inter-agency discussion at national level regarding Article X. It might get back with some small tweaks and suggestions but still capturing the spirit and intent of the Africa Group's proposal.

412. The Delegation of the European Union and its member States was open and flexible to discuss the proposal by the African Group.

413. The Delegation of India was flexible on the proposal of the African Group.

414. The Delegation of Brazil thanked the contribution of the African Group and would revert to comments, if any, at a later stage.

415. The Chair invited delegations to comment on Article C regarding national law exceptions on accessible format copies.

416. The Delegation of India suggested that in paragraph 1 of Article C, in the third line, it should be inserted “available to public, as defined in Article 8 of the WCT”.

417. The Delegation of Nigeria, on behalf of the African Group, suggested that on the second line of Article C, first paragraph, it should be inserted “the right of reproduction, the right of distribution and the right of performance”. In some jurisdictions the making available right to the public had not been endorsed by the courts, so it suggested to include the phrase “where applicable” after the insertion proposed by India. The text would read as follows: “A Member State/Contracting Party should/shall provide in its national Copyright Law for an exception or limitation to the right of reproduction, the right of distribution, the right of performance and the right of making available to the public, as defined in Article 8 of the WCT where applicable, to facilitate the availability of works in accessible formats for beneficiary persons”.

418. The Delegation of the United States of America noted that the title of the Article did not have limitations and it should rather read “national law exceptions or limitations”. When in

informal discussions, the Delegation would ask the Delegation of Nigeria if there was a substantive limitation of said beneficiary persons. There was no difference or reason why not to say "as defined herein".

419. The Delegation of the European Union and its Member States would seek clarification from the Delegations of India and Nigeria as to the specific proposals and reference to Article 8 of the WCT or the adding of "where applicable," which could introduce a degree of uncertainty difficult to resolve.

420. The Delegation of Egypt supported the proposal made by Nigeria, on behalf of the African Group, and proposed to add the right of translation to Article C.

421. The Delegation of India supported the new amendment of paragraph 1 of Article C proposed by Nigeria. It concurred with the intervention made by the United States Delegation regarding the inclusion of the word "limitations" in the title.

422. The Delegation of Nigeria, on behalf of the African Group, supported the consistency point noted by the United States Delegation regarding the title. The content of Article C(1) could be discussed in an informal framework more productively.

423. The Delegation of Argentina noted with interest the proposal made by Nigeria regarding the right of making available to the public, which was a right not included in all legislations. It was ready to give further thought to the legal issues the proposed wording could raise.

424. The Delegation of Ecuador supported the proposal of the Delegation of Egypt regarding the right of translation. It also proposed to include the right of adaptation.

425. The Delegation of Islamic Republic of Iran, on behalf of the Asian Group, supported the suggestions of Nigeria and Egypt.

426. The Delegation of the European Union and its Member States referred to the proposals by Egypt and Ecuador. The problem to address was the lack of access to special format copies for persons with a print disability or a visual impairment. Introducing the right to translate or to adapt was not advisable at that stage.

427. The Delegation of the Bolivarian Republic of Venezuela noted that whenever a text was submitted some delegations took the floor and said that that there was something that they were not happy with. The Committee was not talking about trying to agree on every dot and comma, but to agree on a basic minimum which would go in to an instrument and then leave a certain amount of leeway for different countries to reflect it in their legislation as they see fit. There was a need to draw a line and organize informal meetings; otherwise some delegations would boycott the text.

428. The Delegation of Egypt sought clarification from the European Union Delegation regarding the reason for concern on the right of translation.

429. The Delegation of the United States of America said that the question of the right of translation had been discussed for a couple of years. The objective of the discussions was to ensure that a person with print disabilities had the same access as a sighted person did to the world's storehouse of information and materials and expression. If a right of translation was given to the print disabled person that was not held by the sighted person, then it was not the same access but a different form of access. Moreover, the question of a right of public performance was also an interesting one. For example, a book that was spoken as an audio book could also involve a performance. It agreed with the Delegation of the Bolivarian Republic

of Venezuela that there was a fairly stabilized text. If delegations started adding a lot of new things, the risk was that the Committee would move backwards and not forward.

430. The Delegation of Nigeria, on behalf of the African Group, stated that depending on the outcomes of the informal sessions over the content of Article C(1), the particular proposal on behalf of the Africa Group might not be needed. Article C(2)(a) read that “authorized entities shall be permitted without the authorization of the copyright rightholder to make an accessible format copy of a work”. The proposal was to delete the next phrase right after the comma, “obtain from another authorized entity a work in accessible format”. In other words, the proposal was simply deleting the phrase between the commas.

431. The Delegation of the European Union and its Member States noted that, in paragraph 3, there was previous option A and a new option B. Option B read that a “Member State/Contracting Party may fulfill Article C(1) by providing any other limitation or exception in its national Copyright Law pursuant to Article Ebis”.

432. The Delegation of Egypt asked the Delegation of the European Union and its member States to read the proposed Article Ebis.

433. The Delegation of the European Union and its Member States read Article Ebis as “All exceptions and limitations provided for in this instrument shall be limited to certain special cases which do not conflict with normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder”.

434. The Delegation of Nigeria, on behalf of the African Group, asked the Delegate of the European Union and its member States why Article Ebis was separated rather than remaining within the Article C(3). It asked whether it meant to link directly to the right of importation.

435. The Delegation of European Union and its member States said that the intention was to have a clean separate text that clearly indicated something which was obvious within the framework of the international obligations.

436. The Delegation of Egypt sought a point of clarity regarding the inconsistency between the two formulations because Article C, paragraph 3, read that “A Member State/Contracting Party may fulfill Article C(1) by providing any other exception or limitation in its national copyright law,” and referred to any exceptions and limitations included in Article C(1). Article Ebis 3, however, referred to “all exceptions and limitations provided in this instrument”.

437. The Delegation of the European Union and its Member States indicated there was no inconsistency. There was no intention to impose any new obligation that most of countries in the room had at the moment.

438. The Delegation of United States of America referred to Article C(4). It read that “A Member State may confine limitations or exceptions under this Article to published works, which in the particular accessible format cannot be obtained commercially under reasonable terms including at prices that take in to account the needs and incomes of beneficiary persons in that market”. When discussed in informal meetings, delegations wanted to refine that a little bit for the benefit of persons with print disabilities by saying “in the particular accessible format”. It clarified then that even if a version had been made available in an audio book, that might not had been made available in Braille, as very few works would ever be made available by publishers in Braille. The “particular accessible format” should be the condition if a Member State/Contracting Party wants to use the market availability. Instead of saying “reasonable price,” which was a defined term that could be eliminated, the provision could read as “cannot be obtained commercially under reasonable terms including price of beneficiary persons in that market,” or simply say “cannot be obtained under reasonable terms”.

439. The Delegation of Brazil wished to discuss with the Delegation of Egypt, on behalf of the African Group, and the Delegation of European Union and its Member States on the implications of the new Article Ebis. It was also ready to discuss the language proposed in Article C(4) by the United States Delegation.

440. The Delegation of the United States of America was not sure that going on further was possible. There was a lot to discuss informally and the outcome would impact Articles D, E, Ebis and onward. It suggested that the Committee engage in informal conversations.

441. The Delegation of India proposed to insert the word “or otherwise” in paragraph 1 of Article D, second line. It should read “exception or limitation or export license or otherwise”. At the end it should read “Member States would permit that beneficiary person”. That meant to delete “to make or import that accessible copy”.

442. The Delegation of the European Union and its Member States noted that discussions were getting to a level of complexity that was difficult to deal with. It supported the United States delegation’s statement to move to an informal discussion.

443. The Delegation of Nigeria declared itself agnostic as to whether continuing the discussions in formal or informal frameworks. It agreed with the Delegates of the United States of America and of the European Union regarding the level of complexity that the discussions had entered in. But it also noted the level of disunity in terms of the question of what it meant for a work to be accessible in the same way that it was accessible to a sighted person. The most important concern was that some provisions far hinged on Articles D, E and Ebis, particularly.

444. The Delegation of Ecuador supported the proposal made by India to include the phrase “or otherwise” in paragraph 1 of Article D, second line.

445. The Chair asked whether the informal discussions were the direction the Committee wanted to go.

446. The Delegation of Zimbabwe asked about the purpose to go to informal discussions as the Committee had not gone through the entire text yet. It would not make sense to break halfway through the process simply because some delegations felt uncomfortable with the way the discussions were heading. The constructive silence of the Delegation should not be misconstrued to be ignorance. Everyone had the right to know who proposed what. The dynamics of the actual negotiations of the content of the document indicated that not everything could be negotiated in plenary but, for the purposes of transparency, delegations wanted to know who had proposed what and who had objected to what.

447. The Chair asked the coordinators to have a short consultation with him and right after he proposed to break to an informal discussion to resolve the issue of the definition of “authorized entity” first and perhaps other pending issues later, if time permitted. After the informal discussions, the Chair reported that delegations had worked in a very constructive manner and were able to reach some alternative language to define “authorized entity”. The language was still not clean and had some brackets, but it gave the basis to try to move forward. He opened to floor to discuss Article D.

448. The Delegation of the United States of America referred to the informal meetings that had been held by interested States in March and May 2012 which tried to find ways to simplify Article D and at the same time to create the proper balance that would allow authorized entities to operate effectively while creating the right kind of environment of accountability. Those interested countries who informally met never quite settled on a final formulation for a suggestion for Article D(2). It proposed to replace the text of Article D(2) up through the end of

letter (b). It would then read “2. A Member State/Contracting Party may fulfill D1 by providing a limitation or exception in its national copy law such that an authorized entity shall be permitted, without the authorization of the rightsholder, to distribute or make available accessible format copies to: (A) an entity or organization in another Member State/Contracting Party that the originating authorizing the entity has identified as another authorized entity as described in Article A; (B) a recipient person in another Member State/Contracting Party, where the authorized entity has established the individual is a beneficiary person as described in Article B. Provided that prior to the making available or distribution the originating authorized entity did not know or have reasonable grounds to know that the special format copy would be used for any purpose other than the needs of beneficiary persons”. The Delegation had had discussions with many stakeholders on how to ensure that the authorized entities and blind organizations did not have an undue burden put on them, and yet there was some accountability in the system if it turned out that there was some cross-border exchange that was leading to the misuse of special format copies. The wording was trying to seek a compromise instead of creating obligations and duties on authorized entities beyond the identification of each other. That formula, which could be found in other international agreements and many domestic laws, showed that the cross-border exchange was appropriate between authorized entities or from an authorized entity to a beneficiary person unless the authorized entity knew or had reason to know that the special format copy would be misused.

449. The Delegation of Nigeria, on behalf of the African Group, echoed both the concerns and the rationalizations for the proposals to change Article D(2). It proposed that Article D(1) read: “A Contracting Party shall provide that if an accessible format copy of a work is made under an exception or limitation, import or export license in accordance with national law, that accessible format copy may be distributed or made available to a beneficiary or authorized entity in another Member State”. Consistent with the explanation given by United States Delegation, the discussion within the Africa Group was to ensure that beneficiaries could make cross-border exchanges and that authorized entities could do the same, and that those two groups could interact across with each other as well across borders. In terms of the burden, the Group had the same concern and under Article D(2) the Africa Group had proposed to substitute the word “verified” with the phrase “a good faith reason to believe”. Those two phrases actually came from the same jurisprudence.

450. The Delegation of the European Union and its Member States hoped to find the right balance between accountability and lack of burden in Article D(2). It was important to restrict that provision to the exchange between authorized entities themselves. It suggested that, in Paragraph 2 of the same Article read “A Member State/Contracting Party should/shall confine said distribution or making available to published works which, in the particular accessible format, cannot be obtained commercially under reasonable terms, including at prices that take account of the needs and incomes of beneficiary persons in the country of importation”. It was important to assure that importation/exportation possibilities kicked in when there was a market failure, for instance, when the particular accessible format could not be obtained commercially under reasonable terms in the market.

451. The Delegation of the United States of America suggested adding some language at the very end of Article D(2) that read “as well as the cost of producing and distributing the work”.

452. The Delegation of the Islamic Republic of Iran, on behalf of the Asian Group, was in favor of the original wording of Article D(2).

453. The Delegation of Nigeria, on behalf of the Africa Group, welcomed the language proposed by the United States Delegation which had to do with the question of availability in the market based on conditions in the country in which the beneficiary resided.

454. The Delegation of the European Union and its member States referred to the same point that had been raised when discussing Article C. On the basis of the informal discussions of March and May 2012, the language in Article D, paragraph 3, should be replaced by the wording “any Member State/Contracting Party may fulfill Article D(1) by providing any other limitations or exception in its national copyright law pursuant to Article Ebis”.

455. The Delegation of Nigeria, on behalf of the African Group, referred to the comment made by the Delegation of Japan on document SCCR/23/7, and noted it had to be encompassed within Article E so that the import and export did not usually mean the exchange of intangible goods. Article E did in fact permit the exchange of digital files in terms of importation. The Delegation asked whether it was a simple question of fixing the title in terms of importation or whether the text has to in fact be very explicit and include wording for the purposes of clarifying that importation included the exchange of digital files. The African Group's preference was to include language that made explicit that the exchange of accessible format files in digital format was included in Article E.

456. The Delegation of the European Union and its Member States said that Article E read “to the extent national law permits an official person and authorized entity acting on a beneficiary person's behalf to make accessible format copy of her work”. Then “the national law” should be replaced by the words “a Member State/Contracting Party”.

457. The Delegation of the United States of America took note of the remarks made by Japan and Nigeria regarding the importation of digital files. It could find the text down the road.

458. The Delegation of Nigeria, on behalf of the African Group, proposed to keep things simple, so that the last line of Article E after “copy” and the comma would read “including digital files”.

459. The Delegation of Ecuador proposed to delete “an authorized entity” and to substitute “someone acting on his or her behalf, including an authorized entity”.

460. The Delegation of India supported the intervention made by Ecuador.

461. The Delegation of Australia recalled its comments on Article F in document SCCR/23/7, comment F.01.

462. The Delegation of India suggested that in Article F, starting from the first line, the phrase “have the means to” be replaced with “are not prevented from,” so that it read “are not prevented from enjoying the exception where technological protections matters have been applied to a work”.

463. The Delegation of Islamic Republic of Iran, on behalf of the Asian Group, proposed the deletion of the first two lines of the second paragraph in Article F. It proposed that it read “Nothing in this article prevents a contracting party from adopting effective and necessary measures to ensure that a beneficiary would enjoy limitations and exceptions provided in its national law where technological measures have been applied to a work and appropriate and effective measures have not been taken by right holders in relation to that work to enable the beneficiary to enjoy the expectations or limitations under its national law”.

464. The Delegation of the United States of America pointed out to the Committee that the Beijing Treaty, so successfully concluded few weeks before, had an agreed statement on technological protection measures. From a public international law perspective, if a body or bodies with largely the same membership at the same time wrote a similar provision, future commentators would look at very carefully any differences in the language. The Delegation would come back with some very precise proposals along the Beijing Treaty lines.

465. The Delegation of Switzerland expressed its support for their comments of the United States Delegation on that subject. It suggested that the words “in particular” be added to the second paragraph. So it would read “In particular, in the absence of voluntary measures by rightholders”. The Swiss Delegation, however, was ready to accept the solution that was found in Beijing with reference to the audiovisual performances on the same issue.

466. The Delegation of Ecuador proposed to delete the first two lines of the second paragraph so that the second paragraph would start with “Member States”.

467. The Delegation of Peru said that the solution found in Beijing already reflected consensus on the issue.

468. The Delegation of Nigeria, on behalf of the African Group, proposed some text for Article G that read “Contracts that override the exercise of the provisions herein specified shall be null and void”.

469. The Delegation of the European Union and its Member States proposed an Article J related to the voluntary registry of authorized entities. The logical thing would be to help authorized entities in particular in the context of the Article D to identify each other. It would read as follows: “Member States/Contracting Parties shall/should set up a voluntary registry of authorized entities which may be used by authorized entities to identify one another for the purposes of Article D”. That provision could be easily placed as well in Article D.

470. The Delegation of Ecuador asked about the status of the Venezuelan proposal on the 3-step test.

471. The Chair noted that the Delegation of the Bolivarian Republic of Venezuela was not in the room. He confirmed that that was part of the text as it appeared on the footnote. However, Venezuela needed to be there to confirm whether they were still pursuing it or not.

472. The Delegation of Ecuador put forward the original Venezuelan proposal and put it in the form of the proposal from Ecuador.

473. The Chair gave the floor to the inter-governmental organizations and non-governmental organizations.

474. The representative of the World Blind Union (WBU) and its nine regional and national members present in the meeting noted with appreciation the hard work that had been done the previous days. She said they would be available for any informal consultations and during the weekend.

475. The representative of the International Group of Scientific, Technical and Medical Publishers (STM) supported the creation of an enabling legal framework with the potential to increase dramatically access to copies of books, journals, and other published text-based works across borders for the benefit of blind and print disabled person and make that access more secure. The ambitious goal for publishers was to mainstream and approximate as near as possible the experience of accessing literary works for persons with print disabilities to that of sighted persons. STM's view was that any enabling legal framework must not undermine the ambition of publishers and instead maintain the incentive to provide mainstream access to work, i.e. to the extent that the accessibility features were already built into the format available from the publisher or distribution platform making the instrument. A legal instrument needed to be limited to situations where there was no commercial availability of an accessible copy on commercial terms. STM was encouraged by the momentum gained and would urge delegations to keep the positive and constructive spirits in the interests of steady progress. STM believed that a legal framework must create conditions under which authorized entities that wished to act

as gateway for cross-border copies could make those available to relevant stakeholders.

476. The representative of Knowledge Ecology International, Inc. (KEI) agreed with part of what STM had said. KEI thought it was important that the works that were digital were included. Print disabilities was a little confusing to some people because they thought it was about works printed on paper being converted in some way. Since a lot of things were going to be moving to electronic formats, the instrument should get rid of the term print disabled at some point and talk about some other expression of disabilities for people who were visually impaired or have other disabilities. It was important to make sure that the flexibilities in the agreement were without prejudice to other flexibilities under the Berne Convention or the TRIPS Agreement. The European Union and the United States Delegations should support a binding instrument. KEI supported the Ecuadorian proposal for Article I, and also noted the print disabled term initially was promoted by the United States Delegation to keep the motion picture industry happy and make sure that the treaty did not relate to exceptions for people who were deaf.

477. The representative of the International Federation of Film Producers Associations (FIAPF) stated that all creativity relied on strong incentives for creators to create, adding to the educational fund available to individuals and society at large. Those incentives for FIAPF and other industries were contained in copyright and related rights. While FIAPF wholeheartedly supported the aims of the proposed instrument under construction, it was concerned that requisite flexibilities remained firmly in the sight of the Committee and in particular that the exceptions under consideration were submitted to the 3-step test under the international copyright framework. FIAPF believed strongly that the proposed instrument stood a strong chance of success if it remained focused on a singular important issue which was adding opportunities to disabled people to enjoy works tailored to their specific disability.

478. The representative of the International Video Federation (IVF) supported the expeditious conclusion of an instrument to increase the availability of books in specialized formats for print disabled persons in the developing world. In order to succeed, efforts must truly focus on improved access by reading disabled persons. IVF stood ready to support an international instrument that was consistent with and did not prejudice the international corporate hierarchy, including the next best reference to the 3-step test and appropriate flexibility for compliance through commercial availability, licensing alternatives, or exceptions matched with and subject to the protection of corresponding rights.

479. The representative of Internet Society (ISOC) welcomed the commitment of WIPO Member States to address the needs of visually impaired persons and people with print disabilities. Working on the visually impaired persons and print disabilities in multi-stakeholder frameworks could be helpful for all future discussions but at the same time legal international and binding solutions were necessary. ISOC believed that solutions for accessibility were necessary as they could allow the delivery of any product or service over the Internet. Anything which related to interests pertaining to the Internet, directly or indirectly, should respect the Internet open nature as well as its open architecture. Any issues with respect to the Internet should be deliberated under a multi-stakeholders environment as established by the Internet Society agenda.

480. The representative of the International Federation of Library Associations and Institutions (IFLA) said that the time had come to send a recommendation to the next WIPO General Assembly to convene a diplomatic conference in 2013 on a treaty for visually impaired and print disabled people. The governing bodies of UNESCO and WIPO had worked 31 years ago on the same topic and yet WIPO still had not produced a copyright treaty that provided equal access to information for people with disabilities. In a recent letter from the Chair of the UN Committee on the rights of persons with disabilities addressed to the Chair of the SCCR, it had been made clear that the support of WIPO in achieving an international instrument was critical to ensure that copyright was not a barrier to information, culture and information for persons



with disabilities. That instrument should be a binding treaty. The library community, which was the major provider of services assisting blind people to access information, believed that the proposed treaty that WBU and other organizations were seeking was right, fair, just and long overdue. The Beijing spirit of action that the Committee exhibited only few weeks ago should be directed to addressing the compelling needs of visually impaired and print disabled people as your top priority.

481. The representative of the Canadian Library Association (CLA) urged delegates to move expeditiously to finalize a recommend a treaty for the visually impaired and print disabled. The time was then to address that need. For libraries, educational institutions, government agencies and charities providing direct service to the visually impaired and print disabled it was imperative that n international treaty permitted the cost effective delivery of alternate formats. Cross-border movement of legally produced alternate formats was essential in achieving the affordable and timely delivery formats for those who needed them.

482. The representative of the International Federation of Reproduction Rights Organizations (IFRRO) acknowledged the efforts to reach a consensus solution regarding a WIPO instrument to enable effective access to copyright works by persons with reading impairment. In respect of the text of the instrument, IFRRO reiterated what it considered to be among the key elements to be observed. One, the text should clearly link the to the Berne Convention, namely Article 9(2) and the 3-step test which needed to be maintained as a general basis for the establishment of any exception in national legislation. Two, works to be made available under an exception in national legislation should apply only to works not made accessible by publishers or authors or their representatives. Three, cross-border transfer of files in addition to being made subject to some form of approval mechanism by rightholders or their representatives must be limited to works lawfully published domestically before any re-exportation since it would otherwise conflict with the normal exploration of the works and prejudice the rights of the rights holders. Four, entities should follow rules and regulations engaged in the international exchange of copyright works to ensure accountability.

483. The representative of the Centre for Internet and Society (CIS) associated himself with the statements made by the WBU, IFLA, ISOC and CLA. The way to work on the treaty had been stalled by some Member States to date and it was a matter of shame. In India, the parliament had recently passed an amendment to the copyright law that granted persons with disabilities and those working for them a strong yet simply worded right to get equal access to works as sighted persons. An instrument that laid down detailed guidelines on rules and procedures to be followed by authorized entities would not work. An instrument that subjected the enjoyment of fundamental freedoms by persons with visual impairments to market forces and bureaucratic practices would not work. Importantly, an instrument that ignored the realities of the world that the vast majority of persons with visual impairment actually lived in developing countries would not work.

484. The representative of the International Publishers Association (IPA) agreed with IFLA about the importance of the UN Convention on the Rights of Persons with Disabilities and the fact that it gave a lot of flexibility on what kind of instrument delegations could choose to resolve the issue of access to content. But it was very clear that one thing was forbidden, and it was to do nothing. IPA also concurred with KEI and others that flexibility was an important issue. If an instrument had been enacted in the 1980s dealing only with analog recordings, then the question would be where discussions would be. The last five years had been a tumultuous time of change and of improvement for many persons with print disability. iPhones, iPads, ePub3 Daisy, and Bookshare were technological improvements that had reached some but not many. For the vast majority of persons with print disability in developing countries there was no change in the past five years. Flexibility was the core issue to address a world of so different developments to access content. IPA was aware of the different technical abilities of organizations and entities around the world and in particular in the developing world. It was

also aware that the same computers that enabled the reception and distribution of digital files also easily and conveniently enabled the kind of security tools and recording facilities that were part of standard digital asset management. The instrument would not be able to assist persons with print disabilities unless resources were invested into capacity building in least-developed countries. WIPO had a long track record of supplying services to patent offices. It would be easy for them to make similar services available to ensure that copyrighted materials reached those with visual impairments. IPA supported the inclusion of capacity building in the instrument under consideration.

485. The representative of the Computer and Communications Industry Association (CCIA) was pleased to see there was real progress on the visually impaired instrument and that the risk of linkage between the issue of the visually impaired and broadcasting issues had receded. The text under discussion, however, seemed to become longer and more complex rather than simpler and more straightforward. With regard to authorized entities, it asked whether anybody seriously believed it was essential to build such elaborate safeguard mechanisms of compliance. Recent proposals seemed to far exceed any test of reasonableness and to insult the very community delegations were trying to help.

486. The representative of the Transatlantic Consumer Dialogue (TACD) recalled that the issue had been brought to the European Parliament and the democratic representatives of the European Union were in favor of an effective binding international treaty for the visually impaired persons and other print disabled. There was a unanimous vote of the European parliament on February 14, 2012, in Strasbourg of the plenary session in favor of a binding treaty. Unfortunately, it seemed not to be the case of the EU representatives at the SCCR session. Michel Bernier, the Commissioner of internal market, who previously wrote to dozens of members of the European Parliament that he was against a treaty and in favor of a recommendation, stood up in front of the Parliament and committed himself to fight for a treaty to get a mandate from the European Council. TACD was saddened that in the internal meetings and in the informal meetings the EU representatives fought tooth and nail against any mention of a treaty. There was no legal impediment according to the Lisbon Treaty for the European Union to ask the treaty of the visually impaired to be placed on the agenda of the next General Assembly and convening a diplomatic conference in 2013. It would be a democratic travesty if the European Union representatives before the SCCR posed any problem to a clear roadmap for a binding international treaty.

487. The Chair confirmed that the submissions that had been made would be captured by the Secretariat on paper and would be used in the informal discussions.

## **ITEM 7: PROTECTION OF BROADCASTING ORGANIZATIONS (continued)**

488. The Chair referred to the informal consultations on broadcasting which had taken place and recalled the consultations had given the mandate to the Chair to produce a Chair's text for the consideration of that Committee, in recognition of the fact that they several proposals were on the table and there was a need to get to a single text. In accordance with the mandate given by the informal consultations on the protection of Broadcasting Organizations held on July 21 during the SCCR/24, the Chair had prepared a non-paper which was submitted to the Committee for its consideration and discussion. The draft non-paper was a first draft on the provisions that were relevant in the light of the objectives, specific scope and object of protection of the treaty and the preparation. The new draft non-paper had been prepared respecting the proposals made earlier by members and with the objective of moving work forward on the basis of a single text. The non-paper was based on that signal-based focus set by the WIPO General Assembly while providing for a technology neutral approach. It endeavored to recognize the various positions while also suggesting options for moving the process forward. The draft included a limited number of rights and protection clauses to provide

meaningful functional protection for Broadcasting Organizations against signal piracy. It intended to break into informals to advance discussions and report back to the Committee to advance the work on the basis of a single text with a limited number of alternative proposals. While drafting that paper, it had noted that there was already significant convergence on many substantial aspects of the text which made him confident that it could further narrow down the outstanding issues. It had retained in the footnotes alternative textual proposals from members which diverged from the text in the body of the document. The objective was to demonstrate the major alternatives on each issue while avoiding a document that would be simply a compilation of proposals because that would not have facilitated the progress of our work. There was agreement that the objective of the treaty was to update the protection of Broadcasting Organizations in relation to the unauthorized use of broadcast signals and that the objective of protection was the broadcast signal. However, in relation to the Scope of Protection, the positions still differed as reflected in the two most recent proposals on the table, namely documents SCCR/23/3 and SCCR/24/5:

489. The Delegation of Japan expressed concerns over the text as there had been agreement to produce a single text based on all proposals including theirs instead of a single text-based on only one proposal. It considered that the text was not what had been agreed though it needed more time to further examine the detail of that text but could recognize the fact that its proposal had been treated as if it was just a comment to other proposals. The most important was the scope of application and related definitions where no alternatives had been provided in Article 2. It could not accept treating that text as a base for further discussion and requested to discuss the format of that text first while wanting to keep constructive.

490. The Chair indicated that what it had produced was the result of consultations and the idea was not to enter into substance at that point but during the informal meeting that would follow the plenary session. The scope of the paper was still open and the paper was an attempt to move the process forward by producing a single text. It would then break for consultations.

491. The Chair resumed the plenary and stated he had been mandated to produce a non-paper which had been drafted on the basis of consultations held in the past and in particular the one held in 2011 and all the submissions presented to the Committee. He had identified what he considered could be the best way forward taking into account the signal based approach. However diverging views had also been reflected such as in the provisions on definitions or on scope of protection where two views had been presented. Alternative language had also been presented in the footnote but depending on the outcome of the discussions that language could also become part of the main text. It was recalled that the Chair had never been given a mandate to produce a mere compilation of texts and he had avoided that result which would have impinged progress in the discussions. The objective was to have the main elements listed in the document to launch a proper negotiation on the outstanding issues while nothing had been agreed at that stage.

492. The Delegation of the Islamic Republic of Iran expressed its commitment to the adoption of a treaty on the basis of the WIPO General Assembly mandate in 2007 and to the adoption of a single document to be the basis of negotiations to move forward and expedite the process. However, the group did not feel comfortable with the existing format of the proposal and requested clarification on the value of the footnotes in the text. To its understanding those should have the same value as the main body of the text and had to be reflected in the main text as options or as alternatives.

493. The Delegation of the Czech Republic, speaking on behalf of the regional Group of the Central European and Baltic States, reminded the Committee that the issue had been high on its list of priorities and appreciated steps forward taken in the right direction. It thanked the Chair for the hard work that had been put into the non paper and considered that having a single text constituted advancement and would allow further intensive work to delivering a treaty

in the near future.

494. The Delegation of Peru, speaking on behalf of GRULAC, stated that the non paper had to include all the proposals which had been submitted by members of the Committee so that it could work on a single text.

495. The Delegation of Japan stated that its proposal had not been treated equally and it could not accept treating the Chair's text as a formal text for further discussion. However, it could accept to discuss how to modify it, including by putting proper alternatives and wanted to keep a constructive attitude in the further consultations.

496. The Delegation of the European Union and its member states provided a preliminary reaction to the Chair's non-paper and stated it intended to progress rapidly on the issue. It was willing to work on proposals that had been put towards a single text so as to avoid the effect of having a non-manageable text on the table due to the accumulation of proposals over the years while retaining the right to propose modifications and suggestions a later stage. It understood the concerns expressed by the Delegation of Japan which had been echoed by the delegation of the Islamic Republic of Iran. It was necessary to take a balance approach in the non paper between a mere compilation and a text that reflected all of the positions which had been presented.

497. The Delegation of Nigeria, speaking on behalf of the Africa Group, expressed deep appreciation for the work done in the drafting of the non-paper. It supported the views expressed by the Delegations of the European Union and of the Islamic Republic of Iran stating that for the purpose of ensuring the integrity of discussions, it was important for the document to reflect the views and perspectives of other Delegations. It considered it useful to have alternatives and to limit the footnotes to issues that were of a more incidental nature and for which there would be easy agreement and reserved its right to come back with significant textual language at a later stage of the discussions.

498. The Delegation of the United States of America recognized the desire of all delegations to maintain their proposals in the non-paper while also appreciating the flexibility expressed to work with a chair's non-paper to help the work move along. It reserved its right to make future suggestions for text and for language going forward. There was a need to move beyond a mere compilation of everyone's proposals on all issues and to consolidate some limited number of options before it could get to the point of the discussions to choose among them.

499. The Delegation of Brazil made some preliminary comments to the process and stated that the WIPO General Assembly's mandate had to guide the work being carried out by WIPO and recalled what had been decided by the Committee in the conclusions of its twenty third session when it reaffirmed its commitment to continue work on a signal based approach consistent with the 2007 General Assembly mandate towards developing an international treaty to update the protection of broadcasting and cablecasting of organizations in the traditional sense. That principle had to be reflected in any working document which required to be balanced and to reflect the positions of Member States on the issues especially on the mandate. Document SCCR/15/2 had to be taken into consideration as it contained contributions made in the past in particular by the Brazilian Delegation.

500. The Delegation of Zambia expressed support for moving towards a single text as a basis for continued discussion and indicated that the non paper formed a good basis for advancing the work and for recommending to the October 2012 General Assembly a diplomatic conference. It shared the common objective of ensuring the protection of Broadcasting Organizations against challenges arising from advances in technology particularly piracy. A signal based technological approach to that problem was the best way forward. The single text contained in the Chairman's non-paper addressed several of those aspects and formed a good

basis to advance the work in fulfillment of the General Assembly mandate.

501. The Delegation of Mexico acknowledged the very considerable amount of work that had gone into the Chair's non paper which constituted a great initiative and stated it had no problem with it being formally adopted as the document for the work of that Committee.

502. The Delegation of South Africa could work together with other Delegations and the Chair in ensuring that all of the views were accommodated. The text provided a stepping point in the right direction ensuring a single text was agreed. It was available to work with the Chair, the Secretariat and all of the Member States to consolidate a text which would include all views.

503. The Delegation of Kenya stated that broadcasting organizations could not consider piracy effectively if they were not given exclusive rights over their broadcast while that should be done keeping in mind guiding principles of balance. It called for a collaborative spirit to produce a document that would be acceptable to everyone to enable the Committee to carry out its mandate as mandated by the General Assembly.

504. The Delegation of Burkina Faso endorsed the statement which had been made on behalf of the African Group and stated it had been monitoring the discussions which had been held on an international instrument to protect broadcasting organizations with very great attention and believed the non paper could be further improved to reflect all viewpoints.

505. The Chair opened the floor to non governmental organizations.

506. The representative of the National Association of Broadcasters of Japan (NAB-Japan) stated that it expected the Chair's non-paper to be inclusive and well balanced which had not been the case and requested the Committee to focus discussions on the scope of protection where there was significant difference among Member States which had to be solved. The new treaty should protect only traditional broadcasting organizations as a first step not other activities even if they would be conducted by traditional Broadcasting Organizations and had to set minimum standards to protect the traditional broadcasting of traditional broadcasters. Therefore, the scope of protection had to be limited to traditional broadcasting while other activities done by broadcasting organizations could be considered for protection soon after establishing the protection of traditional broadcasting organizations at the international level.

507. The representative of Copyright Research Information Center (CRIC) stated the Committee should accelerate its discussions on the broadcasting treaty which was the last one to be updated for the protection in the copyright and related right fields corresponding to the current digital and Internet involvement. The key issue to promote discussions related to the scope of application which was whether transmissions over the Internet done by traditional broadcasters had to be protected or not. As to the scope of application several proposals were on the table to steer discussions. The international treaty would be providing a minimum criteria by consensus not a maximum one.

508. The representative of the European Federation of Joint Management Societies of Producers for Private Audiovisual Copying (EUROCOPYA) expressed full support to the signal based approach and stated that due attention needed to be given to the definition of communication to the public. Some platforms were challenging to the very heart the fact that broadcasters were still making communication to the public in the new digital environment. Therefore, communication to the public could be defined as the transmission /retransmission of a broadcast signal or fixation thereof intended for reception by the public and so the prebroadcast would not be covered in terms of reception by the public.

509. The representative of the North American Association of Broadcasters (NABA) commended the Chair on it's non-paper as an excellent proposal for the meeting and stated

broadcasters believed it provided the basis for formulation of a forward-looking treaty which would stand the test of time. Broadcasters needed to be protected against unauthorized use of signals on the Internet in accordance with the mandate of the General Assembly in 2007 which did not preclude protection in relation to new technologies for traditional broadcasters. In attendance to the meeting, representatives from broadcasting organizations from many regions were willing to work with delegations to assist them taking that paper to the next level of support with a view towards moving to a final negotiation of the treaty for a diplomatic conference in the future.

510. The representative of the Computer and Communications Industry Association (CCIA), stated that a lot had been heard about rampant piracy of signals and the fact every infringement relied upon content owners rights to address it. Signals could not be fixed and they carried the program irrespective of the medium through which that carrier signal traveled. The signal no longer existed once a device capable of making the program perceptible had received it. To grant copyright in fixations or any act which required a fixation such as reproduction, distribution, making available or rental, amounted to granting a right in an object which did not exist. While the world's governments could certainly create legal instruments with any kind of language, granting copyright in objects which didn't exist would be difficult to justify to the wider public. The technology neutral protection would create a number of unintended negative effects. In the rights based formulation reflected in many proposals, the treaty extended copyright protections to fictional objects which would lead to negative consequences for the public domain.

511. The representative of the Electronic Frontier Federation (EFF) stated that EFF had opposed the WIPO broadcast treaty since 2004 because it harmed journalists' innovation and free flow of information on the Internet. Since 2006, EFF and a broad coalition of public interest groups, libraries, creative industry members as well as the telecommunications and technology companies had been explaining how granting broadcasters and cablecasters intellectual property rights would impinge on the free and Open Internet specifically. The treaty would set the legal rules that would govern the distribution of information on the Internet. The key issue was the scope of the treaty. Broadcasters had explained that the new treaty was required to address the issue of signal piracy. The question was how the problem could be addressed in a way which did not infringe on citizens rights and all other stakeholders in the Internet economy. No empirical evidence had been presented about why broadcasters required intellectual property rights to deal with signals. The Brussels Convention was based on a narrow signal based approach but broadcasters had been looking for intellectual property rights that would overlap with other rights with consequences for freedom of expression in the Internet economy. At a time when the future of the broadcasting was unclear giving broadcasters a set of legal privilege would be a way to damage speech and innovation in the global Internet and to block competition and innovation by allowing broadcasters to control the types of devices for reception of transmissions.

512. The representative of the International Chamber of Commerce (ICC) said that various seminars and sessions of informal consultations had been held on the protection of broadcasting organizations which had always led to the result that it was necessary to give more modern updated protection to the signals issued by Broadcasting Organizations. The Committee was no longer in a position to discuss the difference between content and signal but it was essential that further protection be granted to the signals which were used by broadcasting organizations. The Chair's non paper reflected the need to include all the positions and would constitute a great source of support to continue the work.

513. The representative of Associaco Brasileira de Emissoras de Radio e Televiso (ABERT) stated that it fully supported the need for a treaty and hoped progress could be made quickly as delegations could then work on the basis of a single text.

514. The representative of the International Federation of Film Producers (FIAPF) stated it had considered with interest the discussions that had taken place on the protection of broadcasting organizations. In many parts of the world, broadcasters were an important market outlet for films and audiovisual works in general and its members had always sought to work with broadcasters collaboratively on the financing and dissemination for the projects developed and made by production companies. A treaty focused exclusively on the protection of broadcasting signals and fully compliant with the international copyright framework would add substantially to the legal toolkit which supported the important contribution of broadcasting to economic and social development worldwide. As many delegations had pointed out through the course of the discussions, broadcasters' rights could not impinge on the rights of content owners and it called upon all delegations to achieve substantial progress on that matter.

515. The representative of the Motion Picture Association (MPA), reiterated its support for a balanced approach to the legal protection of broadcasting organizations at the international level. Broadcasters and indeed webcasters already enjoyed a significant level of balanced protection for example at the EU level and in other countries either through related rights or other forms of protection. For example that protection along with the protection established for underlying content had been co-existing at the EU level for a couple of decades which had coincided with the development of a strong audiovisual broadcast sector in Europe where the Internet was also flourishing and driving the launch of new services. That protection had not interfered with the rights held by other rights holders in the underlying content who had generally benefited from it, as well as consumers who benefited from new services and wider choice. The treaty could lead to protection in countries where such protection was lacking as it was not about transplanting systems of protection. The treaty would permit Member States to take different paths to achieving that protection as they were struggling with traditional TV piracy in some regions. The absence of a specific cause of action in the hands of broadcasting organizations seriously constrained its ability to address signal theft issues in many places around the world and the treaty required to be fit for purpose in the Digital Age. Broadcasting organizations required protection on the Internet but merely updating protection for traditional organizations only was short sided. Member States had to be granted room in determining how to provide adequate and legal protection for signals while at the same time protecting the underlying content.

516. The representative of the International Federation of Library Associations (IFLA) stated there was no compelling public policy reason for an international instrument on the protection of broadcasting signals as enforcement measures under existing laws and treaties adequately protected against the piracy of broadcast signals. It was concerned that an additional layer of rights would affect the balance between rights for creators of content and fundamental rights for libraries archives, the visually impaired and people with print disabilities and educational institutions to make use of and provide access to content. It noted that Article 3 of document SCCR 24/5 provided that mere retransmissions of broadcast signals were not covered but maintained that the scope of application of the treaty should explicitly state that protection of broadcast signals extended only to the first transmission of content as otherwise broadcasting Organizations could renew protection over a work simply by rebroadcasting it. It urged the Committee to give priority to a recommendation to the General Assembly for the diplomatic conference in 2013 on a treaty for visually impaired and print disabled people.

517. The representative of the Centre for Internet Society (CIS), associated itself with the statements made by the representatives of CCIA, IFLA, IEFL and KEI. Broadcasters were making three kinds of investments for which they were granted protection. They invested in broadcasting infrastructure, in licensing copyrighted works and at time they invested in creating copyrighted works. The first kind of investment was protected under broadcasters' rights and the latter two investments were already protected under copyright law and did not require any further international protection. The investments made in infrastructure for IP based transmission such as Internet Protocol based transmission were insignificant and could not be

covered under the treaty although the Chair's non-paper had included it. Most legal systems already allowed for licensees like broadcasters to have cause of action for copyright infringements and a new treaty was not needed to grant them that cause of action. The Chair's non-paper had many inconsistencies such as providing 20 years of protection for a signal that lasted mere milliseconds

518. The representative of Knowledge Ecology International (KEI), requested clarity to be provided on the kind of problem the treaty was trying to address. It referred to the statement made by the delegation of Japan indicating that the protection was updated to take into account the digital age but that argument required consistency as the Appendix to the Berne Convention had not been updated to make it relevant to the Internet. The 20-year term proposal didn't make sense to many and it also questioned the issue of how much money the new economic rights would create, who would be paying money and who would be receiving money.

519. The representative of the Internet Society (ISOC) stated it was critical to take into account new economic social and technological developments such as the Internet Revolution. The proposals on the new treaty focused on recognizing new rights to broadcasting organizations and it was concerned about the potentially adverse impact those new rights could have on creativity, the development of innovative content and new business models which could raise the cost for new Internet uses. Issues of signal piracy were currently covered by the Brussels Convention which addressed those issues effectively and a new set of rights based on copyright could have an adverse effect on the content creators and Internet users as well as the Internet evolution. No evidence had been provided to suggest that the Brussels Convention was not an adequate legal instrument. Any treaty which related to issues pertaining to the Internet either directly or indirectly should respect the Internet's open and generative nature as well as its architecture as established by the World Summit on the Information Society and it hoped any discussions on the treaty would be conducted under a similar multi-stakeholder approach.

520. The representative of the Asia Broadcasting Union (ABU) stated that technological developments over the last decades had increasingly exposed traditional broadcasting organizations to signal piracy both within and approach borders. In 2010, the WIPO study on the socio-economic dimension of unauthorized user signals had established that the convergence of information and communication technologies had widened opportunities and possibilities for signal piracy and increased broadband penetration had significantly facilitated signal piracy. WIPO had also conducted three regional meetings in Mexico, India and Nigeria where the common conclusion was to accelerate the pace of work in the adoption of the treaty to protect broadcasting organizations. After 23 sessions of preliminary negotiations, the SCCR had finally proposed a single text which had been drafted taking in consideration more than a decade of submissions and discussions of proposals on the developments of broadcasting in every region of the world. It urged government delegations to consider adopting a single text treaty where traditional broadcasting organizations would be granted protection in various platforms considering the impact on digital technological development.

521. The Chair indicated that according to the discussions held on the previous day, they were to produce a document capturing the previous day's discussions in terms of textual proposals and comments that were not textual. He indicated that at that stage while the document was being printed for distribution, he would ask the Secretariat to explain what had been done. He also asked the Delegation of Egypt if it could make the presentation it had indicated it would have on other disabilities.

522. The Delegation of Egypt, on behalf of the African Group, indicated they had formulated that morning additional textual proposals not only limited to people with other disabilities but also to other topics that were captured within the compiled working document. It added they were at the Chair's disposition to present said additional proposals.



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

523. The Chair opened the discussion on Agenda item 6 on limitations and exceptions for libraries and archives. He proposed Member States to consider the adoption of the “Provisional Working Document Containing Comments on and Textual Suggestions Towards an Appropriate International Legal Instrument (in whatever form) on Exceptions and Limitation for Libraries and Archives, contained in document SCCR/23/8 Prov., in order to include it as a working document of the 24th Session of the SCCR. He reminded that it was based on the African Group's proposal (document SCCR/22/12); the background paper titled “The case for a treaty on exceptions and limitations for libraries and archives” (document SCCR/23/3); the “Proposal on limitations and exceptions for libraries and archives” (document SCCR/23/5); the proposals presented by the Delegation of Ecuador as well as the “Objectives and principles for exceptions and limitations for libraries and archives” presented by the United States of America (document SCCR/23/4). He indicated that the Secretariat had incorporated the comments and textual suggestions sent by Member States on the following 11 topics: 1, preservation; 2, right of reproduction and safeguarding copies; 3, legal deposit; 4, library lending; 5, parallel importations; 6, cross-border uses; 7, orphan works, retracted and withdrawn works and works out of commerce; 8, limitations on liability of libraries and archives; 9, technological measures of protection; 10, contracts; and 11, right to translate works.

524. The SCCR adopted the “Provisional Working Document Containing Comments on and Textual Suggestions Towards an Appropriate International Legal Instrument (in whatever form) on Exceptions and Limitation for Libraries and Archives, contained in document SCCR/23/8 Prov., as a working document of the 24th Session of the SCCR.

525. The Delegation of Egypt, on behalf of the African Group, indicated it would be submitting to the Secretariat textual proposals on Topics 3, 7, 8 and 11 of the adopted document SCCR/23/8.

526. The Delegation of the United States of America expressed its agreement with current document SCCR/23/8 as a working document for continuing the text-based work, as it provided a good roadmap for developing the future work program on exceptions for libraries and archives. Concerning the statement made by the Delegation of Egypt on behalf of the African Group, it was indicated that according to the normal procedure everyone on the Committee should hear or see the proposed language before it was included in to the document.

527. The Delegation of the European Union and its Member States aligned itself with the statement made by the Delegation of the United States of America regarding the discussion on adding new topics to the document. It was also mentioned that in case new topics were accepted, they may also have other items to add to the future work on the issue. Finally, it was requested an exchange of comments with the African Group in that respect.

528. The Delegation of the United States of America indicated that it was understood from the statement made by the Delegation of Egypt those textual proposals to be submitted corresponded to the existing 11 topics. It was also indicated that without foreclosing the possibility of Member States to add new areas, they wanted to request clarification and confirmation from the Delegation of Egypt that the material to be provided fell under the existing 11 topic areas.

529. The Delegation of Egypt confirmed and clarified that the textual proposals were related to existing topics, especially topic 3, deposit repositories; topic 7, retracted and withdrawn works;

topic 8, limitations on liability for libraries and archives; and topic 11, the right to translate works.

530. The Delegation of India indicated that some Indian comments had not been included in the document.

531. The Chair indicated that the Secretariat would confirm and check with the Delegation of India regarding the missing comments.

532. The Delegation of the European Union and its Member States requested confirmation on their understanding that document SCCR/23/8 remained as an open document, as there were still few issues to discuss, some of those that were part of that content were in their view overlapping to some extent and some other as they had made clear in prior interventions were of no particular relevance to limitations and exceptions for libraries and archives. They reserved their right as the work on the open document continued to add further suggestions in whatever form that seemed to be more appropriate.

533. The Delegation of Chile indicated that it would provide to the Secretariat one or two brief corrections to their own comments on the document.

534. The Delegation of the United States of America noted that when they were talking about a working program, they would like to suggest to establish not only the time to devote to work on the document and archives document, but also the priority of certain of the 11 topics, in order to make real progress by identifying topics that they could work on a careful and attentive way as it had been done during the informal sessions on visual impairment.

535. The Delegation of Ecuador expressed its interest in the work carried out by the Committee that day the issue of libraries. They expressed their particular interested in looking at the African Group's proposals when the time was right to do it.

536. The Delegation of Argentina expressed its support for the continuation of the process through which they were trying to submit exceptions and limitations on copyright, to improve the way libraries and archives operated. They expressed their interest in some of the issues that were being dealt with by the Committee and gave as example the topics of preservation, interlibrary loans, liability of libraries and archives and technological protection measures. They pointed out that they would like to continue with the analysis and discussions of the document.

537. The Chair indicated the Committee had taken note of the comments made on the subject matter and indicated that SCCR 25 would consider the document in detail together with all those submissions that were to be made by delegations.

## **ITEM 6: LIMITATIONS AND EXCEPTIONS FOR VISUALLY MPAIRED PERSONS/PERSONS WITH PRINT DISABILITIES (continued)**

538. The Chair indicated that there had been informal consultations on the issue of the visually impaired persons, regarding Articles A, B, C, not completed at that moment, and Article D. He indicated that the idea was to complete the whole work by revising all document SCCR/23/7 and that that was made so far. He finished by proposing that delegations make their comments and afterwards move to informal discussions on VIP and continue working on the text.

539. The Delegation of India indicated that the Chair had made a great service to delegations by announcing that he would start informal discussions if there were no comments. It was added that the previous evening substantial work was made. They expressed their appreciation for the spirit of the discussions held the previous day at the informal meeting. It was added that

instead of wasting time on general statements on the work, if there were specific comments they should be taken or otherwise they would request the Chair to end the Plenary and then move to informal meetings and continue where they had left at Article D.

540. The Chair noted there were no comments on the issue and indicated that the Plenary would adjourn. He also indicated that day's work order: during the lunch period the friends of the Chair would meet to look at the document on education, afterwards in the afternoon they would come back to Plenary on broadcasting and in the evening they would have had informal discussion on the conclusions and some of the cross-cutting issues of the session.

541. The Delegation of Egypt requested clarification on the time slot for reviewing the document on Education in Plenary in order to hopefully adopt it as a working document of the Committee.

542. The Chair indicated that the "friends of the Chair group" would look at the submissions made on the previous day and have them for the consideration of the Committee on the next day.

#### **ITEM 7: PROTECTION OF BROADCASTING ORGANIZATIONS (continued)**

543. The Chair reported that the informal consultations held following the release of the Chair's non-paper, had led to a number of changes made to the document from those delegations that had wanted or held the view that some of their proposals were not reflected on it, and that it had been revised. He highlighted that during the informal discussions the idea was to try and incorporate as much as possible the proposals that those delegations felt strongly should have been in the document and that accordingly all the inclusions were made. That had led to the current document that he was presenting, a single text that had to be considered by the Committee. He asked if they should move to a next stage where they would agree that the document would be the basis of their work going forward, with the understanding that it remained as all other working documents, an open document for negotiation. He reminded that Members that may have textual proposals to negotiate upon were always free to do so, as it was the case with all other working documents. He raised the question to the Committee to consider the adoption of the document as a working document that agenda item, and afterwards move to the next step that was to start negotiating on the provisions therein.

544. The Delegation of Egypt on behalf of the African Group expressed their willingness to use the document as the basis for future work on the issue. They expressed their support to the Chair's non-paper adoption as a Committee's working document to guide their future deliberations on broadcasting. They stated that it was their further recommendation that the Committee make a clear recommendation to the General Assembly on their plan towards hosting a Diplomatic Conference on broadcasting in 2014.

545. The Delegation of the Islamic Republic of Iran, on behalf of the Asian Group, supported the adoption of the document as a working document, to be a base for future negotiations.

546. The Delegation of India indicated the document was not complete and was contradictory, as some articles were against the others. It highlighted that especially in terms of language the document was not as per the 2007 mandate, namely a signal-based approach in traditional sense. It was also highlighted that Indian comments were given basically on the African and Mexican joint proposal, not on the Japanese proposal, for which it was indicated that they did not have a mandate from their capital to go ahead like that, as the document contained most of the ingredients from the Japanese proposal. It was stressed that they were not in the position to support the document as a working document of the SCCR.

547. The Delegation of South Africa aligned itself with the statement expressed by the Delegation of Egypt on behalf of the African Group. It expressed that in the interest of accelerating their work on that matter they could use it as a basis to drive their work on a single text. It also expressed their alignment with the statement made by the Delegation of Egypt, that they should have a clear work plan that could accelerate their discussions so as to have a Diplomatic Conference in 2014.

548. The Delegation of Mexico expressed its full agreement with the document as a good basis for moving forward with their work and to adopt eventually a Treaty on broadcasting. It was expressed that the hard work from the Chair, the Secretariat, and all of the countries who in a direct or indirect manner have played their role in putting together that document should be acknowledged.

549. The Delegation of Senegal associated itself with the statement made by the Delegation of Egypt on behalf of the African Group and indicated that they also believed that they should adopt the document as a working document. It expressed their recognition that the document was the result of considerable work done by the Chair, Friends of the Chair, and the Secretariat. It was also expressed their believing on the imperativeness for them to have a working document on the basis of which they could work in the future. It concluded that they also needed to have a clear defined work plan for their future activities on the issue.

550. The Delegation of Peru, on behalf of the GRULAC, thanked the Chairman for proving the space for the various delegations to include their initiatives and comments and for reflecting them in the document. It supported the document being adopted as a working document to move forward in that area.

551. The Delegation of the United States of America expressed its appreciation for the proponents of the various proposals that went into the document. It also mentioned its consideration of the document as an inclusive one and it indicated that in its understanding from all the discussions that preceded, the document remained completely open for further proposals, additions, deletions or changes, as the discussions progressed. It indicated its agreement that the document reflected some very different and in some cases quite inconsistent approaches to a number of issues of the scope of protection. It also indicated that their Delegation did not have yet authorization to agree to any of the particular options reflected in the text as of that time. It finalized by indicating that it thought it could serve as a working document and as a basis for further negotiations under the conditions that it had mentioned.

552. The Delegation of the European Union and its Member States celebrated that it was find out a way to put both main proposals, the South African and Mexican and Japanese proposals into the text. It indicated it was prepared to work on the document and that it still did not had a clear position from its Member States, because it had not had the time to discuss it with its Member States. It aligned itself with the United States of America by stating that it could certainly support working on the document on the basis that it was an open document, open to changes and additions. It concluded by indicating that it wanted to show flexibility and support the document as a working one.

553. The Delegation of Algeria associated itself with the statement made by Egypt on behalf of the African Group. It remained that that Delegation was in the past strongly in favor of having a single document in order to allow them to make headway on the issue of the protection for broadcasting organizations. It added that they were more than ready to work on the basis of the document that had been then submitted to them. It finalized by recognizing that there was still place for some further improvements of that document.

554. The Delegation of Nigeria associated itself with the statement made by the Delegation of Egypt on behalf of the African Group in recognizing the work done by the Chair and the

Secretariat on producing the working document for an instrument for broadcasting organizations. It supported the use of the document as a working document for deliberations, in order not to waste further time in concluding work on a treaty, considering the fact that a lot of time had been spent on putting the document in place.

555. The Delegation of Japan aligned itself with the statement made by United States on the point that that working document should be open to further contributions or comments. It reminded that during the informal consultation were it was discussed how to develop that text, they recognized the difficulty of developing text while having different alternatives on many substantive issues, especially regarding definitions related to different provisions. It emphasized the importance of solving the basic substantive issues, mainly application and definitions, before developing a detailed text. It stated that it was looking forward to making progress towards a treaty as soon as possible, with the consensus of the SCCR. It finalized by expressing its flexibility and intentions of contributing constructively to further discussion.

556. The Delegation of Zambia associated itself with the statement made by delegation of Egypt on behalf of the African Group regarding the Chair and the Secretariat's work done by putting up that non-paper. It also highlighted the spirit of give and take shown by delegates in order to make progress during the informal meetings. It concluded by expressing that the document should be adopted as a working one to achieve progress.

557. The Delegation of Kenya associated itself with the submissions made by Egypt on behalf of the African Group. It supported the document's use as a working document of the Committee and called for a collaborative spirit through which they could be able to engage their selves in constructive negotiations or discussions. It concluded by expressing their hope that a work plan could be developed to drive that process forward.

558. The Delegation of Turkey indicated its view that the Chair's non-paper provided the basis for future work. It proposed the adoption of the document as an official working paper for the SCCR.

559. The Delegation of Monaco indicated its consideration that the single text produced was an excellent basis for their future work. It also reminded to have in mind that it was an evolving text and that they reserved their right to come back with further comments on it at a later stage. It concluded by indicating that at that stage they could support the text.

560. The Delegation of Switzerland indicated that it accepted the document that had emerged from the consultations of the previous day following the discussion on the non-paper. It indicated the document should be then adopted as a working paper for the basis of future work within that Committee and as the basis for future negotiations. It stated that the document would clearly continue to evolve as they moved forward and that they would reflect progress in negotiations at future sessions of their Committee. It ended by expressing their believing that it would be appropriate to discuss a work plan in order to ensure that they could achieve results on that issue in a near future.

561. The Delegation of Ecuador stated that the document achieved the objective of broadcasting rights, focused on the protection of the signal of broadcasters in the traditional sense. It stated it was flexible and would adopt the text as a working document, with the understanding that it was an open work in progress and an open document. It highlighted that it was very important that the instrument included provisions that assured in a modern way that all stakeholders' interests were guaranteed. It indicated that it would provide contributions and comments to the document.

562. The Delegation of Indonesia supported the document as a working document and hoped other documents would follow. It stated that in their consideration a document in that format

could accelerate the progress and move forward negotiation on that matter.

563. The Delegation of India indicated that its current position was similar to what it had experienced with the BTAP final additional document where it was alone. It proceeded to indicate the reasons why it was alone in that matter against its adoption as a working paper of that SCCR. It stated that if one looked at the conclusion of the 23<sup>rd</sup> SCCR, it was expressly mentioned under the heading of protection of broadcasting organizations: "The Committee reaffirmed its commitment to continue work, on a signal based approach, consistent with the 2007 General Assembly mandate, towards developing an international treaty to update the protection of broadcasting and cablecasting organizations in the traditional sense". It considered the document was not in that spirit. It also stated that there were articles which were very contradictory in nature. It considered that when taking a document in the traditional sense with signal-based approach alternatives, at least one of the alternatives should support that stand or spirit and in the document none of the alternatives were in the same spirit. It asked how that document could be treated as if it were in line with the General Assembly's mandate. It highlighted that in the definitions alternatives it was mentioned for broadcasting and cablecasting that it was understood including transmission over computer network, which in its opinion was not the spirit of that treaty. It also stated that the scope or beneficiaries of the protection were neither in that spirit. It also remarked there was no preamble in the document and there were new elements included for which it did not have a clearance from its capital. It expressed its discomfort and apologized to television channels that wanted a treaty, stressing that they could not adopt an imperfect document that was not in accordance with the 2007 mandate.

564. The Chair noted the overwhelming support for the adoption of the document as a working document of the Committee and all the comments made and he also noted the statement made by the Delegation of India. He proposed that at that stage they should move into informal consultations in the usual format on that issue, as well as on the future work of the Committee on that agenda item.

#### **ITEM 6: LIMITATIONS AND EXCEPTIONS: LIBRARIES AND ARCHIVES (continued)**

565. The Chair invited delegations to discuss item 6 regarding the issue of limitations and exceptions for libraries and archives.

566. The Delegation of Uruguay recalled that, together with other delegations, it had submitted a proposal on limitations and exceptions for libraries and archives, and a document regarding the importance of limitations and exceptions. In 2010, the Copyright Council of Uruguay, together with IFLA, had organized a meeting with various experts and heads of offices of libraries and archives institutions in Latin America and the Caribbean in order to fine tune the abovementioned proposal. The topic of limitations and exceptions for libraries and archives should be kept in the SCCR agenda together with the issue of educational and research institutions, but separately from the issue of limitations and exceptions for persons with print disabilities.

567. The Delegation of Zambia supported the statements of previous delegations regarding limitations and exceptions for libraries and archives. Libraries and archives were very important for developing countries as they provided students and researchers with educational materials and access to culture and knowledge. Libraries should be able to share materials with other libraries through interlibrary loans.

568. The Chair noted that the working document on limitations and exceptions for libraries and archives had been adopted as document SCCR/23/8. That document would include all proposals and comments on document SCCR/23/8 Prov.

569. The Delegation of Kenya stated that publishers and librarians needed each other and therefore librarians and archivists had to do their work in good faith and respect the rightholders. It expressed its concerns regarding the liabilities that had been leveled in the past against librarians and archivists for the misuse of copyrighted works. Libraries and archives had fallen prey of inadequacies in copyright laws and, in the absence of adequate legal advice, librarians and archivists who acted *bona fide* should not be held liable for inadvertently misinterpreting or misapplying the copyright statutes.

570. The Delegation of Nigeria, on behalf of the African Group, stressed the importance of ensuring the vitality of libraries as cultural institutions for users not only in developing countries but in developed countries. The Committee should begin to look at an international treaty on the issue of limitations and exceptions for libraries and how the latter would be able to preserve and distribute works, benefit from parallel importation and library lending facilities.

571. The Delegation of South Africa asked about the procedure to discuss the topics in relation to document SCCR/23/8/Prov. In the latest session of the SCCR, not only comments had been received but also questions had been asked.

572. The Chair explained that the textual suggestions would be dealt with as a priority. Afterwards, the comments on those new suggestions would be tackled by the Committee.

573. The Delegation of the United States of America stated that the question of exceptions and limitations for libraries and archives was very important. It suggested that the Committee actually focused on some of the topics in the list of 11 topics agreed on during the previous session. The African Group had made emphasis on the parallel importation issue, for instance. It strongly urged the Committee to consider that general statements were not needed, and to rather move to a specific understanding of where in the document the Committee should focus its attention to make progress.

574. The Delegation of Tunisia, on behalf of the African Group, expressed its interest on cross-border issues. International treaties on copyright did not address that issue which posed a real challenge regarding access to information especially in the digital age where information had no defined borders.

575. The Delegation of Ecuador supported the proposal of the United States Delegation to start focusing on certain issues related to libraries. In addition, it wondered whether the African Group would explain its enhanced proposal.

576. The Delegation of Egypt stated that one important aspect of the proposal was the issue of orphaned works. Libraries and archives had to make available materials that were of historical, scientific and cultural nature, and faced the challenge to locate the authors of orphaned and withdrawn works, or works that were no longer commercially available.

577. The Delegation of Nigeria stressed the importance of addressing the issue of contracts and licensing regimes for libraries and archives. Limitations and exceptions provided by the copyright national laws were frequently superseded by contracts and licensing terms.

578. The Delegation of Senegal supported the proposal put forward by the African Group. It believed that the existence of technical measures of protection was very important in order to ensure appropriate protection for copyrighted works, but such measures could constitute limitations on the ability of libraries to enjoy access to knowledge.

579. The Delegation of the United States of America remarked that various individual areas had been identified. Nigeria had identified the parallel importation and contracts, Egypt had

identified the orphaned works and Senegal had identified the technical measures. The Delegation recommended that the Committee focused on two or three topics to start moving forward. It also stressed the importance of addressing the issue of liability for librarians and preservation.

580. The Delegation of Egypt sought clarification about the exact perspective towards the other topics beyond the two or three identified as proposed by the United States Delegation.

581. The Delegation of Argentina reiterated that preservation, responsibility of libraries and archives, interlibrary loans and technological protection measures were key issues for discussion.

582. The Chair advised the Committee to not start a pick-and-choose process to establish priorities.

583. The Delegation of South Africa said that, out of 11 topics, it was logical to tackle the issue of preservation first.

584. The Delegation of the United States of America clarified that its suggestion was regarding the future work. Picking two or three topics by consensus was not to the detriment of the other topics being eventually addressed.

585. The Delegation of Egypt supported the proposal to start discussing the issue of preservation.

586. The Chair gave the floor to inter-governmental and non-governmental organizations.

587. The representative of the International Federation of Reproduction Rights Organizations (IFRRO) acknowledged that appropriate exceptions might be required by libraries and archived to perform their duties, but also rightholders should have the right to receive some remuneration, for instance, in the case of lending activities in some 54 countries. Licensing schemes should apply to cross-border uses and to any international document delivery of copy: Permissions should be given by rightholders or their authorized representatives in the country of supply or reception. If those uses were performed under any exception, the latter should comply with the 3-step test in the legislation of the countries of supply or reception, or both countries. The reproduction and making available of orphan and out of commerce works was best handled when voluntary stakeholder initiatives, including licensing arrangements, set a point of departure. Solutions to enable the digitalization and making available of orphan and out of commerce works required a country specific approach considering national legal and other traditions. She referred to the Memorandum of Understanding on the digitalization and making available of out of commerce works through collective licensing that associations representing libraries, authors, publishers, RROs and IFRRO had signed in Europe. Stakeholders in Europe had jointly and voluntarily developed model agreements for one-stop shops run by collective management organizations through the Arrow system. That system reduced time, effort and costs in identifying the status of rights and rightholders by 95% in comparison to traditional research mechanisms. As to technical protection measures, the reference points should be the ones established by the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

588. The representative of the International Federation of Library Associations and Institutions (IFLA) fully supported that the Committee sent a recommendation to the General Assembly in 2012 to convene a diplomatic conference for the visually impaired. She recalled that libraries had worked very long time with the visually impaired and print disabled people as main providers of accessible material for blind and print disabled people. Therefore, libraries should be specifically included in the definition of authorized entities. If the Committee chose to have



record keeping in the instrument, those should be drafted as flexibly as possible. The proposed Article D(3) in a revised version of document SCCR/23/7 allowing rightholders to request anonymous aggregated data on copies and treating authorized users and libraries with suspicion should be deleted. IFLA also supported an instrument that would provide basic minimum international standards for limitations and exceptions for libraries and archives providing flexibility to Member States to enact provision in their laws that met or exceeded those minimum standards. The scope of interpretation of the 3-step test should not be constrained by an unduly narrow or restrictive approach. The Max Planck declaration in that respect did not only take into account the interest of the rightholders but also involved consideration of the collective public interests. IFLA supported the advancement on all four topics of the agenda and the preparation of a workplan that recognized the different level of maturity of the topics. Given the adjustments made to the scheduling and the high level of maturity of libraries and archives illustrated in the proposals made by some Member States contained in document SCCR/23/8 Prov., IFLA urged delegates to set aside and safeguard substantive time at SCCR/25 session to discuss libraries and archives.

589. The representative of the Electronic Information for Libraries (eIFL.net) thanked the Committee for the adoption of SCCR/23/8 as a good basis for moving forward on all topics related to libraries and archives. A work preserved by the national library became part of the national heritage for future scholars and citizens who could rediscover resources that would otherwise be lost. Exceptions and Limitations were good for local research, local creativity, local innovation and development. The applicability of the 3-step test in the different treaties to different rights and different exceptions plus varying interpretations of its meaning were a growing source of confusion and uncertainty. The Committee should provide guidance on that complex topic. She rejected any assertion that would use libraries and archives as a reason not to advance a treaty on the visually impaired. She cited the recent judicial decision of the Canada Supreme Court that fair dealing was a user's right.

590. The representative of Knowledge Ecology International, Inc. (KEI) agreed with the comments the United States to identify a smaller set of areas to start discussions on libraries and archives. The Committee should avoid the mistakes made in the Berne Appendix by creating a lot of burdensome, complicated and restrictive procedures in the treaty for visually impaired persons. KEI also supported the discussions on the issue of cross-border exchange and parallel importation. Developing countries should be able to engage in global parallel trade and copyrighted goods but there should be barriers between parallel trade that went from developing countries and high-income countries in order to protect differential pricing in countries in as similar way as the case of pharmaceutical drugs.

591. The representative of the International Council on Archives (ICA) recognized the vital importance and fast progress for an instrument for the visually impaired and welcomed the attention devoted to it. ICA also looked forward to working on a draft instrument in favor of libraries and archives in the future. Archives existed for two primary and closely related purposes, namely to preserve the largely unpublished and published records of the past and to allow the use of those creations by the public then and in the future. Libraries and archives were strong supporters of copyright recognizing the central role for creators and to the economies of the world. However, copyright could inhibit archives in performing their essential public functions. Many unpublished documents and archival collections were still in copyright and permission were frequently needed to make copies in order to preserve document in fragile paper or electronic documents in new formats. Permission was sometimes impossible to be obtained.

592. The representative of International Group of Scientific, Technical and Medical Publishers (STM) expressed his support for the Berne Convention 3-step test which gave flexibility in national legislation for licensing solutions. That did not mean that STM was not supportive of certain exceptions and limitations. Publishers were prepared to discuss details when specific

solutions were sought in the context of special national circumstances. The Committee had to still reach a level of specificity in its discussions on limitations and exceptions for libraries and archives. Scientific and technical publishers operated in one of the most dynamic and innovative fields combining literary works and information technology. At the forefront of the electronic revolution, STM publishers continued enabling and shaping the information networks uses. The e-book market was growing and developing into various models of purchasing and lending. In that context, carefully crafted exceptions were a must to avoid preempting the future. The 3-step test had historically allowed a balanced approach and national problems were not sufficiently uniform to be tackled always in exactly the same way. Flexibility in whatever instrument was therefore vital. The public interest of access to information, research and education was best served by encouraging the creation of new publications, information services. It was second best to provide only for exceptions to existing and pre-existing materials.

593. The representative of the Library Copyright Alliance (LCA) expressed her appreciation for the thoughtful discussions regarding limitations and exceptions. LCA strongly opposed language in the proposed text for Article D of working document SCCR/23/7 regarding the provision of aggregated data to rightholders as it would invite publishers to second-guess the procedures of libraries as authorized entities to challenge the quality and quantity of the records kept or the appropriateness of transactions and to threaten litigation. Those record-keeping and reporting activities involved significant costs better spent on the provision of services and a burden that many libraries would decide not to take. Furthermore, with current technology there was no such thing as anonymous aggregate data, as several major privacy breaches occurred because people were able to reverse engineering the aggregated data to find out personally identifiable information. As to SCCR/23/8 regarding limitations and exceptions for libraries and archives, she believed the following issues should be emphasized: The right of libraries to lend works and the exhaustion of the distribution right upon the first sale of a copy regardless of country of manufacture, cross-border uses by interlibrary loan by libraries in different countries, the use of orphan works by libraries, broad library exceptions to prohibitions on the circumvention on the technological protection measures for educational use and digital preservation and library exceptions surviving contractual restrictions.

594. The representative of the Computer and Communications Industry Association (CCIA) welcomed the work of the SCCR in that important subject area. He was surprised by the interventions of the United States and the European Union Delegations objecting to the language proposed by Nigeria on Internet intermediary safe harbors. CCIA's view was that the language proposed was clearly logical and tailored specifically to the subject area. The empirical evidence was overwhelming. If a vibrant Internet with rich services of all kinds and opportunities for economic and social development was the objective, then safe harbors for intermediaries who made access to information possible was an absolutely indispensable foundation. Finally, with respect to the proposal to focus on a couple of issues, he suggested that the ultimate result of those discussions should be holistic and sustainable and supported IFLA's comments to have a work plan prioritizing the needs of the visually impaired.

595. The representative of the Centre for Internet and Society (CIS) associated himself with the statements made by IFLA, KEI, ICA, CCIA and CLA and commended the adoption of document SCCR/23/8. The Committee should pay special attention to ensuring that digital works and online libraries and archives, such as the Internet Archive, also received the same protection as brick-and-mortar libraries. The very narrow interpretation of the 3-step test was not supported by CIS as Member States should maintain flexibilities within exceptions and limitations instead of overly prescribe provisions full of procedures and specifications. Libraries and archives should enhance the value of the copyrighted works and exceptions and limitations helped libraries and archives in doing so. The sooner copyright holders tried not to muzzle libraries and archives, especially when it came to out-of-commerce works and electronic copies delivery in

developing countries, the better it would be for rightholders, their commercial interests as well as the global public interest.

596. The Delegation of the Canadian Library Association (CLA) noted the progress which had been made in advancing deliberations on establishing basic minimum standards for limitations and exceptions. Those topics would be most properly addressed in separate treaty instruments according to their level of maturity. While sufficient time should be allocated in each area to advance deliberations, it was important that there would be agreement at the SCCR on a recommendation to the General Assembly on a treaty instrument for visually impaired persons. A ruling of the Canada's Supreme Court read that "the fair dealing exception, like other exceptions in the Copyright Act, is a user's right in order to maintain the proper balance between the rights of a copyright owner and users interests". While eagerly awaiting the deliberations on limitations and exceptions on libraries and archives, CLA urged delegates to move on a recommendation on a treaty instrument for the print disabled.

597. The representative of the International Publishers Association (IPA) referred to the statement of the Delegation of Kenya on libraries and archives, which was a very good description of the relationship between rightholders and publishers. Libraries were the most important customers for many publishers and in many regions for all publishers. He supported the proposal of the United States Delegation to tackle certain issues first, out of the 11 topics on libraries and archives. Not all of the 11 topics on libraries and archives were under the same constellation. Some of the topics actually affected the business relationship between libraries and rightholders, and the work of the Committee should focus on topics which were not part of that library-publisher relationship. In doing so, two things should be kept in mind. Firstly, that the public interest was on both sides, both in showing that the libraries could serve their purpose but also in ensuring that rightholders could provide their content to libraries. Secondly, each of those topics should start with an intensive information sharing and an intensive evidence-based discussion about what the issues were, where the problems lied and what the cause of that was.

598. The representative of the Motion Picture Association (MPA) supported a balanced and workable system of copyright including not only strong exclusive rights but also exceptions and limitations for libraries and archives. MPA member companies had agreements with film archives around the world and recognized in particular the importance of film preservation. Digital exceptions did not exist in a vacuum but needed to have digital rights in place. The exercise on exceptions and limitations for libraries and archives must be informed and respect the international copyright framework including the 3-step test. MPA also stressed the importance of discussing the issue of ISP privileges, sometimes referred to also as safe harbors.

599. The Chair noted that there were many suggestions from a number of delegations on trying to tackle the discussion on specific items on specific topics.

600. The Delegation of Algeria asked whether the Committee would be starting a discussion cluster by cluster.

601. The Chair answered in the positive.

602. The Delegation of South Africa thought it could not prioritize the topics in SCCR/23/8 Prov. without having a previous discussion. It asked whether museums should be included in the future work in addition to libraries and archives.

603. The Chair recalled he had made suggestions on how to proceed. If delegations wanted to make progress, they should state their position on specific topics.

604. The Delegation of Egypt asked whether the new proposals made by its Group had been included in the adopted working document SCCR/23/8.

605. The Chair replied in the positive.

606. The Delegation of the United States of America asked the Delegation of Egypt to repeat the new proposals.

607. The Delegation of Egypt answered that the new proposals dealt with in particular with the issue of topic 3, repositories of accessible works; topic 8, limitations for libraries and archives; and topic 11, right to translate works.

#### **ITEM 5: LIMITATIONS AND EXCEPTIONS: EDUCATIONAL AND RESEARCH INSTITUTIONS (continued)**

608. The Chair referred to item number 5 of the Agenda on educational and research institutions. It had been agreed that the Friends of the Chair would work on compiling the various textual suggestions put forward by the Committee. He invited the Secretariat to report on the outcome of the work undertaken.

609. The Secretariat reported that the Friends of the Chair had met twice and explained the structure of the draft working document that had been distributed.

610. The Delegation of Indonesia was of the view that the comments made by various delegations on the diversity of topics should be separated from the actual text-based proposals.

611. The Delegation of the Islamic Republic of Iran, on behalf of the Asian Group, requested that the textual comments be separated from legal textual proposals. That practice was fully compatible with the General Assembly mandate which called for text-based work. It was regrettable that the text as it stood then was very confusing. If delegations were committed to work on the equal basis, they should present the Committee a meaningful workable document.

612. The Delegation of India was in full agreement with the statement made by the Delegation of the Islamic Republic of Iran on behalf of the Asian Group. The normal textual comments should be in the footnotes and any general comments should be at the end of the document. Otherwise it would be very difficult to understand the document. As done for the library and archives document, Member States could give any correction or comments on the education document when adopting it as a working document in the SCCR/25 session to be held in November 2012.

613. The Delegation of the United States of America took note of the concerns expressed by the Delegations of India and the Islamic Republic of Iran. The Delegation agreed in spirit to make the document workable as a working document. There were still three pending things. One was the structure of the document. Another was the title of the document. And the third thing was how the document would be addressed in the conclusions.

614. The Delegation of Egypt noted the statements of other delegations and reminded the Committee that the African Group wanted to work towards separating the textual proposals from comments on the textual proposals. While it thanked the Friends of the Chair, the Chair and the Secretariat for the effort exerted in the process, it said the compilation was complex and the structure was not clear. There was a start with some subtitles referring to generally applicable considerations, underneath proposals represented and then topics and then followed by general comments and those topics. There was integration between the comments, general comments, and the topics and textual proposals, complex to the extent that it was difficult to deal with them.

It also noted that while some paragraphs were titled proposals, they were in fact either expression of positions or explanation of their national experience. Those issues needed to be separated. As India stated, the document should start with the textual proposal itself and then if there were any specific comments to it, they could be captured as part of footnotes or in a separate part appended to the document. It also noted the three issues highlighted by Indonesia and the United States the title, the structure and the conclusion and agreed that more discussion was needed

615. The Delegation of the European Union and its Member States agreed that the provisional working document was an effort to try to get some structure that would help discussions, but there was a lack of clarity of parts of it. It reminded that they were under mandate to discuss on the basis of text-based work and it suggested avoiding creating new categories of text-based work such as legal texts or proposals. The mandate was text-based work and each Member State had its prerogative to decide in which form to provide such text-based contributions to the work. In that respect, it recalled the importance of the point of the equality, which had been raised by many delegations. Regarding the lack of clarity, for instance on page 17 of the document, under the section "Uses" and under the subsection "outside classroom", there were references to limitations such as recordings of works made by Broadcasting Organizations, reverse engineering or the decompilation for the purposes of interoperability or transmissions in a network between third parties by an intermediary; and those were clearly not necessarily related to educational research and there were similar concerns related to other parts of the document. The Delegation suggested identifying subjects to discuss in a similar way used for the document on libraries and archives.

616. The Delegation of Cameroon stated comments should be removed and a working text should be adopted.

617. The Chair recognized that more work was needed on the document, as it was a compilation of everything the Secretariat had received, organized under the different topics. He noted the suggestion made by the Islamic Republic of Iran, India and the African Group to have some informal discussion on the matter of structure of the document.

#### **ITEM 7: PROTECTION OF BROADCASTION ORGANIZATIONS (continued)**

618. The Chair reminded Member States that the previous day the Committee considered the Chair's non-paper, revised after consultations. The question was put to the Committee as to whether the Chair's non-paper could be adopted as a working document for future work of the Committee on the subject of protection of Broadcasting Organizations. There had been broad consensus for the adoption as a working document, although there was an objection from one delegation. He also informed the Committee that during informal consultations, the consensus was still very strong. The Chair finally proposed to have the adoption formally done in plenary.

619. The Delegation of India expressed deep appreciation for the efforts undertaken by South Africa and Mexico and on the other hand by Japan. It reminded that it had made a request that the clarifications given as a response to the non-papers should actually be brought up in the text of the working paper. In addition, if the text was going to be adopted as a working paper the text needed to be discussed and a number of issues needed to be clarified; but primarily the Delegation requested that the footnotes which were reflected in the document be brought up in the text because they were essential.

620. The Delegation of the United States of America supported the request of the Delegation of India to move the footnotes up into the body of the text, in the interest of consensus and the ability to move forward in a constructive way.

621. The Delegation of the Islamic Republic of Iran understood that the document was still open for any kind of suggestions, even if proposed at a later stage.

622. The Delegation of Brazil supported the inclusion of the textual suggestions by India in the text. Regarding the procedure, it asked whether after the adoption by the Committee, the document would be open for comments by delegations for a period of time just like it had happened in the past.

623. The Delegation of Switzerland expressed some concerns on how the work had been carried out. Working methods were decided and should be respected. Decisions taken could not always be questioned. Without expressing a preference on the inclusion or not of new text, it noted that an agreed basic text should be understood as the basis of developing negotiations.

624. The Delegation of Japan reminded the meeting that it was important to have progress towards the Treaty and to focus the discussion on substantial issues such as scope of application in relation to the mandate of 2007 General Assembly. It emphasized the importance to start that substantive discussion as soon as possible. Member States could discuss substantial issues based on any document regardless of the nature of the document as long as that document was well organized. The Delegation also pointed out that the document should be open for further contributions as other delegations required.

625. The Delegation of Nigeria supported the proposal by India in the interest of consensus and moving the process forward. It was helpful to add those comments into the text so that everyone's views could be meaningfully discussed.

626. The Delegation of the European Union and its Member States shared the concern of those that believed little technical discussions took place. In order to reach a consensus helping the future work, it supported the request by the Indian Delegation to have its comments reflected as well in the working document. It was also understood that the document remained a working basis to which all Member States could contribute with further suggestions.

627. The Delegation of Mexico thought that the contributions made to the Committee had been very valuable and many delegations had shown their interest in the document. It believed that in order for all delegations to be able to consider that on an equal footing, the document had to be adopted by the Committee and then be open for receiving comments from each and every one of the delegations. In conclusion, the Delegation believed it would be very prudent to adopt the document and then proceed to comment.

628. The Delegation of South Africa, without opposing the views expressed by other Member States regarding the inclusion of India's comments on the text, said that it was important to establish clear working modalities and then stick to them. Because the document was not final and Member States were still able to make suggestions. Every Member State that was in the room was given an opportunity to present any other proposal and it was clear that once approved the document was going to be object of further comments and negotiations.

629. The Chair noted there was consensus to adopt the Chair's non-paper as a working document and of course to meet the request by India. The textual proposals in the footnotes were going to be included in the body of the document. The document would then be posted on the Web site. The Chair also said it was understood that the document remained open for comments and proposals.

630. The Delegation of India thanked the Chair for being considerate. The document by way of a working paper would then reflect a balance between the different positions expressed. The Delegation of India suggested that the deadline of September 30, 2012 be fixed for any further textual comments for the educational exceptions and also for Broadcasting Organizations.

**ITEM 6: LIMITATIONS AND EXCEPTIONS: VISUALLY IMPAIRED/PRINT DISABLED PERSONS (continued)**

631. The Chair presented the revised Working Document on an International Instrument on Limitations and Exceptions for Visually Impaired Persons, Persons with Print Disabilities. He recalled that in plenary Member States presented textual proposals to document SCCR/23/7. Those textual proposals were compiled in a separate paper, which formed the basis of discussions in the informal setting. The informal discussions looked at each and every textual proposal that was put forward; in some cases, language was developed with brackets or without brackets in some instances. The idea was to incorporate the textual suggestions that had been made by various delegations into the body of the document so as to facilitate the revision. In the informal discussion, participants went through substantially all the proposals except for the preamble and the definition of a reasonable price for developed countries and reasonable price for developing countries which was an issue which still remained open. The document reflected the discussions that took place in the informal discussions.

632. The Secretariat clarified that the document reflected the informal discussions that had taken place during that meeting. It was still a provisional working document and hopefully it was going to be adopted as a working document of the Committee. For the preamble, as requested by delegations and because no discussion took place in the informals, the original language was left followed by the new proposals from Member States made in the plenary. Starting with Article A on the definitions, where there was discussion and bracketed text was agreed upon, it was kept in that form. For instance, for the definition of work, the bracketed parts included a number of suggestions. Obviously more work was needed on bracketed parts. In some cases, alternatives and also additional proposed articles could be found. When there was no discussion, the language of document SCCR/23/7 was left.

633. The Chair requested Member States to adopt the document as a working document considering the amendments and the revisions made.

634. The Delegation of the Islamic Republic of Iran believed it was a good basis for future negotiations and that represented a good example to understand the meaning of text-based work, which shall be also replicated for other exceptions and limitations, according to the principle of equal value and equal importance agreed upon in SCCR/21.

635. The Delegation of Egypt requested some time to work on the document with experts before providing a definitive answer.

636. The Delegation of India appreciated the collective efforts and agreed to adopt the document.

637. The Delegation of Australia was favorable to adopt the document but pointed out there were a few areas which might need a little clarification as for example the alternatives under Article F.

638. The Delegation of Peru supported the adoption of the revised document as a working document for future negotiations.

639. The Delegation of Australia noted that a topic linked to Alternative C was a fully alternative proposal to the first three paragraphs. Once that was made clear it did not have problem in

supporting the adoption of the document.

640. The Delegation of the United States of America believed the document was a good basis for a working document for the Committee. It was mindful of the request made by the Delegate of Egypt, and that Delegation would need some time to review the document, it was acceptable. It also asked the Chair to entertain to the Committee the question of whether or not everyone was comfortable with the substitution of the preambles.

641. The Delegation of Chile said excellent work was done throughout the week and it was ready to support the adoption of the document. It stressed the importance of going towards convergence instead of creating new options and brackets.

642. The Delegation of the European Union and its Member States joined those that considered that the document should be the basis for future discussion and therefore supported its adoption. It was flexible to allow some time to review the document in case there was any representational mistake as identified by the Australian Delegation. It believed there were more brackets than necessary; the Delegation also reminded delegates that it was necessary to make an effort to converge on the text and not to add new issues or new matters for discussion.

643. The Delegation of Switzerland agreed to adopt the document and thanked the Chair for having facilitated such speedy progress. It was important to move towards further convergence and not to add new topics to the instrument.

644. The Delegation of the Islamic Republic of Iran, with regard to the question raised by the United States of America, clarified that since it did not have chance to review alternative texts in brackets, maintaining the original text of SCCR/23/7 was appropriate.

645. The Delegation of Brazil recognized the very positive, strong and constructive commitment of all delegations in trying to find convergence and solutions for the issues under discussion. Brazil supported the adoption of the document as a basis for future work and hoped that that work would pave the way for a diplomatic conference.

646. The Delegation of China expressed support for the adoption of the document as a basis for future work on the subject. China appreciated the engagement and the results achieved during that session, which reflected the spirit prevailed at the Beijing Diplomatic Conference. It thanked all delegations for the flexibility and the constructive proposals tabled.

647. The Chair thanked the delegations for the extensive support for the adoption of the document and noted the request made by the African Group to have some time to review it. He therefore suggested dealing with other issues before start with the conclusions.

648. The Chair brought the attention of the Committee to the Fifth Interim Report of the Stakeholder's Platform included in document SCCR/24/2 and requested the Committee to take note of that document.

649. The Chair reminded the Committee that the African Group had requested time to look at the document on the Visually Impaired Persons and asked whether a decision was taken.

650. The Delegation of Egypt informed that the African Group agreed to adopt the document as the basis for future work on that item.

651. The Chair declared the Working Document on an International Instrument on Limitations and Exceptions for the Visually Impaired Persons, Persons with Print Disabilities adopted by the Committee. He opened the floor to NGOs for interventions.



652. The representative of the World Blind Union (WBU) said that the blind people of the world had been watching and waiting for the issue of access to information to be addressed by the Committee for many years. In recent meetings of the SCCR there had been a recognition that it was an urgent issue and one that needed to be solved. The representative was pleased at the start of SCCR 24 to sense the air of enthusiasm, collaboration and willingness to work together to finalize the text on the document. In the opening statements the vast majority of Member States said they hoped to reach an agreement on the text at that session and to achieve a call for a diplomatic conference. WBU acknowledged the comments made by IFLA recognizing the very important role libraries played in the access to information for people who were blind or had a print disability. As it was not under discussion what kind of instrument was appropriate to solve the issue of audiovisual performances or broadcasting organizations, the blind deserved nothing less than a Treaty. Many Member States had signed and ratified the Convention on the Rights of Persons with Disabilities, therefore they had an obligation to make that Convention a reality and that treaty was putting human rights into action. It was time to recommend the convening of a Diplomatic Conference

653. The representative of Inclusive Planet (INCP) said that the concerns of persons with print disabilities and the urgency for the treaty had been discussed for few decades. The representative observed that those Member States that were opposing the Treaty did not recognize that it was no longer possible to treat the concerns of the developing countries at that time in the same way that they were treated in the past, because civil society in developing countries had gained power to defend their position. If the WIPO was to have any relevance in the coming years and any progress had to be made on any issue in the future, developed countries had to realize that. There was no better issue than the visually impaired for the developed world to demonstrate that they were concerned about the problems of the rest of the world.

654. The International Publishers Association (IPA) welcomed the adoption of the current working document as the basis for the conclusion of the discussions for an international instrument and hoped that all the remaining issues would be resolved with expediency. The international publishing community was very much interested and supported all methods that could be used to improve access for persons with print disability.

655. The representative of the Royal National Institute of Blind People (RNIB) urged one more time the Committee to agree on a binding and effective treaty to assure that blind and other print disabled people could access books thanks to national exceptions and cross-border exchange. Everyone agreed that a law was needed to address the issue. RNIB did not understand how people could still discuss on the nature of the instrument to achieve. As regarding other issues, such as broadcasting, a treaty was the answer. That decision process was non-sense and extremely slow. Regarding the substance of the text, RNIB agreed with the library community that libraries must be considered as bona fide authorized entities, as their services to blind people were too important to be ignored. In addition, regarding the fact that the EU would like wording in the text to say that the new law would have to be subjected to the three-step test; the representative asked whether the EU believed the exceptions included in the text were not meeting the three-step test requirements. Such a significant caveat could create great uncertainty and hamper, not improve access for the visually impaired. RNIB urged the Committee to finalize an effective and binding text, to agree it should be a treaty and to agree to recommend to the General Assembly to convene a diplomatic conference in 2013.

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

656. The Delegation of Brazil on behalf of the Development Agenda Group (DAG) expressed its satisfaction with the progress made in all areas of the SCCR during the session, and in

particular the progress achieved in the agenda of limitations and exceptions. The work program adopted in SCCR/21 could be considered one of the most important contributions of the SCCR to the implementation of the 45 Development Agenda recommendations. The SCCR was on the right path and should be seen as a model to other bodies in terms of implementation of the coordination mechanism and the attention given to Cluster B of the Development Agenda recommendations. The work program represented a very important contribution to the mainstreaming of the Development Agenda recommendations, because it provided a norm-setting mandate taking into account the development needs and contributions to a more balanced Intellectual Property system in a very pragmatic way. The DAG highlighted the value of copyright in encouraging creative cultural developments; at the same time it also recognized the need to establish limitations and exceptions in key areas, with a view to strike the necessary balance in the IP system to ensure that those rights do not adversely affect access to knowledge and culture to disadvantaged segments of the population, especially those in developing countries. The Group was encouraged by the progress made during the session towards the conclusion of a Treaty for the benefit of visually impaired persons and it was ready to engage in negotiations on international instruments for libraries and archives, teaching and research institutions and persons with all disabilities with the same enthusiasm and commitment. Those areas also demanded effective and concrete results. The DAG was convinced that appropriate limitations and exceptions for those beneficiaries played an important role in the promotion of cultural and economic development, not only for developing countries but for all WIPO Member States. One of the key lessons learned during the negotiations was that all WIPO membership could benefit from the results arising from a balanced and fair copyright system. The DAG also commended the efforts being made towards the conclusion of a treaty on the protection of broadcasting organizations. Progress had been made and further work still remained to be done on substantive issues, taking into account the 2007 WIPO General Assembly mandate and the Development Agenda. In terms of process, the need to conduct the discussions formally was emphasized, even though informal consultations were also needed. In that regard, it recalled Recommendation 44 which dealt with the need to consult formally and informally in an inclusive and transparent manner. Because that session had been conducted mainly in an informal manner, it considered that such Recommendation should be observed when conducting discussions within the SCCR. The successful conclusion of the Diplomatic Conference of Beijing, which resulted in a new Treaty on audiovisual performances, was made possible due to the constructive engagement and productive efforts of all Member States. The DAG was satisfied by the inclusion of a clause in the preamble in the treaty referring to the importance of the Development Agenda recommendations adopted in 2007 by the General Assembly. It was meaningful that the first international instrument to be created after the adoption of the Development Agenda recommendations contained such a reference. It hoped that future WIPO instruments would also be fully consistent with the 45 Development Agenda recommendations, especially those provided by its Cluster B.

657. The Delegation of the Islamic Republic of Iran associated itself with the statement of Brazil on behalf of the Development Agenda Group. Development objectives lie at the heart of the SCCR and the 45 recommendations of WIPO Development Agenda were immediately relevant to its ongoing work and already integrated therein. It was pleased to see the valuable work of the SCCR taking into account various Development Agenda recommendations especially in the area of norm setting as stipulated in Cluster B. WIPO norm setting activities on all aspects related to exceptions and limitations, namely visually impaired persons, libraries and archives, and educational and research institutions, could be supportive of the development goals of Member States and had direct linkages with their development. Therefore, it welcomed the commitment of the SCCR to develop a comprehensive and inclusive framework in its work plan agreed upon at the 21st Session of the SCCR. The approach should be continued to reach tangible results in all areas. While acknowledging the importance of copyright for creativity, the Delegation attached great importance to the issue of exceptions and limitations to copyright and related rights which had an outstanding role in upholding the public interest and essentially

contributed towards achievement of the development goals. Exceptions and limitations allowed governments to strike the necessary balance in their Intellectual Property systems to ensure that those goals did not affect access to science and knowledge for their population. In that context, the Delegation attached great importance to the limitations and exceptions for people with disabilities including the visually impaired. It committed to establish a strong Treaty to ensure sustainable accessibility for blind persons to copyrighted works and was happy to see significant progress in the text and towards holding the diplomatic conference; it looked forward to similar progress being made with regard to libraries, archives and education and research institutions as outlined in the SCCR work program. It hoped that the Development Agenda recommendations, especially those pertaining to norm setting in Cluster B, would be fully taken into account while negotiating various treaties in that Committee. Broadcasting also played an important role in the social, cultural and economic development of all countries, but particularly in developing countries. The protection of rights of broadcasting organizations could help broadcasters in developing countries to rely on their national or local TV programs and audiovisual productions; that could assist the industry in the developing country to produce original TV and radio programs compatible with their local, traditional and cultural values. If the industry was not supported sufficiently by updating their existing rights in the platforms, only powerful broadcasting organizations could continue to survive. It was confident that the new treaty on protection of broadcasting organizations as it was decided by the WIPO General Assembly in 2007 would be a balanced approach to help promotion of cultural diversity in that leading world industry. It invited the Secretariat to enhance its technical assistance activities for developing countries to assist them in using appropriate limitations and exceptions in favor of the public interest, including making appropriate amendments in their national laws. It also requested the CDIP to come up with projects on the best practices on the effectiveness of limitations and exceptions in developing countries with the view of enhancing the capacity of Member States to benefit from limitations and exceptions.

658. The Delegation of Egypt on behalf of the African Group said that the implementation and mainstreaming of the Development Agenda recommendations in all areas in WIPO was of great importance. The SCCR made significant progress in the past year in addressing the three main substantive agenda items, including limitations and exceptions, audiovisual performances and protection for broadcasting organizations. The group was pleased to see the work of the Committee continuing to be guided by the Development Agenda principles, especially regarding innovation, creativity, public domain and norm setting. The Beijing Treaty on Audiovisual Performances was the first treaty to be concluded after the adoption of the WIPO Development Agenda and had clearly recognized the importance of its recommendations as an integral part of WIPO's work. Negotiations on copyright exceptions and limitations were also progressing, especially towards a Treaty for VIP. In that regard it supported the statement made by the WBU. It was crucial that the SCCR continued to work in accordance with the Development Agenda recommendations so that norm setting activities were inclusive, member-driven, took into account different levels of development, and were aligned with the principle of WIPO neutrality. The international copyright system was making contributions to important public policy objectives such as education, especially to support the development goals agreed within the United Nations system in accordance with recommendation 22, as well as to preserving the human rights of visually impaired persons' access to information and knowledge. Most importantly the international copyright system was contributing to the preservation of human heritage and knowledge through supporting the role of libraries and archives. The African Group believed that SCCR future work should be guided by recommendation 21 to ensure that WIPO shall conduct informal open and balanced consultations prior to any norm setting activities through a member-driven process, while promoting the participation of experts from Member States, particularly developing countries. In addition, its collective objective should remain seeking to achieve the right balance between the protection of moral and economic rights of writers, creators and innovators and the need that their works were accessible so that they could contribute to overall human development, progress, and accumulation of knowledge.

659. The Delegation of South Africa associated itself with the statements made by Egypt on behalf of African Group and Brazil on behalf of the Development Agenda Group. South Africa attached great importance to the WIPO Development Agenda and was interested in promoting the mainstreaming of the Development Agenda recommendations in all WIPO activities. It was pleased that the Committee was going to be reporting to the General Assembly for the second time on its contribution towards implementation of the Development Agenda. However, it reiterated its preference to have the issue as a standing agenda item in the SCCR sessions preceding the General Assembly. The SCCR was currently engaged in norm-setting activities pertaining to limitations and exceptions for libraries and archives, educational and research institutions, and for visually impaired persons as well as for the protection of broadcasting organizations. It attached significance to the implementation of Cluster B recommendations on norm setting in relation to the work of the Committee, especially the principles outlined in recommendation 15. The work of the Committee on limitations and exceptions should be viewed within a broader international development agenda. There were three years until the review of the Millennium Development Goals, and the work of the Committee could provide clarity on the potential role Intellectual Property could play in advancing the MDGs related to education. Although the Committee would not be in a position at that stage to submit recommendations, at least for its Delegation achieving a legally binding international instrument on all limitations and exceptions was important. South Africa noted that significant progress had been made especially on the issue of visually impaired persons. South Africa was pleased that the 23rd and the 24th session of the Committee advanced work on limitations and exceptions and it urged the conclusion of all instruments at the earliest possible time. It would be prudent for the Committee to convene a diplomatic conference in 2013 to develop a Treaty on limitations and exceptions for visually impaired persons. For South Africa the pursuit of the protection of broadcasting organizations was a national imperative central to the development of the creative industry, in particular the cultural industry. It realized that the Treaty on the protection of broadcasting organizations had been a challenging endeavor, but one that eventually needed to be accomplished in order to curb the scourge of signal piracy and its associated socioeconomic impact. It welcomed the progress that had been made in terms of expediting the progress towards the completion of the treaty, particularly the informal consultations held in November 2011 aiming at reviving interest on that issue. The Delegation had benefited substantially from interacting with interested Member States and other stakeholders on the issue in the spirit of the Development Agenda. It was ready to continue to work in close cooperation with a range of stakeholders for the successful conclusion of the treaty on protecting broadcasting organizations in the near future. Its preference was to have a diplomatic conference convened in 2014 to adopt the treaty. South Africa recognized that the Committee was able after a decade to resolve issues that stalled the adoption of the Treaty for the protection of audiovisual performances. It was pleased that the Treaty was eventually adopted in Beijing in June 2012. It was worth noting that it encompassed provisions striking a balance between the interests of rightholders and the public interest. It noted that the outcomes of Beijing were already having a positive impact on the remaining issues being discussed in the Committee. To make sure that the Beijing spirit did indeed affect the work of the Committee, a clear and shared vision of the scope and expected outcomes was needed. Therefore, a work program providing clear guidelines on the future of the Committee was highly desirable. The program must be guided by the principle of equal treatment of issues, taking into account their different levels of maturity. The Delegation of South Africa was ready to engage proactively and constructively in ensuring that the development issues in the agenda of the Committee received the priority and attention they deserved.

660. The Delegation of India joined the distinguished Delegations of the Islamic Republic of Iran, Egypt, and South Africa in supporting the statement of the Development Agenda Group. The Development Agenda recommendations had achieved recent success in the Beijing spirit when Member States included the paragraph on the Development Agenda in the preamble of the new Treaty. It recalled the importance of the success of the United Nations Millennium Development Goals and linked it to limitations and exceptions for educational institutions and

research organizations. Similarly it supported another reference made about the human rights issues in reference to the adoption of a treaty for limitations and exceptions for the visually impaired and other print disabled. Without any conditions, the Diplomatic Conference on that issue was to be convened in the year 2013. Overall limitations and exceptions were not creating any imbalance in the international copyright system. Also the Berne Convention, the WCT, the WPPT and the TRIPS agreement recognized the importance of the balance of rights. Equal treatment for those treaties was very important. It reminded the Committee of the importance of contributing to the development of the knowledge economy and the progress of the knowledge society because access to knowledge was essential.

661. The Delegation of the European Union and its Member States noted that some recommendations of the Development Agenda were relevant to the SCCR. In particular, recommendation 15 which mentioned inter alia, the importance of taking into consideration a balance between costs and benefits for norm setting activities. Such an approach was particularly relevant when discussing new topics in the Committee for which instruments in whatever form were envisaged, like limitations and exceptions for libraries and archives or limitations and exceptions for educational and research institutions. Taking into account also the different levels of development, the Committee should carefully look into the socioeconomic dimension and potential impact of such possible instruments. The EU and its Member States were satisfied with the progress made in the Committee in the previous year, including first and foremost, the conclusion and adoption of the Beijing Treaty on the Audiovisual Performances. Important tasks remained on the agenda, including as regards VIP and broadcasters. The Committee should strive to adopt a balanced and inclusive work program. In that respect the European Union and its Member States stood ready to make concrete and constructive proposals.

662. The Delegation of Algeria supported the statements of the Development Agenda Group and of the African Group. The mechanism approved by the Assembly in 2011 made it possible for all Committees of WIPO to determine how the work undertaken by the organization could improve the Intellectual Property system and make it more efficient and ensure that knowledge and information was available and accessible to all Member States. Concrete proposals should be made in order to better integrate the development issues in WIPO's program. First of all, the very spirit of those recommendations implied an examination of the work of the Committee to create a balanced Intellectual Property system. Therefore, through an agenda to achieve international instruments on exceptions and limitations, the SCCR contributed in a notable manner to the Development Agenda. On the other hand, there was consideration of the restrictions. It believed that the SCCR was on the right path when it talked about Cluster B on norm setting. Furthermore, the Delegation also shared the views of the declaration made regarding Recommendation 44, as it believed that the process of debate should be inclusive and transparent. However, it believed that only once its work program had been concluded would the SCCR have formally and substantively contributed to the spirit of the recommendations. That was why it urged Member States to work together in order to adopt a Treaty on exceptions and limitations for visually impaired persons, for libraries, archives, educational and research institutions, and finally a treaty on broadcasting.

663. The Delegation of Indonesia associated itself with the statement of the Development Agenda Group and of the African Group. It also recognized progress achieved in the SCCR. Although certainly more work was still needed it was important to take into account the Development Agenda recommendations to ensure all WIPO members could benefit from the outcomes.

664. The Delegation of Nigeria supported the statement of the Development Agenda Group and informed the Committee that the first copyright act for Africa was 100 years old. That copyright act extended to 11 countries, all of which remained independent countries in the African continent. Looking back at developments in international relations but also in particular

in international copyright law, it was clear that was a system that would always need adjustments. It was important to note that the accomplishments today were only the first steps in a very long journey with regard to the treaty for the visually impaired. When they were addressing the needs of the visually impaired, there could be no question that the responses must be law, and not only sentiment. They must be a commitment, not just an ideal. Copyright law was government policy, not private policy. It was not the entitlement of users, consumers, authors or intermediaries. Member States must have the leadership and the moral courage to establish principles that were sustainable, fair, and implemented at the highest levels of integrity. Nigeria was proud to have produced the first blind physiotherapist and the first blind professor on the continent, and to have established the first organization to train and teach the blind and the visually impaired. The exceptions and limitations agenda was a reflection of a long history and commitment to ensure that the copyright system and indeed all other systems supported the full integration of individuals into a meaningful and productive life. It was time to convene a Diplomatic Conference in 2013. Regarding the WIPO Development Agenda, it was clear that the legal, social, and political reality was that an international copyright system that did not work for all would not work at all.

665. The Chair declared that the Committee took note of the statements on Agenda Item 8 and announced that they would be recorded in the report of the SCCR to be submitted to the WIPO General Assembly.

666. The Secretariat explained that negotiators were still trying to complete the general text of conclusions. There were some issues that remained in brackets until Member States found the right language to prepare a recommendation to the General Assembly. If the midnight boundary was reached, the Committee would stop the clock so that conclusions could be delivered at anytime in early hours of July 26.

## **ITEM 9: OTHER MATTERS**

667. The Chair noted that there were no other matters to be discussed under item 8.

668. The Delegation of Nigeria, on behalf of the African Group, expressed its gratitude to the Secretariat for its diligence, great attitude and hard work.

669. The Delegation of Brazil thanked the Chair for having conducted the work of the Committee so diligently. It also thanked the Secretariat and interpreters for having worked so hard and produced so much for the delegations. On behalf of the Development Agenda Group, it was glad to see the strong commitment of all delegations over weekend and night sessions. The conclusions on the broadcasting treaty and the clear pathway to the diplomatic conference on limitations and exceptions for the visually impaired were in line with what DAG had recommended. WIPO was moving in the right way to ensure that an appropriate legal environment was conducive to an increased availability of cultural, educational and scientific materials to the visually impaired people.

670. The Delegation of India praised the Chair's leadership and guidance in finalizing the text on visually impaired persons which could be presented in an extraordinary session of the General Assembly to convene the diplomatic conference to finalize the treaty. That was the continuation of the Beijing spirit. It thanked the hard work and cooperation of the WIPO Secretariat officials and especially the efforts to bring out the documents at the right time and to the satisfaction of everyone.

671. The Delegation of Peru, on behalf of GRULAC, thanked the Secretariat and the Chair for helping to achieve a work plan to convene a diplomatic conference in 2013.

672. The Delegation of Chile endorsed the comments made by Brazil on the positive outcome and commitment of all delegations. It also thanked the Chair and the Secretariat for their hard work. Delegations needed to renew their energies for the upcoming meetings of 2012 and 2013 to conclude a treaty.

673. The Delegation of the Islamic Republic of Iran, on behalf of the Asian Group, thanked the Chairman for his leadership, wisdom and stewardship which made the session so productive and successful. A great step forward had been made toward the objective in devising a timetable for organizing a diplomatic conference to adopt an international treaty for the visually impaired. It thanked the Secretariat and especially Ambassador Clarke for their permanent presence, great expertise, and competence.

#### **ITEM 10: CLOSING OF THE SESSION**

674. The Chair presented the set of draft conclusions and submitted them for the consideration of the Committee.

675. The Chair thanked all delegations for the cooperative spirit exhibited in the various discussions. The Committee had made progress, but a lot of work remained to be achieved on those various agenda items of the Committee. He hoped that the commitment in SCCR 24 session would be more successful. He particularly thanked the Secretariat for all the support rendered to the Committee and the interpreters who were essential to the work of the Committee and had showed great patience. He noted that the Standing Committee unanimously had adopted the conclusions set out below and closed the session.

## CONCLUSIONS

### Agenda

1. The Committee agreed to include a new item in the agenda related to the contribution of the SCCR to the implementation of the respective Development Agenda recommendations. Some delegations stated that the inclusion of that item was temporary only at that session of the Committee preceding the General Assembly and should not set a precedent.
2. The Committee agreed to continue to work on all subjects on the agenda of the 24th session of the SCCR taking into account their equal importance and different levels of maturity.
3. The Committee recognized both existing priorities and the right of every Member to submit new items or proposals for consideration. Accordingly, the timelines reflected in these conclusions are without prejudice to new items or proposals to be submitted for the work plan of 2013 – 2014 by any Members, subject to the adoption of such proposals by the Committee.
4. In future the WIPO Secretariat will prepare an annotated agenda reflecting the date on which each agenda item is to be discussed in the Plenary of SCCR.

### Limitations and Exceptions

5. Bearing in mind
  - *the Development Agenda recommendations;*
  - *the agreement reached during the 21st session of the SCCR in November 2010, namely that “all the aspects concerning limitations and exceptions will be maintained on the Agenda of the twentieth session of the SCCR with the aim of establishing a work program concerning those limitations and exceptions, following a global and inclusive approach, and taking into account their equal importance and different level of maturity, while recognizing the need for concurrently addressing all the issues with a view to achieving progress on all of them”;*
  - *the international conventions in the field of copyright and related rights, including the SCCR’s authority to make a recommendation to convene a diplomatic conference.*

Following a global and inclusive approach, the SCCR agreed to work towards an appropriate international legal instrument or instruments (whether model law, joint recommendation, treaty and/or other forms), taking into account the proposals already tabled or any additional submissions.

### Limitations and Exceptions: educational and research institutions and persons with other disabilities

6. The Committee took note of the new documents, namely Limitations and Exceptions regarding Education, proposal by the Delegations of Ecuador, Peru and Uruguay (SCCR/24/6), and Draft Articles and Thematic Clusters on Limitations and Exceptions to Copyright for the Benefit of Educational, Teaching and Research Institutions, proposal by



the Delegation of Brazil (SCCR/24/7), in addition to the updated provisions on the Draft WIPO Treaty on Exceptions and Limitations for the Persons with Disabilities, Educational and Research Institutions, Libraries and Archives, proposal by the African Group (document SCCR/22/12).

7. A compilation of the text proposals and text comments on the above topics proposed by the Members was prepared by the Secretariat as a provisional working document. The Committee noted that there was substantial divergence of views about how to organize the document particularly the relationship of comments to textual proposals.
8. The Committee agreed that the document should be restructured in a similar manner to document SCCR/23/8 on limitations and exceptions for libraries and archives with textual proposals and comments separated under each topic.
9. This compilation will constitute a Committee document titled "Provisional working document towards an appropriate International Legal Instrument (in whatever form) on Limitations and Exceptions for Educational, Teaching and Research Institutions and Persons with Other Disabilities Containing Comments and Textual Suggestions" (document SCCR/24/8 Prov.). Elements of this provisional working document yet to be agreed will constitute the basis for the future text-based work to be undertaken by the Committee in its 25th session.
10. The Committee agreed to recommend to the WIPO General Assembly that the SCCR continue discussion to work towards an appropriate international legal instrument or instruments (whether model law, joint recommendation, treaty and/or other forms), with the target to submit recommendations by the SCCR/30 session to the General Assembly on Limitations and Exceptions for Educational, Teaching and Research Institutions and Persons with other Disabilities.

#### **Limitations and Exceptions: libraries and archives**

11. The Committee adopted document SCCR/23/8 titled "Working document containing comments on and textual suggestions towards an appropriate international legal instrument (in whatever form) on exceptions and limitations for libraries and archives," which includes the African Group textual proposals presented during the meeting. This document will constitute the basis for the future text-based work on the matter to be undertaken by the Committee in its 25th session.
12. The Committee agreed to recommend to the WIPO General Assembly that the SCCR continue discussion to work towards an appropriate international legal instrument or instruments (whether model law, joint recommendation, treaty and/or other forms), with the target to submit recommendations by the SCCR/28 session to the General Assembly on Limitations and Exceptions for Libraries and Archives.

#### **Limitations and Exceptions: visually impaired persons/persons with print disabilities**

13. The Committee took note of the Fifth Interim Report of the Stakeholders' Platform (document SCCR/24/2) and encouraged the stakeholders to continue the work of the Stakeholders' Platform.
14. The Committee moved forward with text-based work based on the "Working document on an international instrument on limitations and exceptions for visually impaired

persons/persons with print disabilities” (document SCCR/23/7), and adopted a revised version contained in document SCCR/24/9.

15. The Committee noted: [a] that substantial progress had been made on the substantive provisions of a draft legal instrument on appropriate exceptions and limitations for persons with visual impairment and/or print disabilities, [b] that further work on substantive provisions still remains to be done, and [c] that the SCCR is committed to resolution of outstanding questions at its next session. In this connection, the Committee agreed on the following recommendations to the WIPO General Assembly:
  - a) that an inter-sessional meeting of the SCCR be held in Geneva between the 2012 General Assembly and the 25th session of the SCCR, and that funding be provided, according to the usual formula, for experts from developing countries to participate in the meeting. The exact dates will be determined by the WIPO Secretariat.
  - b) that the item of limitations and exceptions for visually impaired persons/persons with print disabilities will continue in the 25th session of the SCCR with a view to conclude or advance substantially the text-based work on limitations and exceptions for visually impaired persons/persons with print disabilities.
  - c) that the General Assembly convene an extraordinary session to be held in December 2012 to evaluate the text from SCCR/25 and to make a decision on whether to convene a diplomatic conference in 2013.
16. The Committee requested the Secretariat to explore the question of funding options for representatives from developing countries to participate in the extraordinary session of the General Assembly.

### **Protection of Broadcasting Organizations**

17. The Committee reaffirmed its commitment to continue work, on a signal based approach, consistent with the 2007 General Assembly mandate, towards developing an international treaty to update the protection of broadcasting and cablecasting organizations in the traditional sense.
18. The Committee pursued discussions that led to the adoption of a single text titled “Working document for a treaty on the protection of broadcasting organizations” contained in document SCCR/24/10, which includes India’s legal textual proposals as one of the alternatives in the relevant articles of the working document. This working document will constitute the basis of further text-based discussions to be undertaken by the Committee in its 25th session, subject to any modification or further textual comments to be submitted by the Members.
19. The Committee agreed to recommend to the WIPO General Assembly that the Committee continue its work toward a text that will enable a decision on whether to convene a diplomatic conference in 2014.

**Contribution of the SCCR to the implementation of the respective Development Agenda recommendations**

20. The Chair stated that all statements made in relation to Contribution of the SCCR to the implementation of the respective Development Agenda recommendations would be recorded in the report of the 24th session of the SCCR and would be transmitted to the WIPO General Assembly in line with the decision taken by the WIPO General Assembly related to the Development Agenda Coordination Mechanism.

**Next Session of the SCCR**

The 25th session of the SCCR will take place from November 19 to 23, 2012.

[Annex follows]

**ANNEXE/ANNEX**

**LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS**

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Alfredo SCAFATI, Presidente, Consejo de Derechos de Autor, Ministerio de Educación y Cultura, Montevideo

Gabriel BELLON, Consejero, Misión Permanente, Ginebra

VENEZUELA (RÉPUBLIQUE BOLIVARIENNE DU)/VENEZUELA (BOLIVARIAN REPUBLIC OF)

Oswaldo REQUES OLIVEROS, First Secretary, Permanent Mission, Geneva

VIET NAM

Vu Ngoc HOAN, Deputy Director General, Copyright Office, Hanoi

Van Son MAI, Counsellor, Permanent Mission, Geneva

ZAMBIE/ZAMBIA

Darlington MWAPE, Lusaka

Kenneth MUSAMVU, Registrar of Copyright, Ministry of Information, Broadcasting and Labour,  
Lusaka

ZIMBABWE

Garikai KASHITIKU, First Secretary, Permanent Mission, Geneva

II. DÉLÉGATIONS MEMBRES SPÉCIALES/SPECIAL MEMBER DELEGATIONS

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

Maria MARTIN PRAT (Mrs.), Head, Copyright Unit, Directorate-General for Internal Market and Services, European Commission, Brussels

Delphine LIDA (Mrs.), Counsellor, Permanent Mission, Geneva

Judit FISCHER (Ms.), Policy Officer, Directorate-General for Internal Market and Services, European Commission, Brussels

Pierre-Yves ANDRAU, Policy Officer, Directorate-General for Internal Market and Services, European Commission, Brussels

Agata Anna GERBA (Ms.), Policy Officer, Directorate-General for Internal Market and Services, European Commission, Brussels

III. ORGANISATIONS INTERGOUVERNEMENTALES/  
INTERGOVERNMENTAL ORGANIZATIONS

BUREAU INTERNATIONAL D'EDUCATION/INTERNATIONAL BUREAU OF EDUCATION  
(UNESCO)

Zhao ZHAO (Ms.), Intern, Geneva

NATION UNIES DROITS DE L'HOMME/UNITED NATIONS HUMAN RIGHTS (UNHR)

Caroline HARVEY (Ms.), Human Rights Officer, Geneva

Aline VICENTIM (Ms.), Geneva

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

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

Olga BEBZHOZHNA (Ms.), Intern, Geneva

ORGANISATION INTERNATIONALE DE LA FRANCOPHONIE (OIF)

Ridha BOUABID, ambassadeur, représentant permanent, Mission permanente, Genève

Sandra COULIBALY (Mme), représentant permanent adjoint, Mission permanente, Genève

Antoine BARBRY, Conseiller, affaires économiques, Mission permanente, Genève

Andrea CONDE (Mlle), stagiaire, Mission permanente, Genève

ORGANISATION INTERNATIONALE DU TRAVAIL (OIT)/INTERNATIONAL LABOUR ORGANIZATION (ILO)

John MYERS, Industry Specialist, Media, Cultural Graphical Sectoral Activities Department, Geneva

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

Hannu WAGNER, Counselor, Intellectual Property Division, Geneva

SOUTH CENTRE

Carlos CORREA, Special Adviser on Trade and Intellectual Property, Geneva

Germán VALASQUEZ, Special Adviser, Health and Development, Geneva

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

Kevon SWAM, Intern, Innovation and Access to Knowledge Programme, Geneva

Melissa MINTY (Ms.), Intern, Innovation and Access to Knowledge Programme, Geneva

UNION AFRICAINE/AFRICAN UNION

Georges-Rémi NAMEKONG, Senior Economist, African Union Commission (AUC) Geneva Representative

IV. ORGANISATIONS NON GOUVERNEMENTALES/  
NON-GOVERNMENTAL ORGANIZATIONS

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

American Council of the Blind (ACB)  
Melanie BRUNSON (Ms.), Executive Director, United States of America

Associação Brasileira de Emissoras de Rádio e Televisão (ABERT)  
João Carlos MULLER CHAVES, Legal Manager, Rio de Janeiro  
Isabella Girão (Ms.) BUTRUCE SANTORO, Legal Manager, Brasilia  
Carla de Silber de BRITO PEREIRA (Ms.), Legal Manager, Brasilia

Association des télévisions commerciales européennes (ACT)/Association of Commercial  
Television in Europe (ACT)  
Thomas RIVERS, Expert, London  
Jose Manuel GOMEZ BRAVO, Member, Brussels

Association européenne des étudiants en droit (ELSA international)/European Law Students'  
Association (ELSA International)  
Kornelika EGRS-PISUKE (Mrs.), Estonia  
Hari LEE (Ms.), Germany

Asociación Internacional de Radiodifusión (AIR)  
Jorge BACA-ÁLVAREZ MARROQUÍN, Presidente del Comité de Derecho de Autor, Montevideo  
Edmundo RÉBORA, Vice presidente del Comité Jurídico, Montevideo  
Alexandre JOBIM, Presidente del Comité Jurídico, Montevideo  
Nicolás NOVOA, Miembro del Comité de Derecho de Autor, Montevideo  
Andrés TORRES, Miembro del Comité de Derecho de Autor, Montevideo

Association internationale du barreau (IBA)/International Bar Association (IBA)  
Thomas LEGLER, Intellectual Property and Entertainment Law Committee  
Inge HOCHREUTENER (Mrs.), Doctor, Python and Peter, Berne

Association internationale pour la protection de la propriété intellectuelle (AIPPI)/International  
Association for the Protection of Intellectual Property (AIPPI)  
Matthias GOTTSCHALK, Special Committee Member, Zurich

Association IQSensato (IQSensato)  
Susan ISIKO STRBA (Mrs.), Expert, Geneva

Association littéraire et artistique internationale (ALAI)/International Literary and Artistic  
Association (ALAI)  
Victor NABHAN, Chairman, Ferney Voltaire, France

Brazilian Association of Intellectual Property  
Bruno LEWICKI, Rio de Janeiro

Central and Eastern European Copyright Alliance (CEECA)  
Mihály FICSOR, Chairman, Budapest

Centre d'administration des droits des artistes interprètes ou exécutants du GEIDANKYO (CPRA)/Center for Performers' Rights Administration of Geidankyo (CPRA)  
Samuel Shu MASUYAMA, Secretary-General, Tokyo

Centre for Internet and Society (CIS)  
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Chambre de commerce internationale (CCI)/International Chamber of Commerce (ICC)  
Gerardo MUÑOZ DE COTE, IP Legal Director, Mexico, D.F.

Civil Society Coalition (CSC)  
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Comité national pour la promotion sociale des aveugles et amblyopes (CNPSAA)  
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Computer and Communications Industry Association (CCIA)  
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Matthias LANGENEGGER, Deputy Representative, Geneva  
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Jennifer BRANT (Ms.), Consultant, Microsoft, Geneva

Communia International Association on the Public Domain (COMMUNIA)  
Melanie DULONG DE ROSNAY, Chair, Bussels

Confédération internationale des sociétés d'auteurs et compositeurs (CISAC)/International Confederation of Societies of Authors and Composers (CISAC)  
Gadi ORON, Director of Legal and Public Affairs, Neuilly-sur-Seine

Conseil britannique du droit d'auteur (BCC)/British Copyright Council (BCC)  
Maureen DUFFY (Ms.), President of Honour, London  
Andrew YEATES, Director, General Counsel, London  
Hugh JONES, Treasurer, Copyright Counsel, London

Co-ordinating Council of Audiovisual Archives Association (CCAAA)  
Hubert BEST, Advocate, Middlesex

Copyright Research Information Center (CRIC)  
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Electronic Frontier Foundation (EFF)  
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European Federation of Journalists  
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European Dyslexia Association  
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European Network for Copyright in Support of Education and Science (ENCES)  
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Fédération européenne des sociétés de gestion collective de producteurs pour la copie privée  
audiovisuelle (EUROCOPYA)/European Federation of Joint Management Societies of  
Producers for Private Audiovisual Copying (EUROCOPYA)  
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Fédération internationale des acteurs (FIA)/International Federation of Actors (FIA)  
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Fédération internationale des associations de bibliothécaires et des bibliothèques  
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Fédération internationale des associations de producteurs de films (FIAPF)/  
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Fédération internationale de la vidéo/International Video Federation (IVF)  
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Fédération internationale de l'industrie phonographique (IFPI)/International Federation of the  
Phonographic Industry (IFPI)  
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Fédération internationale des musiciens (FIM)/International Federation of Musicians (FIM)  
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Fédération internationale des organismes gérant les droits de reproduction (IFRRO)/  
International Federation of Reproduction Rights Organizations (IFRRO)  
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Andrej NOWAKOWSKI  
Rainer JUST  
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Groupement international des éditeurs scientifiques, techniques et médicaux (STM)/  
International Group of Scientific, Technical and Medical Publishers (STM)

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Inclusive Planet Foundation

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International Confederation of Music Publishers (ICMP)

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Knowledge Ecology International, Inc. (KEI)

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Library Copyright Alliance (LCA)

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Motion Pictures Association (MPA)

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Royal National Institute of Blind People (RNIB)

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Sociedade Portuguesa de Autores

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Society of American Archivists

William J. MAHER, University Archivist, University of Illinois, Illinois

Software and Information Industry Association (SIIA)

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South African National Council for the Blind (SANCB)

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The Japan Commercial Broadcasters Association (JAB)

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Transatlantic Consumer Dialogue (TACD)

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Union européenne de radio-télévision (UER)/European Broadcasting Union (EBU)

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Union de radiodiffusion Asie-Pacifique (ABU)/Asia-Pacific Broadcasting Union (ABU)

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Union francophone des aveugles (UFA)

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André KOWALSKI, France

Union internationale des éditeurs (UIE)/International Publishers Association (IPA)

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Jens BAMMEL, Secretary General, Geneva  
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Union mondiale des aveugles (WBU)/World Blind Union (WBU)

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Christopher FRIEND, Special Projects Consultant, Sightsavers International, WBU Strategic  
Objective Leader, Accessibility Chair WBU Global Right to Read Campaign, Programme  
Development Advisor Sightsavers, Sussex, United Kingdom  
Judith FRIEND (Mrs.), Special Projects Consultant, Sightsavers International WBU Global Right  
to Read Campaign Team Support Member, Sussex

V. BUREAU/OFFICERS

Président/Chair:	Darlington MWAPE (Zambie/Zambia)
Vice-président/Vice-Chair:	Alexandra GRAZIOLI (Mrs.) (Suisse/Switzerland)
Secrétaire/Secretary:	Michele WOODS (Mrs.) (OMPI/WIPO)

VI. BUREAU INTERNATIONAL DE L'ORGANISATION MONDIALE DE LA  
PROPRIÉTÉ INTELLECTUELLE (OMPI)/  
INTERNATIONAL BUREAU OF THE WORLD INTELLECTUAL  
PROPERTY ORGANIZATION (WIPO)

Francis GURRY, directeur général/Director General

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[End of Annex and of document]