

Standing Committee on Copyright and Related Rights

Twenty-sixth Session
Geneva, December 16 to 20, 2013

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-sixth session in Geneva from December 16 to 20, 2013.
2. The following Member States of the World Intellectual Property Organization (WIPO) and/or members of the Bern Union for the Protection of Literary and Artistic Works were represented in the meeting: Andorra, Argentina, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Brazil Cameroon, Canada, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Czech Republic, Ecuador, El Salvador, Ethiopia, Finland, France, Germany, Greece, Guatemala, Holy See, Hungary, India, Iran (Islamic Republic of), Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kenya, Latvia, Lithuania, Luxembourg, Madagascar, Mexico, Morocco, Myanmar, Netherlands, Nigeria, Oman, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic Of Moldova, Romania, Russian Federation, Senegal, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkey, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Viet Nam, Zimbabwe (77).
3. The European Union (EU) participated in the meeting in a member capacity.
4. The following IGOs took part in the meeting in an observer capacity: African Union (AU), Common Language Resources and Technology Infrastructure as European Research Infrastructure Consortium (CLARIN ERIC) and World Trade Organization (WTO) (3).
5. The following non-governmental organizations (NGOs) took part in the meeting in an observer capacity: Actors, Interpreting Artists Committee (CSAI), *Agence pour la protection des programmes* (APP), Asia-Pacific Broadcasting Union (ABU), *Asociación Argentina de Intérpretes* (AADL), Association of Commercial Television in Europe (ACT), British Copyright Council (BCC), Canadian Library Association (CLA), Center for Performers' Rights Administration of GEIDANKYO (CPRA), Central and Eastern European Copyright Alliance (CEECA), Centre for Internet and Society (CIS), Chamber of Commerce and Industry of the Russian Federation (CCIRF), Civil Society Coalition (CSC), Computer & Communications Industry Association (CCIA), Copyright Research and Information Center (CRIC), Electronic Information for Libraries (eIFL.net), European Broadcasting Union (EBU), European Digital Media Association (EDiMA), European Law Students' Association (ELSA International), European Visual Artists (EVA), *Fédération européenne des sociétés de gestion collective de producteurs pour la copie privée audiovisuelle* (EUROCOPYA), German Library Association, Ibero-Latin-American Federation of Performers (FILAI), Interactive Software Federation of Europe (ISFE), International Association for the Protection of Intellectual Property (AIPPI), International Association of Broadcasting (IAB), International Authors Forum (IAF), International Confederation of Societies of Authors and Composers (CISAC), International Council of Museums (ICOM), International Council on Archives (ICA) International Federation of Actors (FIA), International Federation of Film Producers Associations (FIAPF), International Federation of Journalists (IFJ), International Federation of Library Associations and Institutions (IFLA), International Federation of Musicians (FIM), International Federation of Reproduction Rights Organizations (IFRRO), International Federation of the Phonographic Industry (IFPI), International Group of Scientific, Technical and Medical Publishers (STM), International Literary and Artistic Association (ALAI) International Society for the Development of Intellectual Property (ADALPI),

International Video Federation (IVF), Knowledge Ecology International, Inc. (KEI), *Latín Artis*, Motion Picture Association (MPA), National Association of Broadcasters (NAB), North American Broadcasters Association (NABA), *Société portugaise d'auteurs* (SPA), Society of American Archivists (SAA), The Japan Commercial Broadcasters Association (JBA), Union of National Radio and Television Organizations of Africa (URTNA) and World Association of Newspapers (WAN) (50).

ITEM 1: OPENING OF THE SESSION

6. Mr. Francis Gurry, the Director General of WIPO, opened the session and welcomed all delegates to the 26th session of the SCCR. He reminded the meeting that it was the first session of the SCCR after the successful Diplomatic Conference held in Marrakesh. The SCCR had the extraordinary record of having originated two multilateral treaties within a period of twelve months, the Beijing Treaty and the Marrakesh Treaty. It was expected that what allowed those treaties to be successfully concluded would prevail again in the course of the meeting and of the 2014 work program. It was only by engagement of the Member States that those two treaties were able to be concluded, allied to a constructive attitude amongst all delegations enabling compromises to be reached and successful outcomes to be achieved in both cases, making all delegations equally happy. The Director General recalled that issues that had not been focused on during the previous 12 months would be revisited since the focus was on concluding the treaties. The longest standing agenda item was the protection of broadcasting, which had been on the agenda since 1998, 15 years ago. He noted that that was the only item present in the Berne Convention, Rome Convention, WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty which had not been updated for the digital environment. All other elements had been updated by the Geneva Conventions or the Beijing Treaty. It was expected that broadcasting was part of those elements which had been properly updated. He reminded the meeting that the Member States had reached a decision on possibly convening a diplomatic conference for broadcasting in 2015, which was very close. Within the three meetings scheduled for 2014, two of them would take place before the WIPO General Assembly in September and one in the last quarter of 2014. It was emphasized that there was very little time available in order to meet the timetable originally established for the possibility of a diplomatic conference, i.e. three meetings to get the substantive framework in sufficient order for everybody to be comfortable with the decision to go to a diplomatic conference in 2015. The Director General encouraged the continuation of the good spirit of Beijing and Marrakesh treaties in order to find a constructive way forward and to agree on the main issues that would constitute the basis of a treaty on broadcasting. He highlighted the fact that there were other items on the agenda. Two days would be devoted to broadcasting, two days for libraries and archives, and one day for education. Those were items that had been foreseen in the timetable that the SCCR had agreed to, several meetings back. It was also pointed out that a rich array of presentations and side events would take place during the week and those side events and presentations would be very much welcomed, since they would help to inform all of some of the latest developments and latest concerns in different areas that came within the scope of the SCCR. The Director General looked around the room and noted that attendance was very high, which was good given the proximity to the end of the year, and thanked all participants for their presence, stating that that was a sign of the constructive spirit that prevailed and the sense of engagement that characterized that area of intellectual property.

ITEM 3: ELECTION OF THE CHAIR AND TWO VICE-CHAIRS

7. The Director General stated that item three on the agenda foresaw the election of a new Chair and two Vice-Chairs, as was customary for the SCCR. The officers elected would be in office for the following four sessions of the Committee and up to the election of the new Chair. The floor was given to the delegates in order to receive proposals in that regard.
8. The Delegation of Algeria proposed that Mr. Abdellah Ouadrhiri, Director General of the Moroccan Copyright Office, should act as Vice-Chair.
9. The Delegation of Bangladesh supported the recommendation of Mr. Ouadrhiri.
10. The Delegation of Japan nominated Alexandra Grazioli, of Switzerland, to act as Vice-Chair.
11. The Delegation of Belarus supported the nomination of Ms. Grazioli.
12. The Director General summarized the proposals, according to which Mr. Martin Moscoso of Peru was to be elected as Chair, and Mr. Abdellah Ouadrhiri of Morocco and Ms. Alexandra Grazioli of Switzerland were to be elected as Vice-Chairs.
13. The Committee elected Mr. Martin Moscoso as Chair and Ms. Grazioli and Mr. Ouadrhiri as Vice-Chairs.
14. The Chair thanked the floor for his election and stated that all countries at the General Assembly had committed themselves to the task of ensuring that the Committee would continue to make progress in developing the copyright agenda throughout the world. The Chair stressed that he would continue in his role of facilitator in order to show that it was possible to construe a legitimate and well-balanced copyright system.

ITEM 2: ADOPTION OF THE AGENDA OF THE TWENTY-SIXTH SESSION

15. The Chair informed the meeting that the Committee had been invited to continue its work on the basis of the mandate received from the General Assembly and discuss protection of the rights of broadcasting organizations, limitations and exceptions for libraries and archives, and limitations and exceptions for educational and research institutions. The Chair asked the Secretariat to announce the program.
16. The Secretariat informed the floor that according to the conclusions of SCCR 25 it had been decided to spend two days on broadcasting, two days on limitations and exceptions, and one day on limitations for educational and research institutions. Regarding the time for the adoption of the conclusions, the Chair said that he would consult with regional coordinators in order to address that issue.
17. The Chair invited the Committee to adopt the agenda submitted in Document SCCR/26/1.
18. The Committee adopted the agenda of SCCR 26.

ITEM 4: ACCREDITATION OF NEW NON-GOVERNMENTAL ORGANIZATIONS

19. The Chair invited the Committee to approve the accreditation of the new non-governmental organizations listed in Document SCCR/26/2.

20. The Committee accepted the accreditation of non-governmental organizations listed in Document SCCR/26/2.

ITEM 5: ADOPTION OF THE REPORT OF THE TWENTY-FIFTH SESSION AND THE INFORMAL AND SPECIAL SESSIONS OF THE STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

21. The Chair invited the Committee to adopt the Report of the 25th Session of the SCCR and the reports of the informal and special sessions of the SCCR, mentioned in Documents SCCR/26/3, SCCR/26/1 and SCCR/2/13.

22. The Committee adopted the report of the 25th Session of the SCCR and the reports of the Special Session of the Standing Committee on Copyright and Related Rights and the Inter-sessional Meeting on the Protection of Broadcasting Organizations of the SCCR.

GENERAL STATEMENTS

23. The Chair invited the delegations to deliver their opening statements.

24. The Delegation of Trinidad and Tobago, speaking on behalf of the Group of Latin American and Caribbean States (GRULAC), pointed out the achievements and the conclusion of the treaty to facilitate access to publications by visually impaired persons and persons with print disabilities. The Delegation thanked the Chair for his role as a facilitator of that outcome. It stated that the lesson that had been learned was that when the Committee worked in a constructive manner it could succeed not only for the benefit of the individual delegations but also for the benefit of millions of blind and visually impaired persons across the globe. The Delegation expressed the hope that the same constructive, flexible spirit that produced the Marrakesh VIP Treaty would be reflected during the course of said session. The Delegation expressed its commitment to the work program on limitations and exceptions for libraries and archives, for educational and research institutions, and for persons with other disabilities. It said that it was of the view that the SCCR should continue its text-based work towards appropriate legal instruments. The implementation of the Marrakesh VIP Treaty, an agreement on limitations and exceptions for libraries, and limitations and exceptions for those with other disabilities were issues of paramount importance to GRULAC. The Delegation highlighted the importance of the Treaty and the consultations devoted to libraries and archives occurring between the 26th and 27th sessions of the SCCR. It said that continuing along that path would be entirely consistent with the organization's commitment to the Millennium Development Goals of the United Nations, the Development Agenda of WIPO, and would enhance the development of millions of people across the world. The Delegation expressed its willingness to continue discussions on a treaty for the protection of broadcasting organizations in accordance with the decisions adopted by the General Assembly and the mandate adopted in 2007.

25. The Delegation of Poland, speaking on behalf of the Central European and Baltic States (CEBS), noted that, in the previous two years, the SCCR had managed to successfully resolve two main issues of the agenda, resulting in the Beijing Treaty and the Marrakesh Treaty dealing with access to published works for persons who were blind, visually impaired or otherwise disabled. A reasonable and balanced approach and continued respect for copyright and creativity were underlying values of the work of WIPO as a whole. There was hope that new standards of protection of intellectual property at the international level could be achieved. The Delegation noted that, for a long time, CEBS and its members had shown support for expediting

the work on establishing standards for the international protection of broadcasting organizations in the form of a binding treaty. It stated that working out a proposal for a treaty for the protection of broadcasting organizations was the main priority for the work of the SCCR with a view to concluding a Diplomatic Conference in that regard in the nearest possible future, preferably in 2015. Ensuring adequate protection for broadcasting organizations at the international level was most necessary and long overdue. The Delegation pointed out that it had a roadmap for the future work of the SCCR, which could be put before the General Assembly of WIPO and its members for consideration. It stated that it was ready to discuss the roadmap with interested groups and Member States and looked forward to further constructive and fruitful discussions on the issues relating to the activities of libraries and archives and educational, research and teaching institutions. It proposed that the work of the Committee should enable a deeper understanding of how best practices under the existing international legal system functioned in the Member States. It was high time to build upon the great achievements and hard work of the Committee. Future work should reflect the most recently adopted treaties and the floor should be opened for discussions on the implementation of Committee's successes and national experiences of present Member States. It proposed that there was also space for the Committee to work together on new issues that would take into consideration the conditions of the digital and globalized environment, in addition to the licensing of rights.

26. The Delegation of Japan, speaking on behalf of Group B, welcomed the efforts that had been made by all Member States to deepen the Committee's mutual understanding of the protection of broadcasting organizations during the inter-sessional meeting in April and during the 25th Session of the SCCR. The Group expressed its expectations to increase the focus on text-based discussions in order to develop an international treaty which would update the protection of broadcasting and cablecasting organizations in the traditional sense, maintaining the momentum for consensus. It expressed the view that further understanding was needed on certain key issues, such as definitions, scope of application and the list of rights (or protection) to be granted. Regarding exceptions and limitations in favor of libraries, archives and education and research institutions, the existing copyright framework enabled the institutions to fulfill their roles both in the analog and digital world, and Group B was ready to exchange experiences and work further with all Member States so that the exceptions and limitations could function in the best possible way within the existing framework of the international treaties and conventions. The Delegation foresaw that in 2014 and 2015 the Committee would accomplish its goal of a treaty for the protection of broadcasting organizations and develop a deeper understanding of exceptions and limitations in the international copyright system.

27. The Delegation of Bangladesh, speaking on behalf of the Asian Group, hoped that the side events organized throughout the week would shed light upon certain issues. It expressed the desire to achieve progress in the trading of copyright throughout the world. The SCCR had recently achieved remarkable success. The Beijing Treaty had been concluded in 2012 and the Marrakesh Treaty in 2013. It stated that the Committee would again be able to contribute substantially in the areas of limitations and exceptions to copyright and move toward a more balanced international copyright system. The Delegation reaffirmed its commitment to efforts toward developing an international treaty for the protection of broadcasting organizations. Technical consultations would take place to resolve outstanding issues in the finalization of said issue pursuant to the 2007 mandate of the General Assembly. WIPO's activities should not be limited to the protection of rights. It should take into account a broader social and developmental context. The Delegation stressed its commitment to the development of a comprehensive, inclusive framework on limitations and exceptions for libraries and archives, educational and research institutions, and persons with other disabilities. It was a common responsibility of the Committee to find effective and expeditious solutions to outstanding issues, to provide access to educational and informational materials, and to guarantee access to copyrighted works for persons with genuine needs. The new international instruments would be all important steps to achieving those objectives. The existing text for the protection of broadcasting organizations would provide a basis for ongoing work on the issue of limitations and exceptions for libraries

and archives, educational and research institutions, and for persons with other disabilities, and would provide a foundation for the future undertaking to develop and adopt an international document.

28. The Delegation of the Russian Federation, speaking on behalf of the Group of Central, Asian, Caucasus and Eastern European States, acknowledged the substantial importance of regulations in the field of broadcasting organizations in view of technological progress. It pointed out that progress could be achieved within the framework of a Diplomatic Conference in 2015, enabling stakeholders to take advantage of the treaties' success. It added that a transparent approach should be adopted for limitations and exceptions and indicated that it was important to create a positive and constructive atmosphere. The Delegation looked forward to participating in the discussions included in the agenda.

29. The Delegation of China stated that the Chair had demonstrated experience and practical aptitude in Morocco, during the Diplomatic Conference held in June 2013, and expressed the conviction that, under the Chair's leadership, all Member States would continue to keep the Beijing spirit alive so that new progress would be achieved.

30. The Delegation of Algeria, speaking on behalf of the African Group, stated that issues under discussion by the Committee were of key importance and emphasized particular issues linked to limitations and exceptions, which would give balance to the international copyright system and respond to the private and public interests in an equitable manner. The Marrakesh VIP Treaty had paved the way and delegations should continue along the same path. It pointed out that the African Group worked ceaselessly to implement the work program of the SCCR as confirmed at the 25th Session regarding limitations and exceptions for libraries and archives, in addition to limitations and exceptions for educational research institutions and for persons with other disabilities. It stated that those issues would also be looked at in 2015. The African Group had submitted a legal text on those issues in the continuing debate to adopt a treaty on limitations and exceptions and believed that a discussion and exchange of good practices and national experiences in those fields would be extremely useful. Regarding broadcasting organizations, the Delegation reaffirmed its desire to continue to work on the issue, following a signal-based approach in keeping with the 2007 mandate of the General Assembly to update the protection of broadcasting organizations and cable distribution in the traditional sense.

31. The Delegation of the European Union highlighted the efforts and the constructive approach during the successful Diplomatic Conference that resulted in a treaty to facilitate access to published works for visually impaired persons and persons with print disabilities. The Delegation was of the view that the special case of access to books for the benefit of those people required intervention at the international level. The Marrakesh VIP Treaty was an important step toward improving access to copyrighted works for persons with visual impairments or print disabilities throughout the world, but more work should be done to ensure the effective implementation of the treaty. The Delegation attached great importance to the negotiations relating to the protection of broadcasting organizations and was encouraged by the efforts made in the meeting held in April, yet acknowledged that work remained to be done before the convening of the Diplomatic Conference. It insisted upon having a common understanding of the objectives, regarding the problems to be addressed and protection to be granted, as a matter of priority. Concerning the limitations and exceptions in favor of libraries, archives, educational and research institutions, the existing international copyright framework provided sufficient leeway for Member States to ensure meaningful limitations and exceptions in the analog and digital context while respecting the necessary balance to ensure that copyright would continue to be an incentive and reward for creativity. There was no need for further rule-making at the international level in that regard. The Delegation was, however, ready to continue debating and working with all WIPO Member States so that those limitations and exceptions could function in the best possible way within the framework of the existing international treaties. The exchange of experiences and best practices would be the way forward on that issue.

Concerning the future working program for the Committee, the Delegation urged that, after the exceptional two years in which both the Beijing and the Marrakesh treaties had been adopted, it was time to concentrate on the implementation of the commitments made under those two and other previous treaties. The Delegation proposed that the role of the Committee should not be limited to rule-making, stating that it should provide follow-up on the rules instead in the form of discussions so as to provide meaningful evidence which would underpin future and existing policies, and to work on the issues of facilitating the licensing of rights in the new digital and multi-territorial environment.

32. The Chair announced that the Committee would continue to listen to the important statements of the non-governmental organizations (NGOs) throughout the 26th Session and immediately proceed to the issue of the protection of broadcasting organizations during the first two days of the session. The Committee would then, at some point in time, listen to the statements made by the NGOs.

ITEM 6: PROTECTION OF BROADCASTING ORGANIZATIONS

33. The Chair stated that the 25th Session of the SCCR had focused on the protection of broadcasting organizations on the basis of document SCCR/24/10 which was the working document for a treaty on the protection of broadcasting organizations. The Chair explained that the document would act as a basis for text-based discussions held by the present Committee. The Chair informed delegations that the Delegation of Japan had submitted a new proposal contained in document SCCR/26/6. The Chair explained that an informal consultation had been held in Geneva during the 12th and 13th of April, chaired by the distinguished Ambassador of Japan. The Chair invited the Vice-Chair of the informal consultations to submit a summary of their results, highlighting that that would be of great use in order to make substantive headway in the field.

34. Ms. Alexandra Grazioli, from the Delegation of Switzerland and Chair of the 2013 inter-sessional Meeting on the Protection of Broadcasting Organizations, explained that the inter-sessional meeting held in April 2013 had been organized according to a decision made during the 25th Session of the SCCR, when it had been decided, based on document SCCR/24/10, that the Committee would work together to make progress on the protection of broadcasting organizations in order to consolidate a text that would enable the Committee to convene a diplomatic conference during the next meeting of the General Assemblies. During the three days of discussions, the delegations had committed themselves constructively to make headway based on the core of document SCCR/24/10 and the consolidated text to enable the Committee to make the decision to convene a Diplomatic Conference. The delegations were able to obtain clarifications on their positions and submit points of view on three main issues of the draft treaty: the beneficiaries, the scope of application and the extent of protection. The outcome of the meeting was that many joint approaches had been shared, enabling the Committee to address, in an effective manner, open questions within the framework of the immediate and following two sessions, so as to have a decision by the Assemblies in September 2014 and be prepared to convene a diplomatic conference. The inter-sessional Chair reported that the inter-sessional meeting had demonstrated a very strong commitment to finalize the work on the issue of broadcasting within the framework of the mandate provided by the General Assembly.

35. The Chair noted that two additional sessions of the Committee would be held before the General Assemblies of 2014, which would enable the provision of a report and possibly the preparation of a text to enable a diplomatic conference to be convened. The Chair declared that it would be possible if the Committee were to have a positive working attitude and flexibility in seeking a consensus. The Chair explained that the Committee would work on the basis of working document SCCR/24/10, also taking into account a new document SCCR/26/6 and any possible comments relating to the two documents.

36. The Delegation of Japan declared that it would explain its new proposal for the protection of transmissions over computer networks by traditional broadcasting organizations. It explained that working document SCCR/26/6 had been put on the table as a result of the previous discussions, but there still remained certain issues that needed to be discussed. Based on the recommendations that Member States had already shared, there had been a common understanding that the objective of the proposed treaty would be to deal with broadcasting piracy. The Committee was therefore requested to establish a consensus on the issue of the scope of application. It explained that one of the issues that had been discussed was the submission of new proposals for the protection of broadcasting organizations' transmissions over computer networks. It emphasized that its proposal was a comprehensive new proposal designed to assist with document SCCR/24/10, a Working Document for a Treaty on the Protection of Broadcasting Organizations. It explained that, in the new proposal, it had presented alternatives. It drew attention to Article 6B, Article 6 alternative, based on its original proposal. It said that when delegations considered the Japanese proposal, they should bear in mind the relationship between the proposal and Article 6 alternative B. Paragraph 1 established that the protection of signals transmitted over computer networks by a broadcasting organization was within the scope of application of the proposed treaty. The Delegation continued that it had provided alternatives in its proposals, one being transmission signals excluding on demand transmission signals, the other being simultaneous and unchanged transmission signals of the broadcast. It explained that on the other hand paragraph 2 stipulated that a country could decide whether or not to provide protection for transmission signals over networks by broadcasting organizations. It noted that at the same time the paragraph provided that if a party were to provide protection for transmission signals over computer networks, it should provide national treatment to other signatories. It declared that the provision gave the Contracting Parties flexibility in handling transmission signals over computer networks in their domestic roles. Paragraph 3 established that the domestic legislation in each country could decide the extent of the protection for transmission signals over computer networks. Article 6 covered the concept of Article 14 of the Convention as a whole. The purpose of the proposal was to find common ground on the issue of the scope of application. It clarified that while providing protection of traditional broadcasting signals was the obligation of the Contracting Parties of the treaty, protection of transmission signals over computer networks was discretionary and would be introduced among the parties that provided the protection or something similar thereto. The Delegation explained that another issue to be decided was whether or not the proposed treaty would cover transmission signals over computer networks. It opined that the Committee should address the issue and reach a consensus on the inclusion of transmissions over computer networks among the Member States. The Delegation stated that it had prepared a paper on the issues to be discussed for the proposed treaty, which was similar to the one it had circulated at the last meeting, and hoped that it would accelerate the discussion.

37. The Delegation of the United States of America informed the meeting that it was pleased to be resuming a substantive discussion of the proposed broadcasters treaty. It explained that, as several groups and delegations had noticed, this was the first SCCR since the conclusion of the successful Marrakesh Treaty, which had been achieved under the leadership of the current Chair. It hoped that the positive atmosphere would continue throughout the week. The Delegation observed that the Chair's text before the Committee served as a basis for the Committee's work, with the understanding that it was open for amendments, additions or deletions. Given the limited time available, the Committee was requested to focus on three key elements: the beneficiaries of protection, objects of protection and the scope of the rights to be granted. It declared that progress on those three elements would allow the Committee to move forward and make it possible for the other provisions to fall into place more easily. The Delegation explained that, when the SCCR last discussed broadcasting in the April inter-session meeting, it had put on the table a proposal for a way forward to resolve the divergent approaches that had been under discussion for more than 15 years. It suggested that the

Committee should focus on the core of current problems for broadcasters in order to find common ground around the right. It explained that such actions would involve focusing on the unauthorized retransmission of broadcast signals to the public, regardless of which technology was used for retransmission. It declared that such an approach would be consistent with the General Assembly's mandate on the right, and that the right would not create extra layers of rights in the content of broadcasts. The Delegation stated that it looked forward to providing a more detailed explanation of said approach when the Committee proceeded to discuss the topic of the rights to be granted. It stated that it saw the new proposal from Japan as focusing primarily on the objects of protection and that it very much welcomed it as a new idea and helpful contribution toward moving the discussion forward. The new chart that the Delegation of Japan had circulated had been a useful clarification of the issue. On the basis of the first reading of Japan's proposal, it was seen as providing hopeful flexibility to Member States in choosing how they wished to approach the issues. The Delegation explained, however, that it needed to study the exact scope in greater detail, along with what was being proposed, and that it looked forward to asking Japan more questions as the discussion proceeded.

38. The Delegation of Japan, speaking on behalf of Group B, observed that Group B had attached importance to the effective protection of broadcasting organizations in the digital era. It explained that at the latest session in April all Member States had actively participated in a discussion of the definitions, scope of applications, beneficiaries and scope of rights based on working document SCCR/24/10. It declared that the session had resulted in a better understanding of the positions. It explained that Group B believed that such an exchange of views paved the way for future consensus. On the other hand, Group B had not reached a consensus on certain key issues partly because of different national legal systems and practices. The Delegation explained that Group B noted that important tasks lay ahead of the Committee and that, given the situation, it was necessary to continue discussions on those issues and items in order to breach the remaining gaps between Member States. In relation to the scope of the applications stipulated by Article 6, it took note of the Japanese proposal, which would also be taken into account. The Delegation explained that Group B believed that continuous efforts and flexibilities could lead to a common ground on which Member States could all agree to a convening of a Diplomatic Conference for the adoption of a new treaty at the 2014/2015 meeting. It declared that Group B stood as committed as ever to work toward a consensus that would enable broadcasting organizations to be given effective protection at the international level.

39. The Delegation of the European Union explained that the draft treaty on the protection of broadcasting organizations was a high priority for the European Union and its 27 Member States. It explained that it was keen to see an improvement in the international protection of broadcasting organizations adapted to the specific problem in question, while at the same time being respectful of the rights of right holders in works and other protected subject matter carried by broadcast signals. The European Union informed the meeting that it was committed to working toward the goal and toward a consensus that would enable broadcasting organizations to be given adequate protection at the international level. It explained that, having the working document for a treaty on the protection of the broadcasting organizations on the table, it was now time for emphasis of the various positions, mapping the differences among the delegations, and working toward compromise. The Delegation added that the European Union and Member States looked forward to the discussions on the working document and reserved the right to propose modifications and textual comments thereto. Regarding the Japanese Delegation's proposal, it asked whether the two alternatives that were provided in Paragraph 1 had a different meaning or different wording for the same idea (i.e. that protection was to be granted to simultaneous and unchanged transmission signals over computer networks). It stated that it had not been clear as to whether the two alternatives had a different meaning or were simply worded differently. The Delegation also inquired as to whether it had understood correctly that the proposed protection would be 100 per cent optional.

40. The Delegation of Iran declared that the SCCR was an example of the success and creativity of WIPO. It declared that the work of the Committee over the course of the previous three years, particularly the last achievement of facilitating access to visually impaired persons throughout the world, was an illustration of the fact that the Committee had successfully carried out its work. The Delegation attached great importance to the work of the Committee on developing a legal framework for protecting broadcasting organizations against signal piracy. Since the inception of the issue, there had been negotiations and three major studies had been conducted. The issue was mature enough to reach a positive solution. The Delegation said that it was delighted with the progress that had been made in the area and that it hoped to see a binding treaty which would protect the legitimate rights of broadcasters, especially those arising from the fixation and production of broadcasting materials, which should be defined and should not conflict with the other interests of the right holders. The Delegation observed that the Committee should take care not to create a second layer protection for broadcasts through the proposed legal framework. The Delegation noted that the new framework should be used to distinguish the beneficiaries: broadcasters, copyright owners and society at large. In the case where the broadcasters were not considered as copyright holders, the Committee should think of ways to ensure the legitimate interests of the copyright holders, such as re-sale rights which had been recognized in the laws of the European Union and various other countries. The Delegation pointed out that there was a provision in the draft articles, which emphasized that the proposed treaty should not prejudice the protection of copyright, related rights and subject matter carried by broadcasting signals, but that it should define in precise terms the cooperation in practice. It proposed that the Committee should also try to reach a definition of broadcasting that would fit into the new digital environment and which would address the needs and requirements of broadcasting organizations. The Delegation stated that the Committee should not restrict society's free access to knowledge and information in order to balance the treaty for the benefit of right holders, broadcasters and society at large. Nor should the Committee ignore the economic dimension of the subject matter. It believed that technology could ensure the effectiveness of the process. In order to fulfill the Committee's objectives of establishing a binding, effective treaty, the Delegation said that it was imperative to work on the basis of the single document before the Committee. The Delegation informed the meeting that it was ready to engage in negotiation, article by article, and hoped to see a tangible result at the end of the process.

41. The Delegation of India reiterated, regarding Article 6 of the new document submitted by Japan, its commitment to proceeding with a signal-based approach toward developing a treaty for the protection of broadcasting and cablecasting organizations in the traditional sense that was consistent with the mandate of the 2007 WIPO General Assembly. It believed that there were basic principles which should be adhered to when discussing or negotiating a treaty. The broadcasting organizations protection treaty, as with the international treaties on copyright and related rights, had conferred upon the owners of copyrights and related rights the exclusive right to communicate their work to the public. The owner could resort to different means to exercise the right, as broadcast and cablecast in the traditional sense were such mechanisms to exercise the right. The Delegation noted that, for the purpose of exercising the right through broadcast or cablecast, the help of the intermediate broadcasting or cablecasting organization, which made the financial investment for the purpose of converting of the work of the owner to the signals for the purpose of the broadcast or cablecast, was required. Broadcasting and cablecasting organizations had neither a standing of their own nor an absolute right. All rights were subject to, and subordinate of, the rights of the owners of the copyright or related rights, and that hence they could not be conferred with any right that would subordinate the right of the copyright or cable right owner. It recalled that the right to prohibit as reflected in some of the provisions. The Delegation proposed a number of amendments and alternate proposals to the basic text of the working document on the protection of broadcasting organizations, and proceeded with the discussion. It announced that it would send a soft copy to the Secretariat in the course of the following two days.

42. The Delegation of Poland, speaking on behalf of CEBS, thanked the Japanese Delegation for its proposal and seconded the European Union's questions. It informed that it would deliver a general statement on broadcasting organizations that had been prepared by CEBS. CEBS was of the view that there was an urgent need to produce more up-to-date, effective, proportional protection of the activities of broadcasting organizations. The work on a new treaty should reflect the substantial technological development achieved by the audiovisual sector. The proposed treaty should be future-oriented and based on the technological neutrality principle, and the protection of the broadcast should take into account the financial and organizational reports and the creativity of the broadcasters, with editorial work related to the vast amount of choices and legal responsibilities. CEBS appreciated the work done by all of the delegations that resulted in document SCCR/24/10, which had formed the basis for the Committee's negotiations. It supported focusing on the beneficiaries, the scope of application and the catalog of rights to be protected and believed that agreement on the three elements should be the goal, as it would bring the Committee closer to a decision on scheduling a Diplomatic Conference. The Delegation highlighted its engagement in the work on the schedule of its meetings, and on the substantial improvements of the single text, and added that it would seek flexibility and mutual understanding from all negotiators.

43. The Delegation of Japan explained that if the former alternative in Paragraph 1 of the Japanese proposal were to be chosen, webcasting would be subject to the protection of the treaty. If the latter were selected, the Committee would use the scope of the application for the treaty. The Delegation explained that, as specified in Paragraph 2, each signatory could decide whether or not to give protection for broadcasting organizations, even if the Committee agreed to employ the former, Paragraph 1, and the signatories could give protection only to simulcasting, broadcasting as a matter of choice.

44. The Chair proposed that there might be interest in studying the Japanese proposal, and that the intention was to start specific work, article by article, stressing important issues, such as the object of protection, scope of protection and the beneficiaries, as had been suggested by the Delegates who had taken the floor. The Chair proposed that the Committee should use the remaining time to think about the proposals on the table and make additional comments. The Chair requested that the Non-Governmental Organizations give their comments, referring to the offer made at the beginning of the meeting. The Chair asked them to bear in mind that their opinions on the subject of protection for broadcasting organizations would be welcome. NGOs would have an opportunity later on to develop the ideas on other items on the agenda. The Chair requested therefore that delegations think about the Japanese proposal. The Chair opened the floor for interventions from Non-Governmental Organizations.

45. The Representative of the *Federación Ibero-latinoamericana de Artistas Intérpretes y Ejecutantes* (FILAE) declared that the text it had received was somewhat immature. There was one particular problem. The mandate of the General Assembly was the protection of the signal and to go any further than protecting that signal presented a number of difficulties. With regard to the definitions, it found that there was some confusion between the concepts of broadcasting and rebroadcasting. It declared that protection of the broadcasting organization was supposed to concentrate on traditional broadcasting, but expressed that the Committee could not, of course, ignore progress in digital technology, and therefore the Japanese proposal appeared interesting because it was flexible and allowed Member States to provide for more extensive protection or less extensive protection. It added that it seemed that the proposed treaty would not have any connection to the Convention where there was a definition of the rights of the broadcasting organization, including the right to prohibit. It expressed that it would like to hear more opinions thereon. Regarding limitations and exceptions, the Representative believed that most legislation that had developed copyright did contain specific provisions that protected the limitations and exceptions for libraries or research institutions, adding that such protection was highly developed in Spain. The law provided that one could preserve examples and reproduce them. The Representative was sorry that most of the films from the 1920s in the United States

of America were lost, adding that said law would have helped. The Representative continued to say that certain exceptions and limitations existed already, and that right holders would unite in disapprobation at the tragic issue of piracy in the country, plus the fact that it was impossible to look at the duplication of the images. It concluded that it governments should be urged to do something about the serious problems rights holders had encountered and to take that into account.

46. The Representative of the Japan Broadcasters Association (JBA), looking at the issue of broad protection for broadcasting organizations, declared that it had been a long, winding road since the issue had first come up on one of the agendas of the SCCR, well over a decade ago. It declared that there seemed to be a long way still to go in order to have a treaty because of the issues left unsolved. The Representative expressed that there was an especially great chasm on the issue of scope. Some wanted protection of broadcasting signals over computer networks and others opposed the idea. It declared that the discussion would remain deadlocked while this issue remained unresolved, and that the Committee could not proceed to a Diplomatic Conference because it could not fulfill the 2007 Mandate of the General Assembly. It declared that it was fortunate that the Delegation of Japan had suggested an Alternative B for Article 6 that might bridge that chasm. It explained that, according to the proposal, each signatory could decide to what extent it would provide protection of broadcast signals over computer networks, and that the protection would be guaranteed by national treatment. The Representative expressed appreciation for the idea, and declared it to be worthy of consideration because it was very flexible and provided a well-balanced solution. It added that the Marrakesh Treaty was established as a result of the compromise and cooperative spirit among Member States, which provided a good example, showing that achieving something big internationally needed patience and compromise.

47. The Representative of the Copyright Research and Information Center (CRIC) noted that 2012 saw the establishment of the treaty on protection in Beijing and that in 2013 the Marrakesh Treaty was established to facilitate access to published works to people who were blind, visually impaired or otherwise disabled. It noted that protection of broadcasting organizations had been a topic of discussion for the past 15 years, but that, unfortunately, the Committee had not yet reached an agreement. The Representative explained that, for a long time now, digital technology had enabled signals over the Internet. It declared that, accordingly, the establishment of an international treaty was urgent. In order to establish protection for broadcasting organizations, the Committee needed to agree on the objectives, specifics and the objects of protection in accordance with the 2007 mandate of the General Assembly. The Representative declared that the Committee had already come to a consensus that the objective was to stop the infringement of broadcast signals. It proposed that the discussion should focus on the specific scope and object of discussion. On those issues the opinion of the Committee was divided. Some countries contended that protection in the new treaty should extend to traditional broadcast signals but not to extend to transmissions over mobile computer networks. On the other hand, other countries insisted upon protection of transmissions over computer networks in the digital era. The Representative explained that, in working document SCCR/26/10, it had found that issue addressed expressly. It declared that the Committee must resolve the point before going to a Diplomatic Conference, meaning that the Committee would need to compromise and accept the proposal of Japan, which it declared to be a very suitable proposal for compromise on the issue. The Japanese proposal would allow the Member States flexibility on the protection of transmissions over computer networks, so that any Member State could protect transmissions over computer networks, but would have no obligation to do so. It explained that, secondly, national treatment would grant international harmonization, noting that national treatment was a basic and important way of harmonization in the area of copyright and related rights. It declared that the issues should be resolved by reaching a compromise, and that the new proposal of Japan would be a good basis for doing so. It expressed hope that the Committee's substantial progress on the discussion of the specific scope and objectives of

protection would be developed at the session. Such a mission would be surest route to a Diplomatic Conference.

48. The Representative of the European Broadcasting Union (EBU) thanked the Member States that had expressed the need to prioritize the issue of broadcasting within the Standing Committee, as had been expressed by the group of countries from Central Europe and the Baltic States and a number of other delegations. It opined that the issue was now mature enough to finalize the work within the next two or three meetings. It expressed confidence that the Committee could achieve a good result if the commitment was there for all Member States to work on the specific texts. The Representative thanked Japan in particular for its proposal of an alternative for the scope of application. It declared that it was an important step forward to recognize that broadcast signals or other signals transmitted by broadcasters over computer networks or any other network that one could think of were worth protecting simply because they were what broadcasters did and were increasingly obliged to do as well. It added that there were certainly necessary discussions to be had on how reciprocity would work and that said topic would be the subject of discussion in the following days.

49. The Representative of Knowledge Ecology International (KEI) expressed that it remained unconvinced that the time was right to conclude a new treaty for broadcasting organizations. It added that it felt that it was still very premature to set up a Diplomatic Conference in 2015, declaring that there remained major disagreements about the objectives of such a treaty. The Representative declared that the broadcasting entities who wanted a treaty wanted one that would provide Intellectual Property Rights for the broadcast, and that they wanted it extended to new platforms such as cable, satellite, television and, for many present, the Internet. It continued that that was the paradigm for the Internet and necessary for any platform where copyright and theft-of-service laws provided balance with regard to user rights and remedies against unauthorized uses. The Representative added that, to the extent that creative works were distributed through broadcasting networks, they were nearly always protected by copyright. It explained that, in the few cases where a broadcast involved material in the public domain, it would be a mistake to give the broadcaster an intellectual property right merely for transmitting information. It stated that piracy of broadcasting signals was already against the law under copyright and under various national and local laws on the theft of services. It added that the advocates of the broadcasting treaty had not shown that there was a problem in the area of piracy that was protected by the existing laws on the theft of service. The Representative added that the treaty was, in essence, an attempt by corporate broadcasting entities to change the outcome of licensing negotiations by giving broadcasters a right that they would otherwise have to acquire by contract in return for something that they would give the copyright holders. Regarding Japan's latest proposal on the scope of application, it noted that Japan proposed a new Article 6 that would grant protection for broadcasting, cablecasting, protection for the transmission signal, exclusive on demand signals, or simultaneous, unchanged transmission signals of broadcasts over computer networks. It declared that SCCR 26 should first examine the consequences of the Japanese proposal on access to knowledge and consumption of cultural goods. It asked how the Japanese proposal would affect the way that people use YouTube, Facebook, Twitter, Instagram, Bing and many others.

50. The Representative of the International Federation of Journalists (IFJ) explained that it represented 600,000 journalists in 134 countries. The Representative stated that there had been much talk in the background of the session of rebalancing author rights. The Representative expressed that, with regard to the issue of protecting broadcasting organizations, it shared the concerns expressed that the Committee's mandate was to consider the protection of the signal, and believed that extensive further work was required in order to deal with the questions raised by the convergence of broadcasting and networking, which was fundamental to the protection of journalistic works. Looking ahead to exceptions and limitations, it declared that too often those that spoke of re-balancing really meant the weakening of authors in favor of sponsors. It declared that, to do so – in the case of education, for example – it would

raise serious questions about what education was and how it was to be achieved. It added that education was commonly held to be a public good, and that some attempted to argue from this that it should therefore be given cost-free access to primary raw material, which consisted of works of authorship. There had been a disguised promotion of a shift in the fundamental nature of education. The Representative stated that it was commonly agreed that education should be an independent quest to extend and to impart knowledge, requiring not only access to works expressing knowledge but also to specialist educational works. It declared that the requirement of independence argued strongly against those works being funded by patronage or sponsorship against them, being the product of political or religious or commercial interest groups or just those with writing an edit for free. The Representative noted that Johnson, the inventor of the modern dictionary, summed this up, saying that "no man but a blockhead ever wrote except for money". It declared that the question confronting education was, "whose money?" It declared that the only known way to provide independent educational materials was to pay for them at the point of delivery so that the authors - and increasingly the performers in the multimedia work - could be paid for the work they do. There was a place for the collective licensing of works to be reused for educational purposes. The model by which certain exceptions to author's rights operated only in the absence of a collective licensing scheme had much to commend it, as it compensated authors for the reduction of opportunities to syndicate their works that were often overlooked in surviving as a journalist or author. The Representative explained that part of the issue was that publishers told many authors of educational works that they must sign over all rights to the works or not be paid at all. In other words, contracts were imposed upon authors with no negotiation. One of the effects was that many authors did other work to survive. In general, many educational authors were represented and the independence of their educational work might survive, but in other cases, it might be compromised. It had to remain possible to make an independent living as an author to receive fair compensation for the works used, for which ever manner in which they were used, requiring revisiting the fairness of contracts between authors and performers and those intermediaries that distributed their works, including those distributing to schools and colleges, and including broadcasters. It was time for WIPO to seek genuine balance and indeed to initiate positive action to promote through international cooperation the creation, dissemination, use and protection of works used in the human spirit for the economic, cultural and social progress of all mankind.

51. The Representative of the Association of Computers and Communication (CCIA) declared that the Committee had heard how there was rampant piracy of broadcasts despite the fact that all infringement that was solved by relying on existing legal protections for content. Even if entirely signal-based, the Brussels approach was a treaty in search of a problem. It continued that, signals not being fixed, the signal carrying a program, irrespective of the medium through which it traveled, no longer existed when a device capable of making that receptacle received it. The Representative declared that the Committee had heard calls for technologically neutral protections and it recognized how that could be logical, but assured that the results would create an unlimited number of unintended negative consequences. It asked, for example, if it were useful to create international norms to turn any one person that wanted to stream something live on a platform like YouTube into a broadcaster with protection of their signal. The Representative noted that in the United States, the European Union, and indeed other countries, major processes at reassessing copyright in a digital age were underway. Those decision makers responsible for copyright in the European Union, and the register of copyright in the United States, had publicly set the evaluation of copyright working in the digital age. It asked whether, given the shifting sands, a treaty dealing with that could limit national options such as new or overlapping rights, and wondered whether it was really a sensible option.

52. The Representative of the International Association of Broadcasters (IAB) explained that it represented broadcasters from all over the world, especially from Latin America. It added that it also represented the Brazilian Association of broadcasters. The Representative reaffirmed the need for progress to conclude a signal-based broadcasting treaty to protect the rights of

broadcasting organizations in all new platforms. It welcomed the new document proposal from Japan and welcomed the intervention of the United States.

53. The Representative of the North American Association of Broadcasters (NAAB) informed the meeting that it represented broadcasters in North America, i.e. Canada, Mexico and the United States. It added that it had participated in the Committee before, for over 15 years, seeking an update on the rights of broadcasters to protect their signals in the digital environment. The Representative declared that it would not repeat the many arguments and interventions it had made over the years. It stated that many cases had been made to illustrate the need for the treaty. It added that those not familiar with the cases should look to the extensive record that existed at WIPO, consisting of the proceedings of the Committee of Consultations in Geneva, consultations in many regions of the world, research papers and economic studies. It declared that such a vast record should inform the Committee in terms of the need for a treaty. The Representative stressed that it was pleased to hear the constructive commentary put on the record by the United States, Japan, India and others. It declared that the commentary boded well for the substantive work on the treaty that needed to be accomplished in a fairly short time. The Representative noted that many had focused on aspects of the treaty that were not yet resolved. It declared that a few issues had been essentially resolved. It explained that one issue, despite some intervention to the contrary, was that the need for the treaty had been clearly demonstrated. It continued to say that this was why the Committee had carried on for over 15 years, because there was a general consensus that a treaty was necessary. It added that delegations had indicated their willingness to work on the treaty, and that there was consensus that the treaty should be a signal-based treaty. The Representative explained that "signal-based" meant there would be protection of the signal without in anyway interfering with the rights of the content owner. Broadcasters were not seeking to usurp the rights of content owners. The Representative observed that a signal-based approach would protect signals without interfering with the rights of content owners. The Representative added that there was also an emerging consensus that the proposed treaty should look at the current environment of new media. It explained that a treaty dealing with only traditional broadcasting would not be effective in today's digital world. It expressed that, while there might have been a need for flexibility as various delegations wished to embrace the digital environment to a different degree, Japan illustrated an approach that allowed for flexibility and which was worthy of consideration. It agreed that additional work needed to be done, but believed that, if the Committee made it a priority and devoted itself to the subject, progress could be made and that, at the General Assembly the following year, it would be possible to look to a working document that would enable the General Assembly to think about convening a Diplomatic Conference in 2015 to finally conclude said important work.

54. The Representative of the International Association for the Protection of Intellectual Property (AIPPI) supported the continued efforts to conclude a treaty to provide protection for broadcasting organizations. It declared that it desired to join any efforts made by the member countries that were familiar with the problem of the piracy of signals in the international context. The Representative supported the work of the Delegation of Japan who said that the public communication of signals on any platform including over computer networks, needed to be protected. The Representative noted that it would not be possible to conceive of a new treaty if the Committee did not identify hitherto non-identified forms of the use of the signals. It reiterated the urgency of continuing with a new treaty on new technologies and advocated that access to information be guaranteed, but without discarding the rights that had to be guaranteed in favor of the broadcasting organizations themselves.

55. The Chair noted that it had been extremely important to provide space for the declarations of NGOs because they provided important elements to be taken into account in the discussion. The Chair thanked the NGOs for the ideas and comments provided, which would be demonstrated in the work carried out by the Delegations. After the initial statements, where many expressed a desire to work and a readiness to be able to achieve consensus, the time

was ripe for testing all of the statements. The Chair proposed that the Committee begin working on the scope of protection in Article 6, because it had been suggested by some of the delegations as an initial topic for discussion that corresponded to the Japanese proposal. The Chair invited the delegates to consider their contributions to Article 6 and, of course, Article 6/E, on the scope of application and any additional comments or proposed amendments to the Japanese proposal or the text before the Committee. The Chair further proposed that the Committee should continue to develop ideas regarding the issue of beneficiaries and the object of protection. The Chair also stated reminded the meeting that it would be necessary to highlight the fact that the topics were related to one another, and that many calls for creating the necessary balance which the provisions would have with related topics would all be expressed in the articles which the draft treaty had developed. The Chair concluded that, taking all of the above-mentioned into account, there would be a comprehensive perspective for methodological reasons. The Chair added that the Committee would initially focus on the scope of application.

56. The Delegation of Ecuador asked if the Secretariat could make document SCCR/24/10 available in printed form.

57. The Secretariat announced that copies of the document would be made available as quickly as possible outside of the room in all of the official languages. The Secretariat informed that it was the renewal period for adherence to the appendix of the Berne Convention for an additional 10-year term. The Secretariat explained that questions about that matter should be referred to Ms. Geidy Lung. The Secretariat added that the renewal period would end on July 10, 2014. The Secretariat noted that the preliminary list of participants was available outside of the room. The Secretariat announced that the names of those who had signed up today for the first time would be added, and requested that it should be informed if any corrections to the list needed to be made.

58. The Chair adjourned the Session.

59. The Chair proposed that the first part of the afternoon debate should be spent listening to views rather than drafting proposals and asked the Secretariat to describe the proposals that were on the table.

60. The Secretariat explained that Article 6, on the scope of application, had two alternatives: Alternative A and Alternative B. Within Alternative A, there was an alternative to the first paragraph, paragraph 1. Alternative A presented a basic statement according to which protection granted under the proposed treaty would extend only to broadcast signals used for transmission by a broadcasting organization and not to works or other protected subject matter carried by such signals. An alternative to the provision provided that the proposed treaty would provide protection to broadcasting organizations for broadcasts over traditional broadcasting and cablecasting media, to enable them to enjoy rights to the extent that they were owned or acquired by them from the owners of copyrights or related rights. A second alternative provided a more specific description of the boundaries of protection and the specific nature of protection, and also referred specifically to cablecasting. The first alternative did not refer specifically to cablecasting. The second paragraph in Alternative A indicated that the treaty would not provide protection in respect of mere retransmissions by any means. The third paragraph addressed the possibility of depositing with the Director General a declaration to limit the protection provided under the treaty in respect of broadcasts over computer networks to transmissions by a broadcasting organization of its own broadcasts transmitted by other means, provided that such reservation would only have effect for a period not exceeding three years from the date of entry into force of the treaty. Article 3 provided at least one three-year period where there could essentially be a transition period during which protection of broadcasts over computer networks would only cover the broadcasts of the broadcasting organization itself. The terminology in brackets, regarding simultaneous and unchanged transmissions, would be even more specific or strict, providing that broadcasting organizations would only receive protection to the extent

that they were retransmitting their own programming and where the programming was simultaneous and unchanged. The fourth paragraph, referred back to the third, providing that, to the extent that a signatory made use of the reservation just described, the obligation of other signatories provided for in Article 8 would not apply. Article 8 was the national treatment provision. Essentially, if a Contracting Party chose to use the reservation for three years, or rather declare for three years a limitation of protection, the Contracting Party could do that, but then the national treatment provisions would not apply. Alternative B for Article 6 in its entirety – i.e. for Articles 1 through 4 - started out by providing that protection under the treaty would extend only to signals used for the transmission by the beneficiaries of the protection of the treaty, and not to works and other protected subject matter carried by such signals. Alternative B went on to provide that the provisions of the treaty would apply to the protection of broadcasting organizations in respect of their broadcasts, and to the protection of cablecasting organizations in respect of their cablecasts which entailed the explicit inclusion of cablecasts by cablecasting organizations. However, the provisions of the treaty would not provide any protection in respect of mere retransmissions by any means of transmission referred to in Article 5 a, b and d.

61. Article 5 a, b and d constituted the definition section. The Committee was requested to consider the proposal contained in Document SCCR 26/6 from the Delegation of Japan, which corresponded to provision 6bis on the protection of signals transmitted over computer networks.

62. The Delegation of India stated that it would be sending alternative proposals and amendments to the existing articles with regard to Article 6, on the scope of application, it wished to reiterate its proposal, which was in line with its position conveyed earlier in the previous sessions of the SCCR, including the inter-sessional meeting held in April 2013. Under Article 6, the Delegation had declared a preference for the alternative to paragraph 1, and proposed modifications. The Delegation proceeded to comment on the alternative to paragraph 1, as follows: “The provisions of this treaty shall provide protection to the broadcasting organizations for their signals on traditional broadcasting and cablecasting media, to enable them to enjoy the rights to the extent owned or acquired by them from the owners of Copyright and Related Rights.” With regard to Paragraphs 3 and 4, the Delegation requested a deletion in Alternative A, and provided comments with regard to Alternative B. It announced that, in Paragraph 1, it proposed certain amendments to the latter part of the paragraph, where it read: “the protection granted under this treaty extends only to signals used for the transmissions by the beneficiaries of the protection of this treaty”. Instead of “work and other protected subject,” the Delegation desired to mention “not to the programs contained therein, and only to the extent of rights acquired or owned by them from the owners of copyrights or related rights”. It explained that the above was an amendment in paragraph 1 of alternative B for Article 6. It stated that it had additional amendments to propose for the end of paragraph 2 and desired to add the words, “and only on traditional broadcasting media.” Similarly, it requested that “and only on traditional cablecasting media be added to the wording at the end of paragraph 3 after “cablecast”. With respect to paragraph 4, it desired to stop close to “retransmission” and delete everything that came afterward. The Delegation had no comments for paragraph 2, commenting that it was fine with the chosen wording. It also proposed additional paragraphs. The Delegation then commented upon Document SCCR 26/6 which went far beyond the mandate of the General Assembly in 2007, creating independent rights for broadcasting organizations in the signals beyond the contractual terms. The Delegation proposed that the Committee should work to ensure that whatever alternatives agreed upon should be subject to the terms of the contract with the owner of copyright regarding transmission over computer networks. It acknowledged that subsequent paragraphs 2 and 3 gave countries some flexibility at the national level, but declared that it still felt that it would create an obligation for the countries to include the supplementary protection in their law.

63. The Chair opened the floor to questions for the Indian Delegation and asked the Delegation of India to answer questions regarding its proposal.

64. The Delegation of El Salvador asked the Delegation of Japan, regarding its proposal on Article 6 bis, alternative A, subparagraph 3, if the Committee would be limiting protection to what was established therein over computer networks and whether Document SCCR 26/6 referred to Paragraph 3 of alternative A, or whether it was something quite different.

65. The Delegation of Japan clarified that its proposal on Article 6 bis, was based on Alternative B of Article 6, and that therefore it was different from alternative A of Article 6.

66. The Delegation of the European Union and its member states reserved the right to provide further comments on Article 6 at a later point in the discussion. It then asked the Delegation of India about the ending of Paragraph 1, which provided that protection would be limited only to the extent of rights owned or acquired from the owners of copyrights or related rights. It asked if that would mean that protection would extend only to the parts of broadcasts where there were underlying rights that had been acquired by broadcasters, and not to other parts of broadcasts. It explained that it viewed the provision as creating a limited type of protection, but that it was unclear as to what it related to.

67. The Delegation of India thanked the Delegation of the European Union for its question. It explained that its understanding of the right of the copyright holder was something that was being worked on. It noted that some other organizations or intermediaries were involved.

68. The Chair announced that it would be appreciated if delegations raised questions as to the scope and intent of the proposal of India, explaining that such questions would allow the Committee to have a more exhaustive debate on Articles 6B and 6 bis, as had been proposed by the Delegation of Japan.

69. The Delegation of Guatemala opined that a treaty on the protection of broadcasting organizations was extremely important. It added that, as to the question of protection dealt with in Article 6, it appeared to be a principle that appeared in the Rome Convention and in other treaties. It explained that since the principle was a part of existing treaties it would have to be retained.

70. The Delegation of Colombia proposed that the new treaty should contain very clear articles and be clear as to its objectives. It explained that what it wanted to do was to ensure that transmissions were protected, in view of the development of new technologies. It declared that the Committee had to be therefore very cautious, since the definitions of terms would be critical to the proposed treaty. It explained that, when talking about signals, the Committee should know exactly what was meant and define the word "signals" clearly. The Delegation declared that the Committee must achieve three objectives. First, clearly define exactly what signal was to be protected by the proposed treaty. Secondly, it would need to clarify that the signal and its content were two separate things, and that content was not what the proposed treaty sought to protect, but rather the vehicle by which the content was transmitted. Another element was to clarify whether the proposed treaty would address only simulcasts or simultaneous transmissions, or first transmissions. Thirdly, there was need for a transition period. The Delegation stressed that, in the case of Colombia, Alternative A was the one that achieved those three objectives. It declared Alternative A to be the clearest and simplest expression of those objectives.

71. The Delegation of Venezuela declared that it did not share a view that would support the proposed treaty. It explained that looking at Article 17 of the Charter of Human Rights it did not think that human rights should be granted to legal persons.. Speaking of protection, the Delegation stressed that it was unclear what the Committee was going to do about the legal and technological divide. It asked where developing countries would find the necessary resources, and inquired into who would be dealing with the technical assistance required to bridge the

gaps. The Delegation explained that, if talking not about content but rather means of transmission, it appeared to be somewhat of a euphemism, stating that if one decided to place restrictions on the truck that was going to transfer food, it would not protect that food, and food security would not be affected. It continued on the other hand, that said trucks would in all probability be unable to reach their destination. The Delegation declared that it did not see anywhere in the draft treaty questions of technical assistance. It explained that there had been some mention of limitations, but that it had been left up to individual countries. It seemed that the proposed treaty was designed for multi-national communications organizations rather than protecting the citizens. i.e. nationals of the countries concerned.

72. The Delegation of Japan explained that it wished to clarify the preliminary comment made by the Delegation of India about its new proposal on Article 6bis. First, it explained that the 2007 General Assembly mandate had set the protection of broadcasting by traditional broadcasting organizations as a minimum standard. It continued to maintain that, on the other hand, it had enabled signatories to take flexibility measures for the protection of transmissions over computer networks as prescribed by the country's domestic system. It explained that it sought a point of compromise in that regard. The Delegation declared that it believed its proposal to be in line with the 2007 mandate of the General Assembly, and secondly, it provided an option for the protection of transmission signals over computer networks. The Delegation added that it preferred Alternative B, which was already contained in its proposal.

73. The Delegation of the European Union and its member states opined that the principle expressed in Article 6, Paragraph 1, whether pursuing Alternative A or Alternative B, was the same. The protection granted by the treaty would be granted to broadcasts and not to the underlying works. The Delegation declared that said principle was uncontroversial and should be in the Article. It preferred the wording of Alternative B, but noted that the Committee would have to be aware of the fact that deciding on particular wording would only be possible when the Committee had decided on the definitions, because whether and how the terms broadcast, signal, or program were defined would affect the actual wording of that Article. It declared that it certainly supported the idea that protection should be granted to broadcasts and not to underlying works. The Delegation declared that Paragraph 2 was probably the main paragraph of the Article, because it provided that protection should be provided with respect to broadcasts. It proposed that the big question to be resolved was the following: what was a broadcast under the proposed treaty? It found the non-paper proposal that had been prepared by the Delegation of Japan was very helpful, as there were points describing various transmissions. The description provided for "traditional broadcasting including cablecasting," had always corresponded to the position of the European Union and its Member States, according to which transmissions over the air and by wire, including cable and satellite, should be protected. With regard to transmissions over the Internet, simultaneous and unchanged transmission of broadcasting programs, simulcasting, it had always been the position of the European Union and its Member States, that it should be given the minimum level of protection. The Delegation declared that the question before it related to points 2 (transmission of webcasting), 3 (on-demand transmissions) and 4 (deferred and unchanged transmissions), where it was open to discuss those transmissions. It understood the proposal submitted by the Delegation of Japan, both in Alternative B, Paragraph 4, but also in the new proposal discussed that morning that the Delegation of Japan had proposed excluding protection for on-demand transmissions. The Delegation requested confirmation of said understanding, and explained that it would also be interested in hearing other delegations' views on that topic. It added that it found Document SCCR 26/6 to be a very interesting proposal although it represented less than the Delegation wished to see in the treaty, as it wished to provide protection for simulcasting as a mandatory protection. It added that it would further reflect on the matter, and treat the proposal with full consideration.

74. The Delegation of Japan declared that, in the course of discussion of the proposed treaty, it believed that no Member States had formally advocated that the proposed treaty should

protect on-demand transmission signals over computer networks so far. It explained that, as a result, it had excluded on-demand transmission signals from the scope of application. The Delegation declared that the Committee should bear in mind that, in a lot of countries, on-demand transmissions over computer networks was already conducted by webcasters, other than traditional broadcasting organizations. The balance between webcasters and traditional broadcasting organizations should be carefully considered.

75. The Chair announced that the Committee would move on to Article 7, beneficiaries of protection, since it was a related issue. The Chair explained that Article 7, which appeared in Document SCCR 24/10, Article 7, dealt with beneficiaries of protection. The Chair requested that the Secretariat provide an introduction to Article 7 before discussion.

76. The Secretariat explained that Article 7 concerned the beneficiaries of protection. The Secretariat continued that Paragraph 1 stated that Contracting Parties would accord the protection provided under the treaty to broadcasting organizations that were nationals of other Contracting Parties. The Secretariat explained that the second paragraph addressed the question of what entities were actually nationals of other Contracting Parties, and provided that they would be understood to be those broadcasting organizations that met either of the following conditions. The first possibility was that the headquarters of the broadcasting organization were situated in another Contracting Party. The second possibility was that the broadcast signal was transmitted from a transmitter situated in another Contracting Party. The Secretariat explained that, in either of those cases, the broadcaster would be considered a national of another Contracting Party. The Secretariat added that there was also a footnote with an explanation of broadcasting organizations whose headquarters were situated in a Contracting Party or whose broadcasts were transmitted, and that it also included some other elements. The Secretariat explained that an addition submitted by the Delegation of Senegal was contained in footnote 10 which included broadcasting organizations broadcasting via satellite from the place at which under the control and responsibility of the broadcasting organization, the program carrying signals intended for direct reception by the public, were introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth. That was an addition to the elements of nationals of Contracting Parties that had been offered by Senegal, and was contained in a footnote. Otherwise, there were two elements in the alternative in 2.1 and 2.2. The Secretariat explained, regarding paragraph 3 – or, in the case of alternative B, paragraphs 3 and 4 - that in Alternative A, there would be one paragraph 3, after the two paragraphs just described. The Secretariat continued that it would provide that, in the case of a broadcast signal by satellite, the transmitter would be understood to be situated in the Contracting Party from which the uplink to the satellite was sent in an uninterrupted chain of communication, leading to the satellite and down towards the earth. Paragraph 3 had similar, but not exactly the same, language to that contained in footnote 10, as proposed by Senegal. Alternative B would have two paragraphs following 1 and 2, the first being one that referred to satellite broadcasts, providing that, for satellite broadcasts, the relevant place would be the point at which the transmission came under the control and responsibility of the broadcasting organization. A possibility of a notification to be deposited with the Director General of WIPO was contained under Paragraph 4. Through the notification, any Contracting Party could declare that it would protect broadcasts only if the headquarters of the broadcasting organization were situated in another Contracting Party and the broadcasts were transmitted from a transmitter situated in the same Contracting Party. The Secretariat explained that, in other words, the two elements in paragraphs 1 and 2 would need to be the case in said notification. Such notification could be deposited at the time of ratification, acceptance, accession, or at any time thereafter. If the notice were deposited after ratification, acceptance, or accession, it would become effective six months after it had been deposited.

77. The Delegation of Japan explained that the language proposed by the delegations of South Africa and Mexico was slightly different from Alternative B. It sought to ascertain why some of the language used in SCCR/15/2 had been changed.

78. The Delegation of India declared that it had some amendments to propose for Article 7, which it had already conveyed to Secretariat, and requested that the proposal be circulated to the Member States. It explained that, in Article 7, beneficiaries of protection, it preferred Paragraph 1 as it had been in Paragraph 2, i; in Paragraph 2 ii, it proposed, in place of the existing paragraph, inserting language such as “the signal was transmitted from a transmitter situated in another Contracting Party.” Regarding Paragraph 3, the Delegation declared a preference for Alternative A, instead of Alternative B, and proposed modifications in Paragraph 3, Alternative A. The Delegation added that it preferred deletion of Alternative B, for Paragraph 3 and 4, as India did not advocate for reservations in the proposed treaty.

79. The Chair asked the Delegation of India to highlight the specific changes it had made in its proposal.

80. The Delegation of India explained that, in Paragraph 2, i, it had introduced "and" in the end, instead of the "or" that was in the existing text. It added that, in ii, it had removed “broadcast,” and then “the signal was transmitted.” The Delegation explained that, in Paragraph 3, Alternative A, it had made some amendments to the existing proposal. There were some changes after the comma in the second line, which had come from the existing proposal. In Paragraph 3, in the case of a broadcast by satellite, “the signal” had also been removed from the original text of 24/10. It noted that “the signal” was removed, and that the text proceeded to read “shall be understood to be situated in the Contracting Party from which, under the control and responsibility of the broadcasting organization;” explaining that the words “under the control and responsibility” corresponded to the new element that had been added. It believed that the wording had again been amended where it read “the signals intended for direct reception by the public are introduced into an uninterrupted chain of communication.” The words “from uninterrupted chain of communication” were the same, but the text had been modified in Alternative A of Paragraph 3 and it preferred deletion of Alternative B.

81. The Delegation of the Russian Federation explained that it sought to direct questions toward the experts who had been working on the proposed treaty for more than 15 years. The Delegation declared that it had begun to feel that the Committee was not proceeding along the path of progress and moving toward the adoption of a new treaty which would take into account the realities of modern times. In its opinion, the Committee seemed to be going right back to the 1960s. It explained that, at the beginning of the Committee’s conversation on the draft instrument, it had defined a far broader concept of beneficiary. When looking at Articles 6 and 7, it was obviously very important, even essential, for the Committee to return to the very definitions themselves. A broadcasting organization was defined as an organization which did broadcasting, and that was all. It asked where cablecasting had been included, and where other alternative types of broadcasters carrying out said broadcasting had been included. The Delegation asked, in the case of a broadcaster being a private person, whether no protection would be provided at all for that private individual. Regarding the scope of application and beneficiaries, the Delegation declared that, the Committee had to connect the three basic provisions in a very clear manner, otherwise it would end in a stalemate: first, definitions, second, scope of application, and third, beneficiaries. It added that those standards could not exist in isolation from each other and had to be very closely linked.

82. The Delegation of Senegal declared that it wished to respond to Article 7, because there was a proposal from Senegal in Footnote 10. It declared that, if the footnote was taken together with the Indian proposal, it was possible to find an alternative that would be more acceptable. For that reason, the Delegation followed India in requesting the deletion of Alternative B for Article 7.

83. The Chair announced that there was a need to link Articles 6 and 7 (scope and beneficiaries), to the definitions contained in the proposed treaty. The Chair agreed with the

suggestion from the Delegation of the European Union that the Committee needed to work on the basis of agreements related to the principles. The Chair declared that, if the Committee were to agree on the principles first, it would then facilitate the discussion, and it would become easier to translate the principles into wording. The Chair invited delegates to present their views on the principles that had brought the Committee together to grant protection to broadcasting organizations. The Chair proposed that it might be time to discuss informally, suggesting that the regional coordinators should perhaps engage in informal discussions, together with a group of countries, with a view to finding links between the proposals that had been presented. The Chair added that said objective was designed to facilitate progress.

84. The Delegation of the European Union and its member states expressed that it desired to use the occasion to continue speaking about Article 7. It declared that it supported Paragraphs 1 and 2, and preferred Alternative B for paragraphs 3 and 4. The Delegation explained that, at the same time, it agreed with what had been expressed by the Delegation of the Russian Federation, according to which the matter that what was really at stake – i.e. at the core of the discussion - was the definition of a broadcasting organization. The Delegation declared that Article 6 was very much linked to Article 5 on definitions. It noted that during the inter-sessional meeting in April 2013, where the Committee had held fairly extensive discussions on the issues of beneficiaries, scope of application and scope of protection, it was understood that the proposed treaty should apply only to broadcasters and cable casters in the traditional sense. It declared that another conclusion had been that the definition of broadcasting organization needed further work, and that possibly some kind of approach would merge Alternative A's definition of broadcasting organization, and Alternative B's definition of broadcasting organization in Article 5. It noted that one of the problems had been that the elements within Alternative A had been discussed and were held not to have been sufficient to exclude other entities from the scope of protection. The Delegation noted that it had been discussed that the Committee needed some other elements. It continued that one of the possibilities was to include the drafting of an Alternative B where the terms broadcasting and cablecasting were defined, and use them to define broadcasting organization and cablecasting organization. It emphasized that the definitions of broadcasting and cablecasting organizations had nothing to do with the question of which types of transmissions, and on what platforms, should be protected. It thought it had been agreed that the Committee needed to work further on the definition of broadcasting organization, and announced that the Delegation was prepared to carry out work on the basis of both alternatives A and B of Article 5.

85. The Chair declared that a consensus seemed to exist as to the type of entity to be protected under the proposed treaty. The Committee needed to have a link between Articles 7 and 6, and Article 5, which contained definitions. The Chair asked the delegations if it was agreed that the proposed treaty would protect traditional broadcasting organizations, or whether it should also protect organizations that were traditional cablecasting organizations. With regard to the beneficiaries of protection, the Committee would first have to give a general answer to the preceding questions to enable an understanding of what the various positions were before it could go into the details of the text.

86. The Delegation of Belarus thanked all the delegations for their work on the draft, and thanked the representative of the Russian Federation for expressing ideas that Belarus shared. The Delegation proposed that the Committee needed to move forward *inter alia* on the protection of rights of broadcasting organizations. In response to the Chair's questions, it declared that the Republic of Belarus was of the view that the essence of the organization that formed the signal was of no significance. The Committee had to grant protection to the electromagnetic signal and financial investments had to be made to make that electromagnetic signal and then transmit it. An international standard needed to be developed for the protection of rights of both broadcasting and cablecasting organizations, because the issue was protection of the carrying signal. The issue of the transmission of signals over the Internet had become very topical and the Committee could provide standards making it possible to protect the signal

when transmitted over computer networks. The Delegation explained that it was grateful to the Delegation of Japan, because the standards provided under Article 6 referred precisely to computer networks, not only to Internet networks and would make it possible to extend the protection of rights of broadcasting organizations with respect to transmission of signals over any networks, both Internet, Intranet and other types of networks. Regarding beneficiaries, it was unnecessary to restrict the concept of broadcasting organization to only a legal entity, because it was not possible under the legislation of all countries to organize/categorize broadcasting organizations as legal entities. When using the term legal entity, the Committee was narrowing the circle of beneficiaries under the draft treaty. It was possible and advisable to consider extending protection to those organizations as identified in Alternative A for Article 7 of the draft treaty, which transmitted a signal from transmitters found in one of the Contracting Parties, and not only to those broadcasting organizations whose headquarters were located in one of the Contracting Parties.

87. The Delegation of Japan declared that the works to be protected in the proposed treaty were signals transmitted by traditional broadcasting organizations, as a minimum standard. All Member States shared the common understanding that at least traditional broadcasting by traditional broadcasting organizations should be protected. In addition to the obligatory protection for traditional broadcasting signals, its proposal provided the Contracting Parties with flexibility for the protection of transmission signals over computer networks, which was intended as a compromise.

88. The Delegation of Venezuela questioned whether the mandates from the 2001 or 2007 General Assemblies were still valid. The world had changed much over the preceding seven years.

89. The Chair referred the Delegation to the General Assembly's agreement on the basis of which the Committee would continue to work.

90. The Delegation of Brazil supported the idea of a joint approach to Articles, 5, 6 and 7 as the Articles were intertwined. Specifically regarding Article 5, the Delegation underscored the fact that the success of the discussions on the definitions of beneficiaries would rely on a flexible approach that could encompass the different regulations in different countries. In Brazil, broadcast activities had no relation to cablecasting. In this regard, it stressed the need to find language which could accommodate the different international systems under discussion.

91. The Delegation of the United States of America, explained that it agreed with the delegations of the European Union and its member states and the Russian Federation about not reopening issues where the Committee had already reached an understanding. Much progress had been made in discussing the coverage of broadcasting and cablecasting organizations which indeed had been foreseen in the mandate from the 2007 General Assembly. The fundamental question was whether these types of organizations would be protected when they sent signals through different types of delivery mechanisms. It understood simulcasting to be one question, whether over the air or through cable and which involved already a broadcast or cablecast. Webcasting had been covered by the United States proposal in 2007, and had led to a number of concerns being expressed about unfamiliarity with what exactly webcasting was and who was a webcaster. Japan's new proposal was interesting and provided options on how to deal with both simulcasting and webcasting which left it to Member States to decide when and whether they wanted to cover those types of delivery mechanisms for broadcasting and cablecasting organizations. It ensured that once a country had made a decision as to which protections should be covered, it would be entitled to reciprocity under the treaty. The proposal provided a way forward for some Member States.

92. The Chair declared that the Committee was indeed grateful for the Japanese proposal, because it tried to bridge the gap between the interests of various delegations. The Chair also

thanked the Delegation of India for its proposal, which sought to amend the draft language with a view to achieving consensus.

93. The Delegation of El Salvador explained that it was still considering the Articles before it. With regard to Articles 5, 6 and 7, it agreed with the way in which they had been handled, as it believed that the Committee needed to consider the most basic elements of the proposed treaty. It welcomed the Japanese proposal, and explained that it was reflecting upon the content of the proposal which was timely, relevant and important. It also welcomed the Delegation of India's proposal which reflected El Salvador's own reality and addressed the concerns of developing countries. As a preliminary comment, Paragraph 1 of the Indian proposal was acceptable. Regarding Article 7, beneficiaries of protection, the Delegation agreed with the content of Paragraph 2, but wished to continue discussions thereon.

94. The Chair proposed discussions of Articles 6 and 7, which addressed the scope of the treaty and its beneficiaries and subsequently Article 5 concerning definitions.

95. The Delegation of the United States of America proposed that the Committee discuss Article 9, regarding protection for broadcasting organizations, before discussing Article 5 because it seemed that some aspects of the choice of definitions would relate to both the scope and object of protection and the rights themselves.

96. The Chair then opened the floor to comments on cross-article issues as well as comments related to the articles mentioned.

97. The Delegation of Japan, speaking on behalf of Group B stated that there was a general consensus in the group on beneficiaries and types of broadcasting to be included in the scope of application, but differing views on Internet transmissions. Some members had felt that at least simulcasting should be protected in an obligatory manner, and that other items of transmission over the Internet could be further considered. The Japanese delegation was of the view that transmission over the Internet should be optional rather than obligatory and reported that on-demand transmission could be excluded from the subject matter to be protected although it would depend on the detailed definition of "on-demand".

98. The Delegation of Belarus proposed on behalf of the Group of Central, Asian, Caucasus and Eastern European States (CACEES) that the scope of the Treaty should be extended to broadcasting organizations and cablecasting organizations. The beneficiaries under the Treaty should be both the broadcasting and the cablecasting organizations although it had not discussed whether to consider those organizations and those transmissions as traditional or not. The signals should be protected and it was proposed to include within the definition of broadcasting organizations those that transmitted their signals over satellite. Signals should be protected however they were transmitted. The proposed treaty would not in any way affect the rights of the authors of the work, or of the users or the producers of phonograms. It fully supported that the rights of the broadcasters should be protected on the Internet and proposed that protection should be extended to include broadcasting, satellite broadcasting and other ways of making public broadcasts through computer networks, while taking into account the approach of some countries that had indicated that a reservation should be possible with respect to the protection of broadcasting organizations on the Internet.

99. The Delegation of India requested clarity on the mandate of the 2007 General Assembly and asked whether the Committee was working within those parameters or whether it was digressing or trying to interpret the boundaries established by the mandate.

100. The Delegation of Trinidad and Tobago, speaking on behalf of the Group of States of Latin America and the Caribbean (GRULAC), reported that the Group had discussed the scope of application but added that more time was needed for consultations.

101. The Delegation of Poland, speaking on behalf of the Central European and Baltic States (CEBS) stated that protection should be up to date, effective and technology-neutral. It added that it would be unacceptable if the signals protected against piracy were only those transmitted over the air or by cable and not those transmitted over the Internet. The beneficiaries of protection should be traditional broadcasters and cable and, as far as Internet was involved, simulcasting and deferred and unchanged transmission of broadcasting programs. Webcasting could also be included and it supported the view that on-demand transmissions, which were based on multiple transmissions at the same time, should be included within the scope of protection.

102. The Delegation of Senegal, speaking on behalf of the African Group welcomed the methodology which had been adopted on concepts to be included in the Treaty. It asked whether the Committee should confine itself strictly to what the mandate provided or rather interpret it more broadly, and questioned whether more progress could be made until an agreement on this point had been reached. It also asked whether the Committee was allowed to interpret the mandate in a broad sense.

103. The Delegation of the European Union and its member states considered simulcasting as the minimum level of obligatory protection and expressed openness to discuss other proposals while securing adequate protection for broadcasting and cablecasting organizations. It was open to consider transmissions mentioned in points 2, 3 and 4. Regarding point 3 relating to on-demand transmissions, it stressed the importance of ensuring that services and transmissions such as red button services (i.e. where there was a choice of transmission made by the recipients who could watch different programs - for example, sporting events - at the same time) would be protected. The discussion had focused on on-demand transmissions and how they should be defined, but it stressed that this separate issue was very important to the Delegation. Regarding the discussion on the scope of the mandate, it added that the diagram was very much within the mandate of the General Assembly from 200, which stated that the Committee should be looking to protect broadcasting organizations and cablecasting organizations in the traditional sense.

104. The Delegation of Senegal stated that it understood the Delegation of Belarus' view to be that a signal should be protected, whatever the nature of the transmission, and that there was even the possibility that protection might be extended to the Internet even, if a reservation could be made. It asked the Delegation of Belarus what, in its view, would be the contents of that reservation.

105. The Delegation of Belarus stressed that the countries of CACEES supported the position that, since technological development was progressing, the international treaty should protect the rights of broadcasting organizations on the Internet. However, there should be a discussion about retransmission and deferred retransmission. It proposed that there should be a reservation in the treaty allowing for countries to provide an alternate type of protection according to national legislation. It stressed that such an approach would be a compromise and that it would also be possible not to do so.

106. The Delegation of Canada declared that it was encouraged by the turn taken in the discussion towards the principles based on the Japanese diagram. It viewed that creation of a common understanding in the underlying concept was a necessary prerequisite to be able to pursue text-based negotiations. It proposed that this would allow it to join the consensus that seemed to be developing around the fact that transmission of programs at a time and place chosen by the user should be excluded from the Treaty. It was also encouraged to see the development of models that would give countries flexibilities in implementation. Countries had developed a wide variety of systems to protect broadcasters over the years, and it noted that

the Committee was more likely to achieve success if it could accommodate differences while ensuring effective protection.

107. The Delegation of the Russian Federation declared that CACEES had a unified approach and supported the position expressed by the Delegation of Belarus. It remarked that webcasting had come into existence and that any computer could capture any signal and any broadcast from any organization at any point in the world. The mechanism of international law made it possible to include reservations in a treaty as mentioned by the representative of the European Union and a number of countries, making it possible to create a mechanism that would establish a minimum standard protection for cablecasting organizations according to national legislation. It explained that if there were no cablecasting, for example, in Brazil, then that provision would not apply, or if there were no webcasting in certain countries, then those countries would not protect those broadcasts. A reservation could be included in the proposed treaty as had been done for the Beijing Audiovisual Treaty and the Marrakesh Treaty. It was a very good mechanism which would provide a system protecting the minimum rights of broadcasting organizations. It also encouraged the Committee to look into the General Assembly mandate because 7 years had passed since its adoption.

108. The Delegation of Mexico thanked the Delegation of Japan for providing the Committee with a diagram. It welcomed the idea put forward by the European Union for the reason that great progress had been made the previous day. It declared that at every point Mexico had acted in accordance with the mandate of the General Assembly. Together with the Delegation of South Africa it had put forward a document containing a number of positions and alternative solutions to problems that broadcasting organizations faced. Combatting the piracy of signals, particularly on the Internet, was the main objective of the Committee, and establishing language that would be technologically neutral required a restatement of the beneficiary of protection and avoidance of giving protection to various beneficiaries that might be considered traditional broadcasters. It stressed the need for an international instrument that was adjusted to the new millennium and to new technologies. It welcomed Document SCCR 26/6, as a good step forward toward consensus.

109. The Delegation of Australia thanked the Japanese Delegation for its roadmap and stated that simulcasting should be the minimum obligatory protection. It expressed openness to discussions on the other items, including the approach proposed by the Delegation of Japan but indicated that much would depend on how the Committee would define on-demand services. It would be very important to carefully define the concept of traditional broadcasters and cablecasters.

110. The Delegation of Kenya welcomed both the roadmap and Document SCCR 26/6 which provided focus on what the Committee needed to do, especially with regard to the scope of the proposed treaty. It reminded the Committee that, when referring to the mandate of the 2007 General Assembly, it should not forget that it was responsible for originating that mandate which was put before the General Assemblies for approval. It should not be treated as though it were cast in stone. Seven years was a long time in terms of technology. The mode of transmission in 2007 was not necessarily the mode of transmission of 2013. Most countries were moving toward digital networks and the Committee needed to look at the issue of transmission over digital networks. It stressed the importance of talking about a technology-neutral approach, and welcomed the roadmap provided by the Delegation of Japan. It expressed doubt about the issue of protection of on-demand transmissions, recognizing it to be an issue that was very close to the European Union. The proposal on Article 6 gave the Committee flexibility, as the main purpose, per the mandate, was to update existing international protection. The Committee looked at the various challenges that broadcasting organizations had been facing in the recent past and which had not been adequately addressed by the existing international agreements.

111. The Delegation of India noted that it had asked for clarity on the mandate of the 2007 General Assembly and had received views of the other delegations emphasizing that 2007 was seven years back. It stated that the field of broadcasting and the Internet were constantly evolving. Every day brought new developments in that field and it proposed that if the Committee was not comfortable with the mandate, it should consider whose responsibility it was to re-interpret the mandate which would have to be done by the General Assembly. It stated that there was a clear digital divide existing in the world with regard to developing countries and least developed countries. It proposed that either the Committee should limit the signal-based approach in a traditional sense, as was agreed earlier due to the flexibility by those delegations who wanted that treaty at that point in time, or if the Committee desired to negotiate according to another parameter, it had to be brought before the General Assembly for interpretation.

112. The Delegation of Ecuador proposed that the Committee spend time thinking about the implications of this treaty for other rights holders. It expressed there was a need to take into account the rights of artists, performers and others in connection with the proposed Treaty. It declared that issues such as difficulties in licensing and restrictions of access also needed to be taken into account in order to move ahead with the negotiations. The new forms of Internet transmissions had implications that perhaps had not yet been evaluated and needed to be considered in terms of the impact on new rights. It declared all of the above-mentioned to be important matters for consideration in order to move forward, proposing that the Committee should look carefully at the mandate given by the General Assembly.

113. The Delegation of the United States of America offered its perspective on the General Assembly's 2007 mandate and declared that the question of whether the Committee could ask the General Assembly to revisit its mandate was an issue. It understood that a number of delegations did not want to do that and desired instead to continue to work within the scope of the mandate even if it was from 2007 - which was some time ago. The work the Committee was engaged in and what had been done the day before in both the formal and informal sessions was completely consistent with the existing mandate in that it talked about protection for broadcasting organizations and cablecasting organizations in a traditional sense. It expressed that its understanding of those terms was that they were intended to rule out anyone who might be engaged in activities over the Internet that would be considered as webcasting. Identifying those engaged in such activities had been an area of concern among the views expressed by the Committee in 2007. The objective of the mandate was to have a definition of what broadcasting organizations and cablecasting organizations were and there was a common understanding that there were certain kinds of entities engaged in those activities in a regular way which did not mean that the mandate ruled out providing any protection to those organizations in a traditional sense when they used different types of delivery mechanisms from the ones that they had used in the past. The mandate talked about a signal-based approach focusing on the signal rather than the content carried by the signal and it suggested pursuing a compromise focused on the signal-based aspect of the mandate.

114. The Delegation of Japan explained its national stance for the proposed treaty since there was a lack of a unified view toward how to deal with transmission signals over computer networks by traditional broadcasting organizations. It advocated a cautious attitude towards obligatory protection for transmission signals over computer networks under the treaty and stressed that the purpose of its proposal was to find a middle ground to bridge the gap between the different stances of the Member States. Many Member States shared a common understanding that the Committee should adopt a new treaty offering effective and adequate protection for broadcasting organizations in the digital era as soon as possible. It expressed hope that its proposal would provide a breakthrough on the issue.

115. The Delegation of South Africa shared the views expressed by the Delegations of Mexico and Canada. It opined that the proposed treaty should be limited to broadcasting and cablecasting organizations.

116. The Delegation of Colombia stated that the protection under the proposed treaty should be broad enough to cover not only what was referred to as traditional signals but also to include non-traditional signals, which should incorporate cable and Internet and any other future means. It stressed that the formula needed to be broad and flexible enough to cover future technologies for transmission. It declared that the protection needed to be broad enough in scope to cover any type of signal or transmission.

117. The Secretariat explained that the non-papers provided by the Delegation of Japan, provided the basis for the chart which had been an attempt to summarize some of the key issues that needed to be decided on for the broadcasting treaty in graphic form. The color yellow indicated subjects of consensus - subject to regional group consultations - and red represented caveats that the position might not reflect the views of all delegations and that the document was provided solely for the purposes of discussion. Traditional broadcasters and cablecasters seemed to be the subject of consensus with the caveat that it would be important to account for the definitions in national law that might or might not include cablecasters within the definition of traditional broadcasters. Regarding the scope of application (or object of protection), there had been consensus around traditional broadcasting and cablecasting, but that there had been more extensive discussion on other topics, while many delegations had alluded to those issues in their comments in the groups or in their individual country positions. There had been discussion around the general question as to whether transmission over the Internet was included in the mandate and there had been agreement that the issue would have to be resolved. Many countries had agreed that simultaneous and unchanged transmission of broadcasting programs (or simulcasting) was included in the mandate. There had been different positions on the topic of transmission of original programming by webcasting. Some delegations felt that it should not be included and some felt that it should be included as an optional matter. There had been general agreement that on-demand or original programs were not being discussed and should not be included in the proposed treaty, but with the very important caveat of clarifying that the definition of on-demand had to exclude certain cases where there might be options available to the viewer or the consumer. There had been particular concern for the case of red button programming, which allowed one to view different camera angles or even different sporting events occurring at the same time. Regarding the topic of deferred and unchanged transmission of broadcasting programs, there had been some discussion of having some limited ability for time shifting but not necessarily broad inclusion of this type of transmission over the Internet in the scope of application, given that the topic required further discussion.

118. The Chair reported that the discussion had reached a point of clarity on the positions. As he understood it, webcasting made by non-traditional broadcasting or cablecasting organizations should be definitely ruled out of the proposed treaty. It was clear that traditional broadcasting and cablecasting were included, but there was continued discussion over the inclusion of transmissions over the Internet made by traditional broadcasters and cablecasters through the different functions discussed. The Chair reported that some delegations had taken the position that simulcasting was a minimal level of mandatory provision in the proposed treaty, noting that others had expressed the view that it should be an optional inclusion. Webcasting, when made by traditional broadcasters and cablecasters, could be included in the scope, depending on the understanding of the General Assembly mandate which was under discussion. The Chair opened the floor to discussions on Article 9.

119. The Secretariat explained that Article 9, relating to the protection of broadcasting organizations, provided for two alternatives, Alternative A and Alternative B, which were submitted to the Committee for consideration. Alternative A provided for a short list of exclusive rights: the right to authorize a limited number of acts of exportation which included the retransmission of broadcast signals to the public by any means, the right of performance of broadcast signals in places accessible to the public, and the use of pre-broadcast signals.

Paragraph 2 of Alternative A gave the Contracting Parties flexibility to determine the conditions under which the acts under paragraph 1.2 and 1.3 could be exercised, provided that sufficient protection was adequate and effective. Alternative B provided for a broader list of exclusive rights, including: post-fixation rights, rights of fixation, a right of direct or indirect reproduction, a right of retransmission by any means, communication to the public, making available a transmission by any means, and making available to the public. Paragraph 2 of Alternative B, similar to paragraph 2 of Alternative A, provided flexibility for the Contracting Parties to determine the conditions under which the rights could be exercised provided that the protection was adequate and effective. Paragraph 3 of Alternative B provided that, with respect to the exclusive rights that were provided in paragraph 1 (mainly the rights of reproduction, the right of communication to the public, the right of making available, the right of transmission and the right of making available to the public), Member States could provide a right to prohibit instead of the exclusive right of authorization, provided that a notification was deposited with the Director-General of WIPO. Paragraph 4 of Alternative B, relating to the protection of pre-broadcast signals (signals prior to broadcasting which were signals not directly intended for reception by the public) was similar to the language of Alternative A, but used a different wording.

120. The Delegation of the United States of America explained that it had proposed back in the inter-sessional meeting in April that the Committee should look toward a new compromise position on the rights to be granted in the proposed broadcasting treaty. It had laid out some general principles at that time as a means of trying to cut through the divergent approaches that had been on the table for a number of years, and which were still reflected in the existing text. It had promised to give more thought to the matter and flesh out its suggestion for a compromise in more depth later on, whereupon it proposed that it would take the opportunity to elaborate upon what it had been referring to. As a preliminary matter, it explained that it was talking about providing protection to broadcasting and cablecasting organizations in the traditional sense as referred to in the General Assembly's mandate. It envisioned, as a possible landing point for compromise, a single right, rather than a catalog of rights, focusing on the core problem facing broadcasters today: the piracy of their signals while they were being sent out to the public or being prepared to be sent out to the public. The idea was to give broadcasters control of retransmissions of their signals to the public, adding that the approach would avoid any protection for the content that was being broadcast and would not provide any post-fixation rights. The right would be one to authorize retransmission and it would involve retransmission over any medium, so it would be technologically neutral. There was not much point in preparing a new treaty which would not protect against piracy over all technological means including the Internet. The form of retransmission that would be controlled would be limited to simultaneous or near simultaneous retransmission. Simultaneous would essentially entail live broadcasts but "near simultaneous" would have to be defined as "a transmission that was delayed only to the extent necessary either to accommodate time differences in different locations or to facilitate technical transmission of the signal." The element of retransmission to the public was important, so that the proposed treaty would not affect private uses. The proposed treaty would include pre-broadcast signals. This approach provided a potential area for compromise and could be short and simple while not creating more rights than absolutely necessary. It would confirm and clarify the protection that broadcasters most needed at the international level and would enable prevention of signal piracy over the Internet, including pre-broadcast signals. It would allow flexibility and each country could provide a greater range of rights in its domestic law. The proposed approach could be fruitful and might enable the Committee, after 15 years of discussion, to achieve something narrower than had been put on the table previously, but still very focused, which could be a productive way forward.

121. The Delegation of India introduced an alternative to emphasizing the right to authorize, stating that broadcasting organizations should enjoy the right to prohibit re-broadcasting if carried out without authorization. The re-broadcasting of a signal through traditional broadcasting meant causing the broadcast to be seen or heard in public on payment of any

charge and the fixation of a signal for the purpose of re-broadcasting. Notwithstanding anything contained in Paragraph 1, the rights therein would be subject to the extensive rights acquired or owned by the broadcasting organization. The provision would apply to the protection of cablecasting organizations with respect to the cablecasts on traditional media. Broadcasting organizations would have a right to prohibit anyone from re-transmitting broadcasts or pre-broadcast signals and would have a further right to prohibit, subject to the extent of rights acquired or owned by them, unauthorized broadcasting or re-broadcasting of pre-broadcast signals or signals over computer networks or by any other means. It preferred wording that would emphasize in terms of a right to prohibit rather than a right to authorize.

122. The Delegation of the European Union and its member states stated in relation to Article 9 that Alternative B was closer to its position, though there was still discussion to be had on the exact wording. The right of re-transmission should be as broad as possible, should refer to re-transmissions on all platforms and should include re-transmissions whether they were simultaneous or based on fixations. The Delegation supported the inclusion of the right of making fixed broadcasts available in the proposed treaty as well, meaning the right of re-transmission where the recipient of the transmission chose the place and the time of such transmission. The Delegation said that it would also be interested in providing other rights, such as rights of fixation, reproduction of fixation and distribution of fixation, though it understood that a number of delegations were not interested in going as far. Regarding Alternative A, the Delegation stressed that its position with respect to the performance of broadcast signals in places accessible to the public for commercial advantage or using very large screens was that, a right of public performance in places accessible to the public were to be taken into account, it should be limited only to places accessible to the public against payment of an entrance fee as provided in the Rome Convention. It would not be prepared to go further than that and would additionally seek protection of pre-broadcast signals. With regard to the proposal made by the Delegation of the United States of America, it was narrower than what the European Union desired to see, but was nevertheless a very interesting proposal which it desired to explore further. Regarding the proposal made by the Delegation of India, it expressed interest therefore, especially with regard to the text relating to the protection of re-transmissions over computer networks. It was necessary to have a right for broadcasting organizations to protect themselves from re-transmissions over computer networks.

123. The Delegation of Kenya requested documentation from the Delegation of the United States of America regarding the approach that it had presented. It explained that it had found the approach interesting and desired to examine it in greater detail.

124. The Delegation of the United States of America explained that it did not have language for the proposed treaty text but that it could make its intervention available in writing.

125. The Delegation of Kenya stated that, regarding Document SCCR/24, it preferred Alternative B to Article 9 for the reason that Alternative B offered more flexibility and captured the realities on the ground in terms of the issues faced by broadcasting organizations. It requested clarification in relation to the Indian Delegation's proposal, asking why the Indian Delegation chose prohibition as opposed to authorization. It found the first sentence regarding the enjoyment of the rights to prohibit if done without authorization rather confusing, and requested clarification on that particular issue. It also found the continuous reference to obtaining copyright rights from copyright owners to be a little confusing. It expressed confusion as to why the Committee had focused on the issue of obtaining authorization as that was an issue which the Committee had already decided upon when it indicated that the object of the protection was the program-carrying signal, which was very clear. It emphasized that the Committee was not dealing with issue of the underlying copyright and reiterated its request for further clarification.

126. The Delegation of India explained that the language of a right to prohibit, which was contained in the document, was a negative right and that broadcasting organizations could prohibit uses that were not authorized. It explained that it was clearly pursuing a signal-based approach and looking at the extent of the rights to be granted. The right to prohibit was clearly a negative right and a right to authorize would not add anything new.

127. The Delegation of Mexico thanked the Delegations of the United States of America and India for the latest proposals and what they had put on the table. In respect of transmission, it asked whether the proposal went beyond the language of the Rome Convention regarding re-broadcasting and whether the reference to near simultaneous re-transmission took delayed signals into consideration when the delay was due to changes in time or because of schedules. Regarding signals, it asked whether the protection which was sought for pre-broadcast signals was similar to that provided by technical means. The Delegation congratulated the Delegation of India with regard to Paragraph 5, and asked with regard to Alternatives A and B and the joint proposal by South Africa, whether the possibility of reciprocity was provided.

128. The Delegation of India explained that the first line of Point 1 provided that broadcasting organizations would enjoy the right to prohibit if carried out without authorization. It continued that Point 3, relating to making a fixation of a signal for the purpose of re-broadcast without authorization, emphasized the creation of a copy, making another version without authorization.

129. The Delegation of the United States of America explained that, in terms of retransmission, it did intend to go beyond the concept of re-broadcasting in Rome. It understood that issues might arise in terms of translation and declared that, while the terminology in English might be clearly distinct, such was not the case in Spanish or other languages. In response to the second question, about whether it intended to cover delays in transmission because of a change in time or scheduling, it answered yes. The intent had been to define "near-simultaneous" to include delays for adjusting to time differences in different geographical locations. Regarding the question as to whether the Delegation's aim was to provide protections for pre-broadcast signals similar to technological protection measures, it explained that the goal would be to provide legal protection without the use of technological protection measures when pre-broadcast signals were retransmitted without the authorization of the broadcaster. It was also possible that the person sending the pre-broadcast signals to the broadcaster could use technological measures in order to prevent piracy of the signals. It noted that technological protection measures could be used as a practical matter, but that was not the focus of the language.

130. The Delegation of Ecuador thanked the Delegations of the United States and India for their proposals and asked the Delegation of the United States whether it had submitted its proposal in the form of a written text. Turning to the Indian proposal, it suggested that the words "and cablecasting" should be added after the words "traditional broadcasting". It declared that if cablecasting were added after broadcasting it would make the point clearer.

131. The Delegation of India declared that it was open to the addition of including cablecasting along with broadcasting, acknowledging that it would make the meaning complete.

132. The Delegation of Japan thanked the Delegations of the United States of America and India for their proposals. Noting a lack of sufficient time to study the matter, it reserved the right to make a comment on said proposals at a later stage and proceeded to comment on protection for broadcasting organizations. With respect to Article 9, Paragraph Roman Numeral C, Alternative A, regarding pre-broadcasting, it explained that Japan had adopted a cautious attitude toward granting broadcasting organizations the exclusive right of the use of pre-broadcasting signals, which could result in an expansion of the scope of the discussion and consequently cause disagreements among the members. It explained that it preferred Article 9, Alternative B, Paragraph 4, for its flexibility about what kind of initiative should be taken under

each national law. It stressed that the most important right to be tackled under the proposed treaty was the protection of simultaneous or near-simultaneous transmissions. Providing this right was difficult because it was difficult to view the shift and that, consequently, broadcasting organizations did not have enough protection from signal piracy.

133. The Delegation of South Africa expressed keen interest in the proposal from the Delegation of the United States of America and welcomed the opportunity to study it further. With regard to Article 9, it stated that it preferred Alternative B for the reason that it was quite comprehensive.

134. The Delegation of the European Union and its member states welcomed the proposal of the Delegation of India specifically with regard to Article 9 i.e. recognition of the need to act against transmission over computer networks. It stressed the fact that said proposal marked a very important step forward in the Committee's discussions. Seconding the Delegation of Kenya, it asked the Delegation of India about the meaning of the reference to the fact that a broadcast had to be protected only to the extent of rights acquired and owned by the broadcasting organization. Similarly, it wondered why that was required because the types of protection that were being discussed were separate from the protection of underlying rights. It requested an explanation of that particular point and supported the Delegation of Japan's comments regarding pre-broadcast signals. It also felt that protection of pre-broadcast signals did not necessarily have to be provided by means of an exclusive right and felt that it was quite possible to have flexibility in that regard. The Delegation said that it supported the comments from the Delegation of Japan vis-à-vis the right of making available and stressed that such a right was very important indeed.

135. The Delegation of India explained that, regarding its position on demand transmissions, even if the definition of "on-demand" were clarified, it desired more openness than was currently provided in the text and indicated that the matter should be referred to further discussions. Regarding the definition of "on-demand", it suggested that discussions could also focus on the possibility of including certain on-demand transmissions in the protection element of the proposed treaty.

136. The Chair proposed that clarification of the definition might somehow cover concerns. The Chair explained that the information would not be considered in the document but would be placed on record and would be subject to further discussion, i.e. the opinions of all delegations.

137. The Delegation of India explained that it did not consider the document to be a formal document and said that it did not require any special changes or amendments; it was just requesting to have its position noted down on record in order to keep the matter under consideration and open for further discussion. It then explained the differences in what was given as Alternate B pertaining to Point 5. The language used therein was intended to prohibit rather than to authorize. Point 5 was about the contract between the re-broadcaster and the original content owner. It clarified that the sentence should be taken to mean that, subject to the content of rights acquired by means, there had to be a connection in terms of the contract and that any unauthorized rebroadcasting should be blocked. This particular phrase had been included subject to the exchange of rights acquired or owned by broadcasters. The Delegation continued to bear in mind some of the concerns raised by Member States with regard to sporting events, which were not copyrights, but, according to the Delegation's understanding, were a type of content that was also owned by certain bodies. It explained that those bodies transmitted the rights from the broadcasting to the broadcasters, so that the broadcasters acquired them at some point in time. For that reason, it proposed that a right to prohibit should exist.

138. With regard to Article 9, the Delegation of Colombia declared a preference for Alternative B because of its similarity to what decision 351 established. It explained, however, that it had

reservations as to Paragraphs 3 and 4 and proposed that they should not be included because, if adopted, it would go against what the Rome Treaty established. It reiterated that it supported Alternative B, but without Paragraphs 3 and 4.

139. The Delegation of Belarus thanked the Delegations of the United States of America and India for their proposals. It pointed out that the proposal of the United States of America contained a rather novel approach to the definition of the content of the rights of the broadcasting organizations. It declared preference for the approach contained in Alternative B for Article 9. As regards the proposal from India, based on giving broadcasting organizations the rights to prohibit transmission and other acts carried out without the authorization of the broadcasting organization, it opined that the rights of broadcasting organizations with respect to the signal should be formulated as a positive right, a right which provided an exclusive basis to authorize the use of a broadcasting signal in any form in any means within limits defined in national treaties and legislation. It continued that the right to prohibit followed on from the right to use and consequently could be applied only if the former were established. As a result it felt that it could not support the proposal of India on that issue. In light of the understanding that the draft treaty dealt with both the rights of broadcasting organizations and the rights of cablecasting organizations, Alternative B to Article 9 should be corrected in order to take into account the interests of cablecasting organizations. It supported the positions of the delegations of Japan and of the European Union and its member states with respect to the more balanced approach to protection of pre-broadcast signals, and reserved its position on the issue.

140. The Delegation of Senegal endorsed the balanced approach advocated by the Delegation of Belarus and supported Alternative B for Article 9 for the reason that it was coherent with the roadmap established by Japan. It declared that when comparing the targeted categories and the way in which Article 9 was structured, it desired to study the proposal from India in greater detail and give it further thought, whereas it shared the same approach as the delegations of the European Union and its member states and Columbia for Article 9, Alternative B.

141. The Delegation of Poland stated on behalf of the Group of Central European and Baltic States that it was thankful that the discussion of on-demand transmissions had been kept open, and declared that it would like to reserve its position until the definitions had been cleared. Regarding Article 9, it explained that its position was close to Alternative B and proposed that the main rights should be the retransmission of broadcast by any means as broad as possible, whether based on fixation or not. In addition, it supported the inclusion of the rights of making available, and would not keep the window open for other rights of distribution of fixation and public performance against a fee. It also supported those members in favor of protection of pre-broadcast signals.

142. The Delegation of India stressed that it would gladly give further explanations if greater clarity was required of the text of Point 5 of the Indian proposal. It mentioned the rights that broadcasting organizations might hold and those which might have been acquired or might have been owned by them per se. It stated that, according to its broader understanding of the rights that broadcasting organizations might have, it wished to propose that broadcasting organizations should have a right to prohibit unauthorized broadcasting or rebroadcasting over computer networks. It said that it would be open to additions to the text and added that it would be glad to come to an agreement on that. With regard to its second point relating to the distribution rights that had been proposed in Alternative B, it requested that the Committee should consider the situation in India, where the distributors were very different entities from the broadcasters. It emphasized that it had no wish to trample on the rights of one for the sake of the rights of the other and requested that the Committee consider that distributors had a different business model, working in tandem with broadcasters.

143. The Delegation of Kenya addressed the issue of the pre-broadcaster signal and explained that it supported such protection as related to the presentation made by the International

Olympic Committee and the *Federation Internationale de Football Association*. It explained that protection of the pre-broadcast signal was something important that needed to be considered when looking at the protection of broadcasting, and expressed the view that it was one of the biggest issues that broadcasting organizations were dealing with in relation to the different levels of piracy described by the Delegation of Japan.

144. The Delegation of the European Union and its member states thanked the Delegation of India for showing openness to discuss the wording further. It was still not entirely convinced that the phrase “subject to the extent of rights acquired or owned by them” was necessary in that article or in Article 6. It wished to discuss further, because it sounded as if the phrase limited protection to only those parts of the broadcast where broadcasters could give some proof of the rights acquired, adding that it did not see that this would be necessary when granting protection to broadcasts, as the Committee was not looking at the issue of protection for underlying rights, but only for the broadcast. It reiterated that it would be interested in discussing the matter further with the Delegation of India to try to get a better understanding of the meaning of the phrase.

145. The Delegation of Iran thanked the Delegation of India for its flexibility in Paragraph 5. It declared that there was a technical boundary in the reference to “the rights acquired or owned by them” in Paragraph 5, and in the phrase in Paragraph 2, “subject to the extent of rights acquired or owned by the broadcasting organization.” Reflecting upon the broadcasting industry in Iran, it asked the Committee to think that the content that granted the right to broadcast by satellite, Internet or over computer networks authorized the broadcasting organization to do so by means of a contract with the owner of the right. It explained that said case was different from the case where the content owner did not grant the right to broadcast over a computer network and the Internet, where pirates captured the broadcast signal and redistributed or retransmitted it over other computer networks, meaning that the broadcasting organizations were not protected. The Delegation suggested that the reason and rationale for the protection of broadcasting organizations was that broadcasters were owners of both their signal and their broadcasts. The contract mentioned in Article 2, in Paragraph 2 and Paragraph 5, would create ambiguity and problems for broadcasting organizations that were not authorized to rebroadcast or retransmit over networks, but owned their signals. However, the Delegation continued to maintain that even if the broadcasting organization was not allowed to authorize other broadcasters or other parties, as the owner, it should at least have the right to prevent.

146. The Delegation of India thanked the Delegation of Iran for explaining in great detail what it had been trying to say, which was that broadcasters would have the right to prevent unauthorized rebroadcasts to the extent that they had rights. It declared that the Committee was looking at the same thing from different angles, but that the right was really that of the broadcasting organizations to prevent unauthorized use of signals elsewhere.

147. The Chair declared that the submissions had triggered not only initial comments but that they would require further reflection, noting that some bilateral discussions had also been proposed. The Chair thanked the delegations that had submitted proposals - and those that had intended to do so without making any official submissions with a view to looking at ways to close the gaps or to finalize the different positions that were being expressed. The Chair opened the floor to discuss the approach proposed by the Delegation of the United States of America phrase.

148. The Delegation of the United States of America explained that it had received comments asking whether it could give an indication of what its approach might look like in language that could be discussed further. It proposed a discussion as to whether it would be possible and useful to dedicate and use said language as a document for discussion on the screen. The Delegation proposed that the discussion document could be considered as an Alternative C. The proposal would be one sentence written as promised in Article 9, followed by two definitions

and would not be a proposal from the United States of America per se but rather a proposal for discussion of the approach that it had outlined. The text would read as follows: "Broadcasting organizations shall have the right to authorize the simultaneous or near-simultaneous retransmission of the broadcast or pre-broadcast signal over any medium." It explained that there would then be two definitions. One would be a definition of what constituted a near-simultaneous retransmission: "a 'near-simultaneous' transmission is one delayed only to the extent necessary to accommodate time differences or to facilitate the technical transmission of the signal." The second definition would define the pre-broadcast signal and would read: "a pre-broadcast signal is a signal transmitted to the broadcasting organization for purposes of subsequent transmission to the public." The delegation offered this said comments for discussion as a draft alternative to Discussion C so that the Committee could take a look at it in order to facilitate any further consideration or discussion by the group.

149. The Delegation of the European Union and its member states understood the intention of the reference to near-simultaneous transmission. It explained that the reference to "facilitate technical transmission of the signal" was to allow a retransmission that was made to include a fixation along the way and proposed that, in a situation where there was a signal transmitted over the air that was then retransmitted over computer networks, there must be a fixation in between due to technical reasons, and declared that it understood that to be the meaning of the phrase. It requested confirmation of said understanding from the Delegation of The United States of America. It asked whether the intention with regard to near-simultaneous transmissions was to also to cover such retransmissions or transmissions where the recipient of the transmission decided on the time when the recipient watched the retransmission. It proposed an example according to which a certain broadcast was fixed and put on a web site where a consumer could click and decide to start watching it at the time chosen by said consumer-recipient of the retransmission. It understood that the proposed language would not extend to such a situation, but requested clarification so that it could assess the proposal in detail.

150. The Delegation of the United States of America acknowledged that the Delegation of the European Union's questions went to the heart of what looked like a very short and simple proposal. The intention was that if the transmission were made from what one might call an intermediate, a copy, it would still be copied. It explained that that was the way that Internet re-transmissions worked, that it was technologically required. The fixation itself - the copy itself - would not be a violation. The violation would only be the re-transmission which might be made from the copy. It was not proposing a fixation right, only saying that the mere fact that a fixation was made did not stop the re-transmission from being a violation of the right. In response to the question: "what happens when the content is fixed and posted on a web site and the recipient decides on when he or she wants to view it?" It explained that, according to its reading, the circumstance would normally not be covered by the proposed language.

151. The Chair received requests for the floor from delegations interested in making comments regarding Article 5. The Chair explained that the Committee had been discussing Articles 6 and 7, recognized that there was a connection with Article 5, and then started discussion on Article 9.

152. The Delegation of the European Union and its member states explained that it was one of the delegations that wanted to comment on Article 5. It stressed the importance of the definition of broadcasting organization in Article 5. It explained that there had been certain blocks and elements that the Committee had been discussing and that one of the elements related to what was to be defined as broadcast and the object of protection. It explained that the morning's discussions had focused on which transmissions should be protected and covered by the proposed treaty. The second important element to be defined was who the beneficiary of protection should be and it was proposed that in view of the reservations that were made in the morning's discussion, it should be traditional broadcasting and cablecasting organizations. It

noted that said point had been one of the conclusions of the inter-sessional meeting in April which had indicated that the Committee must be very careful in the way it defined broadcasting and cablecasting organizations because it was at the core of the Committee's discussions and it was important to provide for such definitions that covered only those entities that the Committee truly intended to be beneficiaries of the treaty and which did not allow for other entities to benefit therefrom. Alternative A for Article 5 in Point C provided a definition of a broadcasting organization which concentrated on a description of the tasks or responsibilities of one such broadcasting organization, referring to packaging, assembling and scheduling program content and legal editorial responsibility. It proposed that one approach toward finding precise definitions for broadcasting organizations and cablecasting organizations would be to try to merge Alternatives A and C with what was provided in Alternative B, i.e. the definition of broadcasting and cablecasting, and then cablecasting organization and broadcasting organization. It proposed looking at both the responsibilities of the organization and use of the proposals in Alternative B to define in a more precise way what the Committee meant by broadcasting and cablecasting. It acknowledged that there could be other approaches, but it proposed said approach as being able to deal with the question of defining the beneficiary of the proposed treaty.

153. The Delegation of Senegal declared that it intended to try to merge the alternatives as far as possible. Drawing the Committee's attention to the French version on page 3, it noted that there were different notes in the footnote from Senegal that tried to define the most important words. It declared this to be the object of the proposed treaty and said that the Committee could try to unify those alternatives. It pointed out that, when defining "signal" under Article 5.A, the Committee determined that it just meant the transmission of a broadcast. According to Senegal's proposal, it was defined as the process whereby the output signal by a broadcasting organization was taken from the point of origin. It had also defined broadcasting organization in terminology that was intelligible. It explained further that there was first the signal (the means, the broadcasting), and secondly the broadcaster (the body which broadcast and which was the legal body that put the program together and transmitted it). The Committee was requested to consider the proposed definitions for those concepts because the Delegation was of the view that it would enable to time to be saved and reduce the number of alternatives.

154. The Delegation of Japan declared that it desired to explain in further detail the relationship between its new proposal and Article 5.B, which had definitions. It explained that Article 5, Alternative B was based on its original proposal. It stated that an important point of the Japanese proposal was that it defined broadcasting, not broadcasting organizations, in the first paragraph. The Delegation pointed out that, in Article 5.A or B, it defined so-called traditional broadcasting along the lines of the WIPO Performances and Phonograms Treaty or Beijing Treaty. For the concept of broadcasting, it expressed the belief that all the Member States shared a common understanding thereof. It explained that, among the entities conducting broadcasting, it defined those meeting certain requirements as broadcasting organizations in Article 5.C, clearly providing that webcasters were not included as broadcasting organizations. Based on such a premise, by adding Article 6, it established protection for signals transmitted over computer networks by traditional broadcasting organizations within the scope of application of the proposed treaty.

155. The Delegation of Brazil thanked the Delegation of the European Union for its proposal regarding the possibility of bringing the Committee closer to clearer texts. It reiterated that before the Committee was the mandate of the 2007 General Assembly, which mentioned broadcasting organizations and cablecasts as two items that should be dealt with. Regarding broadcasting organizations, it understood that some countries would not be comfortable with the concept of traditional broadcasting organizations.

156. The Delegation of India introduced a proposal with regard to defining broadcasts and broadcasting organizations. It explained that a broadcast meant the transmission of a set of

electronically generated signals by wireless and carrying a specific program for the conception of the general public and it should not include the transmission of signals over computer networks. Broadcasting organization meant the legal entity taking the internal packaging, assembling, scheduling of the program and converting the signals with the authorization of the owner of the copyright and related rights for the broadcast thereof and for reception by the public. Those were the two alternatives that it had circulated earlier.

157. The Chair asked the Delegation of India to clarify which definitions it was presenting.

158. The Delegation of India explained that the signal meant an electronically generated carrier consisting of a specific program whether encrypted or not. Then it proceeded to explain that as an alternate to D, rebroadcasting should be defined as “the simultaneous transmission for the reception by the public of a broadcast or a cablecast but by any other person than the original broadcasting organization.” It added that simultaneous transmission of an original broadcast would be understood as well to be a rebroadcast. The Delegation continued to say that as an alternate to E, fixation meant the embodiment of a signal on a physical support from which the programs could be perceived, reproduced or re-communicated through a device. With regard to F, the Delegation explained that communication to the public meant any broadcast or rebroadcast to the public or the program in a medium or platform other than through a computer network for which the broadcasting organization had obtained authorization from the owner of the copyright or related rights. Regarding G, it explained that pre-broadcast signal meant the transmission of signals before broadcast. It explained that rights and information meant the information that defined the broadcasting organization or the owner of any right to the signal, or information about the terms and conditions of the user's signal and any number which represented the items which were attached to or associated with the broadcast or cablecast or the pre-broadcast signal. Regarding I, it explained that it meant sending transmission for reception by the public. As an alternative to J, it explained that a program meant a discreet package of one or more works protected by copyright or related rights in the form of live or recorded material consisting of media. Finally, it explained that cablecast meant the same as broadcast where the transmission was by wire, excluding transmission by satellite or over computer networks.

159. The Delegation of Brazil requested that the alternative of having no such provisions as one of the alternatives among the possible alternatives available should be reasserted with regard to Article 12. It declared that such a possibility would be automatically linked to previous document SCCR/15/2, and should be part of the possibilities that were being considered as draft articles under consideration by Member States.

160. The Chair declared that the Committee would not be entering into substantial discussion of Article 12. He explained that the Secretariat would be asked to review that specific point. Coming back to Article 5, the Chair welcomed comments or questions regarding the submission of the Delegation of India. The Chair proposed that further reflection would be required because new submissions had been put on the table. The Chair declared that consideration of the new submissions would enrich the discussion and sort out certain obstacles that had come before the Committee, and would help it to find ways to close the gaps that had been expressed in previous SCCR meetings. The Committee would start the next day with the second topic, and at the end of the week would allocate time in order to reach conclusions.

161. The Delegation of Japan, speaking on behalf of Group B, proposed a discussion of the conclusion that would be submitted by the Secretariat the next morning. It declared that the participation of experts on broadcasting would be essential if the discussion were to be reflected properly. Many experts would leave Geneva the following day, hence it would be fairer to discuss the conclusions on broadcasting in the morning. It further stated that the Group had noted that some part of the time allocation for broadcasting had been taken away by the discussion of the general statement and other housekeeping issues, and as a result it requested

that the Committee should devote some time to discuss the conclusions on broadcasting the following morning.

162. The Delegation of Poland, speaking on behalf of CEBS, supported the statement of Group B. It declared that it desired to recall, at the same time, the conclusions of the regional coordinators meeting from last Friday in which it had been stated and agreed that a full two days would be devoted to broadcasting. It stated that the Committee did not have those full two working days as Group B had just mentioned. At the same time, it had been agreed that conclusions would be made and adopted after each topic.

163. The Delegation of Brazil requested clarification on the agreement between the regional coordinators on Friday. It explained that it had understood that there had been an agreement that the Committee would have two days for broadcasting, two days for limitations and exceptions on libraries and archives, and one day for other limitations and exceptions. The Delegation also understood that there had been a second day and a night session the day before to discuss broadcasting. It requested clarification on what had been agreed. It understood that the Committee had agreed that it would proceed to focus on other issues, such as the conclusions that needed to be drawn from the two days of discussions.

164. The Delegation of Bangladesh declared that, when the proposed program of work had been discussed, there had been a tacit understanding that there were other issues to be debated. It declared that it did not know how to reach a consensus, but that it had a feeling that, from all the segments, i.e. two and two, the Committee would somehow have to make time for the other issues that needed to be discussed. It proposed that the Committee should carve out a specific amount of time from all the segments in order to make time for those other issues that would also have to be discussed.

165. The Delegation of Trinidad and Tobago, in its national capacity, echoed the views of the Delegations of Brazil and Bangladesh. It had been agreed that the Committee would spend two days on the issue of broadcasting, two days on limitations and exceptions for libraries and archives and would discuss limitations and exceptions on the Friday. It proposed that the Secretariat should circulate the draft conclusions and that the Committee could then discuss them within groups, adding that there should perhaps be a meeting of Coordinators to discuss the conclusions later on in the week. It stated that said proposal might serve as a middle ground for some sort of consensus on the issue.

166. The Delegation of the United States of America expressed that it was near agreement with the Delegation of Trinidad and Tobago, save for the proposal that the conclusions could be discussed later in the week. It proposed that if the draft conclusions were circulated overnight, the Committee could discuss them during the coordination meetings in the morning and take care of the matter quickly. It declared a preference for doing that the next day rather than putting it back to the end of the week.

167. The Delegation of Trinidad and Tobago expressed that it was glad to have almost had the consensus of the Delegation of the United States of America. It suggested that it could be flexible on the issue and believed that the groups could take a few minutes to discuss the matter during the meetings on the following morning.

168. The Delegation of the European Union and its member states added its voice to the opinions that had just been aired by the Delegations of the United States of America and Trinidad and Tobago. It proposed that the Committee should arrange for a very quick discussion on the following day if discussions were to be conducted in original groups followed by the adoption of the Conclusions in the morning. The Delegation declared that such action would ensure that the experts would be present and it opined that no time would be lost because the discussion would have to happen at some point in time, and that said discussion

could happen very quickly in the morning with the presence of all the experts in that particular field.

169. The Delegation of the United Kingdom declared that it would like to add its voice to the compromise that was arising. It did not think there would be many complications with conclusions of that kind and stated that it simply wished to add its voice to those that had come before it.

170. The Delegation of Ecuador asked if there were any limits to the discussion, bearing in mind that the consensus would be to have the Conclusions distributed to the coordinators and the groups would then discuss them first thing the following morning. It explained that it would like to ask when the Committee intended to start discussing the other items, since the proposed discussion would mean that there would be less time available to discuss the other items. The Delegation also inquired if the Committee intended to use all the time available until Friday.

171. The Delegation of Brazil offered clarification regarding the agreement from the previous day on how to proceed with the Committee's work. It seconded the questions that were raised by Ecuador regarding the time limits of the eventual discussion of the Conclusions and proposed that the Committee could perhaps conduct a discussion for several minutes, adding that if it were not possible to finish within a reasonable time-frame, the discussion would have to be deferred to Friday.

172. The Chair explained that the Secretariat would submit the draft conclusions to the regional coordinators by e-mail that night and that they would be presented to the Regional Groups early on the following morning. The Chair continued that the Committee would then start with adopting conclusions on the topic of broadcasting, and explained that if the Committee did not manage to reach a conclusion, it would have to stop and then use the final time on Friday. The Chair felt that that option would not be necessary and said that the Committee would make use of the expertise of the experts present without taking time for the second topic as had been stated. The Chair clarified that housekeeping information would have to be presented on the next day and on the following days as well, adding that time would be needed at the end of each topic in order to come to conclusions. The Chair declared that such flexibility would ensure that an equal basis was given to the various topics that lay before the Committee. The Secretariat reminded the delegations that if they had revisions or corrections to the list of participants, they should provide them to a member of the Secretariat, or send them to the copyright e-mailbox.

173. The Secretariat explained that the Committee had agreed the day before that it would take an hour to receive comments on the conclusions that had been prepared on the work done over the first two days. The Secretariat added that comments were welcome from Regional Groups that had been unable to attend the Coordination and from individual countries wishing to make additional comments.

174. The Delegation of Belarus, speaking on behalf of the Group of Central, Asian, Caucasus and Eastern European States (CACEES), supported the document that lay before the Committee. It declared that the document provided a detailed and objective reflection of the course of the discussion and the work that had been achieved over the preceding two days. It understood that other groups might propose changes to the document, which the Group was prepared to consider and assess.

175. The Delegation of Poland, speaking on behalf of the Group of the Central European and Baltic States (CEBS), extended the Group's support for the text. It explained that it desired to raise the issue of making minor changes to the terms used throughout the text. It proposed that instead of having the wording "traditional broadcasting organizations and cablecasting

organizations” the Group suggested that the wording “broadcasting organizations and cablecasting organizations in the traditional sense” should be used.

176. The Delegation of Algeria, speaking on behalf of the African Group, offered the following comments on the proposal: First, the Group felt that the Conclusions somewhat changed the practice of other WIPO committees by going into such detail, and declared that it could be of concern to some delegations. Second, regarding use of the term “it has been agreed,” certain members of the African Group emphasized that, in fact, no agreement had actually been reached on the issues included. It explained that there had rather been a general understanding on certain issues. Third, concerning the final paragraph, which spoke of an annex to the basic document, the Delegation explained that some delegations could not support the inclusion of a proposal in an annex at that point in time as they would need additional time to study the proposals and to report back to their capitals and receive instructions. It explained that the African Group would prefer the proposals to appear in the report like any other statement or proposal, and not be annexed to the basic document. It noted that, taking into consideration the fact that other Regional Groups did agree with the format of the Conclusions as they appeared, it believed the African Group could be flexible and continue working on the basis of the document. It emphasized that that level of detail was to prevent future discussions from wasting time by going back over ground that had already been covered. It proposed that the African Group might share the understanding that it would be a shame to always go back over the same ground. The Delegation added that, even if the Group could agree on continuing with the proposal before the Committee, some of the language would need to be changed at some point.

177. The Delegation of Trinidad and Tobago, noting that it had given a comprehensive statement in the morning with respect to its views on the conclusions, asked if the Chair desired that the Delegation should repeat its views at that moment.

178. The Chair explained that it was not necessary to go in detail into each of the specific words and asked the Delegation of Trinidad and Tobago to go over, in a general sense, the topics to which its contributions belonged so that the Committee could take note of its general considerations as it felt it was necessary to avoid repetition.

179. The Delegation of Trinidad and Tobago reiterated some of the issues that were of importance to GRULAC. It declared, with respect to Item 1, that it would have liked to see discussions with respect to the proposal of the Delegation of the United States of America, which was not in the format of a working document. The Delegation continued that it would have liked to see the proposals of the Delegations of the United States of America, India and Japan included in the text. It proposed that those three documents should provide the basis of the discussions for the next SCCR. The Delegation explained, in terms of Paragraph 6, that the Committee had had preliminary discussions with respect to the protection of pre-broadcast signals and that it would have liked to see that also reflected in the document itself. Regarding Paragraphs 4 and 5, it declared that some delegations were a bit uncomfortable with the use of “traditional broadcasters”, especially the word “traditional”. The Delegation explained that it was trying to see if some sort of language could be used to replace that word “traditional” and broadcasters as “all broadcasters in a traditional sense.” It continued that it would also look at that issue within GRULAC. The Delegation explained that there had been a few grammatical issues and sentence construction issues. Looking again at Paragraphs 4 and 5, it noted that, although it had asked for the deletion of the word “cablecasters”, after speaking to delegations within GRULAC, it recognized that it could be flexible on that, and perhaps if the word “beneficiaries” could be used instead of “cablecast”, that would be something GRULAC could also be flexible about. The Delegation explained that it was merely presenting the tip of the iceberg of its suggestions. It noted that it had gone into greater detail in the coordinator meeting with the different proposals. It added that its comment was without prejudice to what other delegations within GRULAC would like to see.

180. The Delegation of Japan supported the correction pointed out by GRULAC relating to the replacement of the words “traditional broadcasters and cablecasters” with language along the lines of, “broadcasting, cablecasting organization in a traditional sense”. Regarding Paragraph 1, as pointed out by GRULAC, the Delegation supported the inclusion of the United States of America’s proposal in the wording. It suggested that the Delegation of the United States of America’s proposal from the discussion be added to the end of the paragraph. The Delegation proposed that, at the end of Paragraph 4, it be noted that, “if that protection is to be included, further discussion should be had whether it should be mandatory or optional.” It opined that such a notion reflected the discussion held during the two days in a proper manner. The Delegation proposed that the words “original broadcast” in the first line of Paragraph 4 be replaced with the words “internet originated transmission” in order to reflect the concept in a more proper manner. It then proposed, regarding the first line of Paragraph 6, that the word “broadcast”, after the words “on-demand transmission”, be deleted in order to reflect the notion in a more proper manner. The Delegation proposed, with regard to Paragraph 9, that the annex would be an appropriate place to accommodate the proposal, that the proposals of Japan, India and the United States would be discussed at the next session, and that a discussion would take place as to whether they should be included in the text or not. The Delegation added that, in that sense, an annex would be the appropriate place to accommodate said proposals. Referring to Paragraph 5, it added that the agreement mentioned in the paragraph contained a proposition in character. It proposed that, in that sense, it would be better to insert the word “provisionary” in the second line of Paragraph 5.

181. The Delegation of India explained that it had conveyed its concerns through its regional coordinator during the morning meeting of the regional coordinators. It proposed that an intervention should take place with a view to enabling certain amendments to be made to the text of the Conclusion. The Delegation agreed with the statement of the Delegation of Algeria on behalf of the African Group regarding how the words “it was agreed” were used in the draft conclusion. It found that language to be misleading, as there had been alternate views expressed. The Delegation further desired that any of its textual contributions that were sent to the Secretariat, particularly those on articles 6, 7 and 9, which had been broadly discussed during the plenary of the committee, should be reflected as alternatives in the body of the text, not in the annex. With regard to the conclusion, the Delegation noted that it had made some textual contributions to the footnotes that had been incorporated into the main body of the text after the plenary. It noted that paragraph 17 of the conclusion of the SCCR indicated that the Committee had pursued discussion that led to the adoption of a single-text document which included India's proposal as a working document that would constitute the basis of further text-based discussions to be undertaken by the Committee in the 25th Session, subject to any modification or further textual comments to be made by the members. It declared that another understanding had been that any textual contribution would be included, not only interventions made on the floor. It requested that if there were textual contributions and discussion during the session, those articles should be reflected as alternatives in the main body of the text, and declared that it would not feel comfortable to have them included merely as an annex. Regarding that concern, it requested the Committee to recall that at least three or four Member States – not only India - and others had expressed concern about the mandate. It lamented the fact that any mention of the discussions as to whether the proposed treaty would apply to broadcasters in a traditional sense or whether it would extend to webcasting and broadcasting over the Internet was missing from the Conclusion paragraph. It wanted the text to reflect the fact that some clarification had been requested by more than one delegation. It left said task in the hands of the Chair, noting that it was quite likely there were not many amendments from India. It requested that it be reflected in sentence 2 of Paragraph 2 that the Committee had also taken note of the textual rephrasing of certain paragraphs in the working document. It desired textual rephrasing of certain paragraphs in the working document containing the proposal from the Government of India. It declared that, since the proposal that it wished to amend came from India, it hoped that it would not be a problem for other delegations. The Delegation explained

that it did not have much concern with Paragraph 2. It noted that it would like to have Paragraph 3 reflect that it had been agreed that “broadcasting and cablecasting with signal-based approach in the traditional sense” would be added. It stated that it had understood that other groups were uncomfortable with the language used in “traditional broadcasting or cablecasting,” preferring that the language should specify “in the traditional sense.” It proposed adding “limited to those transmissions originating from the traditional broadcasters or cablecasters to the extent contractual agreements with the content owners authorized on different media of transmission” to the end of Paragraph 4. Furthermore, it requested that an additional paragraph should come after Paragraph 4, explaining that the Indian Delegation had suggested that, instead of giving an absolute right, the broadcasting organization could have the right to prohibit unauthorized use of their signal transmissions over different media, including Internet, to the extent that contractual agreements with the content owners were authorized for different media of transmission. The Delegation proposed that it would send the new paragraph to the Secretariat by e-mail. Furthermore, in Paragraph 5 it wished to add “to the extent contractual agreements with the content owners authorized on different media transmission” to the end. Similarly, along the same lines, it had requested that its textual proposals be included in the main body of the text. It requested therefore, that Paragraph 9 be amended, that it should not be stated that all the proposals would be included in the annex. The Delegation supported the idea that the proposals of Japan and the United States of America should be included in the same main body of the text, allowing them flexibility if they wanted to leave said text in the Annex. Regarding the rephrasing of the paragraphs, where it said “it is agreed”, the Delegation proposed that it would be better to state that “some delegations express that view, they have expressed different views and opinions,” and added that the text should be more defined.

182. The Delegation of South Africa declared that the previous two days had not necessarily been marked by discussions that had gone out the window since a certain level of progress had been achieved. It declared that the reason it had adopted the working text was so that the discussions could be focused. It proposed that whatever points delegates desired to submit as part of the discussion should be included in the draft working text. It hoped that the discussion of the preceding two days had reflected the fact that most of the Member States had referenced the working text. The Delegation requested that, either way, the Committee could share those discussions. It stated that the discussions should reflect the articles that had been created and should reflect whether they were proposals or not. It noted that, at the present moment, it seemed that there had been formal decisions only in the first and last paragraph of the working document and that many issues had been raised. It requested that the record of the discussions should reflect the articles that were examined, and desired that any proposals made should refer to those articles, so that when the Committee would meet next, it would know which articles had been discussed and what form they had. It declared that most important of all was the fact that the document at least showed that there had been some level of progress in the discussions that had been held during the 26th session of the SCCR. The Delegation declared that there had indeed been fruitful discussions, a mark of progress, and that the Committee should refer to those draft articles as continuing in the working committee in order to create a record of the discussions that the Committee had focused on.

183. The Delegation of the European Union and its member states, following on from the statements made by Group B, made two suggestions for Paragraph 6 in order to reflect the Committee’s discussions on transmissions over the Internet and, in particular, to reflect the adoption of points 2, 3 and 4 from the Japanese diagram. It proposed drafting the text in a manner that was closer to the drafting proposed in the Japanese diagram and suggested that, rather than stating “original broadcast” in the third line of the paragraph, the term to be used should be “internet-originated transmissions,” which reflected point 2 in the Japanese diagram. It further proposed that the wording “of broadcast” be deleted after “on-demand transmissions of broadcasts” so that the sentence would simply provide for “on-demand transmissions.” It proposed that that said wording would better reflect the Japanese diagram. It added that it supported the Chair’s statement that the overall discussion should be reflected in the

conclusion, and not certain issues raised by specific delegations which might be construed as common understanding. The Delegation appreciated the fact that certain delegations had made specific suggestions, and stated that some comments had been made as to Article 4, whereupon it noted that Article 4, Paragraph 4 was about common understanding. Under common understanding it preferred not to see suggestions from individual delegations that had not received common support.

184. The Delegation of Brazil seconded the intervention from Trinidad and Tobago on behalf of GRULAC and highlighted comments made regarding Paragraph 3. In order to have a more precise reflection of the Committee's discussions in the second line, it proposed the words "without prejudice" to "subject to clarification" on cablecasting. It explained that that proposal referred to points that were raised in discussions expressing the fact that the Committee would need to find language that was flexible enough on that point prior to moving forward and which would be required in order to reach a definite decision on the matter. Regarding the language in Paragraphs 4, 5 and 6, it noted that Group B and GRULAC had mentioned that there was no consensus on how to refer to traditional webcasters, cablecasters and broadcasters in a traditional sense. It proposed that the best solution would be to focus on the word "beneficiaries" as mentioned by GRULAC. The Delegation added that by doing so it would possibly cause the Committee to change Paragraph 2 in its discussions where the initial language referring to traditional broadcasting organizations and cablecasting organizations could be found, and that perhaps in the first line of the second paragraph the Committee could go with the language of the mandate, and subsequently, the document would refer to beneficiaries.

185. The Delegation of the Bolivarian Republic of Venezuela declared that the only agreement that it had seen was that there was a lack of agreement. It added that had there been agreement, there would have been two days for broadcasting, two days for limitations and exceptions on archives and one day for educational matters. Instead, it noted that many of the NGOs present were interested in libraries and not multinationals and broadcasting. The Delegation then asked what the schedule was for the coming days.

186. The Chair explained that it had been decided the day before, based on the suggestion of the plenary, that the Committee would take a limited amount of time at the beginning of the sitting, namely one hour, to deal with the Conclusions. The Chair expressed the certainty that the Committee would be able to complete its work and perhaps even finish slightly early since a number of opinions had been received, and it would be possible for the NGOs to be heard on the very important topic of number two.

187. The Delegation of Belarus, taking account of the fact that the representatives of the African Group and India had expressed their views on the proposals that were considered at the meeting either in the text or in an annex or in some other manner, declared that it desired to give its opinion on the matter. From a practical viewpoint, it felt it was a bad idea to include all of the proposals as an alternative text because, as the proposals grew, the text might become difficult to read. It requested that an annex be considered, noting that it was prepared to be flexible on this. It stated that it understood that proposals officially submitted to the Secretariat in the future, either between meetings of the Committee or at the next meeting of the Committee, would have the same status as the proposals currently on the table.

188. The Delegation of the United States of America shared India's concern about ensuring that the American Delegation's discussion proposal should be fully reflected for future consideration by the Committee and shared South Africa's desire to ensure that the progress made in the preceding two days be captured on paper for further discussion. It appreciated, in particular, South Africa's suggestion of a compromise, which might lead to the proposals including the specific articles to which they related in the text.. With that approach in mind, it declared that the United States of America could be flexible and could certainly agree to the

inclusion of its discussion proposal along with the others in an annex with references, on the understanding that the next meeting should start by integrating the proposals in the annex with a reference to particular articles into the text, and that said activity should be undertaken in an appropriate and helpful manner under the guidance of the Chair and Secretariat as to how best achieve that result. It hoped that the proposal would be perceived as a compromise that everyone could accept, making sure that the work of all delegations would be captured in an appropriate way, and ensuring that it be fully integrated into a single document as soon as possible.

189. The Delegation of Japan, speaking on behalf of Group B, expressed that the proposal discussed during the session in the Annex to the text was bald and appropriately reflected the situation of the discussion of the session. It recommended that the proposal be reflected in the text only when enough deliberations had occurred and it was regarded as a firm basis for further mainstreaming of the text. It explained that discussion of the meeting was preliminary because of the timing of the submission, adding that many Delegates needed more time for further reflection. It proposed that the Committee should engage in further consideration of how to deal with the proposal at the next session, including the matter as to whether the proposal should be included in the text or not as a basis for further discussion. Speaking on behalf of Japan, the Delegation thanked the colleagues within its group for their widespread support for its proposal, seen as a way of resolving the conflict generated by the issue of transmissions over the Internet. It also recognized that some delegations needed to reflect further on the issue. It added that, generally speaking, every Delegate submitting a proposal would be more than happy if his or her proposal were submitted in the text with widespread support, but, given the objective nature of the discussion, the proposal had been included in the Annex, not in the text. It explained that, as such, it hoped that its proposal would be included in the text once it gained wider support, not at that stage but in the future, and at the same time it requested that the other proposals included in annex should be respected with the same spirit.

190. The Delegation of the European Union and its member states supported the proposal made by the Delegation of South Africa and also that of the United States of America referring to the Articles that had been discussed in the conclusion paper. As to the proposals that had been made during the sessions, it expressed gratitude toward all of the delegations, such as Japan, India and the U.S. for their proposals and thought that they all deserved proper consideration, adding that it would certainly be looking at them. The Delegation proposed that the best way forward would be to keep those proposals in the Annex because the Committee should try to streamline the text to be worked on in the next session, including those proposals and other possible modifications that might be made. Looking at how the Committee could take that into account and work on the text to streamline it rather than enlarging it, the Delegation emphasized that that meant taking into account all the proposals and other modifications. It hoped the Committee would produce a streamlined, shorter text and move closer to a result.

191. The Delegation of Kenya thanked South Africa and other delegations for the proposal making references to the specific Articles. In terms of the Conclusion, it emphasized that the Committee should not get carried away and start drafting it as if it were the Final Report because the Conclusion should basically capture the essence of what had been generally agreed. It noted that there were many issues discussed in the preceding two days, some of which resulted in consensus, some which did not and some which were left pending for the next discussion. It proposed that the Committee should look at the Conclusions and that any other details should be contained to the Final Report.

192. The Chair announced that the Committee had made comments on the work of all of the delegations on broadcasting the day before. The Chair reminded the meeting of the constructive attitude among delegations and their flexibility in working towards consensus and in meeting the mandate that had been given to the Committee by the General Assembly. The Chair announced that the Committee would move on to the second important topic, namely a

draft treaty on exceptions for libraries and archives. The Chair explained that work on that issue would continue throughout the morning, afternoon and the following morning. The Chair suggested that the Committee should begin with a round of comments by the Regional Groups in order to have general comments on their expectations with respect to that topic and on the main topics that should be dealt with in order to receive their views on the work that the Committee would need to accomplish in the two days allocated. The Chair announced that the Committee would then listen to individual countries as a compliment to comments made by the Regional Groups on that important topic with specific suggestions to be included, and thirdly the Committee would listen to the NGOs present to hear their views, which the Chair declared were important and would help guide the work of the Delegates. The Chair added that, finally, the Committee would discuss, topic by topic, in accordance with document SCCR/26/3. The Chair hoped that the Committee would get through all 11 topics. The Chair made the general comment that, at the beginning of the Committee, the importance of working and building and strengthening a balanced system of Copyright and Related Rights had been emphasized. The Chair declared that that could be seen in the work and the results of the Committee over the previous two years. The Chair noted that the Committee had produced a treaty on the rights of audiovisual performers, another on exceptions for those that were visually impaired and with difficulty in having access to printed text. The Chair declared that the Committee was thus sending out a message to the world, indicating that it was keeping to its purpose of balancing, strengthening and building. The Chair declared that the accomplishments of the first two days had accurately reflected that in the present session. The Committee had given importance to an important topic, which was the protection of broadcasting.

ITEM 7: LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES

193. The Chair continued that the Committee was now turning to another important topic: limitations and exceptions for libraries and archives. He declared that those institutions were important in giving people access to information and culture. He noted that the issue was being approached from the standpoint of copyright, which was not outside the objective of access to information; the objective rather was part of the copyright system. The Chair declared that working in such a way, along those lines would ensure that delegations' contributions would enable progress to be made in respect of the second very important topic.

194. The Delegation of Algeria, speaking on behalf of the African Group, endorsed the Chair's introductory comments vis-à-vis balance in the international copyright system. It declared that it was indeed the Group's objective when discussing limitations and exceptions for copyright. It reiterated that the Group's ultimate goal was to have a balanced system so that the international copyright system would take into account both private and public interests. Second, it reiterated the African Group's position that it sought to establish a legally binding international instrument for limitations and exceptions for libraries and archives and research institutes and educational institutions. It explained that the reason why the African Group was requesting such an international legally binding instrument was threefold. First, the Group believed such an instrument would make it possible to clarify the extended scope of limitations and exceptions that already existed so that developing countries could fully enjoy them. It explained that the countries of the African Group had some difficulties in setting up and understanding existing exceptions and limitations, and the Group believed that such an instrument could help its countries better understand the exceptions and, above all, use them for their own development needs. Secondly, such an international instrument would help the Group provide for and create a mechanism for cross-border exchange where limitations and exceptions for libraries and archive services would apply not only at the national but international level, enabling the countries within the Group to benefit from the resources of other libraries and archive services and to set up a mechanism of exchange with their own libraries. The Group viewed that that should be the final objective of the instrument. Thirdly, the Group felt that such a legally binding instrument would make it possible to meet the needs of all countries in terms of digitization work, especially libraries and archive services, and viewed that to be an objective that should be

stressed. The Delegation explained that that was what the African Group wished for, and that it hoped that the discussions on those issues during the two ensuing days would enable the Committee to make headway in order to produce a working document that would tend more and more towards a legally binding international instrument. The African Group assured its full cooperation and commitment. The Delegation explained that the countries of the African Group would be taking the floor to present their own thoughts on the specific topics for each issue.

195. The Delegation of Trinidad and Tobago, speaking on behalf of GRULAC, explained that with respect to Agenda Item 7, the Group was fully committed to the work program on limitations and exceptions for libraries and archives. It trusted that the Committee would make substantial progress on those discussions within the following two days. It recalled the terms of the work program renewed by the 2012 General Assembly, which defined that the SCCR should continue its text-based work with regard to the elaboration of appropriate international legal instruments, the target being to submit by the 28th and 30th sessions of the SCCR limitations and exceptions for libraries and archives, for educational, teaching and research institutions and for persons with other disabilities. It explained that, as expressed by the Ambassador of Trinidad and Tobago on December 16, 2013, issues around the limitations and exceptions in the framework found their genesis within the membership of GRULAC. It declared that, for that reason, the implementation of the Marrakesh Treaty and reaching an agreement on the issue of limitations and exceptions to library and archives were of paramount importance for the Group. It declared that the Group would be sure to make every effort to close that gap, to strengthen the copyright system in addition to the human and collective rights aspect for the benefit of creators and users alike. In that context, the Group supported the holding of the three-day consultation dedicated to archives and libraries between SCCR/26 and SCCR/27. It believed that, if the Committee were to continue along that path, it would be entirely consistent with the millennium goals of the United Nations and the Development Agenda of WIPO and would enhance the development and education of millions of people across the globe.

196. The Delegation of Japan, speaking on behalf of Group B, declared that the Group recognized the importance of libraries and archives. It had been actively participating in the discussions for the libraries and archives and had shared experiences and views with other Member States since the issue had been first put on the table for the discussion at the 23rd Session of the Committee. At the same time, the Group noted that each country and region had developed its own legal system regarding libraries and archives subject to the influence of its culture and tradition. The Group was thus of the opinion that due recognition and respect should be given to the differences among members in the discussions of the Committee. Taking those circumstances into consideration, the Group believed that the first and foremost priority would be to promote the exchange of experiences, ideas and principles in that field. It added that the hard work of the Secretariat and all Member States in providing document SCCR/26/3 was such that it should be fully looked at as a matter of course. The Group believed the Committee should continue the text-based work as foreseen in the mandate. The Group also saw merit in asking the Secretariat to update the documents from 2008, noting there had been a number of developments since those studies had been first published. It concluded that the Group would continue to participate in the discussions on limitations and exceptions for libraries and archives in a constructive spirit and constructive manner.

197. The Delegation of Poland, speaking on behalf of the Central European and Baltic States (CEBS) Group, expressed the view that libraries and archives continued to represent a vital network of institutions that supported society's educational, cultural and integration aspirations by offering universal and well-organized access to information sources. The Group expressed awareness that book circulation in society was changing and that there was an essential relationship between the presence of books and the ability to move and adapt with the tides of the contemporary world. The level of book reading had a decisive impact on the comprehension of processes taking place in society, culture and science. It explained that that was why the governments of the Member States within the Group were engaging in a variety of promotion

projects designed to promote reading. It noted that the future of traditional libraries and archives had become a matter of concern since the Internet had caused books and content to lose their nature since the content was subject to digitalization. It declared that the digital world had changed the functions of libraries and archives, that the organizational condition of those entities was continuously being changed, and that they addressed new social and cultural challenges. The Group desired to indicate that the development of collections of libraries and archives was closely interrelated to public policies that supported acquisitions by those entities with dedicated public functions. That was the reason why building up the collections of libraries and archives often attracted the support of publishing sectors and formed a part of the overall cultural policy of WIPO Member States. The Group recognized that the transformation of libraries and archives needed the support of modern and, at the same time, balanced copyright policies. Copyright systems that existed in the Member States of the Group provided a vast array of limitations and exceptions crafted specifically for libraries and archives. On that basis, the Group recognized the value of sharing the experiences and views among different delegations that had occurred since the 23rd Session of the Committee. The Group noted the coexistence of models showing the diversity of the traditions of the States. On the same basis, it saw the merit and future development of WIPO studies that presented a variety of legislations providing for limitations and exceptions for libraries and archives. The Group was convinced that modern copyright systems must also provide for a variety of licensing schemes that were useful, flexible and supportive for libraries and archives and every day activities. It proposed that it should be up to WIPO Member States to decide what kind of instruments, whether based on licenses or limitations and exceptions were more adaptive to the traditions of their societies and better reflected the cultural policy goals of their governments. The Group believed it was crucial to preserve the flexibility of WIPO Member States to shape their cultural and other related policies by different copyright mechanisms. It opined that a legally binding instrument in that domain might question the effectiveness of cultural and other related policies that were based on the balance of copyright mechanisms and guaranteed equilibrium between access to information and support of creative industries. The Group believed it was not indispensable to enter into a treaty on exceptions in order to support the values represented by libraries and archives in the societies they respectfully worked for. It shared the opinion that the Marrakesh treaty, which had been the result of tremendous work done by the Committee, addressed an issue that needed unique legislative action in the international forum. The Group declared its participation in the exchange of views on national experiences relating to limitations for libraries and archives.

198. The Delegation of China thanked the WIPO Secretariat for its work in the field of limitations and exceptions for libraries and archives. It declared that the digitalization of works would make that work even more important in SCCR/26 and, in that regard, an agreement should be reached. It proposed that the Committee work toward developing one or more legally binding international instruments, or model treaties, and it supported the continuation of the discussion within the framework of the work plan. The Delegation declared that it would participate in a constructive spirit and hoped that the subject would receive the attention it deserved and would achieve such progress in the future.

199. The Delegation of Bangladesh, speaking on behalf of the Asia-Pacific Group, explained that libraries and archives played a valued role in the history and culture of a nation or country. It declared that, for developing countries, limitations for libraries and archives were extremely important and that it favored a balance between rights and responsibilities. It explained, however, that it had diversions of views regarding the scope and nature of the exceptions and limitations. It invited the Indian Delegation to make its respective intervention based on its national position on that international discussion and asked the Chair to support the members of the Group under that item.

200. The Delegation of El Salvador felt that there seemed to be unanimity on the importance of the topic of limitations and exceptions for libraries and archives and the fact that countries in

general, and developing countries, El Salvador in particular, would like to see progress made on that very important topic. On that basis, it considered that access to information and knowledge implied power, and sometimes countries found that access to many educational texts was limited, adding that that did not come as a result of educational or technological limitations in the countries. It endorsed the statement expressed by the coordinator of GRULAC, offering that it would like to cooperate as best it could to ensure that the Committee could reach an agreement on the proposal and ensure access to information by all participating countries. The Delegation desired to make rapid progress on the text and so noted that it stood ready and willing to cooperate and provide support in order to achieve a specific outcome from the meeting.

201. The Delegation of the European Union and its member states explained that libraries and archives played an important role in its society with regard to the dissemination of knowledge, culture and information. The Delegation found it important that the copyright framework should enable the institutions to fulfill their role both in the analog and digital world. It declared that the existing international copyright framework already provided for a wide variety of possibilities for all Member States of WIPO to ensure meaningful limitations and exceptions for the benefit of those institutions. It declared that it was therefore ready to continue to debate and have an exchange of views on that issue and to have an exchange of views on the diverse national experiences in that area. However, it reiterated that it was not willing to consider a legally binding instrument in that area and requested that that be reflected in the title of the document. The Delegation did not believe that the possible issues related to the activities of libraries and archives required the same type of action as was necessary to address the needs of people who were blind, visually impaired or print disabled. In its view, the unique case of access to books for the benefit of the blind, visually impaired and print disabled needed intervention at the international level. It noted that the Marrakesh Treaty to facilitate access to publish works for people that were blind, visually impaired or otherwise print disabled addressed that specific issue. It explained that, even though the European Union's goal was to ensure the functioning of an internal market without borders, European and international legislation gave European Union Member States a certain degree of flexibility that was particularly important in view of the different legal systems and traditions of the 28 Member States. It continued that that was even more important on the international scale, where so many countries had taken different approaches in line with cultural and legal traditions. The Delegation emphasized that it was important that the Committee supported different countries' cultural institutions and encouraged the preservation and dissemination of knowledge and culture, maintaining the flexibility provided by the international framework. It proposed that the best way to make progress in the Committee's work would be to identify those issues which were most important and useful for exchange of national experiences and to update relevant WIPO studies.

202. The Delegation of the Islamic Republic of Iran congratulated WIPO Member States for the adoption of the Marrakesh Treaty as a first international instrument on limitations and exceptions. It emphasized that limitations and exceptions were an essential part of copyright law and played a vital role in bringing balance to the system. Although limitations and exceptions must properly reflect the legislation of several countries and reasonable established practices at domestic levels, to bring certainty and transparency for the benefit of countries through limitations and exceptions, it would be important to define minimum standards and establish binding treaties. In the case of libraries and archives, it declared that the objective of the possible treaty was strengthening and stressing the capacity of libraries and archives to provide access to and to enable preservation of library and archive material to carry out their public service role. The Delegation declared that it was imperative that libraries and archives themselves adapt to the requirement to meet their responsibilities of providing essential services to the public and facilitating access to knowledge and information in the digital age. To that end, it proposed that the Committee should work toward an international binding treaty to clarify the existing limitations and exceptions in order to allow developing countries benefit therefrom in harmony with their needs and priorities. In order to fulfill the mandate and come up with a concrete proposal to establish an international instrument, the Delegation recommended that

the Committee expedite the process and start text-based negotiation and an article discussion on each identified topic contained in the working document. To facilitate that exercise, it proposed separating proposed text from the common and inclusion of the common and an Annex in the working document. It added that the comments, which were almost a reflection of the best practices and existing limitations and exceptions in the countries, contained requirements that could be used to develop an international instrument.

203. The Delegation of Colombia explained that the progress of technology related to the ability to produce knowledge, which was essential for the development of Colombia, a country where ever more was being invested into that field. It declared that it was important that leaders had access to more works and that they should be able to keep up with knowledge which was being developed ever more rapidly. It stressed that adequate copyright limitations and exceptions were important in order for libraries and archives to be able to meet their public interest objectives and to provide such information. It opined that a solution maintaining the adequate balance between the rights of creators and the right to provide information through libraries and archives was an adequate means to create incentives for creation and for providing users with access. It declared that an up-to-date system should provide users with not just traditional services, but those that rely on new technologies. It therefore supported an alternative of benefit to all in order to continue to promote and provide creators with incentives to create new knowledge and to provide sufficient legal security to copyright holders.

204. The Delegation of Guatemala supported the statement made by the Delegation of Trinidad and Tobago on behalf of GRULAC. It noted that limitations and exceptions for libraries and archives was a topic of great importance to Guatemala because it would enable the country to establish balanced tools to facilitate access to education and culture. It added that it was very open to making progress on the subject and assured its willingness to cooperate in the discussions.

205. The Delegation of India aligned its statement with those delegations that had expressed the view that limitations and exceptions, particularly for libraries and archives, were important for developing countries, and also supported reaching a conclusion with regard to limitations for libraries and archives. It explained that it had constructively submitted its proposals and comments at previous sessions of the SCCR, adding that it was very much willing to work in a constructive manner for the development of a document on the subject.

206. The Delegation of Ecuador expressed great hope that the Committee would be able to move ahead in its work plan as mandated by the General Assembly in order to identify limitations and exceptions for libraries for an international agreed minimum. It explained that, after Marrakesh, it felt that the copyright system needed to be strengthened and made legitimate in terms of human rights. It expressed the certainty that a treaty on limitations and exceptions for the protection of libraries and archives would be of great benefit to users throughout the world who would benefit from balance and legal certainty in the area of intellectual property. It added that experience had demonstrated that when the Committee worked together in good faith it concluded early and achieved better results. The Delegation declared that it was committed to working cooperatively and called on other delegations to join in the collective effort that would benefit them as well. The Delegation declared that the culture of humanity was a single culture inasmuch as parts of it could not be preserved because of insufficient copyright standards, adding that that did not just affect an individual country because it was all part of a universal heritage. It explained that digital forms of expression existed throughout the world and that the laws on copyright were not updated as they should have been in order to protect the legitimate activities of libraries and archives, enabling them to update their collections, to preserve, or to use them according to institutional mandates which were at the heart of the centers of research, education and culture. It therefore felt that it was fundamental for the Committee to analyze the details of the texts of the proposals that dealt with the issues highlighted by the libraries themselves with respect to preservation and with respect to their use

by users in providing the necessary technological means. The Delegation understood that it was still too early for the Committee to take a position on the nature of the instrument that would reflect the results of the Committee's work, but it declared that to simply set aside any binding rules would not be productive or in the spirit of the Committee. It therefore hoped that the delegations would be open to flexibility with respect to the various instruments that could reflect the success of the Committee's mission. It supported the Islamic Republic of Iran's proposals on the working text, adding that they would enable the Committee to better comply and comply more quickly with the mandate of the General Assembly.

207. The Delegation of Brazil aligned itself with the statements delivered by Trinidad and Tobago on behalf of GRULAC and the statements delivered by Ecuador, Colombia, El Salvador and Guatemala. It supported the text based-approach previously agreed upon by all members. In that light, at that stage of the discussions, it understood that judgment should not be passed on to the outcome of the exercise. It asserted only that an effective instrument was needed to address limitations and exceptions for libraries and archives. In order to make the Committee's discussions more effective, the Delegation supported the suggestion that comments and contributions that were included in document SCCR/26/3 should be transferred to an annex. It clarified that that approach was aimed at facilitating the work on the document, adding that it would preserve the individual comments made by delegations.

208. The Delegation of the United States of America noted that limitations and exceptions were a critical element of a balanced and vibrant copyright law regime. A combination of strong protection for authors and appropriate limitations and exceptions on their rights jointly served to further copyright goals of encouraging creativity, innovation and learning. It added that limitations and exceptions must be consistent with Member States' existing international obligations, including the three-step test. The Delegation saw the flexibility provided by the three-step test as beneficial both in keeping up with changing technologies and also in reflecting the particular circumstances of individual countries. It expressed interest in exploring a variety of ways to improve approaches to limitations and exceptions for libraries and archives and for education through continued discussions, including text-based discussions at the international level. It believed the discussions should be based on substantive analysis supported by up-to-date information. It declared that much progress could be made if the Committee focused on substance rather than form. It noted that there were, of course, many different forms the work could take. The Delegation urged consideration of objectives and principals to guide the formulation of national limitations and exceptions to which all could agree. It felt that a study and a comparison of different national approaches to specific exceptions that furthered those goals and objectives, and the sharing of on-the-ground experiences would make a positive contribution to the international environment. It proposed that said approach would also allow the Committee to maintain flexibility for national differences, an issue that was important to all. It believed that such a path was critical and therefore did not support an approach involving norm setting through treaty provisions. The Delegation also saw value in having the Secretariat update some of the former SCCR studies that had analyzed Member States' respective limitations and exceptions for those activities. On the subject of libraries and archives in particular, it was pleased to continue such an important discussion. It declared that the public service role carried out by those institutions was critical to supporting preservation and access to copyrighted works. It noted that, according to a research center survey released the week prior, 95% of Americans aged 16 and older agreed that the materials and resources available at public libraries played an important role in giving everyone a chance to succeed. It recognized that limitations and exceptions must be tailored to address the needs of individual countries, but did believe that there were general objectives and principles that all could agree on. In the SCCR/23 session, it had introduced a set of such objectives and principals for libraries and archives. It noted that those objectives and principles recognized the many and varied public service roles that those institutions played, including with respect to preservation and support for research and human development and acknowledged the special needs of those institutions in carrying out their responsibilities. It had listened carefully to the discussions over the past few

meetings and continued to believe that there were important areas of agreement. It noted that Member States had identified new areas of common concern; Switzerland, the European Union, China and Chile, for example, had emphasized the importance of preserving materials in the digital environment. With that in mind, the Delegation had updated its objectives and principles paper to reflect additional areas where it believed there might be agreement, notably with respect to digital technologies, and planned to circulate that updated document during the course of the meeting. With respect to studies on those issues, it additionally appreciated the study by Professor Crews that had informed discussions on the issue within the SCCR given the significant developments in law and technology over the preceding five years, including ways in which Member States had updated their laws during that period. The Delegation believed it would be helpful to have an updated version of that study done. It looked forward to continued forward-moving constructive discussions of the issue and declared that it was more than ready to continue participating actively.

209. The Delegation of Tunisia declared that the achievement of an international instrument on limitations and exceptions for libraries and archives was something that was both important and essential, especially for developing countries. The Delegation declared that it could contribute to providing access to culture and knowledge. It proposed that legislation needed to be harmonized at the international level so that institutions could make progress in facilitating access to works for all concerned. It noted that, at the international level, there were already certain exceptions and limitations, but added that the Committee needed to promote said exceptions and limitations, harmonize them and make them more efficient and effective so that developing countries would be able to launch cultural programs and draw up cultural policies and provide access to culture and knowledge as had already been stated. It declared that building an international mechanism would make it easier to exchange works at the international level, an issue of major importance in terms of success for programs based on access to culture and knowledge. It added that, in 2013, digitalization was no longer an option, it was an absolute necessity for the work of libraries and similar institutions. It proposed that the building of an effective and efficient international instrument could improve the work of those cultural institutions, libraries and institutions engaged in cultural heritage. It acknowledged that there were already international laws, but declared that the Committee must ensure that the limitations and exceptions became more effective and harmonized to enable public libraries and other public institutions in developing countries to derive benefits and so that beneficiaries could benefit from the sources of knowledge and culture.

210. The Delegation of the Democratic Republic of the Congo declared that the need to have access to knowledge, culture and information on a universal basis meant that development of a treaty on limitations and exceptions for libraries and archives was a necessity in modern times. It stated that the Committee not only had to solve problems related to the digital divide, but it was also required to guarantee equal access in real time and under the same conditions for mankind. The Delegation declared that it would support all arguments to that end.

211. The Delegation of Sri Lanka expressed that the issue was of great importance to Sri Lanka also. It proposed that, after the Marrakesh Treaty, the copyright system should be strengthened.

212. The Delegation of Senegal welcomed the move forward on limitations for archives and libraries, adding that it was very much needed at that point in time. It noted that progress in that area could provide massive access to culture and knowledge and facilitate cross-border exchange. The Delegation considered the digitalization of works to be of capital interest, especially in terms of education and teaching. It offered that, as university graduates, the members of the Committee knew very well that universities had been engaged in remote courses for some time, a field in which many difficulties had arisen due to copyright. It proposed therefore that strengthening the system of limitations and exceptions for libraries and archives

by means of such an international instrument would make it possible to solve many problems at the national and international level.

213. The Delegation of Sudan acknowledged that the Marrakesh Treaty opened the doors widely to a greater understanding of exceptions and limitations, the topic which the Committee would be discussing that day and the next. It declared that it was important to remember that limitations and exceptions were promoted through the Marrakesh Treaty for visually impaired persons, from a humanitarian perspective. It stated that the Committee should make headway and promote further limitations and exceptions to facilitate access to culture and knowledge and improve the living standards afforded by said types of limitations in a world where communication was possible thanks to technological progress. It proposed that those limitations and exceptions could help breach the divide between developed and developing countries. Noting that that said aim was shared by WIPO and other delegations, the Delegation supported the statement of the African Group and the opinions expressed in other meetings as well as the meeting today. It noted that national legislation planned for 2014 had placed those limitations and exceptions as a priority and that progress had been made in that area. After acquainting itself with WIPO studies in that area and looking at studies by other organizations on limitations and exceptions in the domestic legislation of various countries, it had adopted a stance on that basis and taken a stand on bilateral agreements by various countries. The Delegation explained that the laws adopted in the 28 countries of the European Union were clearly to that effect, adding that said efforts would enable the Committee to promote exceptions for libraries and archives in the context of the digital era, which had introduced a new dimension to the issue that was helping nations bridge the knowledge divide. The Delegation hoped that that progress therein would enable nations to have greater access to knowledge and culture. It declared that it did not desire a one-way flow of information, that it needed information to flow in all directions to contribute to the well-being of all.

214. The Representative for the International Council of Museums (ICOM) said that ICOM had a long-working relationship with WIPO and had participated in ongoing discussions on traditional knowledge and traditional cultural expressions. He explained that it also had a program to help resolve cultural property disputes, which was co-managed by WIPO. The Representative noted that Museums were frequently referred to in dialogues and commentaries. With appreciation for the consideration he welcomed said interest and respectfully urged delegations to fully include museums as the discussion on limitations and exceptions for libraries and archives moved forward. He explained that museums shared many common issues with libraries and archives yet differences also existed, particularly in the nature of the educational applications thereof. He invited delegates to attend a special presentation that museums would be providing under the auspices of WIPO on Friday, December 20, at lunchtime, when participants could explore the subject further.

215. The Representative of the International Federation of Film Producers Associations (FIAPF) explained that he had listened with great interest to the various discussions on archives and libraries, especially over the course of the preceding year and also at the SCCR/26 session, and desired to make a few preliminary comments on the issue based on the Association's first-hand knowledge of practices in various parts of the world. First of all, he noted that there was a very broad range of subjects before the SCCR: preservation, legal deposit, interlibrary lending, orphan works and many others, all of which were distinct issues requiring equally distinct, separate solutions. He declared that there were no ready-made solutions and that distinctions must be drawn between the various topics. On the basis of the practical experience of the creative enterprises that he represented, he declared that he had a misgiving as to the validity of the approach of adopting globally applicable limitations and exceptions. He believed that a universal approach would solve very few of the problems that existed but would on the other hand create new problems. He did not think that, at the level of international law, it was a good idea to try to develop binding norms only for limitations and exceptions to rights without first having a discussion on substantive rights to which such limitations and exceptions would then

apply. He noted that the national situation was considerably different from country to country with regard to the challenges of managing cultural heritage, preserving that heritage and access thereto. He therefore proposed that limitations and exceptions of rights could only be meaningful if they were left in the hands of the national legislatures, together with the archives and rights holders and their obligations, and the three-step text in the Berne Convention and WIPO treaties. He reminded the Committee that throughout the world there was a range of voluntary approaches regarding preservation of works and the value of heritage, wherein the beneficiaries and the archives had converging interests, making it possible to bring practical balanced issues to bear on the issues of preservation, digitalization and access within clear parameters. He declared that those agreements made it possible to establish a balanced approach through which the legitimate cultural mandate of archives could be fully implemented with the active participation of the holders of rights. He reminded the Chair that those rights were an incentive to the commercialization of cultural works and future creation that, in the long-term, would guarantee the enrichment and renewal of heritage. In light of that observation, he recommended that the Delegates present should take advantage of the meeting of the Committee and the roundtable discussion to ensure an exchange of opinions on existing practices within Member States, including both voluntary solutions as well as those based on limitations and exceptions to rights. He looked forward to hearing said exchange of views and proposed that the exchange would serve the interests of Member States and use best existing practices to inspire its work. He declared that the pragmatic objectives should be to ensure that national regimes for preservation, digitalization and access to cultural heritage should be in full respect of copyright and enable full participation of right holders.

216. The Representative of the United Nations Organization for Education, Science and Culture (UNESCO) informed the Standing Committee that UNESCO had organized an international conference entitled “Memory of the World in the Digital Age: Digitization and Preservation” from the 26th to the 28th of September 2012 in Vancouver, Canada, to explore the key issues affecting the preservation and long-term accessibility of digital documentary heritage, co-hosted with the University of British Columbia. Funding and support had come from several public and private sponsors in different parts of world, thus confirming the importance of the topic. She explained that, after exploration of the above-mentioned issues, participants had adopted the UNESCO Vancouver Declaration which had been addressed to UNESCO, Member States, professional stewardship associations and the private sector, and included the preparations of a roadmap proposing solutions, agreements and policies for implementation by all stakeholders. The major findings of the conference had been that a better understanding of the digital environment was essential in order to establish digital preservation models that respected the legal principles enshrined in institutional regulatory frameworks, balance, concerns of access with regard to privacy, and the acquisition of knowledge with economic rights and with respect to ownership of heritage in digital formats. The conference urged that digital preservation had become a development priority with proper investment and infrastructure for long-term accessibility and usability in order to minimize the risk of digital records rapidly becoming inaccessible. The Representative added that the trading of information between professionals had been essential for developing the skills needed for effective digitalization and preservation practices. Other key recommendations from the conference included a cohesive, conceptual, practical digital strategy to address the management and preservation of recorded information in all its forms in a digital environment, the institution of an international legal framework of copyright limitations and exceptions to ensure preservation of access to cultural heritage in digital performance, and collaboration between international professional associations and other international bodies to develop an academic curriculum for digitization and digital preservation, and to implement training programs for the management and preservation of digital information. The Representative reported that a multi-stakeholder forum had brought forth discussions on standardization and digitalization and digital preservation practices including the establishment of digital formal registries, strategies for open government and open data that adjusted the need to create trust in digital government records, and cooperation with the private sector for the development of products that facilitated

the long-term retention and preservation of information in a digital format. He declared that the challenge was to ensure effective follow-up on the recommendations, including two initiatives that had recently been implemented. "Digital Heritage" had been an International Congress in France from the 28th of October to November 1, 2013 where leading specialists had discussed and presented digital technology applied to the protection of documentation and understanding of humanity's shared heritage. The Representative explained that the Congress had adopted a five-track approach: physical heritage, intangible, documentary heritage, museums and collections of arts, and creativity. She announced that, in cooperation with the Dutch National Commission, work was underway for the establishment of a digital roadmap for long-term access to digital heritage. She explained that part of the objective was to set up a global platform for stakeholders representing governments, heritage institutions and industry to discuss long-term access, interest and preservation. She reported that a first meeting had taken place at the start of December 2013 with the involvement of NGO partners and other stakeholders.

217. The Representative of the Ibero-Latin-American Federation of Performers (FILAI) noted that, in document SCCR/26/3, both archives and libraries were treated as equals while they were very different matters. He explained that with libraries, for example, there was a question of lending, whereas archives were used very differently. He explained that the document's reference to libraries and archives applied more to public institutions, in order to avoid the confusion with private libraries and archives. A number of Regional Groups and Member States had referred to the Marrakesh Treaty, which had been the first treaty on limitations and exceptions rather than on recognition of rights. He fully supported the treaty, but it was nevertheless an exception to the exceptions. It was very unfortunate that some organizations hid behind the community of persons with a disability to ask for other limitations and exceptions. He drew the Committee's attention to what had happened to the library in Alexandria where more than 400,000 volumes had been burned. An efficient system for preservation would guarantee that such a tragedy could never reoccur. He agreed with the views expressed by Japan, the European Union and the United States of America. There were other ways forward, one of them being the development of national legislation establishing limitations and exceptions for libraries and archives.

218. The Representative of Knowledge Ecology International (KEI) declared that modern libraries faced a lot of challenges. One of the challenges they faced, particularly associated with digital services, was the role of contracts in eroding exceptions in the countries that had statutory exceptions. He explained that many times those exceptions were overridden by provisions in contracts, often in connection with services and information that was acquired by libraries in digital formats. Another challenge that libraries had to face was to try and figure out their role in supporting education courses that were delivered on-line. Many speakers at the Committee had talked about the problem in countries that did not have adequate exceptions for libraries and felt that it was a significant problem. Many countries did not have lending rights, for example, and in a lot of countries libraries often operated illegally because they would not be able to operate at all if they operated within the contours of the law. It was not a good situation for the copyright system where something as fundamental as the operation of a library was in the same category of other kinds of illegal acts. He proposed that, to have a long-term respect for the law, the law must be respectable itself. He also noticed that many of the Regional Groups that opposed the library treaty were strong supporters of treaties for broadcast organizations. If their own publics were asked which was more important for the development of their country or protection of their cultural institutions, they would not say radio and television stations, they would probably say that libraries ranked higher. That was a sense of misplaced priorities. On the issue of archiving, he noted that it might be the case that moving forward with norm-setting could advance faster in the area of archives and preservation because, as the UNESCO statement illustrated, that was actually quite an important area and the cross-border aspects of the protection of archive information were important for everyone.

219. The Representative of the International Federation of Reproduction Rights Organisations (IFRRO) declared that existing international conventions adequately provided for the establishment of relevant library exceptions in national legislation, such as reproduction for preservation purposes. There was no need for a new international legal instrument to enable that. In that respect, he drew attention to the report from the comprehensive WIPO commissioned study that was carried out by professor Kenneth Crews in 2009. According to that survey, 128 of the 149 countries surveyed had, at the time of the survey, at least one statutory library exception that specifically permitted libraries to make copies of copyrighted works in connection with the performance of library services. He added that there might have been more countries that had included library exceptions in their national legislation by that point in time and that most of the countries reported on had multiple statutory library provisions. He noted that the limitations and exceptions supported preservation and replacement of materials and, at least reasonable access to materials in certain situations. IFRRO and RROs, as well as authors and publishers and their representatives, had long-term experience in collaborating with libraries in developing practical solutions to challenges that libraries might face. That included solutions to digitize and make available orphan works and works that were no longer being commercialized by authors and publishers. Sharing of experiences, both in the wording of library and archive exceptions and practical solutions, seemed to be the most appropriate way to enhance the performance of library and archive services. Capacity-building would be required in a number of countries, and stakeholder organizations, whether they were RROs or represented authors, publishers and libraries, had vast experience to be shared.

220. The Representative of the Motion Picture Association (MPA) explained that the basis of its members' ability to invest in creation and to employ creative talent was indeed copyright. He thus supported a balanced and workable system of copyright, including not only strong exclusive rights but balanced and appropriate exceptions and limitations. He recognized the critical role played by exceptions, particularly where it was the most efficient and appropriate way to meet the specific needs of users. As concerned further work on limitations and exceptions for archives and libraries on the SCCR's agenda, he shared the view of the Member States and NGOs who had observed that rather than embarking on further norm-making activities, the Committee should look for better understandings, principles and ways that countries could improve their copyright systems, and indeed the functioning of their libraries and archives in particular. He declared that countries should, however, retain their margin to maneuver in their own domestic policy spaces, which was afforded by the current international framework, which indeed fostered that goal. The legitimate requests for adapting copyright laws to the global on-line environment should be addressed holistically. While adequate access was a legitimate concern, so was copyright protection, both essential for development. He declared that the one did not need to be sacrificed for the other, adding that limitations and exceptions did not exist in a vacuum. The existing international copyright framework, including the Berne and WIPO treaties, offered all the necessary tools and flexibilities for balancing limitations and exceptions, as well as corresponding exclusive rights respectively in the traditional and digital environment. One of the main reasons for current international copyright treaties was to afford national treatment (i.e. to ensure protection of others from other countries in the countries that acceded to those treaties). He urged the SCCR to continue its effort to put in place practical measures, including updating studies that had become somewhat dated, and to respond to the legitimate requests of developing countries within the existing framework.

221. The Representative of the International Federation of Actors (FIA), speaking also on behalf of the International Federation of Musicians (FIM), welcomed the objective of facilitating the preservation of national cultural heritage and access of the public to information and knowledge, which some delegations desired to achieve by means of a specific binding international instrument. The Representative noted that the existing international normative framework for copyright and related rights provided a coherent and flexible structure with just recognition of the contribution of creators to the information society and knowledge society and provided for the establishment of exceptions and other mechanisms for providing the public with

access to creative content. He encouraged the SCCR to continue discussions with a view to finding the best possible balance between those issues, which were of equal importance. He did not, however, believe that resorting to a new normative instrument was the best way to achieve those goals. Limitations and exceptions were already part of the tool kit of existing treaties. The laws of many nations already used them to the satisfaction of the interested parties. He said that in-depth work on cooperation was obviously still necessary, so that all countries that so desired would be in a position to benefit from available tools to the greatest extent possible, so as to achieve the objectives of access to culture and knowledge, as had been legitimately expressed by members of the Committee, while ensuring that they promoted creation and enabled artists, creators and performers to live decently from their work.

222. The Representative for the Center for Internet and Society (CIS), in agreement with the statements made by GRULAC, the African Group, Tunisia, Senegal, Sudan and India, believed that an international instrument to govern limitations and exceptions for libraries and archives was critical, especially from the perspective of developing and least developed countries, especially in order to ensure the development of an international copyright system that balanced the rights of both the rights holders and the users. He believed that such an international instrument would serve a twofold purpose: one, of protecting copyrighted works, and two, of providing greater access to those materials and the dissemination of knowledge, culture and information in further answer to WIPO's Development Agenda. On the question of exceptions being part of national legislations alone, its position was threefold. Firstly, as stated by the Delegation of Tunisia, national legislation lacked uniformity on the issue of limitations and exceptions for libraries and archives and, in that context, it was particularly important that the development of the international instrument would be discussed by the Committee. Second, as stated by the African Group, an international instrument would foster a system for cross-border exchange with limitations and exceptions operating at the international level. Third, as mentioned by KEI in its statement, discussions therein were likely to influence lawmaking, specifically the development of limitations and exceptions for libraries and archives at the national level. The Representative felt therefore that it was important that the Committee deliberated on the issue of a relevant treaty. Three specific issues arose from working document SCCR/26/3. First, on the three-step test, in order to truly facilitate access to knowledge and information, libraries and archives should have the benefit of any and all flexibilities, and therefore narrow interpretation of the three-step test should not be adopted. Second, the protection of works in digital form as well as on-line libraries and archives was critical from the access to information and education perspective, as was noted by the Delegation of Senegal. The transmission of works in a digital form, as well as any Internet service providers engaged in facilitating access to materials under that proposed instrument, should also be granted protection. Third, libraries, archives and educational, research and teaching institutions should be allowed to import and export copyrighted works and the reproduction of such works should be allowed.

223. The Representative of the International Council of Archives (CIA) explained that five years had passed since the Committee had received a report on copyright exceptions for libraries and archives by Professor Kenneth Crews. In that period, the difficult divide between those countries that enabled their citizens to exploit and benefit from on-line access to archival materials and those that did not had grown. A legally binding instrument would enable cross-border access to archival records for non-commercial research purposes, large numbers of which were orphan works, noting that enabling copying of those records for preservation purposes would help bridge that divide. Archives existed to preserve unique historical documents that recorded the culture and history of the nations of the world so that they could be made available to those who wished or needed to study them. Records were usually created as part of the normal administration of the creating bodies or as the personal and professional papers of individuals and rarely had any independent commercial value of any kind. In the preceding years, many of the administrative records of former colonial powers had become open to the people of those countries they had colonized, revealing information about their past

that the people had known nothing about. He lamented that often those people could see the records only if they could visit the archives where the records were held. Copyright stood in their way, because it hindered the making available of the records online and the transmission of copies overseas. Contrary to the assertions of a few Member States and NGOs, the existing international treaties did not help. The WIPO Copyright Treaty gave nothing with one hand and took something away with the other. It gave Member States the power to introduce national exceptions - which they did in any case without a treaty - and required such exceptions to conform to the three-step test. He declared that the result was in fact a restriction, even if an entirely proper one, not an extension of exceptions and limitations. He asked how the piecemeal approach to the drafting of limitations and exceptions that that implied assisted libraries and archives, especially in the least developed and developing countries of the world, or facilitated exchange between States. The Representative declared that it was time that a legally binding instrument required cross-border recognition of limitations and exceptions and also made online access to archival materials for non-commercial purposes possible throughout the world.

224. The Representative of the International Association of Publishers (IPA) declared that the debate at the SCCR/26 session was of a very different nature than the debate at Marrakesh. He noted that the issue being discussed was different from the issue of accessibility for persons with print disabilities. Close to 90 per cent of the copyright laws of WIPO Member States had exceptions or limitations for libraries and/or archives. He noted that libraries were customers and partners of the publishing industry and that cross-border licensing was common. He declared that international document delivery worked well, even though, in practice, it was in decline. Digitization and document delivery were often part of broader commercial, collective or philanthropic partnerships between publishers and libraries. The existing international legal framework, in particular the WIPO treaties, provided a robust and flexible framework for all those activities and for the adaptation of limitations and exceptions to the digital environment. He declared that there was no need to change international law. He observed that many of the issues listed in the discussion document had been addressed in a variety of ways by different Member States, including the issues that were particularly highlighted by the African Group, adding that the solutions followed individual policy objectives, making use of sovereign policy space and implementation thereof in accordance with legal traditions. Given the evidence for gradual, continuous and diverse reforms of copyright laws at the national level around the world, he concluded that there was extremely limited value, if any, in constructing a consensual text within the SCCR. Such a text could only be either too prescriptive to truly assist national governments or too broad to add anything to the international consensus. He felt that that was particularly true in the area of support for libraries and archives. He declared that WIPO had one chance in a generation to review any given area of copyright legislation and that libraries and archives found themselves in a dramatically changing world, wherein the tools and functions were changing at different speeds in different Member States. The WIPO Secretariat was in the best position to provide flexible and well-informed legislative assistance to Member States that sought it, according to their own individual and specific needs. The WIPO SCCR would best serve that process by sharing best practices and updating Member States as their experiences grew with their own legislation in the appropriate clusters mentioned in the text of the SCCR.

225. The Representative of the Society of American Archivists (SAA) explained that it represented North America's largest assembly of professional archivists, collectively responsible for billions of copyrighted works. In more than three decades of managing collections and helping researchers navigate and respect copyright law, the Representative had witnessed how archival discoveries changed people's lives. The Representative stated that UNESCO's universal declaration on archives recognized the transformative effect by noting, "the vital necessity of archives for establishing individual and collective memory for understanding the past and for documenting the present to guide future actions." That was why the declaration called for archives to be made accessible to everyone. Archivists had always been responsible

for capturing, preserving and making available the intellectual heritage of humankind and the records to support human rights. In the 21st century, network technology had made it possible to open up that vast heritage to the entire world by removing age-old book barriers of time and space and permitting access to those often unpublished, out of commerce and personally donated collections. The Representative lamented the fact that current law prevented the use of barrier-breaking technology to attain the shared goals of archives and copyright law: expanding knowledge and creating new works. The Representative subsequently urged the Committee to support citizen access for accountability, heritage and identity. The United States, for instance, had some exceptions for libraries and archives, but he added that they were inadequate and woefully out of date. He further lamented the fact that libraries and archives were not clearly permitted to preserve back-up copies of digitized materials, to make copies for users of graphic materials, nor share the millions of orphaned images, letters and technical reports that the public had entrusted them with. As for fair use, the Representative declared that it was often subject to costly litigation, leaving too many archives hesitant to put material online, explaining that to be the reason why the exceptions under discussion were necessary. Archivists, as information professionals, took copyright law very seriously and spent considerable time guiding users in how to follow the law. However, archivists faced two inescapable facts. First, in the 21st century, if something was not online, it might as well not exist. Second, without appropriate exceptions for orphaned works and cross-border digital delivery, archivists were faced with either ignoring the law or foregoing their mission and renegeing on their obligation to society. Copyright needed to progress from its 300-year-old model and move into the digitally interconnected 21st century.

226. The Representative of the Karisma Foundation stated that Colombian librarians and archivists desired to take the opportunity to voice their concerns to the Committee. He lamented that, under existing circumstances, libraries and archives lacked the full legal security needed to fulfill that function and use digital technologies. The only exception in Colombian Copyright Law, and in Andean Decision 351, was the reproduction of a work for its preservation, and reproduction in order to replace it should the work become lost or be destroyed in some way. He desired to promote the development of a binding international instrument that would provide protection and guarantees for libraries and archives and enable them to pursue their day-to-day work. He declared that bilateral trade agreements were eroding national copyright law and that increases in protection, that were not to the detriment of the fundamental rights of everyone, were needed.

227. The Representative of the British Copyright Council (BCC) stated that it was important to be clear about the extent and nature of an institution that could properly be described as a library or an archive, when speaking about their limitations and exceptions. In an increasingly on-line world, the services that might be provided by bodies that were in whole, or in part, libraries or archives were increasingly comparable to services that were provided by bodies that would not be regarded in the traditional sense as a library or an archive. She explained therefore that economic concerns arose if copyright provisions which applied to the use of copyright works within the services provided by libraries and archives effectively removed or replaced important opportunities for creators and investors in copyright works to secure a fair reward for the use of their works. She clarified that it was not challenging the public value of the important services that were supported by the existence of libraries and archives within defined limits. However, in that debate, she emphasized that it was vital to recognize the current balance and flexible provisions regarding both exceptions and limitations and licensing options.

228. The Representative of the German Library Association highlighted a study published by the European Commission that week on the suitability of existing library and archive exceptions in its region. He declared that the study, completed by Belgian law firm partners, painted a dire picture of the adequacy of the directive for exceptions for libraries in the European Union in the digital environment. The study identified a lack of cross-border application of exceptions for libraries and a patchwork of national laws preventing libraries from fulfilling their functions and

from collaborating across borders in an increasingly borderless world. Quoting from the report, the Representative read, "Imagine a national library digitizing its collection of newspapers from the 19th and 20th century within the framework of a European project to put on line newspapers relating to the construction of the European Union after 1945." He declared that the report expressed without any doubt that the online dissemination of the newspapers was still protected by copyright when authorization was required of the copyright owners in all Member States. He explained that, depending on the national copyright law applicable to the library, the conditions to digitize the newspapers would either be exempted by an exception or not. He continued to say that the more newspapers were digitized, the more they could be of some use for digital projects. He declared that, should some libraries be impaired in their efforts to digitize part of their collections due to lack of harmonization in the exceptions to benefit libraries and archives, all cultural heritage institutions would be on an equal footing in one such trans-European project. He proposed that, for all those reasons, greater effort should be placed on increasing the harmonization in relation to the exceptions for certain acts of reproduction made by libraries. He emphasized that libraries and archives faced a problem. There was a high level of international copyright protection, yet on the other hand, there was no such uniformity of limitations, which constituted a patchwork of different national legislations. He explained that, for every library service crossing borders, in order to act legally, library staff had to know about the limitations and exceptions not only in their own country, the country of origin, but also in the country of destination of their services. He presented that example that in 2001 a library in Germany had been sued for sending digital copies to other countries. He noted that the IPA representative had mentioned the decline in cross-border document delivery, acknowledging that that was probably the truth, i.e. a consequence of the legal restrictions or legal uncertainty. He pointed to another example. For orphan works there was a European Union directive and a neutral recognition of national laws thereon. He explained that, when a library quoted orphan works on the Internet i.e. on the Worldwide Web, it would be visible to the whole world. Therefore, as long as those making the orphan works available were unsure as to whether making such works available was allowed in every country or not, they would be in legal limbo. He added that another part of cross-border library issues was the international exhaustion of distribution rights which were also connected also to the point of parallel importation. As long as countries had only national or regional exhaustion like in the EU, libraries that bought books in other countries could not be sure that they were allowed to lend them to their patrons. He pointed to the example of a special research institution in Germany, asking whether a research institution on intellectual property in Munich which had bought books in India or Mexico or the United States of America could lend said books. He proposed that they would not be permitted to do so unless the rights holder agreed to distribution within the EU. He explained that, on the other hand, international exhaustion of rights was recognized by Switzerland, whereby an institution in Geneva, the WIPO library for instance, which bought books in any country, could lend said books to whoever it wished. Libraries that needed to build up research infrastructures required legal certainty and the freedom to buy their resources wherever they needed to. He explained that that said problem could be a cross-border issue, especially with regard to worldwide, interconnected cultural or research institutions. He proposed, for example, that the German branch of the Goethe Institute should be able to send books to their branches in Bogota, Nairobi or Sydney, and that said provisions could apply to the Kennedy Institute or the British Council. He declared that balancing not only of exceptions and limitations but also of exhaustion was required to enable all of that to happen. He recommended that international exhaustion be adopted in every country. The Representative noted that there were special issues to mention with respect to electronic resources. With regard to the German library index, in university libraries in 2012, 45 per cent of the resources were electronic. In technical universities the portion of electronic resources was even higher. He declared that in the electronic world, the problem was that resources were usually only available after an agreement on license stipulation formulated by the rights holders, which meant that contracts had been concluded. He noted that the Committee agreed that contracts could eventually override limitations and exceptions. He declared that when WIPO Member States agreed on limitations and exceptions, they had to apply not only to paper books but also to electronic resources

online. He explained that countries should be obliged to implement the limitations agreed upon by the Committee in a mandatory manner. He declared that reliance on the market to deliver eBooks to library readers could potentially allow rights holders to dictate unreasonable terms and conditions for libraries, or transform public lending into a commercial service provided by publishers. He continued that such a state of affairs led to the problem of technical protection measures (TPMs), adding that limitations and exceptions should not be restricted in the fulfillment of their functions by TPMs. Services that were allowed should not be prevented by technical protection measures. There was even less cause for justification that the law should protect those TPMs in their own right.

229. The Representative of the International Forum of Authors (IAF) supported the view expressed by Japan and the European Union, among others, that the existing provisions contained sufficient flexibility to cater to the digital developments currently taking place. She hoped that the Member States, as authors would take advantage of the opportunity provided by the WIPO texts for adequate remuneration of authors in accordance with the three-step test as advocated by the Delegation of the United States of America. In cases of self-publication, which was growing exponentially, the author bore the full cost of publication, not only of supporting him or herself while producing the work, but also of making it available in a digitized print or in both forms for public consumption. The Representative believed that it was essential to maintain support for the individual author in order to ensure a constant flow of material for libraries to preserve and to make available, and she trusted that that fact would always be borne in mind when taking legislative action at WIPO.

230. The Representative of the Electronic Information for Libraries (EIFL) stated that the Marrakesh Treaty had demonstrated that international intervention could remedy inequalities created by the copyright system. She explained that libraries, as authorized entities, looked forward to playing their part in the implementation phase, in order to make a real difference in the lives of print-disabled people in developing countries and those in transition. She was eager to continue the work plan with regard to limitations and exceptions for libraries and archives. Topic 2 of document SCCR/26/3, i.e. the right of reproduction, served one fundamental goal: to help ordinary people to meet their education, leisure and information needs. In communities where affordable access to books was rare and the library was the only source of a broad range of reading materials, the service that it provided was imperative for education and development. The Crews study showed that one-third of the Member States surveyed had no exception allowing libraries to make copies of their works for their users, and only 8 percent had provision for inter-library document supply. She stressed that the ability to make digital copies was highly uncertain or expressly barred in some cases. At the same time, other States were forging ahead, reforming their copyright laws to boost their digital economy and foster the growth of a robust digital society for their citizens. The Representative lamented the fact that inequalities in public knowledge would increase unless an international framework establishing basic standards were put in place urgently. Nations would increasingly find themselves at a competitive disadvantage and already disadvantaged societies would fall further behind. Libraries in every part of the world should be allowed to carry out their institutional mandate properly in order to facilitate access to knowledge in fulfillment of governmental, social and educational policies.

231. The Representative of the International Video Federation (IVF) shared the view expressed by many delegations that the existing international copyright framework, in particular the WIPO Copyright Treaty, offered all necessary tools and flexibilities for balancing limitations and exceptions as well as corresponding exclusive rights. He declared that the SCCR should therefore focus on the exchange of national experiences and effective technical assistance in implementing the existing international copyright framework.

232. The Representative of the Scientific, Technical and Medical Publishers (STM) expressed his support for the Berne Convention's three-step test which epitomized coherence on an

international level and flexibility on a national level. He said that he was also in favor of licensing solutions in the context of the discussion on examples of limitations and exceptions for libraries and archives. The Representative said that he was indeed supportive of certain national exceptions and limitations. In cases where publishers accepted the principles of exceptions, the terms and objectives needed to be clearly specified and it was quite possible that specific terms might be required so as not to erode or eliminate viable markets unnecessarily. Publishers offered to contribute to the discussion of specific solutions in the context of special national circumstances, and even in the absence of exceptions publishers were willing to act responsibly and offer access on free or near-free terms to readers who would otherwise not be able to access materials. He explained that publishers were able to act in that way because they enjoyed legal certainty and because the copyright system enabled them to assume said types of responsibilities. He also supported the interventions of a number of previous speakers who said that it was important to focus on specific problem areas with sufficient factual underpinning to arrive at solutions that could be translated and adapted at the national level. STM operated in one of the most dynamic and innovative fields, combining literary works and information technology. The public interest of access to information, research and education was best served by encouraging the creation of new publications and information services with new opportunities in mind.

233. The Representative of the *Asociación Argentina de Intérpretes* (AADI) stated that the case of limitations and exceptions was something the performers could not ignore. The proposed treaty referred to many issues that would require further debate. The Committee could not forget the needs of humankind regarding the dissemination of information and knowledge.

234. The Representative of the Association of Canadian Libraries (CLA), representing the interests of approximately 57,000 library staff and thousands of libraries of many kinds across Canada on a range of public policy issues, declared that information policy involved every aspect of the role of libraries in Canadian society, adding that copyright was critical to the effectiveness of the public interest mandate that those community institutions served. It explained that the returns to the Canadian community from investment and support of libraries had been great. A recent study into the economic benefits of the Toronto Public Library found that it contributed over \$1 billion in economic benefits to the Canadian economy. The study also found that services provided every hour for costs of \$656 contributed to \$2,515 worth of services. The Representative explained that part of this effectiveness was attributable to the solid information policy framework underpinning libraries in Canada. The Representative explained that it was present at WIPO to ensure that a basic copyright framework was made available to libraries everywhere, and not just in Canada, to deliver essential information services so that other communities could benefit from the same societal and economic impacts as existed in Canada. It lamented that, even in Canada, libraries' abilities to achieve the kinds of outcomes demonstrated in the Toronto study were under threat, as increased restrictions such as technology group protection measures and licensing terms and conditions degraded the environment in which libraries worked, leaving libraries with no choice but to change their role to that of simple market access intermediaries for publishers. It declared that, in an era when proportions of library collections acquired by license rather than purchase typically ran at 75 percent, old models of inter-library loan permitted under domestic laws could not meet the demands for local and international sharing of library resources. It proposed that, in those circumstances, a legally binding instrument enabling services like inter-library loan was urgently required to allow libraries and archives to efficiently and effectively meet the needs of the world's population of users. The Representative declared that it was time to move forward with the discussions. It proposed that the successful conclusion of the Marrakesh Treaty provided guidance on some of the issues confronting libraries and archives as well as for instance, Article 7 of the Marrakesh Treaty regarding Technological Protection Measures. The Representative declared that it provided the Committee with a model to move forward on the issue in working document SCCR/26/3 being discussed that day. It believed that without the ability to override a technical measure in the digital environment, protections for libraries and archives to serve their

users would be undermined, adding that this undermined the vital role that libraries played in preserving culture and advancing knowledge.

235. The Representative of the International Federation of Library Associations and Institutions (IFLA), representing over 750,000 library information professionals in more than 160 countries, declared that, as the international organization whose mission was the dissemination of information, it was proud to have played an active role in informing the drafting of the Marrakesh Treaty, and as an authorized entity it would play a critical role in working with Member States, the WIPO Secretariat, rights holders and other NGOs to implement said treaty. It declared however that WIPO had more work to do to ensure that the rights of all stakeholders, including users, remained an integral part of the international copyright regime if it wished to ensure its credibility and effectiveness. The Representative continued that copyright was for everyone: creators, owners and users. It explained that, from the beginning, copyright laws had recognized the role of libraries and archives in achieving the goals of the copyright ecosystem. It noted that the first limitation on copyright, included in a statute nearly 400 years ago, required the deposit of copyrighted works in various libraries in the United Kingdom in recognition of the critical and privileged role libraries had always played in the preservation and dissemination of the world's cultural heritage. It continued that libraries also played other critical roles in the copyright arena, including its role in educating users about permissible uses of copyrighted works, serving as critical intermediaries between rights holders, publishers and users, and also its role in educating authors about their own rights. The Representative explained that, in a digital world where information was increasingly borderless, the immense disparity in national exceptions and limitations for libraries made it impossible for libraries to competently fulfill their role as intermediaries between rights-holders and users. The Representative supported the recommendation by Group B and the United States of America that WIPO update the study on library limitations and exceptions prepared by Professor Crews in 2008. That study demonstrated how problematic it was to ascertain what libraries could legally do from the patchwork of provisions that existed. The Representative declared that it was discouraging to note that 25 percent or so of the WIPO Member States, located almost totally in Africa and Latin America, had either no exceptions for libraries or such a general exception that it provided little useful guidance for libraries and users. Libraries could not serve as fully effective intermediaries in such a rapidly changing international environment in which new forms of research such as text and data mining required new trans-border exceptions. Member States should demonstrate the necessary courage and clarify and strengthen users' rights, through a legally binding instrument, as they did for the visually impaired in Marrakesh. It was noted that many Member States, the African Group, Brazil, Ecuador, Uruguay, India and the United States of America had proposed specific text. The Representative declared that those texts must remain the focus of the discussion so that the SCCR would be prepared, as agreed by the General Assembly, to submit recommendations on limitations and exceptions for libraries and archives no later than the 28th session of the SCCR, scheduled for July 2014, to enable libraries and archives, working with creators and owners, to realize for everyone the promise of the age of information without borders.

236. The Chair, noting that the last of the NGOs had taken the floor, announced that the Committee would proceed to discuss in order each of the topics included in document SCCR/26/3 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. Topic 1 was preservation. The Chair suggested that delegations should not confine themselves to general statements on each of the topics and should endeavor to target main problems that required a solution. That approach would avoid scattering and dispersing the Committee's endeavors. The Chair noted that there were very divergent views on a number of issues and it was important to analyze them. The Chair expressed that the statements by the NGOs on the subject were very interesting and announced that afterward the Committee would take up a more controversial issue, namely the final form of the instrument. .

237. The Delegation of the European Union declared that it desired to make a textual comment on the title of the document itself before embarking on debating the different clusters. It acknowledged that the Chair might prefer to discuss the issue later on, but it wished to reiterate the view that it was best to delete the following part: "Towards an Appropriate International Legal Instrument (in whatever form)".

238. The Delegation of Ecuador thanked the European Union for its comment concerning a modification of the title. It felt that the procedure proposed by the Chair, namely, that delegates should analyze each of the topics in the document before discussing the nature of the instrument that would embody the solution, was an excellent procedure. It proposed, however, that it would be useful for the Secretariat to recall for the benefit of Member States the agreement of the General Assembly in respect of the mandate in relation to the work of the Committee on exceptions and limitations for libraries and archives.

239. The Secretariat was prepared to read the report of 2012, as there was not any particular decision in 2013 on the subject. The 2012 General Assembly approved the recommendations included in the SCCR report to the General Assembly. Paragraph 19 of document WO/GA/41/14, provided that the Committee agreed to recommend to the WIPO General Assembly that the SCCR continue discussions 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 on limitations and exceptions for libraries and archives to the General Assembly by the 28th session of the SCCR. Summarizing Topic 1 on preservation, the Secretariat noted that the first section was proposed texts; after that the document included comments on preservation and then written comments made to the proposed texts. The Secretariat added that there was also a fourth part of the comments on preservation in the annex: The proposed texts included a proposal from the African Group, a proposal from Ecuador responding to the proposal of the African Group and a short proposal from India. The Secretariat explained that those three proposals discussed what could be permitted with respect to the preservation of library and archival materials, such as making limited copies and the right to reproduce in any format. The Secretariat noted that they were addressed in terms of permissions or rights. The other element in the proposed text was the principles and objectives on the subject proposed by the United States of America, providing that the objective was to enable libraries and archives to carry out their public service role, adding three principles that would contribute to fulfilling that objective. The comments on preservation generally reflected national practices. The Secretariat explained that countries described their national practices with respect to preservation, often with respect to whether they already had an existing limitation or exception that addressed the topic of preservation, but not limited to preservation. The Secretariat explained that there were also other comments on practices in terms of preservation found both on pages 3 to 5 and on page 50. The Secretariat added that when the document was first organized, the inclusion of written comments on the proposed texts was requested. A number of countries had submitted written comments on the proposed texts, although many of those in fact describe national practices. The Secretariat concluded that, for the most part, the written comments on the proposed texts described national practices, but some commented more on the general principles that were addressed in the textual proposals.

240. The Chair proposed that the Committee focus on the problems and try to come up with a solution for any problem or issue, bearing in mind that the document included proposed language and comments.

241. The Delegation of Cameroon explained that exceptions and limitations existed in the national legislation of Cameroon but did not cover all the topics included in the document. National exceptions and limitations were mainly for the right of reproduction of short extracts, for teaching and legal deposit; for the national library and national cinema library, the regulation provided for compulsory deposit of administrative documents in national archives and

authorization given to archives to upload the collections of document to the cloud in order to preserve those collections. It explained that Cameroonian legislation had not considered limitations in terms of libraries, parallel imports, cross-border uses, orphaned works, retracted works and works out of commerce, limitations on liability of libraries and archives, contracts and rights to translate works. The Delegation declared that, like other delegations that welcomed the proposed treaty, it was committed to assisting in the endeavors to accomplish the project. It noted, however, that the limitations and exceptions must fall within a framework. Regarding the first topic, preservation, it proposed that the Committee eliminate from the list of texts the language regarding the reproduction of unpublished works, adding that the Committee should specify the number of copies that could be produced within the provisions, not just a vague limitation.

242. Regarding the issue of preservation, the Delegation of Ecuador wished to explain the reason behind its proposed text. It explained that the goal of the Committee's work was to address those topics that libraries and archives had identified as representing obstacles to their work, in so far as there was no standard in copyright law that protected them when undertaking an activity without the express permission of the author. It stated that the goal was accordingly to establish that all libraries and archives should enjoy a right, or rather an exception to copyright, which allowed them to fulfill their mandate and purpose as libraries when undertaking preservation or replacement. The Delegation explained that it would mean that libraries were recognized as institutions whose mission included the preservation and maintenance of the cultural expressions of humanity so that they could make available in future what had been created over the ages. It emphasized that libraries and archives needed to preserve those creations and that making copies for preservation was instrumental to that purpose. It added that, moreover, there was a housekeeping aspect of preservation, which was to ensure that the books and documents in their collections withstand normal use. It explained that the original works were frequently expensive or difficult to replace, and it was usual practice in libraries to make a copy to be landed and keep the original valuable copy on their shelves. It declared that libraries needed to be permitted to make copies in order to make them available in the future. Another aspect, related to the day-to-day use of the collections, as expressed in paragraph 1 of the Ecuador proposal, was that libraries and archives must be permitted to produce works protected by copyright for purposes of preservation or replacement in accordance with fair practice. It explained that the expression "fair practice" was chosen because it could be considered as very similar to the three-step test. It added that some flexibility must be allowed for each country in so far as their national domestic practices were in line with what could be considered fair practice.

243. The Delegation of the Russian Federation expressed its belief that in modern times national libraries had to satisfy universal information needs of society; they carried out information and science activities in the interests of all nations and developed national and world culture, science and education. It noted that many limitations and exceptions already existed in Russia's national legislation, primarily because it needed to provide users with access to libraries' collections. National libraries could prepare electronic forms of copies of old and damaged works, defective books and unique and rare documents of scientific and educational value. When it came to preservation, it also considered the possibility of permitting direct access to works in electronic form in those libraries. The Delegation stressed the importance of realizing that the most important point behind the idea of setting limitations and exceptions, which could not be an unacceptably wide range of proposed measures of preservation, was that the Committee must not go beyond the red line. It explained that the red line was related to the interests of the main stakeholders, i.e. the author. In that regard, the Delegation noted that it had heard in some statements that there had been questions related to the need to create electronic copies for subsequent library exchange.

244. The Delegation of Senegal, responding to the proposal from the African Group, noted that it realized that the other proposals, even those emanating from Ecuador, India and the United

States of America, all shared the idea that there was a need for preservation to enable the main role of libraries' and archives' services. It noted that, as emphasized by the Delegation of Ecuador, the Committee needed to overcome the problems that continued to confront libraries and archives, adding that it was the reason behind the three bullets of the African proposal. It explained that the expression copy would include all possible and necessary forms and formats to ensure that there would be a link between the past and the future. It stated that regarding unpublished works, contrary to what had been expressed by a member of the African Group, the provision should remain because it spoke to the very purpose of preservation; both published works and works that, because of the historical value, importance and scope, remained unpublished and were very rare and not available, needed to be preserved. The Delegation stated that education and research should be added to the possible purposes of preservation. It stated that, as a public service mission, libraries and archives should be permitted to make copies, but in a non-profit-making way, noting that education and research were not mentioned in other proposals such as the ones from India and from the United States of America. It stressed that the non-profit element was fundamental and was not contrary to the normal exploitation of the work and did not unreasonably prejudice the interests of the author. Digital usage by libraries in the area of research and education was fundamental, because university libraries needed to disseminate the work to all the computers in all of the reading rooms. The Delegation explained that every librarian would want to make copies available in all of the computers in their premises. For instance, in case of a rare work, if only one reproduction of the work was permitted, students would face problems in accessing it. It emphasized that it was important to discuss those issues within the Committee in order to help libraries and archives achieve their goals in a not-for-profit fashion.

245. The Delegation of the European Union explained that, on the topic of preservation and preservation of copies in isolation, out with the dissemination of the preservation copies, it was outlined that document SCCR/26/3 provided for a part that dealt with the proposed text and also a part on comments, including the sharing of national experiences on preservation exceptions. It noted that the experience of 14 countries was contained in the document, showing that the current international legal framework allowed WIPO Member States to define preservation or the exception for preservation copies in a way they considered consonant with their cultural and legal traditions and according to the flexibility available to their policy-makers. It explained that it had noted the information provided by other delegations regarding the rationale itself for national exceptions for preservation copies, but there was a lack of evidence that the exception must be harmonized on an international level. The Delegation stated that it was still seeking further information. It had heard certain delegations referring to harmonizing to the full extent, even to the number of preservation copies that could be made. It stated that the European Union had experience with harmonizing certain exceptions and that, with 28 member states, it was a very difficult job to harmonize such issues. It explained that certain things had to be left to the flexibility of the member states. The Delegation reiterated that, within the existing international framework, the European Union already recognized an exception for the so-called preservation copies, specifically in Article 5.3.C of the 2001 Directive. It therefore recognized the public-interest mission of cultural heritage institutions by allowing them to make such preservation copies.

246. The Chair requested that delegates not consider the question of limitations and exceptions at a domestic level, but rather look at the need to harmonize the exceptions for preservation in the various Member States.

247. The Delegation of the United States of America stressed that it was important for WIPO Member States to encourage the development of limitations and exceptions enabling libraries and archives to carry out their public service role of preserving works while leaving flexibility to each country on how best to do so in keeping with its international obligations. It wished to define a baseline for the discussion and to note the basic elements of the approach currently taken in the United States of America, as it felt it would help inform some of the Committee's

discussions about the changing environment. Under Section 108 of the U.S. Copyright Act, libraries and archives were permitted to make and distribute copies of materials for specified purposes under specified conditions. It continued that, for example, a library or archive was permitted to make several copies of an unpublished work for preservation, security, or deposit for research use in another library if the work was currently in the collection of the library making the copy. It added that Section 108 also provided that, if copies were made for preservation or replacement of library materials, the scope of materials was broad: a library could make copies of manuscripts, pictures, sound recordings and any other works. The Delegation noted that Section 108 had been revised in 1998 to address the digital technologies of the day. It noted that new challenges, of course, had arisen in the following decade; the Library of Congress National Digital Information Infrastructure and Preservation Program, in cooperation with the U.S. Copyright Office, convened a Section 108 Study Group to review possible updates to the exception and a final report of the group was published in 2008. The Delegation explained that, among other things, the report identified challenges with respect to digital preservation and conversion issues. It noted that, meanwhile, developments continued in the area because of the many changes occurring, especially the digital environment, over the preceding five years. It explained that the Copyright Office, in collaboration with Columbia University, held a symposium in 2013 to continue the review of possible updates to the existing law, adding that it was therefore clear that that area was evolving quickly in tandem with technology. The Delegation had reviewed the comments of other Member States who had also noted the importance of and challenges in the preservation of digital materials. It had also taken note of the written comment of the United Kingdom, inquiring whether or not museums should also be added to the list of libraries and archives in order to enable them to preserve materials. The Delegation explained that it had identified the particular issue within the objectives and principles circulated during SCCR 23, noting that the United States Government, including the U.S. Patent and Trademark Office, Copyright Office and the Institute of Museum and Library Services, continued to review the existing legislative framework with a view to making it possible for libraries and archives to meet existing and future challenges in preservation. It looked forward to exchanging views with other Member States as they continued to develop their own frameworks.

248. The Delegation of Brazil acknowledged the presentation of the Delegation of Ecuador and the intervention of the Delegation of Russia regarding some concerns on the possible effect on the dissemination of works. It desired clarification from the Delegation of the Russian Federation as to whether, in the text proposed by Ecuador, the words “in accordance with fair practice” would be enough to provide some comfort regarding the line. Additionally, regarding the proposal of the Delegation of the United States of America, it requested clarification as to whether they understood that “where under appropriate circumstances”, as used in the fourth proposed text, would be appropriate according to their understanding of the matter.

249. The Delegation of the Russian Federation explained that it considered that “fair practice” was very ambiguous, not clearly defined, and that every country could argue for its own fair practice. It considered that, in an international legal document, a concept should not be included that could be interpreted in different ways, declaring that there should be clear-cut criteria.

250. The Delegation of Ecuador responded, seeking to provide further information that might allay the well-founded fears expressed by the Russian Federation that the concept of fair practice in its proposal referred to the standard already used in Article 10 the Berne Convention. It explained that the Berne Convention used the term “fair practice”, adding that the concept of fair practice was also used to describe education for educational purposes in Article 10.2 of the Berne Convention. It added that the concept of fair practice was already included in an international legal order and was also included in the WIPO Copyright Treaty and in the Agreement on Trade-Related Aspects of Intellectual Property Rights.

251. The Delegation of Canada stated that it would be important, in the discussions of limitations and exceptions for libraries and archives, for the Committee to develop a common understanding of what it meant when it spoke of central terms, such as the definition of a library or definition of an archive. It asked who would be performing the preservation being discussed and whether the proposed copyright legislation could provide one definition that applied to three terms: library, archive and museum. The Delegation highlighted two elements of its definition: First, a library, archive, or museum had to be an institution that was not established or run for profit. Additionally, a body that was for profit could not control the institution, directly or indirectly. Second, a library, archive, or museum had to be an institution that held and maintained a collection of documents or other materials that was open to the public or to researchers. The Delegation declared that it would be interested in a discussion on definitions of important terms such as library and archive. Additionally, it was interested in the concept of a museum since Canada's definition also applied to museums, adding that the same question was raised by the United Kingdom and the United States of America.

252. The Delegation of the United States of America asked how long the Committee's discussion would continue for that evening.

253. The Chair explained that the Secretariat had mentioned the Committee would conclude after Brazil's statement, but that Brazil had requested clarification from the Russian Federation and then the Russian Federation asked for a clarification from Ecuador, and that when the Chair was about to conclude the session, the United States of America asked for the floor. The Chair noted that it had been a very useful discussion and concluded the session, to resume the following day at 10:00 a.m.

254. The Chair welcomed the delegates to the session and hoped that they would have an interesting exchange. Member States were reminded of the need to describe the problems and establishing specific solutions. The Chair also pointed out that a reference was made to the public services role for preservation performed by libraries and archives. There was a need for such institutions to develop that role to preserve works, thereby ensuring the continued collection of knowledge and heritage. The Chair added that the question of limitations and the appropriate means of approaching them remained open. The Chair further noted that discussion on the first topic would continue, to be followed by discussion on the second issue: the right of reproduction and safeguarding copies.

255. The Delegation of Azerbaijan stated that it felt that exceptions and limitations guaranteed a right between rightholders and libraries. It supported the view that a legal document was needed to address the problems linked to limitations and exceptions at an international level and that the draft document submitted was a good basis for such progress. The Delegation suggested that any draft Treaty take advantage of the legislative and practical experience of the countries that have already made moves in that area, adding that the proposals from Africa, India and USA contained positive elements. The Delegation voiced a concern that during the process of reproduction, if there was no quality limitation on the reproductions by libraries and archives, undesired consequences might ensue and therefore reproductions should be confined to certain specific circumstances. Exceptions and limitations should be limited in the number of copies that could be produced and used for research under preservation of cultural heritage. Reproduction of IP should be carried out in accordance with best practice. The Delegation also pointed out that the current document was in an inconvenient format and supported the move to separate the basic proposals in the document from the one with comments.

256. The Delegation of Australia expressed its impression that the purpose of preservation was to ensure the availability of physical and digital works already held by a library or archive for the benefit of users of those services both in the present and in future. It added that usually such preservation was appropriate not due to historical import or rarity, but to day-to-day wear and tear or data degradation. The Delegation expressed concerns that new rights of reproduction or

distribution might be inadvertently created under that topic. The Delegation outlined Australia's own preservation scheme, that if a new addition of the work could be obtained within a reasonable time and at an ordinary commercial price, it was preferably to copying the existing one. The Delegation associated itself with a previous comment from the Delegate of Canada on the need for clearly defining what was meant by libraries and archives. The Delegation noted that it was yet to be convinced that a legal instrument was necessary to allow for preservation schemes in domestic copyright legislation.

257. The Delegation of Belarus supported the Russian comment that the copyright system remained a valid system that encouraged creativity. It noted that Belarus had adopted a new copyright agreement protecting all those rights and regulating limitations. It expressed a concern that the wording suggested by other Member States, particularly around fair practice, was rather vague and that national legislation should be implemented according to fixed rules which meant there could be no ambiguous interpretations and the rules could not therefore be abused. The Delegation emphasized that libraries and archives were non-profit making institutions, and that preservation was carried out for non-commercial purposes.

258. The Delegation of Poland agreed with the comments of previous delegations in that it was an important issue and that a framework was necessary to enable libraries to perform one of their most important missions and social roles. The Delegation made reference to Poland's national law which included exceptions and limitations in conformity with the three-step test. Article 28.2 of the Polish Act allowed archives, libraries and schools to make or allow the making of copies of disseminated works in order to supplement and maintain their own collections. It pointed out that the Act was in compliance with EU legislation and the existing international framework. The Delegation felt that it was not necessary to have an international treaty to implement a preservation scheme.

259. The Delegation of Brazil stated that the discussion should give assurances to users of the copyright systems that their interests would not be overlooked in the discussions. With reference to the Canadian concern as to the definition of libraries and archives, it suggested that the subject of definitions should be addressed in future discussion.

260. The Delegation of the Russian Federation expressed its opinion that the part dealing with the right of preservation in libraries and archives was the most important part of the document and it was important to find a compromise proposal between the different stakeholders. The Delegation agreed with the comment from the Delegate of Belarus that the definition of libraries and archives were important to the process.

261. The Delegation of Morocco supported the idea of guaranteeing that libraries and archives were able to meet the needs of education, training and scientific research. Exceptions and limitations should be seen in a context respecting a balance between the rights of the rightholders and authors on one hand, and users on the other. Although exceptions and limitations should be limited in number, it felt that some were necessary, especially in regard to reproduction. The Delegation suggested that cases where reproduction was necessary should be listed, always bearing in mind the three-step test. The Delegation expressed the opinion that there should be an accurate definition of who could benefit from exceptions and limitations, allowing libraries and archives to fulfill their roles as disseminators of knowledge and science. The Delegation expressed its hope that libraries would be able to play a broader role beyond national borders.

262. The Delegation of Senegal proposed to define libraries and archives respectively. They stated that libraries were public or private bodies whose collection was available for loan or for the reading of books or any other audiovisual medium classified in a certain order. Archives could be classified as institutions or administrative bodies that safeguarded, protected and

preserved all documents, regardless of the date, format or medium through which they were produced or received by any person.

263. The Chair thanked the Delegate of Senegal for the proposed definitions, but reminded delegates that the current session was discussing the subject of preservation and that other topics would be addressed later.

264. The Delegation of Spain stated that Spanish national law addressed the topic of preservation, and went on to explain how under Spanish law authors could not challenge reproductions that were for non-commercial purposes and made by libraries, film libraries and archives provided the reproduction was exclusively for the purposes of research or preservation. Spanish law was also subject to the three-step test, which was integral to the rules of exceptions and limitations. The Delegation supported previous comments of the European Union as to the need to identify evidence requiring normative action or recommendations which transcended the national sphere.

265. The Delegation of the United States of America also voiced concern over any solutions which transcended national borders. The definitions of libraries and archives were difficult to establish, and while it did not have a definition of libraries or archives in its copyright law, it considered that an institution could only avail itself of the library exception if its collections were open to the public or to exclusively available to researchers affiliated with the library or archive of the institution of which it was a part.

266. The Delegation of Ecuador believed that discussing the need for an international instrument would delay progress in finding a text containing a solution. The Delegation stated that it felt there was a consensus that libraries required a right to preserve their collections in their capacity as preservers of cultural heritage. The remaining doubts concerned the specific standards to which exceptions should conform.

267. The Delegation of El Salvador explained that in its national legislation, a library was permitted to copy a work, provided the copy was preserved in the permanent collection. That provision was applicable, in conformity with the three-step test, when the copy was lost, destroyed or unusable and could not be acquired easily. The Delegation noted considering such an exception was a matter of priority for it. The Delegation went on to state that discussion should not be confined to physical works but should also cover digital formats, which were especially important in remote areas of the country. Libraries played an important role in developing culture and therefore should have access to proper materials. The exception should benefit libraries which were acting in good faith to share knowledge.

268. The Delegation of Greece stated that preservation was a hugely important area as it formed a necessary prerequisite for libraries and archives to fulfill their roles. Greece had its own law in the area; reproduction was permissible only if additional copy could not be obtained in the market promptly and on reasonable terms. Three specific requirements had to be met: the library or archive must be non-profit making; the work must belong to the permanent collection of a library or archive; and the reproduction must be aimed at retaining the additional copy or transferring it to another non-profit library or archive. The Delegation pointed out that the law was in full conformity with EU legislation and was based on international conventions and the three-step test. The Delegation did not consider a normative instrument necessary in that area as the international legal framework was already flexible enough; nonetheless, it was interesting in hearing from those nations that were not currently covered by the international framework.

269. The Delegation of the European Union and its Member States outlined the often-quoted Article 5(2)(c) of the EU Copyright Directive which was subject to the three-step test, stating that in respect of specific acts of reproduction by publically accessible libraries, museums or

archives which were not for direct or indirect economic or commercial advantage, the Directive provided flexibility: Member States could ensure that certain beneficiaries did not benefit from the exception based on their legal and cultural traditions. The Delegation considered that the flexibility provided by the Directive was sufficient and should be respected.

270. The Delegation of Venezuela agreed with the comment by the Delegation of El Salvador regarding the treatment of libraries acting in good faith, adding that the use of libraries was important to the development of people's personalities as well as supporting research, learning, innovation and creativity in the 21st century.

271. The Delegation of Italy made reference to an intervention at a previous SCCR session outlining the current situation in Italy. Considering the issue from an international perspective, the Delegation noted that the main interest of libraries was to preserve their collections and that the interest of the country within which that library was established was to preserve its own, unique, cultural heritage. It stated that in its view, this was an exclusively national issue and there was no international interest in having such a rule at the international level.

272. The Delegation of India commented on the difficulty of defining libraries and archives, stating that although it was normal to think of documents from archives as documents one did not usually take home and those from libraries as ones one did, many libraries did actually act, on some level at least, as archives. Addressing a previous point made by the Delegation of Italy, it stated that ancient Indian documents were of great interest to scholars from other countries and that the world was moving to a place without boundaries and there was a greater international interest in preservation. The Delegation referred to the latest amendment in Indian law (Section 52(n)) which stated that fair dealing included the storing of a work in any medium at a non-commercial public library so long as the library already possessed a non-digital copy of that work. The Delegation felt there was almost a convergence on preservation and replacement in many countries, but that Member States should be allowed flexibility as to what was fair in their own national copyright legislation.

273. The Delegation of the Republic of Congo stated that it considered that library and archival services were vital for the development of creative industries and that limitations and exceptions within an international framework would allow for the further increase of a nation's creative capacity. It stated that an international framework was very timely and emphasized it must support libraries and archives in their traditional role as a public service.

274. The Delegation of Guatemala stated that Guatemala already had limitations and exceptions regarding archival works, applying the three-step test, as well as individual reproduction rights for archives and libraries with a non-profit purpose where necessary. The Delegation also mentioned another law with a different purpose that provided that a certain number of copies had to be sent out to the central library, the university library and other institutions with the intention of preserving the work and allowing more people to access it.

275. The Delegation of Kazakhstan called for an international instrument on exceptions and limitations for libraries and archives. It mentioned that its current law allowed non-profit making libraries and archives to reproduce copies to replace damaged, lost or destroyed works and to make them available to other libraries. The Delegation also stated that specific tests would be useful in the definitions of limitations and exceptions and that the Berne Convention would also have to be considered in that regard.

276. The Delegation of France stated its intention to raise a number of questions regarding other Delegates' previous statements. Firstly, it addressed the African Group's proposal which referenced the making of copies of published and unpublished works and observed that this would cause certain compliance and disclosure problems for other countries, including France. The Delegation wished to know whether the African Group felt those works should be included

within the framework on that point. The Delegation's second question referred to the proposal from Ecuador about national fair practice and asked whether it was possible to have some specific elements or criteria which could be used to specifically identify cases of fair practice. The third and final question dealt with the Indian intervention, which the Delegation considered covered not only the preservation but also the distribution of works, which the Delegation felt went too far, asking why the copies needed to be distributed and to whom they would go.

277. The Delegation of Japan described the Japanese Copyright Law provision of limitations and exceptions, which was in line with the three-step test. Firstly, reproduction should not be for profit; secondly only libraries were allowed to reproduce; and thirdly, the original materials must belong to the library doing the copying. The Delegation stated that furthermore, one of the following criteria must be satisfied: the purpose of reproduction should be research and only a single copy was allowed; the reproduction was necessary for the purpose of preservation; and the original material must be out of print and not available from other libraries via the normal route.

278. The Delegation of the United Kingdom agreed with earlier statements that it was essential that libraries and archives were able to reproduce materials in order to preserve them and prevent their deterioration. The current UK exception covered only books or similar materials, but was being updated to all types of work to be preserved, as well as being extended from just libraries and archives to include museums. While developing the current law, regard was paid to two key principles: firstly, that law must be flexible enough to allow preservation of all media using modern preservation techniques and keep up with new technology; and secondly, the rights must be narrowly defined so the rights of copyright owners were not undermined. Like Greece, the Delegation noted that the law only applied when commercially distributed copies were not available and that preserved copies were not to be disseminated more widely than the originals. The Delegation stated that the current international framework and three-step test were sufficient in terms of flexibility and security for the national situation and agreed with earlier Delegations who had stated that national legislation was sufficient in that area.

279. The Delegation of Greece asked the Indian Delegation how its preservation of ancient Indian manuscripts could be considered a copyright issue, as protection for such manuscripts would have expired a long time ago. The Delegation also asked how an international instrument would be required to aid in the preservation of such manuscripts for the international community when that was already permissible under Indian law.

280. The Delegation of India responded to the questions of the Delegation of Greece explaining that its comment in regard to the copyright of ancient manuscripts was in response to the Delegation of Italy's statement that preservation was purely a national issue. The Delegation also explained how preservation and replacement were core values and under the national act it was possible for anyone to digitize in electronic form of any non-digital copy.

281. The Chair stated he felt that a consensus had been reached on the need to provide exceptions and limitations under that topic.

282. The Delegation of Ecuador addressed the question from the Delegation of France which had sought clarification of the concept of fair practice. The Delegation stated that fair practice continued to have the same meaning as it did in Articles 10.1 and 10.2 of the Berne Convention and that that definition had been accepted and studied at the international level. The three-step test was useful as an alternative, because libraries carrying out copying for preservation was a special case in the sense it implied that that the first step of the test was met. The Delegation also agreed with the suggestion of the Russian Federation that there should be further discussion to find a better wording for the proposal.

283. The Delegation of Finland stated that the discussion about limitations and exceptions for libraries and archives did not encompass all libraries, but should focus on those which

had, under public law, the function of archiving and dealing with library systems. Therefore, there should not be general limitations and exceptions concerning all libraries and archives, but only for those having special designated tasks; it would then be for national governments to select an institution performing such tasks.

284. The Delegation of Jordan stated that under national copyright law, libraries, non-commercial archives and cultural institutions had the right to make copies and photographic copies of any materials subject to permission from the copyright holders, provided this was not prejudicial to the copyright holders.

285. The Delegation of Senegal spoke on behalf of the African Group in response to the question from the Delegation of France about the nature of works to be covered under its proposal. It noted that many African nations drew on French legislation for their own laws and that when the proposal referred to all works, it meant both published and unpublished works.

286. The Chair expressed the view that there was a general agreement that there was a problem that needed to be addressed. The Chair added that the purpose was to agree on a principle to be reflected in an instrument, in whatever form that instrument would take. The Chair suggested that such principle could reflect the idea that in order to ensure that libraries and archives could fulfill their public service responsibility for the preservation, including in digital form, of the cumulative knowledge and heritage of nations, limitations and exceptions to the making of copies of works could be allowed so as to preserve and replace works in certain circumstances.

287. The Secretariat stated that Topic 2 was "Right of Reproduction and Safeguarding Copies". Reference was made to proposals from the African Group, Brazil, Ecuador and Uruguay, India and the United States of America, which covered the ability for libraries or archives to copy works and supply copies of those works. The permitted recipients of works under those proposals range from very limited situations to any users, provided the use was compatible with fair practice or any situation where national law allowed the user to make a personal copy. Reference was also made to interlibrary loans and to the public service role of advancing research and knowledge. The Secretariat also referenced the comments made on the reproduction and safeguarding of copies, which reflected a number of discussions about the current copyright system and how it applied to legal treaties.

288. The Chair reminded Delegates that the following discussion would be on topic 2 only and that part of the challenge was to try and identify those specific problems which were not being addressed by the other topics.

289. The Secretariat briefly summarized the 11 topics up for discussion: 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 the commerce; 8. Limitations on liability of libraries and archives; 9. Technological measures of protection; 10. Contracts; and 11. Right to translate works.

290. The Delegation of Venezuela requested that its previous comments regarding the African proposal and lawful acquisition and access by library archives be transferred to that topic.

291. The Delegation of the European Union and its Member States suggested that the title of the topic focused on the right of reproduction as very often supply for access was being mentioned in distribution or communication to public.

292. The Delegation of Ecuador introduced the proposal from Ecuador, Brazil and Uruguay and stated that it was not an exchange of national experiences. It should be a right of libraries to be able to perform the function of making copies available at the request of their users. The

proposal called for an international instrument to guarantee those exceptions which were not present in the legislation of many Member States, as reflected in the study carried out by Professor Crews. The exceptions must be subject to copyright standards and rights which most countries had and in accordance with the current international obligations under the Berne Convention, other international treaties and the three-step test. The second part of the proposal stated that libraries were authorized to make a copy and users had the right to receive that copy through exception, which meant that users did not make the copy themselves. The Delegation explained that that second part was not contained in many national laws.

293. The Delegation of Brazil associated itself with the proposal made by the Delegation of Ecuador, and sought to address questions raised by the European Union and France over the naming of the topics. While Topic 1 discussed a specific activity which was more connected to the work of archives, Topic 2 and the right of reproduction and distribution was an activity more associated with libraries. The Delegation suggested that further clarification of the issues under topic 2 might be useful.

294. The Chair stated that such a discussion could be useful and referred to earlier comments from the United States of America suggesting that even without defining the entities, it was helpful to define the services they provided.

295. The Delegation of France admitted that there were still a few parts of topic 2 that the Delegation could not understand, in relation to safeguarding copies. Under topic 2, there were several elements of possible uses; the first for teaching or educational purposes, and the second for research. Both education and research might be covered by other discussions which were to take place after the libraries and archives discussion. It was unable to see the link with archive services. In regard to interlibrary lending, the Delegation felt that it would be better covered within topic 4 or 5, and sought to know in what way it was different from cross-border uses or library lending. The Delegation reiterated that it favored the most precise discussion possible.

296. The Delegation of Ecuador addressed the difference between the scope of the proposal under topic 1 and that under topic 2. It considered that the concept of safeguarding copies might not be appropriately included under this topic. For example, if a library acquired a book and made a copy to avoid destruction and to replace it in the future, that would be justified by the circulation or preservation needs. In a second case, the library made a copy at the request of a third party for education or private study, or for another library. A third case was when the copy was going to be handed out to a third party providing it fulfilled national legislation requirements and a fourth was the matter of lending when no copy was made. The Delegation stressed two further points that the committee should discuss: first, when there was a possibility of acquiring a copy that was made, and second, the impact of any advance in technology on the exceptions.

297. The Delegation of Congo stated its view that safeguarding should remain under topic 2, providing as example the agreement it had with France in regard to the copying of material, as a result of conflict in Congo that had destroyed much of the library and archival infrastructure, because those copies were safeguarded within the French libraries and archives. The Delegation noted that it would be open to the rewording of the topic, but that it should remain where it was.

298. The Delegation of Senegal agreed with the Delegation of Congo that the safeguarding of copies was an important issue and should not be removed from topic 2. It cited the example of the recent destruction of libraries in Mali and the loss of important documentation which had not been safeguarded elsewhere. The Delegation also questioned the use of the right of distribution, which was worded in a manner more consistent with commercial activity and

suggested the expression “making available” be used, as that was in fact a library’s primary function.

299. The Delegation of Poland, speaking on behalf of the Group of Central European and Baltic States (CEBS), expressed its opinion that the title of the whole topic should be “exceptions and limitations to the right of reproduction” rather than just “the right of reproduction”.

300. The Delegation of Senegal agreed with the Delegation of Poland in that the topic should be named “exceptions and limitations to the right of reproduction”. It also added that the beneficiaries would be people who go to and use the library services, as well as the libraries and archives themselves.

301. The Delegation of Italy expressed its concerns as to the content on page nine of the proposal and pointed out that its original comments could be found in paragraph 34, on page 11 of the document under discussion. In its view, it was unacceptable that copies could be made in any format and distributed to any user because it considered that this could open the door to free distribution. The wording in the third proposal was unclear and it appeared that limitations under A, B, C and D did not apply only to the user of the library and distribution could therefore benefit anyone. The wording of “accessing” a library was also questionable and it should not be the libraries’ role to help a third party gain access. Photocopying was done by students and the proceeds thereof accrued to the rightholders by way of university fees, any photocopying outside that framework would undermine the rights of the rightholder.

302. The Delegation of Spain considered that the definition of the issue under topic 2 required further clarity as it dealt not only with reproduction, but also with distribution, which could mean different things under different national laws. As it had noted in a previous statement, it could not see why that problem should be dealt with internationally and not nationally. The Delegation made reference to a contribution from Spain at paragraph 46 of the document as to how to deal with the problem, but warned that the vagueness of the definition needed to be addressed first.

303. The Chair supported the comments made by the Delegation of Spain, but added that flexibility was also important in the discussions to make sure that nothing was left out.

304. The Delegation of Belarus supported the new title of topic 2 as suggested by the Delegations of Poland and of the European Union and its Member States. It considered that the proposal made by Ecuador, Uruguay and Brazil was too substantive for the current discussion and pointed out that a library was a link between the rightholder and person needing the work for educational or scientific purposes. In that context, the Delegation did not support the view that there should be any right of reproduction without agreement from the rightholder, but the library would be able to copy works only after seeking permission. The Delegation also reminded the Committee that although libraries were non-commercial entities, an increasing number of them were engaging in commercial activity. In Belarusian law, the works that could be reproduced were reduced to articles, short works or excerpts from books which were more relevant to the needs of researchers. The legislation also allowed making copies of certain short parts of works without prior authorization.

305. The Delegation of Ecuador agreed with the statement of the Delegation of the European Union and its Member States, stating that topic 2 should be renamed as “exception to the right of reproduction and distribution”. The Delegation considered that libraries themselves should be making the copies to ensure optimum care of the work and monitoring of the exception. The proposal only provided that the libraries be able to make a copy for a user or for another library in three circumstances; if that copy was requested for allocation, requested for research or private study, or requested for interlibrary document supply. The proposal did not specify the quantity or format of what could be copied, because there was a limitation to such activity

requiring that it must be in accordance with the international obligations of any particular country. It noted that the concern voiced about not respecting the rights of the copyright owner was not well-founded as the exception was bound by relevant standards in the international copyright system.

306. The Delegation of Brazil addressed a number of questions posed by the Delegation of Spain in reference to the joint proposal. In regard to the question of beneficiaries, the Delegation referred the committee to the discussions on topic 1 which might provide some clarity on the matter. On the second question, the Delegation confirmed that the main purpose of the proposal was to provide the legal certainty needed to allow libraries to operate both internationally and nationally. Regarding the third question on associated assurances for rights holders, the Delegation made reference to paragraph 2 of the proposal, which gave assurances that the national legislation would be the focus and the basis for providing protection to rightholders. On the last question as to whether the discussion had an international implications, it pointed out that the WIPO General Assembly approved the discussions, and the discussion was important.

307. The Delegation of the United States of America considered that the topic aimed to cover a number of different issues; when a library supplied a copy of a work to another library and when a library provided a work for personal use of a library user. In both cases, the focus was on the supply of copies for personal and library use. The Delegation stated that its proposal was to enable libraries and archives to continue to perform their public service role of advancing research and knowledge. The proposal contained general principles about access to collections and information, as well as reasonable exceptions and limitations that should be used to establish a framework for enabling libraries and archives to provide copies of certain materials to researchers. It concurred with the German and Chilean Delegations' written comments and did not wish to impose solutions at an international level which left no room for flexibility. In the United States, when an exception for library supplying copies was used, the library must believe that it was for private study or scholarship research and not for commercial use. The materials must be the property of the user requested through a library or the property of the library itself. The Delegation stressed that it had endeavored to provide flexibility for the ways countries work individually and together for identifying how to reflect that function.

308. The Delegation of Senegal, in response to comments of the Delegation of Italy, stressed that as far as the African Group was concerned, access to knowledge was a most important factor, as was the ability to preserve sensitive documentation. The Delegation provided the example of historic texts being destroyed in Egypt, and that if an international instrument had been in place, copies of such texts could have been preserved and held in foreign libraries, and that was why national legislation alone could not solve the problem.

309. The Delegation of Canada stated that topic 2 appeared to have three objectives; firstly, the safeguarding of copies so as to protect the work from digitization, which it might be more appropriate to discuss under the topic about preservation; secondly, to enable a library to lend to a second library, thus benefitting the second library, which might be suitable to be discussed under topic 4, library lending; and thirdly the situation in which a library made a copy of a work for a user in conformity with fair practice, which could be considered under topic 8, limitations of liability of libraries and archives. The Delegation stated that there was a risk of compartmentalizing items in topic 2 when they might be better addressed elsewhere.

310. The Chair stated that it was necessary to narrow down the scope of topic 2 and to avoid duplication across topics.

311. The Delegation of Spain referred to its previous statement, taking the view that it had been misinterpreted to be referring to one specific proposal when in fact it referred to all of the proposals, which overlapped in many areas without the topics being made clear. The Delegation

supported the international discussion that was taking place, but also considered that there was a danger the discussion might reach a point where the Committee did not know what the limits were and risked going beyond its mandate.

312. The Chair noted that the discussion was not intended as an intellectual exercise, but as an effort to further spell out the problem at hand. In regard to comments on the scope of topic 2, the Chair stated that it was possible to attempt to reach a preliminary consensus while leaving the remainder of the problems for a later discussion.

313. The Delegation of Italy reminded the Committee that under the Berne Convention, exceptions, unlike rights of authors, were not a right, nor was that the case in the law. Exceptions should be devised by Member States and not by an international instrument; also, countries should not have unlimited scope in identifying who could benefit from exceptions. That was a fundamental issue because if too much scope was given to exceptions nationally, there was a risk of abuse.

314. The Representative of the International Federation of Libraries Association (IFLA) outlined the two types of lending that libraries could do. There was the lending of a physical object or time-limited view of an article which, like a physical copy, could be password-protected for a limited period of time. That was very different from providing a copy to a library or to a user to retain. Those activities arose from the basic fact that no library could have everything it needed to have, and that time-limited lending was imperative in fulfilling obligations to users.

315. The Representative from International Council of Museums (ICOM) thanked the Member States which recognized the importance and role of museums, which shared many functions with libraries and archives. Highlighting a few key differences which affected the way museums dealt with copies compared to libraries, the Representative pointed out that museums were required to make a copy initially for the management of a collection; taking a photograph of a work of art for internal management and not for external application. In many countries, that was permissible activity, but it was unknown whether it was permissible in all countries. The Representative stressed that the concerns of copyright became very different when one moved into three-dimensional objects from the two dimensional document world.

316. The Delegation of the European Union and its Member States reiterated its previous comments that it was not satisfied with the reasons advanced as to why there should be an international instrument in that area and requested that its objections be noted.

317. The Chair noted the Delegation's comments but reminded the Delegation that the Committee was still far from implementing any sort of international instrument and that the discussion was whether it was right for the copyright system to provide exceptions and limitations to cover the services that libraries and archives provided.

318. The Delegation of Congo suggested the title for topic 2 be "exceptions and limitations to the right of reproduction and making available in the light of the traditional role of libraries and archive services". It also suggested an amendment to the African proposal by removing "national legislation" and replacing it with "compatible with fair practice" to allow for greater flexibility at the national level.

319. The Chair recognized that additional work was needed to properly define topic 2, but stated that there seemed to be an uncontroversial common element about the need to establish exceptions and limitations to enable libraries and archives to reproduce certain copies or works so as to facilitate research and under certain conditions such as the three-step test, allow for fair use. No agreement was reached on a number of other issues, for instance whether the right to distribution needed to be discussed alongside the right of reproduction. The Chair moved to topic 3.

320. The Secretariat outlining topic 3, explained that proposals had come in from the African Group and India, together with a principles and objectives document from the United States of America. The African proposal suggested that countries be allowed to set up a designated deposit system; India suggested that the matter be left to Member States with freedom to decide in which way it was implemented; and the United States suggested encouraging the deposit laws and systems to help national collections and in preservation efforts. The comments on the topic started on page 17. A number of the comments stated that national deposit systems were not linked with the copyright system and the question had been as to whether it was a topic related to copyright exceptions at all.

321. The Delegation of the United States of America referred to the principles and objectives document it had previously submitted, stating that legal deposits helped develop national collections and might help in preservation efforts. It noted that national law was unique in that it provided for deposit of copyrighted works published in the US and Library of Congress, and that it was looking forward to hearing how other countries were adjusting to the digital era in regard to the legal deposit. The Delegation also noted that it was important not to restrict the ability of libraries and archives to receive, preserve and disseminate government works which did not receive copyright protection under US law. Because of its unique legal situation, the Delegation did not view the legal deposit area as one suitable for harmonization at that stage, especially within the context of limitations and exceptions.

322. The Delegation of Colombia stated that it did not consider legal deposits should be discussed within the topic of exceptions and limitations.

323. The Chair decided in view of the lack of further comments from the Delegations to move to topic 4.

324. The Secretariat outlined topic 4, stating that the African Group had submitted a proposal on the supply of works to another library or archive for subsequent use by the second library's users. Brazil, Ecuador and Uruguay had submitted a proposal suggesting that a library could lend copyrighted works or materials protected by related rights to a user directly or to another library, noting that Member States that had a public lending right could keep that right. The proposal from India stated that there was a right to lend any work without authorization, but did not specify the recipients. The US proposal had the objective of enabling libraries and archives to perform their public service role of advancing research and knowledge, with the beneficiaries being the public, researchers or intermediary libraries in different circumstances.

325. The Chair opened the discussions regarding public lending, reminding the Delegates to take into account the IFLA explanation of the different services that libraries offer.

326. The Delegation of Ecuador stated that a library's purpose was to make works available to users, allowing them to use that work outside of the library for a specific time-frame. However, in some Latin American and other countries, there was a situation in which libraries were acting illegally by lending works to their users. It called for an international standard which guaranteed the legality of that action, and that the proposal was in line with the respective African and Indian proposals and did not infringe the EU countries' systems for public lending by libraries. The proposal helped those countries that did not have a system and at the same time allowed current public lending systems to continue functioning.

327. The Delegation of Guatemala noted that Guatemalan national legislation allowed for the public lending of a copy so long as the lending institution did not have a profit-making purpose.

328. The Delegation of Italy, referring to that part of the African proposal which referred to the digital transmission of copies, raised the concern that once the copy was transmitted, it failed to

see how access to that digital copy could be withdrawn. The fear was that the system would result in an increasing number of copies being sent out into the public domain; the only safe possibility was the loan of a physical copy that could be returned.

329. The Delegation of Colombia confirmed that it was one of the countries where an exception for public lending did not exist.

330. The Delegation of Brazil associated itself with the proposal delivered by the Delegation of Ecuador and sought clarity from the Delegation of Italy as to what type of guarantee would be necessary to allay its concerns in regard to fair use.

331. The Delegation of Ecuador addressed the Delegation of Italy's statement that there were technologies which were used to provide digital documentation for a certain time and then restricted access to it. The Delegation suggested that ILFA inform the committee as to what those technologies were and how they could be used.

332. The ILFA representative responded, stating that the digital object was lent through e-lending and password protected for a period of time after which it became unavailable, or returned, in a sense.

333. The Delegation of Canada gave a national example of interlibrary lending. Under Canadian law, libraries, archives and museums were permitted to provide copies to users or other institutions through an interlibrary loan, including electronic delivery, regardless of the original format. Safeguards were in place to prevent abuse of the system: loan copies could only be stored electronically for five working days and there were also restrictions on the printing of copies.

334. The Delegation of Tunisia voiced its support for an exception and for the proposal made by the African Group, stating that interlibrary loans were very important for allowing libraries to fulfill their role within developing countries.

335. Regarding the African proposal, the Delegation of Greece asked why a person would purchase a piece of music or pay to watch a program on TV if they could just download it from a digital library, and how that was compatible with the three-step test and the protection of legitimate rights of authors. It also noted that the title of the African proposal suggested the idea of the supply of copyright and related rights material rather than the lending of works.

336. The Chair stated that the African Group would be given some time to prepare a response.

337. The Delegation of France sought clarification from the African Group about whether it was referring only to providing a copy of a work or the work itself. Referring to the Ecuadorian proposal, the Delegation questioned whether the proposal referred to a public lending right or an authorization for a loan. The Delegation stated it had been under the impression that the point at issue was authorization only and that France did not have an exception mechanism, but rather a legal license mechanism. The fact that the proposal complied with current national mechanisms was a positive aspect. The Delegation reminded the Committee that license mechanisms were not exceptions and those licenses exist which did not correspond to the lending right as used in the Ecuadorian proposal.

338. The Delegation of Ecuador asked whether the meaning of the word "supply" in the African Proposal could be interpreted as being different or the same as the more traditional phrase "loan", but also in a digital sense. It added that according to international obligations, the scope of the supply of copies was limited in the final phrase which stated that all making available had to be compatible with fair practice as determined in national law. Consequently there was a

standard that limited the scope of the exception, but it was clear that such a text could appear under topic 2 or topic 4.

339. The Delegation of the United States of America requested clarification as to how library lending complemented the commercial market. Its national law did not have an express provision addressing lending between libraries and the ability to do so was implicit in their right of distribution by law. Libraries and archives advanced knowledge by providing access to their collections. The Delegation also had a concern regarding the African Group's proposal to establish a standard where a library or archive would have to do a fair practice or fair use analysis with the lending of any particular material.

340. The Delegation of the European Union and its Member States outlined that the current legal framework in the EU was set in 1992 with the Lending Directive and it had contributed to the lending of physical copies of works in collection of libraries. The Delegation stated that the current system in the Rental and Lending Directive did not allow for the digital lending of items in libraries, and that currently Member States and publishers were engaged in pilot projects based on agreements rather than legislation allowing for digital lending.

341. The Delegation of Senegal, speaking on behalf of the African Group, responded to questions regarding the use of fair practice in the Group's proposal. It stated that the expression was fairly broad in scope and that it was difficult to verify whether an institution was acting in a way compatible with fair practice. A better, less loaded wording could be found but disagreement over the language should not hamper the discussion.

342. The Delegation of Tunisia responded to a comment made by the Delegation of Greece and stated that it saw no contradiction between the mission of libraries and the defense of copyright. It stated all libraries work to make their works available to the public but did not challenge the principles of copyright.

343. The Delegation of Greece responded to the Delegation of Tunisia and restated that it did not consider that the missions of libraries was to deliver works to a users' computer permanently, and that this was not the definition of lending right, as confirmed in a recent Oracle case in the European Court of Justice, which stated that if a person supplied a copy, even if in digital form, such a supply was permanent; that meant it was like selling a work. That was not compatible with the mission of a library.

344. The Delegation of Italy agreed with the Delegation of Greece in that there was no provision in EU Member States for the digital transfer or digital lending of works, and disputed whether it was possible to refer to the transfer of digital items in terms of a loan. It considered that the expression fair use/practice had been overtaken by the three-step test.

345. The Delegation of Belarus stated that it extended the scope of library lending to include reproductions in digital form in 2011, but with the proviso that the copies were made within the library and placed on the local intranet, meaning they could be made either in paper or electronic form. The limitation extended to interlibrary lending and any commercial lending was outside the limitations and a contract must be formed with the appropriate rightholder.

346. The Delegation of Senegal stated for a loan to exist, there had to be a time limit, the date after which a copy must be returned. If it lasted indefinitely it would not be a loan. There had been a mistake in the referencing of the texts and the French version of the text was not authentic, with the first paragraph of the proposal being transferred also to the second place.

347. Addressing a point raised by the Delegation of Italy, the Delegation of Ecuador, took the view that the concept of fair practice of Article 10 of the Berne Convention still had a role to play beside the three-step test, and that they could be applied to different areas. In the case of

exceptions for education and reproduction, the fair practice standard applied, whereas the three-step test was a more general statement for the purpose of reproduction.

348. The Delegation of India considered that lending and the wider mission of libraries were a key part of the WIPO Development Agenda and that the role of libraries as a disseminator of knowledge and culture should not be compromised. In addition, the changes the publishing industry was experiencing and the digital lending were topics that would grow in importance. The Delegation was certain that digital transmission without loss or piracy could be addressed satisfactorily. Attention should focus on reaching out to people and not isolating technologies. The second part of the proposal by the African Group should not create agitation. What was applicable to private players was also applicable to public players such as libraries.

349. The Delegation of Tunisia provided comments and clarifications about the contents and wording of the African Group proposal, noting that the delegate of Congo has stated that the word “supply”, or “*remise*” in the French version, should be understood in the context of action by libraries, that is, acquisition for non-profit making purposes and in the public interest. The Delegation therefore noted that it viewed the work of libraries in the context of the interests of the general public and for non-profit making purposes, and this view had informed the use of the phrase “fair practice”, in other words, the practices adopted by libraries acting for non-profit making purposes.

350. The Delegation of Italy stated that the right of communication to the public and the right of making available were governed by Article 8 of WCT of 1996 and therefore the right recognized by that Convention had to be applied in accordance with the three-step test.

351. The Delegation of Greece stated that in its view, if an exception was applied in such a broad manner as suggested by the African proposal, then the safeguard of fair practice would no longer be relevant apart from cases of practices of direct commercial benefit. The Delegation requested clarification from the African Group as to what they considered to be “unfair practice”.

352. The Delegation of Congo stated that it considered that a loan of indeterminate duration which could open the door to a second loan or to copies would be ‘unfair practice’.

353. The Delegation of Senegal agreed with the Delegation of Congo and stated that libraries to which loaned materials were not returned would be acting contrary to fair practice.

354. The Delegation of Greece accepted that a loan for a limited period of time could be considered fair practice and thanked the Delegation of Senegal for its statement. The Delegation of Greece nonetheless noted that it still did not understand the concept or need of subsequent loans when a user could simply request a loan from the original library itself.

355. The Delegation of India stated that the question of fairness in fair dealing was taken from jurisprudence of intellectual property rights, where the central figure was not the author, but the general public. The issue of lending was essential to the main DNA of a library and libraries often lacked the capacity to hold all their potential patrons so loaning copies was the only way they could operate as a public service. In regard to digital transmission, the aim should be the similar concept of non-digital loaning for a certain period of time, with no opportunity to share the copy further afield.

356. The Chair thanked the Delegations for their respective country statements and now opened the floor for the NGOs to add their comments.

357. The Representative of the Ibero-Latin-American Federation of Performers (FILAIIE) reported that the equivalent of a digital loan for five or six days had existed but had had to be

suspended because there was instant viral reproduction through devices enabling the removal of electronic protection. The Representative went on to praise the EU directive in that area as being very cautious as regards the question of digital reproduction or lending for a library.

358. The Representative of the International Publishers' Association (IPA) stated that the Association understood how difficult it was for Delegations to keep abreast of all the latest developments in the areas discussed. The Representative encouraged Delegations to learn from the different library associations and publishers associations about the development of technology and business impacting on the way e-lending was working. There were many initiatives on e-lending which the Representative considered that it would be extremely useful for Delegates to learn about.

359. The Representative of Electronic Information for Libraries (eIFL.net) gave the example of Amazon, which had a web page on "lend or borrow kindle books" allowing user to lend a Kindle book to another reader for up to 14 days, which was an example of what the IPA was talking about in terms of experimentation in the market. The Representative also commented on the three-step test and how it had replaced fair use and fair practice. It was important to revisit the test so people could gain an in-depth understanding of what it was trying to achieve and then assess whether it was indeed the correct test to be used in 2014.

360. The Chair ended the session, stating that a consensus appeared to have been reached regarding public lending, though some were in favor of exceptions or limitations whilst others wanted legal licensing. The Chair also considered that e-licensing also had broader implications in the discussion. The Chair thanked all participants for their views and their patience and adjourned the session.

361. The Chair opened the session, noting that the conclusions on agenda item 7: Limitations and Exceptions of Libraries and Archives by email to regional coordinators. The working plan for that day was the third topic. Suggestions were made to discuss the conclusions after lunch. The basis of the work on topic 3 was document SCCR/26/4/PROV on limitations and exceptions for educational and research institutes and persons with other disabilities. The Chair asked the Secretariat to give a brief introduction to the text.

362. The Secretariat reported that the document was named 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 and that it was organized with a number of preliminary sections such as the preamble, definitions, generally applicable considerations covering topics like flexibilities, obligations and the three-step test. It was followed by a number of more specific topics. There were seven sections in the text, but many of them had multiple subtopics, which meant that the document contained 22 topics and subtopics in all. In terms of the organization, there was some overlap among the topics. In some cases, groups asked that certain texts be placed under two topics. Some of the text was somewhat duplicative. Regarding organization, there were text proposals and in most cases the subtopics and alternatives were followed by comments from different Member States. Most of the comments followed substantive topic, but there were some comments and then an annex at the back of the document. These were moved at the request of certain commenters who considered that comments should be in an annex. The Secretariat noted that the organization of the document had been previously discussed but that generally speaking it started with text proposals of different types, some of which were treaty text and others principles or considerations to be taken into account.

363. The Chair noted that the number of topics in the document showed how significant the difference of opinion was with regard to the issues that should be included or involved in devising an international lead instrument on limitations and exceptions for educational, teaching

and research institutions and persons with other disabilities. The Chair opened the floor first to regional coordinators, then Member States.

364. The Delegation of Bangladesh, speaking on behalf of the Asia Pacific Group, underlined that educational, teaching and research institutions played a vital role in the development of the individual and national attributes. Persons with disabilities deserved respect and it was their moral obligation to do the best to facilitate access to their learning. The delegation hoped that there would be further discussion about the understanding of the issues.

365. The Delegation of Poland, speaking on behalf of CEBS, recognized that educational and teaching institutions support the aspirations of societies by developing and offering access to knowledge and support their efforts to develop modern economies by fostering the diversity of specialists for labor markets. Throughout CEBS, such institutions trained students in specific vocational areas, preparing them to practice particular professions and supplement their professional skills and specialist knowledge, all in the spirit of respect for democracy and responsibility for the well-being of society and workplaces. The main objective of government scientific research policies was important in economies that are competitive and dynamic, based on knowledge, capable of ensuring constant growth, creating better workplaces as well as improving social cohesion. The existence of the so-called knowledge triangle composed of education, research and innovation was recognized and for this purpose the CEBS tended to mobilize and reinforce the research and innovative potential in the area of providing for adequate protection of Intellectual Property. The delegation noted that educational and research sectors contributed to social and economic development, which depended on technology, organizational and marketing innovations. Courses were then provided in various areas, including regular daily studies as well as those offered in distance learning systems. The digitization of educational materials and the opportunities provided by new technologies had led to development of new teaching tools and methods with special focus on ICT-based learning, and thus Member States continuously supported inter-institutional cooperation in education. However, there were linkages between educational and research institutions and publishing and other creative sectors, which explained why those sectors are one of the crucial aspects of public policies supporting creative industries. Therefore, copyright policies needed to assess the economic and social effects of any solution to the problems which might include failing to enable access to results of scientific and educational research. The Delegation of Poland noted that CEBS recognized that research and educational institutions had to be supported by modern and balanced copyright policies. Copyright systems that existed in many WIPO Member States provided for a spectrum of limitations and exceptions crafted specifically for the educational and scientific research sectors. The importance of sharing the experiences and views among different Delegations had been obvious since Twenty-Fourth Session of the Committee. The Delegation of Poland noted the co-existence of different models of limitations and exceptions that reflected the diversity of traditions, educational and other relevant factors. The delegation expressed its conviction that modern copyright systems also needed to provide for a variety of licensing schemes that were useful, flexible and supportive for educational research and teaching institutions and their everyday activities. It should be up to every WIPO Member State to decide what kind of mechanism, whether based on licenses or on limitations and exceptions, was most appropriate for the traditions and realities of their societies and best reflected educational and research policy goals. It was crucial to preserve the flexibility of WIPO Member States to shape their educational, research and other related policies. Legally binding instruments in that domain might question effectiveness of educational research and other related policies based on the copyright mechanisms and guarantee equilibrium and support of the industries. It was not indispensable to enter into treaty limitations and exceptions to support the value added brought by educational research and teaching institutions to the societies they served. The Marrakech Treaty, a result of tremendous work done by the Committee, addressed an issue which needed unique legislative action at the international level. The delegation underlined its participation in the exchange of views of national experience of limitations and exceptions for educational, research and teaching institutions.

366. The Delegation of Japan, speaking on behalf of Group B, thanked the Secretariat and recognized the importance of the exchange of experience in that topic. The working document contained valuable comments from Member States which would help in understanding various legal systems and practices. The Delegation proposed that openness to any input or suggestion from Member States should be maintained in a bid to keep Member States abreast of the situation. The Delegation expressed concern about some topics covered by the document as they seemed to be beyond the scope of the limitation and exceptions for educational and research institutions, noting for instance, that the Committee had not been mandated to work on security, which was dealt with in sections 7.5 and 7.7 of the document. The Delegation took the view that work should be focused on topics that were specific to education rather than on multiple controversial issues that were not relevant. Constructive work on principles and an update of studies by the Secretariat would be more beneficial to all Member States than adopting a treaty approach.

367. The Delegation of Trinidad and Tobago, speaking on behalf of GRULAC, noted that the discussions regarding limitations and exceptions within the SCCR were contained in proposals made by GRULAC Member States. Such debate could enhance the development and socioeconomic abilities of millions of people across the region. The Delegation supported the proposal and expressed its intention to continue to work constructively during the week for the further advancement of the discussion on limitations and exceptions.

368. The Delegation of China noted that the protection of persons with disabilities and the development of education, teaching and research institutions were of great importance. Laws and policies to protect the rights in these areas should be put forward.

369. The Delegation of Algeria, speaking on behalf of the African Group, stated that the presentation by the expert exactly summarized what the group had expected and hoped for. It emphasized that the right for each country to have access to knowledge, being now a fundamental right, was no longer contested today. This right stipulated that there should be freedom to of access all available educational and scientific research material. That requirement made it imperative to find a balance with rights held over intellectual creations, which constituted the main raw material for the embodiment of this freedom. The balance between intellectual property rights and the public interest was generally translated by exceptions and limitations. Unfortunately, in the area of education and scientific research, national legislation did not seek this balance in a uniform and comprehensive manner, and hence the traditional paradigm of international instruments based on the principle that every country would take into account public interest in its legislation was inappropriate in the digital invasion, given the breakdown of borders, especially between communities which shared the same language. Therefore, it was necessary to create a universal legal instrument which lay the basis for a common approach to the creation of exceptions and limitations for education and scientific use. The Delegation noted that the Berne Convention has addressed this, but those provisions did not make it possible to face the challenges of the balance between copyright and related rights on the one hand and the right to access to knowledge in its many dimensions on the other hand. Certain persons continued to assert that the Berne Convention did not apply to distance learning, or that even if this mode of learning did fall within its scope, it did not cover distance learning using digital methods. It was therefore necessary to create regulations to cover all types of learning and the interests of all rightholders. The Berne Convention has not provided for exception for the benefits of education and therefore it had to resort to granting exceptions depending on the type of institution. Such a situation would not engender a satisfactory solution. The Delegation observed that while recognizing the needs to strike a satisfactory balance between protection of rightholders and of the public interest, it was a matter of concern that the two 1996 WIPO treaties had not completely covered the digital dimension of exceptions and limitations. Until then, the debate on reconciling technical measures, which were usually legally protected, with exceptions and limitations was far from being exhausted. It

was important to include in an international instrument provisions which, without challenging these technical measures or their legal protection, would offer Member States the possibility of adopting a more judicious approach to the question of reconciling such measures with an exception or limitation for the benefit of education or research. For these various reasons, the text proposed by the African Group had three main characteristics. Firstly, there was a text-oriented tool to strike a satisfactory balance between the needs to gain access to works for education and research and the need to satisfactorily protect copyright and related rights. Secondly, the text allowed for a certain degree of flexibility which should enable it to be molded to the various development levels of states that would ratify it, the various families of copyright rights and related rights and the various treaties governing literary and artistic property. Finally, the proposed draft was a text which should be consensual because it endeavored to recognize the variety of viewpoints from studies and WIPO experts and research. The Delegation hoped it had sufficiently explained why the treaties mentioned were no longer sufficient and why an international instrument on this area was obviously required.

370. The Delegation of Russia expressed its satisfaction that when only discussion on limitations and exceptions for libraries and archives had begun, it also began to consider the issue of limitations and exceptions for educational, teaching and research institutions. The Delegation took the view that ultimately there would be general recognition of that it would be useful, in fact, just to merge these two documents. If the specific agreement on limitations and exceptions as a whole was achieved and if it was considered in one single document, with limitations and exceptions for libraries, archives, education, teaching and research institutions, it would save time, efforts and WIPO resources. It should have one single document. The Delegation of Russia supported the proposal of the Delegation of Japan that the document should not include contentious issues such, liability.

371. The Delegation of Kenya endorsed the statement made by the Delegation of Algeria on behalf of the Africa Group. It expressed gratitude for the research and national experience provided. The Delegation reported that it was in the process of amending the law to include exceptions and limitations which in the extant law were quite restrictive and did not offer much balance for purposes of research and education. It welcomed the discussion on substantive issues as they related to exceptions and limitations in the search for an international instrument.

372. The Delegation of the Islamic Republic of Iran noted that limitations and exceptions could ensure fair and sustainable balance between copyright protection and the public interest. WIPO copyright treaties did outline exceptions in that regard, but in order to take into account the certainty on limitation and exceptions for education, teaching and research institutions and persons with other disabilities, it would be imperative to establish an international binding treaty specifying the minimum and common standards, especially given how the development of new technologies had changed education and research institutions and modified teaching methods. It would be important to establish a robust framework affording research and educational institutions the access to knowledge they needed fulfill their goal in the digital age while preserving the legitimate interest of rightholders. Digitalization had had a profound impact on public access, posing new challenges for research and educational institutions in developing countries. An update was needed: a compatible instrument on limitation, exception for research and educational institutions to exploit existing limitation exception and a sustainable balance of rights and the public interest. The discussions could gradually bring maturity to issues and identify important elements and requirements that should be incorporated in the text of the treaty in the course of text-based negotiation.

373. The Delegation of the European Union and its Member States stated that during SCCR 24, it had debated and actively engaged in an exchange of views regarding exceptions and limitations in the area of education and research. The Committee was provided with information regarding the new legal framework and several Member States intervened to explain their national exceptions. The Delegation found it important that the copyright

framework enabled these institutions to fulfill their role both in the analog and in the digital world. The existing international copyright framework properly provided for meaningful limitations and exceptions for the benefit of the institutions. The Delegation was willing to continue an exchange of views regarding the national experiences in that area. It was important to reiterate that it was not willing to consider a legally binding instrument in this area. The Delegation did not believe that possible issues related to the activities of educational and research institutions required the same type of action as was deemed necessary to address the needs of people who are blind, visually impaired and print disabled. The unique case of access to books for the benefit of these people needed intervention at an international level. The Marrakesh Treaty specifically facilitated access to the published works for people that are blind, visually impaired or otherwise print disabled. While the goal of the European Union was to ensure the functioning of an internal market without borders, European and international legislation gave Member States a certain degree of flexibility, which was particularly important in view of the different legal systems and traditions of the 28 member states of the European Union. That was even more important on the international scene where so many countries have taken different approaches in line with their cultural and legal traditions. In any country, licensing also played an important role either alongside or instead of the application of exceptions. The Delegation expressed its concerns as regards the status of Document SCCR/26/4 prepared by the WIPO Secretariat and which was entitled "provisional working document towards an appropriate international legal instrument (in whatever form), all imitations and exceptions for educational, teaching and research institutions and persons with other disabilities", containing comments and textual suggestions. It noted that the structure of that document gave the impression that the document was not inclusive of the views of all involved in this discussion. It believed that the best way to make progress in the Committee's work was to identify issues which were most important and useful for the exchange of national experiences and to update relevant WIPO studies.

374. The Delegation of India stated that many delegations had underlined the importance of allowing the expansion of what had been discussed about libraries and archives the previous day. Libraries were at a larger level, and the classroom, of importance, which it wanted to point out for knowledge, especially the developing and least-developed countries in the area of distance learning. Distance learning was noticeably expanding into the online mode. There was an issue of material and its transmission. It was important to consider how distanced learning was enabled in that context. There should be exceptions and limitations if there was to be anything on the exceptions because exceptions themselves were something of a special concentration which looks at particular settings. Another issue was Internet service provider (ISP) liability. In India, the Information Technology Act governed certain operations for ISP relating to internet issues. That was crucial since copyright was a concept which was applicable without registration. ISPs could be a major issue because there was no means of checking whether or not something was copyrighted or subject to exception. The Delegation highlighted the issue of licenses in educational. It was complex in terms of expertise as many institutions in the third world did not have any experience in terms of such offices. The Delegation approached exceptions as a non-compensation model, which was crucial, and welcomed further discussions about how it would be addressed internationally. The Delegation believed that universities could be chained very early on in that and the very purpose of access to knowledge would be affected.

375. The Delegation of the United States of America stated that as had been mentioned earlier that week, it had an updated document on objectives and principles for exceptions and limitations for libraries and archives. It had updated document SCCR/23/4 from 2011. The Delegation recognized that exceptions and limitations for educational purposes were considered as part of the international copyright regime as far back as the Berne Convention in 1886 and that appropriate exceptions and limitations to copyright for certain educational uses were an integral part of any copyright system. The WIPO Copyright Treaty of 1996 also specifically referred to education in its preamble, noting the purpose of maintaining a balance between the

rights of authors and the needs of the public with respect to education, research and access to information. The 1996 WIPO Performances Treaty included that language on maintaining that balance. The Delegation believed that further work on limitations and exceptions for educational purposes should be focused on finding common ground on high-level objectives and principles, and exploring the range of different treatments of educational exceptions by nations around the world. That approach was most likely to lead to positive, constructive results in the Committee. It would permit progress by promoting steps forward on shared goals and principles while enhancing international understanding and maintaining flexibility at the national level. The Delegation did not support work towards a treaty. It expressed its desire to address the scope of that exercise. At the previous session of the SCCR, a number of delegations noted that the current working document on educational exceptions contained a number of general topics that went beyond specific exceptions for education and research. These topics related to education only in so far as educators might be somewhat affected by their application, which could be true of almost any intellectual property-related topic, such as ISP liability and public health. The inclusion of such broad topics was troublesome for two main reasons. First, the issue of copyright exceptions for the purpose of education was itself a rich, complex area for discussion which should be the subject of the Committee's sustained attention. Complicating the discussion with topics having only a transitional relationship with education would impede rather than advance those discussions. Second, the problem was amplified when the proposed non-germane topics were themselves among the most complicated copyright issues. The discussion of such topics would not just slow progress, but would risk bringing the conversation to a standstill as other stakeholders not otherwise affected by education exceptions would also find it necessary to become engaged. The Delegation stated that it was preparing an objectives and principles document on limitations and exceptions for educational activities along the lines of the Committee's updated document on limitations and exceptions for libraries and archives. It planned to circulate an objectives and principles document on that topic prior to the next meeting of the SCCR. These objectives and principles would include the following elements. Firstly, Member States should provide certain exceptions and limitations for educational and research purposes. The premise that education and research should be given special treatment under Copyright Law has long been enshrined in international agreements providing a framework for exceptions and limitations in this area. Both exceptions and limitations that promote access for educational purposes, including exceptions for distance learning and strong protections for authors, were vital to achieving the copyright system's goals. Such exceptions and limitations must be consistent with relevant international obligations, including the three-step test. At the same time, Member States should foster a dynamic commercial market for educational and research materials. A vibrant commercial market for these materials was vital for educational and research purposes. Cost-effective licensing models could allow for educational uses that were not covered by limitations and exceptions and national law. The Delegation recommended that the four WIPO geographic studies from 2009 on that topic be updated for the benefit of these discussions and urged the addition of a component on distance education and any updated studies and further discussions for subtopics arising from the Committee's objectives and principles document as it is developed.

376. The Delegation of Senegal highlighted the need for such an instrument at the international level. It stated that the question had been raised as to what the ideal instrument might be. It was true that the Berne Convention was from 1961, the WPPT and WCT were from 1996, and the world of 2013 was too far removed from 1961 and 1996. International treaties for archives and library services could not be effectively resolved because at the time the issue of the digital world had not arisen. The current, fast developing world was thirsty for knowledge. It wanted to have knowledge about its past and future. Thus, it was important to have education and research establishments which were increasingly turning to distance learning. A treaty was greatly desired by Senegal, as an instrument that promoted a balance between public access to knowledge and safeguard of copyrights. It stated that Senegal would remain flexible and that that treaty was only an update in the ICT sense of the term, to facilitate the traditional vocation of libraries and archives thanks to digitalization. It was a good framework for cross-border

exchange in that area. It was interesting that some of the provisions appeared to be broad, vague and complex; however, Senegal was in agreement with the African Group and would work very hard to produce a very clearly defined, delineated and targeted text so that it did not depart from the essentials and open a Pandora's Box. It declared its endorsement to Nelson Mandela's idea that education was the most powerful weapon for changing the world, and that change was required because of digital imperialism and changes in the law of life.

377. The Delegation of Ecuador stated that it was important to understand why it was considered that limitations and exceptions for education were fundamental parts of a treaty. There was among the delegations doubt as to the importance of having a legal text on that issue, and The Delegation of Ecuador would like to explain why it considered this appropriate. The Delegation noted that it was acknowledged that copyright recognized education as an important area which required special treatment and protection within the copyright system and, therefore, exceptions for education had been allowed from the very outset, as in Article 10(2) of the Berne Convention. There was consensus that there should be flexibilities for education and that they were necessary. However WIPO studies showed that there was generally insufficient normalization especially on the digital issue and so that insufficiency raised a series of obstacles to the development of that activity, as with the services provided. The solution was necessarily an international instrument. The Delegation adduced the example of a country establishing a need for an exception for education and allowing a quotation or photocopy to be used without authorization from the author; if that educational text, which had been based on an exception was exported to a third country which did not recognize the right for quotations in educational institutions or the right to include, for example, a complete photograph in a text, then that textbook was going to be considered a pirated document because it had been made without the author's acceptance in the first country and might not correspond to the legislation in the country to which that textbook has been exported. The Delegation accordingly took the view that such these issues must be resolved internationally to allow legal certainty to cover the exchange of educational materials. The example could be multiplied a million times over because there was always an interest in making the best of the opportunities that the information society and digital networks offered. The Delegation underlined the need for an instrument governing permitted uses for educational purposes to guarantee that the best of distance learning, educational materials, and international cooperation programs would be made available and inequalities in access to education could be ended. It believed that its example offered a very clear illustration of cross-border exchange and there was also a need to facilitate such exchange for educational goods in addition to the obvious common interest in ensuring greater access to educational elements and different societies, which were not always as readily available in sufficient quantity and quality in all countries. From the legal point of view there were more than sufficient elements to found new instruments in the case of education. Article 10(2) of the Berne Convention itself already refers to the need for special agreements for the use of these exceptions for education. The work that was only starting, to provide compulsory instruments that would allow the previously mentioned positive approaches, was worth highlighting. Exceptions for people with other disabilities were also an essential point. The Marrakesh Treaty established a precedent which might be used in the case of persons with other disabilities. Persons with other disabilities had asked when the issue would be resolved for them. At least studies could be made. The Secretariat should undertake a study on the exceptions and limitations with regard to persons with other disabilities, such as the deaf and persons with speech difficulties.

378. The Delegation of Egypt associated itself with the statement of the African Group as made by Algeria and the proposal submitted by the African Group. The proposal contributed to the role of copyright in promoting the knowledge and creating the necessary balance between copyright and related rights and the needs of the public. The Delegation believed that these proposals were intended to raise the level of education and access to knowledge through the copyright system. It would make it possible to promote access to all educational materials which were available. The Delegation thanked all the Member States for their contributions,

ideas and opinions which greatly enriched the discussion. It was important to comply with the mandate handed down by the General Assembly, which stated that the Committee should continue its role in the development of international treaties through international legal instruments in any form. An appropriate international legal instrument should be drafted in some form, so as to submit a recommendation to the Assemblies on the Committee's work on exceptions and limitations for educational, teaching and research institutions and persons with other disabilities. The working document contained a mixture of very detailed proposals and comments, with many national examples of exceptions and limitations from various countries. The Delegation proposed that legal texts applied in the various countries which had referred to their experience on exceptions and limitations be included. It would make it easier for experts because they would be able to learn about these existing systems which underpinned the opinions expressed in the document. That would be a good way to make progress and show that there was flexibility.

379. The Delegation of Tunisia associated itself with the statement delivered by Algeria on behalf of the African Group regarding the importance of setting up an appropriate international legal instrument on limitations and exceptions for libraries, archiving services, educational, teaching and research institutions. An international instrument could contribute to the harmonization of the international legal system in the area and provide greater legal security and clarity; facilitate access of establishments to culture, education and programs and projects in this area; and also guarantee the requisite balance between literary and artistic rights and the right to access to culture and education.

380. The Delegation of Colombia noted that the premise of the subject at hand was that nobody could deny how important education was. It observed that all countries and all constitutions of Member States present had education as a higher goal, a higher objective that all must strive for. The Delegation was aware of the role being played by intellectual property systems in terms of educational and social policies and those policies needed to be subordinated to the higher objective such as education. Copyright could be a very effective tool for meeting that objective, ensuring quality education and, more specifically, the issue of exceptions and limitations was clearly consistent with the role of intellectual property systems. The role of copyright together with exceptions and limitations could represent significant cooperation in achieving the goals and objectives of all Member States in ensuring improvement in the quality of education. Copyright was not only of use in providing an incentive to creation, but also other kinds of creativity. The document that was being examined clearly stated that there were many limitations and exceptions with regard to education. The Delegation wished to determine the actual problem and raised the possibility that there was a lack of exceptions and limitations and that all Member States were not familiar with them and therefore did not use the existing exceptions and limitations. The answer to this question was a bit of both. Therefore, there was a need to find mechanisms to remedy the lack of exceptions and limitations as well as the use of those that already existed but were not familiar for those with responsibility in the educational field which. This was obviously a problem probably greater than the lack of exceptions and limitations. The Delegation was unaware whether it was an international agreement or a treaty, but was convinced that there should be mechanisms that allowed existing exceptions and limitations to be implemented. It was important not to dwell on the question of the necessity of exceptions and limitations and instead consider and implement new exceptions and limitations. The Committee was called upon to establish mechanisms allowing for the use of existing limitations and exceptions.

381. The Chair noted that Colombia had stated that intellectual property had a role in establishing public policies, meaning that an intellectual property system had an impact on a country's development and affected, among other things, educational and the quality of education. The Chair stated that there was not only potentially a lack of limitations and exceptions but it was also possible that existing exceptions were not being used. Defining one part of the problem did not mean forgetting or setting aside the other side and the Delegation of

Colombia was offering the Committee an approach to both aspects of the problem; it was to be hoped that other opinions would follow. The Chair stated that if the Committee were to only concentrate on one or the other, it would conclude that everything was solved whereas the problem was more complex.

382. The Delegation of Sudan expressed support for the statement made by Algeria on behalf of the African Group. It fully respected the three-step test. It found that there was another situation Sudan had faced as a result of technological development. To discuss and examine the real foundation of intellectual property - as the basis for understanding in the organization - the Delegation proposed establishing new measures and a new binding legal instrument that could serve the interests of scientific research institutions and educational institutions. The document before the Committee indicated that seven countries had, in fact, anticipated this problem, especially the United States of America, as its Delegation had explained. The United States of America had drafted legislation in 2002 that helped coordinate technology, education and copyright in what was known as a "teach law." The European Union and its Directive had sought to facilitate exemptions and limitations to provide assistance to certain areas in the European Union. However, these countries had in fact outlined or anticipated the problem, and in so doing had taken steps that had been further supported and backed by experience. In these discussions and debates, the African Group had sought to enable scientific institutions to access information and knowledge while respecting the three-step test, adding that they had sought to do so by ensuring that the intended recipients would be the actual recipients. The African Group was reaching to breach that gap of the developing and underdeveloped countries, and the African countries were seeking to establish their justice mechanisms and use of educational facilities, noting that international organizations such as UNESCO and other organizations had made similar efforts. The Delegation observed that all this emphasized the collective responsibility to use and consider education as a key to knowledge and democracy. Through these efforts, the African countries were attempting to break the current situation faced by certain countries in communication or in infrastructure building and bridging the digital divide. It was common knowledge that the digital divide had indeed helped to bridge distances and achieve what might be termed bringing time and space to one location. Since the Committee's last meeting, Sudan had developed legislation on Copyrights and Neighboring Rights. This new legislation had allowed the use of works - published or visual - for educational purposes. The works could be used in a manner that did not harm or impinge on copyright and commercial rights; the legislation had sought to defend authors' rights. Article 37 of the legislation in fact authorized compulsory licensing for education and research; it was limited in time and provided adequate compensation for the author and his or her heirs. The Delegation explained that conditions and regulations were set out to implement the legislation as set out in the annex to the Berne Convention regarding developing countries. However, the question remained as to whether developing countries had indeed benefited from joint or general conventions, even the Berne Convention, in the field of coordination, and whether international organizations had helped facilitate the steps set out in such conventions to overcome obstacles and enable education, which was one of the pillars of the organization. Such developments had been witnessed in other areas from the activities of the organization, explaining that these were achievements it hoped to be realized through the proposed legislation. At the next session of the Committee, it should be able to receive comparative studies of national legislation, as it would help bring the various views and opinions closer so the Committee would be able to outline specific exceptions and limitations. Such a comparison would also enable the Committee to identify the types of bilateral agreements that had helped the various countries to coordinate action at the various levels so as to implement the exceptions and limitations without any harm to copyright. The Delegation supported the request made by a number of countries calling on the organization to provide copies of the studies undertaken that highlighted the regions benefiting from technology, in addition to those problems and complications that could arise out of the implementation of such technology, as certain countries had pointed out that even encryption, in certain cases, did impinge on those rights that had fallen into the public domain. The smart technologies might indeed create barriers to reaching the general benefit of

modern technologies. The Delegation drew the Committee's attention to the fact that other institutions had created a market that could help benefit users. Another option which could be of use in the implementation of the convention would be for the Committee to consider the possibilities created by the Marrakesh Convention. This should be undertaken without harming, in any manner, the legitimate rights of authors and all other rightholders because in a number of side events it had attended during the week, it had noted that authors and rightholders had been affected by the inappropriate use of their works and creations.

383. The Representative of the Civil Society Coalition (CSC) referred to specific exceptions, the three-step test and the corporate system. With regard to exceptions, the Representative reminded the Committee that the Berne Convention contained a number of exceptions for education and for scientific research, and that the exception for teaching and education and a mandatory exception for the right of quotation came into being in 1967. The three-step test was designed to test other types of exceptions that were not specifically referred to in the Berne Convention. Under Article 10, paragraph 2 of the Convention, the determination of fair practice depended on the context and was defined by the realities of each specific country, allowing states to respond to ongoing developments and new needs. The exceptions should not be restricted by the three-step test to the whole copyright system and protected the rightholders under that agreement, thus losing sight of the principle objective of the copyright system - to promote education, science and useful arts in the public interest. The social and developmental cost of an uneducated citizen was greater than the economic loss suffered by a few individuals or companies whose rights must be integrated to allow the populations to enjoy the fruits of scientific progress.

384. The Representative of Knowledge Ecology International (KEI) expressed regret that deaf persons were excluded from the Marrakesh Treaty, and suggested that a possible future approach could be to extend the provisions of the Treaty to persons who were deaf, hearing impaired or who had other disabilities that required an accessible format of a work. In several areas of education and research exceptions there existed a wide divergence between what the law stated and what individuals did in reality. That divergence could bring about different responses, either in terms of stricter enforcement or of changes to legislation. The aim was always to have a system within which people operated lawfully and which addressed the legitimacy of different parties. In terms of distance education and training, which was a cross-border issue, the solutions for commercial and non-commercial items were very different. The Representative also referred to the 1971 Appendix to the Berne Convention, which was described as being ineffective in providing access to knowledge, and which had never been updated to render it more effective. The proposal from the African Group tried to address some of those shortcomings. Three areas of the field of copyright viewed as requiring attention were highlighted: exclusive rights, exceptions and enumeration in the area of education. In Northern Europe, authors were asking that exceptions also be considered. The United States of America employed an approach of limitations on remedies on compulsory licenses, and had set up a compulsory licensing program for works that were not reasonably priced within libraries. Different countries were suited to different approaches the challenge lay in how to progress where legal traditions differed from country to country. Work needed to be carried out to identify areas where progress could be made. Technical assistance, provided in tandem with work on a binding treaty, could lead to early deliverables.

385. The Representative of IFRRO stated that all educational institutions and their members needed access to good quality educational resources, and that the current regulations did not possess the flexibility required to keep up with technological changes. However, current licensing frameworks did provide sufficient space for the establishment of relevant educational exceptions in national legislations, and there was no need for further international rule-making. Teaching did not comprise the making of multiple copies of teaching material for classroom use. Collective management schemes allowed scientific and literary works to be used in a number of different ways to meet the needs of educational institutions, in line with rightholder mandates

and national laws. That process was initiated by the institutions themselves, who wanted to carry out large-scale reproduction of chapters and other fragments of text. The Universal Declaration of Human Rights (UDHR) stated that everyone had the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he was the author.

386. The Representative of the International Publishers Association (IPA) declared that research and education were important policy issues to which all WIPO members were dedicated, as had been demonstrated in the proceedings of the Committee. Society needed more educational publishers, both paper and digital, in particular in developing countries. There were two reasons that had not been aired enough in the debate that made a meaningful discussion of textual proposals at WIPO SCCR so challenging: Firstly, distance education and digital learning represented the most dynamic areas of growth and change in the knowledge economy around the world. Despite the different copyright regimes, the Internet was awash with offers for education. Publishers and online startups in developed and developing countries were launching new products and ideas at a breathtaking speed. Many such entrepreneurs used licenses and others relied on firm copyright protection. Publishers and collecting societies were learning to adapt and provide their content to such services. Libraries and universities were adapting to the changes as well, but many struggled and saw copyright exceptions as a shortcut to avoid further necessary change. Copyright policies and individual and collective licenses were not yet as seamless as desired, but the change was there and improvements were being made rapidly. In entering into the discussion, the WIPO SCCR was stepping into a torrent of change that was dynamically serving the public interest in terms of education and improving education, irrespective of the debate at WIPO SCCR. Secondly, educational policy was an important and well-established area of national policy making. Marrakesh had been almost virgin territory; the sun had been bright, the air had been clear, and it had been a large open space. However, the Committee was back in Geneva, where it was cold, foggy and messy, and the policy areas were well-established because different countries had very different educational policies with different objectives. Any consensual text that encompassed all practices that were lawful under international copyright law would have to be so broad as to be effectively meaningless. Vague wording and international instruments would encourage equally broad and vague legislation. Legal battles over terms such as fair use and fair practice in national courts fed lawyers well, but were costly and distracting for everybody else. What was required was clarity, rather than further uncertainty and another ambiguous text. The Representative welcomed the proposals to study and share experiences concerning national education copyright policies. That process should be an ongoing one, given the pace of change.

387. The Representative of the Center for Internet and Society (CIS) believed that universal access to knowledge and education for all was particularly important, especially in terms of the distance and cost. Information and communication technologies provided opportunities to achieve universality for all formal and informal institutions and in digital and non-digital formats. The adoption of limitations and exceptions for education and research was, therefore, particularly significant from the perspective of developing and least-developed nations, where demand for books and learning materials was high, not just in absolute terms, but where consumers had to commit higher proportions of income to have access to the materials in the first place. The Representative agreed that the existing international framework did not do enough to address the opportunities presented by those information and communication technologies. The compulsory licensing divisions in the Berne Convention were complex, narrow, unworkable and of little value to the developing nations. There was a need to adopt open-ended exceptions for research and education that were compatible with the digital environment. A narrow construction and application of the three-step test to those limitations and exceptions would not be the ideal way forward, especially if the limitations and exceptions were to benefit the developing and least-developed nations. Limitations and exceptions should

harmonize national practices and international standards, and facilitate the cross-border exchange of books and other learning material.

388. The Chair noted that different requests had been heard for studies, updating studies and new studies, and requests that they be additional instruments for the Committee's discussion. The Chair announced that action would be taken with regard to how such instruments should be generated. Some of the instruments would not necessarily be ready for an upcoming session, but immediate results were not necessary in order to profit from discussions on the issues. One of the problems that had arisen in many of the statements by different delegations was that of distance-learning, and another had been the trans-border exchange of works for the educational sector. The Chair believed that those issues represented a cross-cutting element in the views of most delegations and he therefore invited the delegations to present written documents specifically stating what they believed needed to be achieved in order to consolidate the new services and meet the challenges.

389. The Delegation of Algeria expressed support for the proposal concerning studies. The Delegation requested that the Committee ensure that its conclusion concerning studies clarified that the Committee had a mandate that all had agreed to have legal text-based discussions and that the studies should not be discussed in themselves, rather that they should simply serve as a reference.

390. The Chair announced that Dr. Ricardo Antequera Parilli of Venezuela had passed away in June 2013. Dr. Parilli had been an expert delegate and had been considered to be the author of many copyright laws in South America. Dr. Parilli had been immensely appreciated for his professional qualities, having developed more than two-dozen WIPO courses in the region for authorities, and for teaching generations of students about intellectual property rights. Dr. Parilli had devoted his life to teaching and strengthening copyright and had been recognized around the world. His passing had been an enormous loss for WIPO's copyright family. The Chair asked the Committee to include that tribute in the record of the session and, instead of the traditional minute of silence, asked that delegates applaud the career of a man who had trained many of those present.

ITEM 9: OTHER MATTERS

391. The Chair announced that the Committee would begin discussing the future work of the Committee, which would end with a conclusion on that matter. The Delegation of Poland, speaking on behalf of the Group of Central European and Baltic States (CEBS), reiterated that, for a long time, the Group had shown support for efforts to expedite the work of the SCCR in establishing standards of international protection for broadcasting organizations. The Group supported the view that the main priority in terms of the future work of the SCCR was the drafting of a proposal for the treaty on the protection of broadcasting organizations. The issue should be discussed with the objective of reaching a decision to convene a diplomatic conference in 2015. Thus, the CEBS Group had proposed a road map for the SCCR at the 51st General Assemblies of WIPO. On that basis, the Group proposed a plan for future work, the main target of which would be to prepare for a decision to hold a diplomatic conference on protection for broadcasting organizations in 2015. The Secretariat had distributed a draft work plan. The Delegation supported the Secretariat's idea of holding three SCCRs in 2014. At the same time, the Delegation declared that it preferred different dates for the SCCRs than those placed on the provisional WIPO calendar for 2014. Meetings could take place earlier than proposed, for example: holding SCCR 27 at the beginning of April or in March as opposed to the end of April and holding SCCR 28 in June, not in July. The Delegation envisaged a series of five-day meetings organized in the following manner: SCCR 27 – three days to be devoted to the protection of broadcasting organizations and two days to be set aside for limitations and exceptions; SCCR 28 - three days for the protection of broadcasting organizations and two days for exceptions and limitations. The General Assembly would then take a decision and commit to

holding a diplomatic conference on the protection of broadcasting organizations in 2015. For SCCR 29, the Delegation proposed three days for the protection of broadcasting organizations, including a preparatory committee for a diplomatic conference, and two days for limitations and exceptions. The preparatory committee meeting could be held during or after SCCR 29. The Group looked forward to discussions related to the activities of libraries and archives, as well as educational, research and teaching institutions, and remained convinced that the work of the Committee should enable deeper understanding of how best practices based on the existing international legal system functioned in the WIPO Member States. Future work should envisage reflection on recently-adopted treaties, as well as discussions on the implementation of legislation and members' national experiences. There was also space to work together on new issues that took into consideration the digital and globalized environment in terms of the licensing of rights. The Group was willing to participate in discussions on the role of licensing to facilitate access to content protection, copyright and related rights, including uses made by libraries and archives, as well as educational, research and teaching institutions. Discussion of the role of the collective management of rights with regard to access to copyrighted works and protection of copyright and related rights could also prove to be of value.

392. The Delegation of Belarus, speaking on behalf of the Group of Central Asian, Caucasus and Eastern European States (CACEES), thanked the CEBS Group for its plan. The Committee had now achieved a draft treaty on the protection of broadcasting organizations, and the Group proposed that a decision be taken at the General Assembly to hold a diplomatic conference in 2015. The Group supported the approach and draft work plan put forward by CEBS.

393. The Delegation of Japan, speaking on behalf of Group B, declared that the Committee had made good progress on the issue of protection for broadcasting organizations. It was logical to allocate sufficient time to the discussion of protection for broadcasting organizations in the work program for 2014 in order to achieve the desired result, namely a decision to convene a diplomatic conference to adopt the proposed treaty. The Delegation supported the proposed target and time allocation for the draft work put forward by the CEBS Group. The work plan struck a balance between various elements, including the degree of maturity, degree of interest of Member States, and so on. The Delegation drew the Committee's attention to two points: firstly, preparatory conferences were usually held within the period of the Committee but as a back-to-back session; secondly, the way in which SCCR 27 and SCCR 28 were to be scheduled could be considered later, taking into account the fact that no meeting had been scheduled for June at that moment in the provisional WIPO meeting calendar. The Group considered that the dates proposed by the CEBS Group would make sense to all Member States. As for the possible inter-sessional meeting mentioned in the opening statement by some groups, it was difficult to accept inter-sessional meetings at that stage. Inter-sessional meetings constituted an issue that was related, not only to SCCR, but also to the management of WIPO meetings in general. Inter-sessional meetings should be held only in cases where additional time for negotiation was required in order to resolve issues prior to a diplomatic conference. In that regard, Group B could see no grounds for the holding of an inter-sessional meeting on exceptions and limitations for libraries and archives at that stage. Preparation of WIPO meetings should be reconsidered within the context of WIPO's priorities as a whole. An excessive number of meetings would have an adverse effect on the usual business of the Organization, such as the implementation of existing mechanisms, and would decrease the quality of the meetings rather than facilitating work.

394. The Delegation of Trinidad and Tobago, speaking on behalf of the Group of States of Latin America and the Caribbean (GRULAC), thanked the Delegation of Poland for submitting its draft plan on behalf of the CEBS Group. While GRULAC could support the hosting of three SCCRs during the course of 2014, the Group still lacked a common position with respect to the substance of the negotiations and the time that should be devoted to each thematic issue during each SCCR. The Group furthermore recognized that, while the draft text concerning protection for broadcasting organizations was the most mature of the three thematic issues, further work

was required on the issue of limitations and exceptions for libraries and archives. GRULAC wished to propose an inter-sessional meeting on limitations and exceptions for libraries and archives, to be held between SCCR 27 and SCCR 28. Such a meeting would promote progress on and the maturity of the text on limitations and exceptions for libraries and archives. GRULAC did not have a common position on the holding of a diplomatic conference on the protection of broadcasting organizations.

395. The Delegation of Algeria, speaking on behalf of the African Group, thanked those delegations that had taken the floor to propose a draft work plan for the SCCR in 2014. The Group noted that the Committee had already adopted an agreement on a work plan for the SCCR at its 24th Session. That agreement stated clearly that, after the 28th Session of the SCCR, there should be a recommendation for the General Assembly of 2014 on exceptions and limitations, as well as a recommendation on the subject of the protection of broadcasting organizations. That position was a point of departure for any decision on the work plan for the SCCR in 2014. The General Assembly needed to give its views on exceptions and limitations. There needed to be room for both issues in the remaining sessions. The Group could agree on setting aside three days at the 27th Session of the SCCR for the protection of broadcasting organizations. Time had to be set aside to allow the draft treaty to reach a certain stage of maturity and more work was required during the session in question. Hopefully, the remaining two days would be used for limitations and exceptions, including the conclusions of the Committee. During the 28th Session, two days should be set aside for the protection of broadcasting organizations, with two days being allocated for limitations and exceptions, and the remaining time being reserved for discussions on the conclusions and recommendations that had to be made to the General Assembly. With regard to the 29th Session, the Group hoped that the Committee would meet after the General Assembly had decided whether to convene a diplomatic conference on the protection of broadcasting organizations, and that the Committee would also work on a more ambitious recommendation on exceptions and limitations. The Group therefore proposed that the 29th Session should be organized in the following fashion: two days should be set aside for broadcasting, with two days being allocated to exceptions and limitations and one day being reserved for conclusions, including a preparatory committee meeting. The Group additionally supported GRULAC's proposal to have an inter-sessional meeting between the 27th and 28th Sessions of the SCCR. There was an urgent need for work to be done on exceptions and limitations, and it was therefore crucial to have an inter-sessional meeting between the 27th and 28th sessions.

396. The Delegation of Bangladesh thanked the Delegation of Poland for the proposal it had submitted on behalf of the CEBS Group. As the Delegation had only just received the proposal, it had not had time to discuss it with the other members of the Asia-Pacific Group. If any group member was in a position to react, they would be free to do so.

397. The Delegation of the United States of America fully supported the statement of the Group B Coordinator. The SCCR had been focusing for many years on norm-setting activities which had led to success in the form of a series of treaties. The Delegation sought to move forward on the proposed broadcasting treaty and desired to continue the positive momentum of the session. In that regard, the Delegation fully supported the work plan proposed by the CEBS Group. The Committee needed to intensify its work on the broadcasting treaty and allocate three days to that issue during the 27th and 28th Sessions. Some of the most important developments in copyright related not to the legal structure of rights but to the practical operation of the copyright system. Major changes were underway as global markets and new technologies revolutionized existing relationships and processes. It was essential to follow developments in that field and the effective and up-to-date operation of the system was critical to the authors, rightholders and users in all countries. Relevant issues included licensing, in particular concerning the online management of rights (including through collecting societies), voluntary cross-industry initiatives, and codes of conduct. There was a tremendous amount of activity taking place and creative approaches were being explored in countries around the

world. All could benefit from learning about the developments and discussing their significance and impact. Whether the Member States decided to foster similar approaches in their own countries or to work to create links between national experiences, much progress could be made. The Delegation was not suggesting slowing or delaying work on the SCCR's current agenda items or changing priorities, but rather urging the Committee to take into account the fundamental and fast-evolving dimension of copyright. The Delegation called on the Committee to add those other items to the agenda for future consideration, not as a norm-setting exercise, but for purposes of improved education and understanding.

398. The Delegation of the European Union and its Member States fully associated itself with the statement made by the Delegation of Japan, on behalf of Group B, and with the proposal put forward by the Delegation of Belarus, on behalf of the CEB Group, concerning the future program of work for the SCCR in 2014. A significant amount of time had already been allocated to the 2014 SCCR. The subjects scheduled for discussion during the week were not yet ripe for further inter-sessional work before the General Assembly in 2014. The Delegation therefore endorsed the proposal made by the CEBS Group on the future program for work of the Committee and hoped that it would be met with support from all delegations. Regarding the future work of the Committee, and without prejudice to the work in which it was currently engaged, the Delegation lent its support to the proposals of the Delegation of the United States of America and proposed a few complementary elements. The Committee could address a number of issues, including: the role of licensing to facilitate access to content protected by copyright and related rights, including mass digitization; orphan works and works out of commerce; voluntary initiatives such as copyright hubs, right management databases and other tools to assist with the identification of works, right holders, tariffs and other information important for the online exploitation of rights as a way to reduce transaction costs in the digital environment; the role of WIPO as a facilitator for the creation of an international database on the promotion of interoperability among existing databases; the role of the collective management of rights in the facilitation of access to content protected by copyright and related rights, including transparency, governance and financial accountability rules; the implementation of WIPO copyright treaties, including the Beijing and Marrakesh treaties; and finally, the development of a methodology for the assessment of the functioning and effectiveness of national copyright systems, as well as the development of tools for evidence-based policy-making in the area of copyright and related rights.

399. The Delegation of Brazil thanked the Delegation of Poland for its proposal on future work. Commenting on the proposal, the Delegation considered that inadequate time had been allocated to the three subjects being discussed by the Committee at that time in the forecasted discussions. An appropriate period of time should be set aside, for not only protection of broadcasting organizations, but also for the two items under limitations and exceptions. In that regard, the Delegation noted the balance that the Committee had achieved, with progress being made on both broadcasting and the text-based discussions on libraries and archives. The Committee still had to find more time to discuss educational and research institutions and their relationship to exceptions and limitations. The 26th SCCR meeting provided a good example of balance to guide the Committee in the future discussions. As to the request for a decision on whether to hold a diplomatic conference, broadcasting would be the subject of discussion during the 28th Session of the SCCR, alongside discussions on the work undertaken regarding libraries and archives. With regard to other considerations that had been raised from the floor, the Delegation sought clarification from the Secretariat, first of all, regarding whether such issues would fall under "Other items" on the agenda for SCCR 26, or whether they constituted future work. If delegations could be provided with a hard copy of the draft proposal, Member States could consult and develop a clear understanding of what was being discussed and the meaning of the proposal (i.e., what the Delegations of the United States of America and the European Union and its Member States proposed to discuss in the upcoming sessions). The Delegation explained that delegates would have to analyze the items and new themes to be discussed, and adequate time would have to be set aside in that regard. The Delegation

recommended, in the context of the great number of new proposals, that the Committee should maintain the balance that had been achieved at SCCR 26. Such an approach would involve allocating two days for broadcasting, two days for limitations and exceptions regarding libraries and archives, and one day for education. The day allocated to the issue of education should take place in the middle of the week so the Committee would not have only one morning session dedicated to that important subject.

400. The Delegation of India thanked the CEBS Group for presenting its draft plan for future work, which was focused mainly on expediting the work on the protection of broadcasting organizations in order to convene a diplomatic conference in 2015. The Delegation was of the view that the agenda should have a balanced program, giving adequate attention to all three subjects being dealt with. The Committee had had a productive two-day discussion on broadcasting organizations at the 26th Session of SCCR, but, unfortunately, little progress had been made on the text-based negotiation of the treaty text. Although several issues had been discussed with a view to reaching some sort of understanding among the delegations, the question of whether certain proposals had been within the 2007 General Assembly mandate had arisen. In that sense, the Delegation felt that insufficient progress had been made for the Committee to be able recommend the convening of a diplomatic conference in 2015. The Delegation proposed waiting until the next session of the SCCR in order to see how far work had progressed within the Committee. The Delegation might support GRULAC's proposal if it were flexible enough to allow for an inter-sessional meeting prior to the diplomatic conference. As to the proposal made by the Delegation of the United States of America, the Delegation was unclear on some aspects and needed some time to reflect in that regard.

401. The Delegation of South Africa thanked the CEBS Group for its draft work plan. The Delegation fully supported having three SCCR meetings, an approach that would allow the Committee to make progress concerning the issues on the table. The Delegation supported the proposal to have a diplomatic conference in 2015 and highlighted the achievements of the Committee over the preceding two years. Phenomenal progress had been made on the issue of visually impaired persons, as well as audiovisual performances, and that success was due to the fact that the Committee had ensured that it did not create competition between the issues. That approach had allowed the Committee to create additional space for other issues to be dealt with equitably and should be replicated. The Delegation supported the proposal of the CEBS Group concerning the allocation of three days for broadcasting and two days for exceptions and limitations at each session, but insisted that the Committee should not lose momentum with regard to other issues. If those Member States who were opposed to the inter-sessional could not agree, the Delegation was not necessarily stating that it was going to bind itself at that time. In terms of inter-sessional meetings, the Delegation proposed, as a middle ground, two days, so that delegations would have time to discuss all the other issues. Compromise was needed concerning inter-sessional meetings. The Delegation proposed that all the issues that the colleagues had raised should be looked at, but that the Committee should make sure to build upon the progress that had been made over the preceding two days.

402. The Delegation of Mexico thanked the Delegation of Poland for the draft work plan it had submitted on behalf of the CEBS Group. The Delegation also supported the statement made by the Delegation of Trinidad and Tobago concerning inter-sessional meetings. The Delegation supported the idea of allocating three days in each and every one of the upcoming sessions, in accordance with the proposals made and had no objection to the time or dates proposed for the Committee meetings. The Committee should assess the situation with regard to the various issues to be discussed, while working to achieve an international instrument for broadcasting organizations. The Delegation proposed that two or three inter-sessional days should be set aside for exceptions and limitations.

403. The Delegation of the United States of America, responding to the Delegations of Brazil and India on the new items suggested for future work, declared that it was unnecessary for the

Committee to agree to those items at that time. The Delegation would like to see those items on the next agenda, but it was more important that the Committee agree that there would be a list at some point. The Delegation was not in favor of holding inter-sessional meetings, given WIPO's busy schedule. Much progress had been made on the issue of the proposed treaty for broadcasting organizations, and the Committee should increase its focus on that topic. The Committee was obviously examining the principles and objectives for the other exceptions and limitations more closely, but that did not really necessitate inter-sessional work at the current time. Discussions could take place in the Committee along with the other issues, but the issue of broadcasting had been on the SCCR's agenda for 15 years, and should be dealt with as a priority.

404. The Chair declared that the Committee had a clear agenda concerning the need to fulfill the mandate drawn up in the General Assemblies. There was a consensus with regard to the work required in order to allow the Committee to make a recommendation concerning a treaty for broadcasting organizations. Several delegations had proposed that the Committee should establish a program that would ensure that the recommendation was made in time for a diplomatic conference in 2015. The Committee had a sufficiently mature text in that regard.

405. The Delegation of Brazil stated that the Committee had not reached any kind of consensus.

406. The Delegation of India supported the statement made by the Delegation of Brazil. It was not yet clear whether a consensus existed on the broadcasting organization issue. Many Member States appeared to want more time to consider the various new proposals that had been put forward.

407. The Chair pointed out that the Committee had measured a certain level of progress that had to be considered when developing the different proposals before it. The Committee needed appropriate time to try to fulfill a certain objective concerning the most mature topic. However, the Committee had also pointed out that it had been established at the 24th Session that there would have to be a recommendation at the 28th Session regarding the issue of limitations and exceptions for libraries and archives. With regard to the three Committee meetings that would take place in 2014, there was a proposal that the Committee should devote nine days to the broadcasting treaty and six to exceptions and limitations. Under another proposal, a greater number of days would be allocated to limitations and exceptions for libraries and archives, in order to make progress concerning the objective set by the Committee. The Committee had also raised the issue of the inclusion of an inter-sessional meeting. The Chair noted that it was true that the Committee had determined that inter-sessional meetings should be held only when necessary, so that they did not turn into ordinary meetings, but that it was a decision of the Committee as to whether an inter-sessional meeting was necessary. The Chair declared that, if the Committee were to demonstrate that progress had been made on the two topics, an inter-sessional meeting could be an interesting proposal in terms of a compromise solution. Likewise, time must be devoted in the initial and final sessions of the Committee meetings to hearing initial statements and to drawing up conclusions. A majority of proposals coincided on the topic of the distribution of days in the 27th session of the SCCR. There was disagreement as to the agendas of the 28th and 29th Sessions of the SCCR. One flexible solution would be to decide on the 27th SCCR agenda. The Committee had expressed points of view that seemed to coincide as regarded the 27th Session and it had been pointed out that the Committee could not really envisage the development of some of the elements of the broadcasting treaty, or even of some of the elements of the exceptions and limitations for educational institutions. The whole package for 2014 had been examined according to the level of maturity of the topics under discussion. The Chair proposed that the Committee should define the agenda for the 27th Session of the SCCR. There would be three days for broadcasting organizations and two days for exceptions and limitations for libraries and archives. Such a decision would give the Committee time to consider the positive progress

made in the 27th Session and to consider further elements such as whether the Committee would hold an inter-sessional meeting, or whether it would divide up the 28th and 29th Sessions of the SCCR in a different manner. Such an approach would constitute a compromise solution. The delegations should consider the proposal in their regional groups. The Chair expressed a wish to hear feedback from the delegations, noting that the Delegation of Brazil preferred proportional distribution of the days throughout the upcoming meetings and had proposed that the topics of exceptions and limitations for educational and research purposes be considered.

408. The Delegation of India believed that all issues had to be dealt with simultaneously for the 27th, 28th and 29th Sessions and inter-sessional meetings, in order to produce a clear understanding of how much real time would be allocated to other items. The Delegation asked whether the Committee was required to decide on the work program at the current time, or whether a decision could be postponed until the upcoming session.

409. The Delegation of Brazil reiterated that the Committee had achieved a good balance in SCCR 26. The delegations had agreed that the Committee had witnessed good progress on broadcasting organizations, as well as on exceptions and limitations for libraries and archives, but the same could not be said for education. The Committee could employ the same successful approach at SCCR 27 and then decide in future sessions how to proceed. The Delegation reiterated that it had listed a series of ideas for discussion in the next session originating from the Delegations of the United States and the European Union and its Member States. Those Delegations were interested in introducing those new items at the next session or perhaps at the two subsequent sessions. The Committee was unclear as to how much time that it would need to discuss those items, whether all members would agree to the inclusion of all the items in the discussion, and how much time would be allocated to discussing the new items. In that regard, the Delegation restated its plea that the Committee should maintain its tried and tested approach.

410. The Delegation of Ecuador agreed that the Committee should first focus on the work program for the forthcoming session, thus ensuring that there would not be discussions on topics that would surely be resolved during that session. The Delegation firmly believed, that by the next session, it would be a lot easier to adopt the programs for future sessions, as the discussion would have matured. Regarding the content of the program, the Delegation was flexible, despite the fact that it was extremely interested in the issue of exceptions and limitations for libraries and education. The balance achieved at SCCR 26 should be maintained, with the topic of broadcasting organizations being treated as a priority, followed by libraries, and then by the issue of exceptions and limitations for educational institutions and people with other disabilities.

411. The Delegation of Japan supported the step-by-step approach proposed by the Chair, that involved focusing on the work and time allocation of the 27th Session; three days for broadcasting organizations and two days for exceptions and limitations. The time had come to make a decision.

412. The Delegation of the European Union and its Member States called on all present to be as operational as possible and to recognize an agreement on the full program of work for 2014. A consensus appeared to be emerging concerning the Chair's proposal. The Delegation urged all present to bear in mind the need to reach a decision at an early stage in order to ensure that all stakeholders could take part in the decision-making process.

413. The Delegation of the United States of America considered that the Committee needed to agree to the work plan for at least SCCR 27. The list of other items the Delegation had mentioned, and those that the Delegation of the European Union and its Member States had added could be carried forward to future sessions. It was important that the Committee agree that a list should exist. The Delegation did not want to slow down the discussions on the

Committee's work plan moving forward on the three issues on the agenda at that time. Responding to the Chair's proposal, the Delegation agreed with the Group B Coordinator that the Committee probably needed to finish up, noting that SCCR 26 was the last meeting before the end of the year. The Delegation fully supported the Chair's proposal, proposing that the Committee should identify and proceed with a work plan for SCCR 27 and then take up future sessions later.

414. The Delegation of the United Kingdom aligned itself with the Delegations of Japan, the United States of America and the European Union and its Member States. The Delegation agreed that the Committee should focus on its next meeting and try to agree on plans for the 27th Session. However, the Committee was focusing too much to the timetable. The Committee had time and needed to be rational, pragmatic and practical when looking to the mandate and making decisions.

415. The Delegation of Senegal supported the proposal of the Delegation of the United States of America simply to focus on the upcoming session.

416. The Delegation of South Africa supported the Chair's proposal.

417. The Chair stated that there was the risk that the Committee would not reach an agreement on the issue in question and appreciated the fact that various delegations had stated that allowing the coordinators to meet could be a way to resolve differences over the whole series of meetings. The Chair wished to include the suggestions made by the Delegation of Brazil on the question of the work on exceptions and limitations, but clarified that the Committee would distribute its days on limitations and exceptions. The Chair suggested that the Committee should allocate two days for exceptions and limitations and three days for broadcasting. As the Committee saw the progress made, it could decide in the future exactly which areas it wanted to discuss and then devote its efforts accordingly. The Chair explained that that approach would apply to the exceptions and limitations for libraries and archives, although the Committee could perhaps devote a certain amount of time to those issues at SCCR 27, and also to the educational topic in limitations and exceptions and to other topics that had arisen.

418. The Delegation of the United States of America declared that it had not heard any opposition to the Chair's very wise proposal to focus solely on SCCR 27, with the three-day/two-day solution. The Delegation proposed that the Committee resolve the issue. Group coordination sessions were unnecessary.

419. The Delegation of Brazil favored the approach employed at SCCR 26. There was consensus that the Committee had achieved a very positive outcome concerning two topics. The Delegation did not see why the Committee should not replicate the same approach in the next session. The Committee should focus on the timetable for the next session. Nonetheless, the Delegation failed to understand why the Committee should change the way the meeting was organized.

420. The Delegation of Algeria, speaking on behalf of the African Group regarding the allocation of days in the 27th Session, proposed that the Committee should focus only on the 27th Session. The issue of exceptions and limitations for libraries and archives was a priority for Algeria. The Delegation stated that, by allocating only two days for exceptions and limitations as a whole, the Committee would be giving itself even less time to address libraries and archives and education. If there was an agreement on the fact that the Committee needed only decide on the 27th Session, the approach employed to allocate days for SCCR 26 could be replicated.

421. The Delegation of Italy echoed the delegations that had supported the option of defining the work program for the upcoming session and allocating three days for broadcasting and two for exceptions and limitations.

422. The Delegation of Ecuador expressed doubts regarding the Chair's proposal of three days for broadcasting organizations and two days for limitations and exceptions, inasmuch as it was well aware that the conclusions took at least three-quarters of a day, if not an entire day. As a result, it seemed to the Delegation that when the Committee stated "three and two," it meant that it was contemplating a six-day week, which of course, was not the case. One way of striking a balance might be to have two days for broadcasting organizations, two days for exceptions and limitations and one day for conclusions, which would ensure a balance and also acknowledge the work that was required for the conclusions, particularly if the Committee was going to think about the schedule of work for the following sessions.

423. The Delegation of Egypt noted that the discussion of the Committee had shifted into a discussion on days. The Committee could do more valuable work than just discussing the number of days. In the same way that allocation of days had been discussed at SCCR 26, the Committee could simply have that discussion at SCCR 27. The Committee could meet to discuss the mechanism before SCCR 27. The agenda would include the same topics. The number of days allocated was irrelevant, as success depended on the content of the discussion, the level of commitment, and political will.

424. The Chair asked that delegations place their confidence in the Chair because the Committee could not stay in session for days. The Chair proposed that the Committee should devote its time to more substantive matters.

425. The Delegation of Sudan declared that the African Group had presented a whole package, but that the focus had shifted to a discussion of the next session. The Delegation supported the proposal put forward by the Delegation of Brazil. The Committee must show a willingness to assist those who were in need of exceptions and limitations with regard to the topics that had been presented, not just at the level of SCCR 26, but also during the coming sessions.

426. The Chair emphasized that the distribution of days per topic was not in any way linked to the importance of those topics and proposed a compromise solution consisting of: two and a half days for broadcasting organizations; two days for limitations and exceptions, mainly for libraries and archives. If additional time remained, then the Committee could also discuss research and education. The half-day that remained would be devoted to a discussion of the conclusions and future work of the Committee. The Chair noted that the discussion on the topic had been concluded. The next topic was the conclusions. A tremendous effort had been made to try to adapt the different contributions that had been made in successive meetings of the regional groups. The Committee would be discussing conclusions on the three topics. The Chair asked delegates to consider the first set of conclusions regarding the protection of broadcasting organizations.

427. The Delegation of Belarus, speaking on behalf of CACEES, expressed the opinion that the draft text was well-balanced and reflected the various statements made by the Group. The Group endorsed the document in its current state.

428. The Delegation of the United States of America approved of the summary on the protection of broadcasting organizations, but proposed the addition of a parenthetical, "(to be defined)" in paragraph 6, line 4, after "on-demand transmissions".

429. The Delegation of Poland, speaking on behalf of the CEBS Group, thanked the Secretariat very much for the text and fully supported it.

430. The Delegation of India expressed a wish to see the inclusion of the following text: “discussions took place on article 9 with regard to protection of broadcasting organizations, on prohibition of the unauthorized rebroadcast of signals over the Internet to the extent of rights acquired by the broadcasting organization.” Moreover, the Committee had been using the word “beneficiaries,” but the word was not defined in the treaty. The text could simply refer to “broadcasting organizations”, or “(to be defined)” as suggested by the Delegation of the United States of America. In the last line of paragraph 5, the word “should” should be changed to “might” or “may.”

431. The Chair opened the floor to views on the suggestions that had just been made.

432. The Secretariat explained that the proposal for paragraph 5 was that the final line would read, “unchanged transmissions may be included,” instead of “should be included.”

433. The Chair noted that the intention behind the paragraph was that the conditional term “if” be used to avoid implying that the decision would be taken, and that, if that protection were to be given to transmissions over the Internet, then at least such simultaneous transmissions should be included. The Chair asked the Delegation of India if it had considered whether the use of the term “if” addressed its concern regarding the use of the word “should”, as it might capture the same intention India had regarding the alternative use of the term “may.”

434. The Delegation of Ecuador endorsed the proposal made by India to use the word “may” or “might.” The proposed treaty might include transmissions over Internet, and the Committee had only considered those possibilities that were found in paragraph 5. Consequently, the text would be conditioning the result of the negotiations. Therefore the Delegation considered that it would be more appropriate to use “might” or “may”, instead of “should”.

435. The Delegation of Japan declared that Group B preferred the text as it stood, without further changes, because the issue was a substantive one, and not merely an editorial or cosmetic change. The Committee should retain the original language, as the Chair had proposed.

436. The Delegation of Switzerland endorsed the statement of the Delegation of Japan. Changing the text to “might”, or “may”, would cause it to lose its meaning and the proposal should be maintained in the form put forward by the Chair.

437. The Delegation of Brazil supported the statements made by the Delegations of India and Ecuador. The word “may” would give a clear picture of both the discussions the Committee had had that week when examining how to integrate the proposed treaty on broadcasts into the Internet environment and the future considerations of the Committee.

438. The Delegation of the European Union and its Member States expressed support for the Chair’s compromise text in its entirety.

439. The Delegation of Italy echoed what had been stated by the Delegation of the European Union and its Member States. From a grammatical point of view, it would appear a little strange to retain “might,” because if the text were to say “then at least... might be included,” it would lose meaning. The Delegation suggested that the existing language was preferable, given that the qualifier “if” provided sufficient flexibility.

440. The Delegation of Poland expressed a wish to see the text maintained in its current form.

441. The Delegation of India proposed deleting the phrase “some simultaneous unchanged transmission may be included”. Responding to the Chair’s explanation, the Delegation declared

that it found comfort everywhere where the language stated “if.” The word “if” indicated there was something to be discussed in the future, and if an agreement were reached, only then would it happen. There was a need to amend the text put forward by the Chair and the Delegation requested that its previous proposal be reflected.

442. The Delegation of the United States of America stated that it was in favor of retaining the conclusions on protection of broadcasting organizations in their existing form.

443. The Delegation of Belarus reiterated its support for the text as it stood. The necessary conditionality was included in the “if” clause, and the phrase “if they are included” already indicated that there were divergent views on the issue. The “should” clause should be included.

444. The Chair noted that perhaps an additional explanation might be necessary, particularly to address the concerns raised by India. The Chair understood the legitimate concern that the conclusions should reflect the divergence of views on the question of whether simultaneous transmission was going to be protected. However, the view that simultaneous transmission was a modality that could be protected had received the greatest level of support. On the other topics there had been general discussion as to whether transmissions over the Internet were protected. The Chair noted that, because the Committee might decide not to protect transmissions over the Internet, the whole issue of protection might fall as a consequence, and thus the Committee was not bound. The Chair hoped that that would grant a level of comfort to those who were opposed to the text as it stood.

445. The Delegation of India requested clarification as to whether any changes would be made to the text. The Delegation had put forward a number of other amendments, for instance, regarding beneficiaries. Moreover, during the course of the two days allocated to broadcasting organizations, the Committee had not discussed issues related to beneficiaries, and the term had not even been defined. Furthermore, there had been calls to resolve the issue surrounding the terms “traditional broadcasting and cablecasting organizations,” and “broadcasting and cablecasting organizations in the traditional sense.”

446. The Delegation of the European Union and its Member States suggested that the Chair should come forward with a language proposal on the particular point made by India so that all could have an idea of how the text might be changed, if at all.

447. The Chair recommended accepting India's suggestion regarding the term “beneficiaries”, in order to avoid the legitimate concerns raised by certain delegations. The Chair proposed adding the words “(to be defined)”. The Chair also suggested including the phrase “transmissions (to be defined)”, as had been proposed by the Delegation of the United States of America. The Chair had also taken time to consider the additional paragraph suggested by India and had produced a paragraph that he hoped would be considered acceptable by India and by the rest of the delegations.

448. The Secretariat read out the proposed text: “In relation to article 9, an issue was raised in relation to the prohibition of unauthorized rebroadcasting of signals over the Internet to the extent of rights acquired by beneficiaries.”

449. The Chair explained that the intention behind the drafting was to include the topic raised by India in a way that did not imply that a common understanding had been reached. The proposal merely reflected the statement made by the Delegation of India and did not alter the substance of the document.

450. The Chair called on the Delegation of India and the other delegations to accept the compromise formula as a whole.

451. The Delegation of India explained that it could accept the proposal but requested the Chair to make the last amendment that it had put forward.

452. The Delegation of the European Union and its Member States stated that, in the spirit of constructive compromise, it could agree to the final proposal made by India.

453. The Chair declared that, in the absence of any objections, the text was approved. The Chair then turned to the topic of limitations and exceptions for libraries and archives.

454. The Delegation of the United States of America explained that it only had two minor suggested amendments: For paragraph 18, five lines down, starting with the clause, "among others," the word "may" was not necessary and should be deleted. Then, on paragraph 21, the Delegation wished to see the inclusion of the phrase "and other proposals submitted" after the phrase "the working document".

455. The Delegation of Brazil requested clarification regarding paragraph 14. The first phrase mentioned the mandate that the Committee was supposed to fulfill. The second phrase noted that some Member States also expressed interest in discussing national laws, capacity-building, technical assistance, development of studies and exchange of national experiences. The Delegation understood that the word "some Member States" gave the impression that many delegations had an approach that differed to the text-based work that would actually be employed during the session. In that regard, the Delegation requested that those Member States which desired to discuss national laws, capacity building – topics other than the text-based negotiations - be mentioned as such in order to present a clear picture of the discussions that had taken place.

456. The Chair requested the Delegation of Brazil to set out precisely the amendment it was suggesting.

457. The Delegation of Brazil proposed that, instead of "some Member States," those Member States that had requested discussions on other activities that they understood would be within the mandate would be listed by name. The Delegation took the position that the Committee should implement the mandate that had been clearly spelled out in the Plenary. The Delegation understood that the text-based approach had already been agreed among Member States. If certain countries interpreted the mandate in a way that covered other kinds of discussions, those Member States should be identified. Any reference to a decision of the Committee, with a general mention of "Member States," would give the wrong impression of the discussion that had taken place during the week. As to paragraph 18, the first sentence referred to updating the work of the study on exceptions for libraries and archives. The second sentence mentioned that a new study on museums had been requested. The Delegation requested clarification on that issue. With regard to the suggestions made by the Delegation of the United States of America, in particular that concerning paragraph 21 and the phrase "the working document will be the basis for future text-based work to be undertaken by the Committee in its 27th session.", said phrase was a clear reflection of the discussion that the Committee had had that week, and of the Committee's mandate.

458. The Delegation of Trinidad and Tobago, speaking in its national capacity with respect to libraries and archives, declared that it could agree to the amendments proposed by the Delegations of the United States of America and Brazil.

459. The Delegation of the European Union and its Member States suggested that, for paragraph 14, the word "also" be removed from the phrase "some Member States also expressed interest." The final sentence of paragraph 16 should be amended to read: "These studies will serve as information and work resources for the Committee." In response to the Delegation of Brazil's suggestion that those Member States which had expressed an interest in

discussing national laws should be listed, the Delegation noted that the 28 Member States of the European Union would need to be listed individually.

460. The Delegation of Canada turned to the issue of the reference to museums and called on the Committee to update the relevant study. Dr. Crews had already carried out a lot of groundwork in that regard that could be built on. Looking at the appendix, where Dr. Crews had addressed the issue of libraries and archives, he had also looked at museums. There might be an opportunity to update the work that had been carried out there as well and then perhaps to perform an analysis.

461. The Delegation of Ecuador proposed an amendment to the proposal made by the United States of America regarding the first paragraph, which would read, "the working document, including new text proposals, will be a basis for the future text-based work." Such a drafting would better reflect a spirit of compromise. As to the study on limitations and exceptions for museums included in paragraph 16, the Delegation was struck by the fact that the study requested in the Plenary on other disabilities was subject to the condition of the availability of adequate resources, whereas the museum study, which was not discussed as such, was an obligation not subject to conditions. The Delegation wished to be informed as to the reasoning behind that approach.

462. The Delegation of the European Union and its Member States noted the absence of any reference to licensing with regard to the conclusions on both topics on limitations and exceptions and requested that the concept be included in both sections. The Delegation wanted to make sure licensing was also included with respect to exceptions and limitations for research and educational institutions.

463. The Delegation of the United States of America thanked the Delegation of Ecuador for proposing compromise language on paragraph 21, adding that it fully supported that proposal.

464. The Delegation of Algeria offered two comments. First, on paragraph 13, the verb agreed upon had been "recalled," and not "reminded." and the text should be amended accordingly. Second, in reaction to the proposal by the Delegation of the European Union and its Member States with regard to the studies, the Delegation had made it very clear that the studies would only be used as information resources for the Committee, and, at that time, no one had opposed or amended the proposal. The Delegation wished to maintain the text proposed by the Chair as it stood, rather than adding the concept of "work resources".

465. The Secretariat summarized the proposals that had been made up to that point in the meeting.

466. The Delegation of Brazil, in response to the suggestions regarding paragraph 14, thanked the Delegation of the European Union and its Member States for its proposal, noting that it could be flexible in that regard. The Delegation did not object to the inclusion of a reference to the fact that the Delegation of the European Union and its Member States had expressed interest in discussing national laws. The phrase "some Member States" did not reflect the discussions of the Committee. As a compromise, the Delegation could agree to the text of the Chair and supported the proposal of the Delegation of Ecuador concerning paragraph 21.

467. The Delegation of the United States of America stated that it still did not understand the statement of the Delegation of Brazil concerning paragraph 14. The Committee should maintain the Chair's original language, while agreeing to the proposal of the Delegation of the European Union and its Member States concerning the deletion of the word "also."

468. The Delegation of Egypt declared, with regard to paragraph 16, that it considered that if the studies were to be introduced, they would be work resources. Such an approach might

cause confusion with regard to paragraph 21. The studies provided information that could be useful to different delegations, but not necessarily as a working document for the Committee. The Delegation requested further clarification concerning the proposals made by the Delegations of Canada and the European Union and its Member States.

469. The Delegation of the European Union and its Member States proposed the following text for paragraph 14: “a significant number of Member States.” The Delegation did not think that a listing of individual Member States was appropriate.

470. The Delegation of Brazil stated that the European Union took part in the discussions of the SCCR and other committees. The Delegation’s suggestion was aimed at producing a factual report of the Committee’s discussions.

471. The Delegation of the United States of America asked the Delegation of Brazil if a possible solution could be to delete “with regard to fulfilling that mandate,” so that the sentence would read, “some Member States also expressed” or “some Member States expressed interest in discussing national laws.”

472. The Delegation of Brazil thanked the Delegation of the United States of America for the proposal. The Delegation believed that the inclusion of the phrase “some Member States,” or of an indication that a number of Member States had that discussion, would give the wrong impression to the delegations present at the next SCCR. The group that had defended the idea had been identified, and therefore the Delegation considered that it would be more accurate to identify the Delegation of the European Union and its Member States, or the list of delegations that actually had that interest, in the text.

473. The Delegation of Greece declared that it did not understand the reasoning behind the Delegation of Brazil’s proposal and felt that listing was not appropriate. The Committee should retain the existing wording.

474. The Delegation of the European Union and its Member States explained that it did not have a mandate to agree to a text that would include a listing or a singling out of the European Union Member States on that specific point.

475. The Delegation of Belarus, speaking in its national capacity, supported the viewpoint expressed by the Delegation of the European Union and its Member States. The Delegation did not feel that a list of the particular states was appropriate in the conclusions, and believed that it would be difficult to compile such a list. The Delegation suggested that the Chair’s original proposal should be retained.

476. The Delegation of Italy considered that the phrase “some Member States” did not suggest a specific number of states but was rather a reflection of the fact that some Member States held the opinion in question. The Committee was not obliged to mention the Member States by name, and, in any case, a report of the meeting would be produced which would allow members to identify those states covered by the phrase “some Member States”.

477. The Delegation of Ecuador explained that, in paragraph 14, the point was that there was a discussion on the nature of the measure that would allow the Committee to comply with the Assembly’s mandate. That point had already been accurately reflected in the first part of paragraph 14, in which it was stated that “different points of view were expressed with regard to the nature of the appropriate international legal instrument or instruments, whether model law, joint recommendation, treaty and/or other forms”. The text that had given rise to disagreement between the Delegations of Brazil and the European Union and its Member States could simply be deleted.

478. The Delegation of Algeria supported the proposal of the Delegation of Ecuador concerning the deletion of the second sentence of paragraph 14.

479. The Delegation of the European Union and its Member States reiterated that it insisted on the inclusion of the sentence in question. The sentence had been included in the Chair's draft and the Delegation was satisfied with the Chair's wording, with the exception of the word "also" which came after "Member States."

480. The Chair, starting with paragraph 21, announced that a compromise solution had been reached between the Delegations of the United States of America and Ecuador. Based on that, the Chair proposed the incorporation of the sentence suggested by Ecuador, including new text proposals in paragraph 21. Regarding paragraph 18, the Chair considered that eliminating "may play" and inserting the phrase "play an important role" was a proposal that, from a drafting perspective, reflected the idea that the Chair wanted to express. The Chair suggested that the word "may" be deleted from paragraph 18, leaving the word "play." As to paragraph 16, there had been a reference to a study on limitations and exceptions for museums, and the delegations which had spoken on the point had remarked that there had been no clear reference to the discussion of the subject throughout the Plenary. It had been proposed that the Committee should just delete the reference and accept Canada's proposal to delete the paragraph referring to museums. By way of a compromise solution, it had also been proposed that the Committee should point out that the update of the report to be prepared by Dr. Kenneth Crews would cover that subject, since the initial report had mentioned museums. No consensus had been achieved with regard to the suggestion of adding the words "and work" to the last sentence. Without support, the Chair considered that "information resources" should remain and it would be up to the Committee to use the information in another way, or to incorporate it in its work. The Chair asked the Delegation of the European Union and its Member States to consider withdrawing its suggestion of "and work," and retaining "information resources," considering that the Committee could choose to incorporate the results in its work later without restriction. Regarding paragraph 14, the word "also" could be deleted from the text. The most contentious point had turned out to be the use of the term "some Member States. The word "some" had been used to make it clear that more than one country had expressed interest. The Chair clarified that the word "some" did not refer to many countries, a majority of countries, or a common understanding. With regard to the use of the term "recalled" or "reminded," two contradictory views had been expressed. The Chair called for flexibility, as it would be important to check on the meaning of the two terms. The Chair provided a summary of the proposals made.

481. The Delegation of Brazil agreed to the suggestion made by the Delegations of Ecuador and Algeria to have the second sentence of paragraph 14 deleted. The Delegation would agree to the listing of the names of the Member States or the group that actually expressed the interest. Thirdly, to ensure compromise, the Delegation could also accept the suggestion of the Delegation of the United States of America that the first part of the sentence stating "with regard to fulfilling that mandate" be deleted.

482. The Delegation of Egypt did not wish the text to give the impression that there was a difference of views on the mandate of the SCCR regarding exceptions and limitations simply because there were different points of views on the nature of the legal instrument. There was another possible direction consisting of an exchange of national experiences and discussions on technical assistance. The Delegation clarified that that latter direction was definitely not the understanding that it wished the paragraph to reflect. One possible solution would be to separate the ideas, so the first paragraph would capture the idea that there were differences of views on the nature of the instrument, and then the second paragraph would try to reflect the request made by the Delegation of the European Union and its Member States for a discussion on the additional issues.

483. The Delegation of Ecuador considered that the compromise solution proposed by the Delegation United States of America was the correct way forward.

484. The Delegation of the European Union and its Member States thanked the Chair and declared that it could join the consensus on the basis of the Chair's proposal. The Delegation clarified that it supported all of the proposals put forward by the Chair concerning the text.

485. The Chair understood that, in light of the flexibility shown by the Delegation of the European Union and its Member States, the words "and work" would not be added to paragraph 16. The word "may" would be deleted in paragraph 18. The Ecuadorean proposal would be accepted for paragraph 21. Regarding paragraph 14, the Chair's proposal had led to a response from the Delegation of Brazil displaying flexibility concerning the proposal of the Delegation of the United States of America that the phrase "with regard to fulfilling that mandate..." should be deleted from the second sentence. That proposal had received support from the Delegation of Ecuador, and was one of the three options that the Delegation of Brazil considered would cover its concerns.

486. The Delegation of Algeria proposed an amendment to the end of the second sentence of paragraph 14 in the form of the phrase "while other Member States or other delegations did not agree to that." The Delegation declared that the African Group wanted a treaty, not a discussion of national experiences, and had not agreed to the proposal that was described in the paragraph. The addition of the new language would clarify the reality, which had been that some Member States, in order to fulfill the mandate, wished to address the issues of national laws, capacity-building, technical assistance, development of studies and exchange of national information, while others had not agreed to that approach.

487. The Delegation of the European Union and its Member States thanked the Delegation of Algeria for its creative solution and agreed to it in the spirit of compromise.

488. The Delegation of Brazil stated that it would prefer the suggestion of the Delegation of the United States of America but, in the spirit of compromise, would accept the proposal made by the Delegation of Algeria, on behalf of the African Group.

489. The Chair thanked the Delegation of Algeria for offering a suggestion that provided a solution and explained that the final issue to be resolved was the use of the words "recalled" or "reminded". The Chair briefly explained that the word "reminded," as used in the Chair's proposal, referred to the terms accepted by the General Assembly in 2012. The Chair explained that that had been a General Assembly decision, so any terms used therein could not be changed.

490. The Delegation of Algeria requested clarification concerning paragraph 16, and how it would read.

491. The Secretariat explained that, for paragraph 16, the first sentence would be kept, and a clarification would be added, so that it would read "the Secretariat was requested to arrange for the update of the study prepared by Kenneth Crews on copyright limitations and exceptions for libraries and archives, with the inclusion of the subject of museums." The second sentence would be deleted altogether. Then the third sentence would read: "These studies will serve as information resources for the Committee."

492. The Delegation of Ecuador requested that the Committee not confuse studies on libraries and archives with those on museums. The Delegation explained that it had no objection to a study on museums, but believed that that was an issue that had to be dealt with separately.

493. The Chair pointed out that there was no reference to museums in the first sentence. Furthermore, Dr. Crews was free to decide what to include in his update. The Chair proposed that all references to museums should simply be deleted.

494. The Delegation of Algeria agreed that all references to museums should be deleted, but requested that the phrase “with the understanding that its preparation will not delay discussion on the limitations and exceptions agenda item.”, which the Delegation interpreted as applying to all studies scheduled to be carried out, be maintained.

495. The Delegation of the United States of America stated that, with regard to the limitations and exceptions for museums, it could be flexible concerning the line containing the phrase “would not delay discussions on the libraries and archives limitations and exceptions agenda item.”

496. The Delegation of Algeria declared that the principles should apply to all of the studies, not only to a study on museums. In the interests of greater clarity, an entirely new sentence might be required.

497. The Chair clarified that the language was not only related to one specific study. The Chair proposed that paragraph 16 be read again because of all the changes.

498. The Secretariat read the following text: “The Secretariat was requested to arrange for the update of the study on copyright limitations and exceptions for libraries and archives, document SCCR/17/2, prepared by Kenneth Crews, and also asked to arrange for a separate study on limitations and exceptions for museums. It is understood that the preparation of these studies would not delay discussion on the libraries and archives limitations and exceptions agenda item. These studies will serve as an information resource for the Committee.”

499. The Chair asked if all agreed with the amendments and supported the second section in its entirety. Noting that there was no opposition, the Chair announced that the second section of the conclusions had been approved and opened the floor for discussion of the final section on persons with other disabilities.

500. The Delegation of Brazil requested that paragraph 24, which had the same structure as paragraph 14, be updated with the same solution that had been agreed upon for paragraph 14.

501. The Delegation of the European Union and its Member States thanked the Delegation of Brazil for its proposal and asked how exactly the text would read.

502. The Secretariat explained that the text would read, “Different points of view were expressed with regard to the nature of the appropriate international legal instrument or instruments. With regard to fulfilling that mandate, some Member States expressed interest in discussing national laws, capacity building, technical assistance and development of studies and the exchange of national experiences while other delegations did not agree.”

503. The Delegation of the European Union and its Member States declared that it could agree to that proposed text.

504. The Delegation of Brazil proposed using the words “while other Member States” in order to have a parallelism, as well as using exactly the same language that had been proposed by Algeria for the second part of the text.

505. The Delegation of the European Union and its Member States expressed support for the parallel approach.

506. The Delegation of Algeria considered that the term “understood” did not fit properly into paragraph 23, in which the following was stated: “The Committee understood the importance of the subject of limitations and exceptions for education.” The Delegation did not feel that the Committee “understood”, and insisted upon maintaining the phrase “agreed on the importance.”

507. The Delegation of the European Union and its Member States considered that the point on licensing that it had raised with respect to the second part of the conclusions was indeed missing from the text of the third part. The Delegation wished to see a reference to licensing included at an appropriate point. The Delegation also shared the Delegation of Algeria’s concern about the use of the word “understood” and wished to have it removed from paragraph 23. Additionally, with regard to paragraph 27, the sentence that read “The provisional working document will inform future text-based work to be undertaken by the Committee in its 27th Session,” the Delegation understood that the text was not agreed on, as had been the case for libraries and archives.

508. The Delegation of Brazil, reacting to the requests made by the Delegation of the European Union and its Member States with regard to paragraph 27, explained that it understood the text provided by the Chair to be accurate. Given that a text had been presented to the Committee and that the Committee had decided to proceed with text-based negotiations, the Delegation would not be inclined to support the suggestion that the document should be referred to as not being the basis for the Committee’s future work.

509. The Delegation of Ecuador associated itself with the statement made by the Delegation of Brazil to the extent that the text being reviewed by the Committee reflected the proposals that came from treaties proposed by groups of WIPO Member States, such as the African Group, or treaties proposed by the Delegation of Ecuador. As a result, the Delegation considered that, to the extent that the text reflected the proposals formally submitted, it formed the basis for the Committee’s text-based discussions.

510. The Delegation of Brazil requested clarification concerning the request of the Delegation of the European Union and its Member States with respect to the term “licensing.” The Delegation could not understand why the Delegation of the European Union and its Member States wished to add the proposed wording. The Delegation understood that, in the context of libraries and archives, the licensing schemes were mentioned with regard to the specific topic of library lending. The Delegation understood that it would be accurate to say that the Committee had actually had experience of those kinds of interventions concerning libraries and archives. The Delegation wished for clarification on whether the Delegation of the European Union and its Member States thought there had been a discussion on licensing schemes with regard to educational and research institutions.

511. The Delegation of the European Union and its Member States stated that it believed that the Committee was dealing with issues that were related and that deserved equal treatment. Furthermore, licensing schemes were possible in the context of educational and research institutions and should be reflected in the conclusions.

512. The Delegation of Egypt stated, with regard to paragraph 23, that it could support the Chair’s draft as proposed. Alternatively, another term could be employed, for example, “recognized.” With regard to paragraph 27, the Delegation recalled that, in paragraph 12 of the conclusions of SCCR 25, the Committee had already agreed to continue text-based work on the document. With regard to the suggestion that the document was a basis for future text-based work, the Delegation noted that the draft referred to “is a basis”, not “the basis.” The Delegation proposed that such an approach might provide flexibility and address the concerns of the Delegation of the European Union and its Member States.

513. The Delegation of the United States of America supported the statement made by the Delegation of the European Union and its Member States on including a reference to licensing schemes. The Delegation proposed that said reference should be inserted into the first line of the last page of the document, in paragraph 24, giving the following text: "Some Member States expressed interest in discussing national laws, licensing schemes, capacity building..."

514. The Delegation of the European Union and its Member States explained that it was sensitive to the argument put forward by the Delegation of Egypt, and stated that the sentence in question could be rendered acceptable through the removal of the word "the". The Delegation explained that the sentence would read, "The provisional working document will be a basis for future text-based work to be undertaken."

515. The Chair reported that the Delegation of the European Union and its Member States had expressed concerns with regard to paragraph 27 but had then stated that it would be content with the removal of the word "the." Noting a lack of objection, the Chair concluded that the word "the" would be removed. The Chair noted that the Delegation of Brazil had reminded the Committee that licensing had been mentioned under a specific point, as a part of discussions, but that other delegations had suggested that it had been part of the alternatives named. The Chair declared that there was no issue with listing the subjects because they had been commented upon. As to paragraph 23, the Chair noted that, given the concerns raised, the solution proposed by the Delegation of Egypt might be a way forward. The delegates were requested to consider using the term "recognized", rather than "agreed on", in line with the proposal of the Delegation of Egypt.

516. The Delegation of Brazil, responding to the proposal made by the Delegation of the United States of America regarding licensing schemes within the framework of discussions on limitations and exceptions for educational and research institutions, declared that it could perhaps agree to the Delegation of the United States of America's proposal, on the condition that it was made clear that certain members had a different understanding with regard to fulfilling the mandate. The Delegation added that it considered that licensing schemes were outside the scope of the mandate bestowed upon the Committee.

517. The Chair expressed support for the proposal and, in the absence of any opposition, stated that the third section of the conclusions had been approved. The Chair noted that there were two short paragraphs to be considered, and declared that the Committee would consider the items covered by those paragraphs. The subject had been discussed with the regional coordinators, but needed to be reviewed as part of the agenda. The Chair introduced the agenda item on the Stakeholders' Platform, noting that documents SCCR/26/5 and SCCR/26/7 were available on the web page for the Committee. The Secretariat would provide background information concerning the Stakeholders' Platform.

518. The Secretariat explained that the SCCR had, four years earlier, established what was called a Stakeholders' Platform, with the participation of visually impaired persons' representatives, publishers, and representatives of authorized entities. The aim of the Stakeholders' Platform was to work on transitioning to an overall situation that would be conducive to the implementation of the Marrakesh VIP Treaty, and that would provide for the cross-border transfer of accessible works. The Secretariat explained that the Stakeholders' Platform was working on three major projects: capacity building in developing countries to develop authorized entities and to build publishing capacity; the Trusted Intermediary Global Accessible Resources (TIGAR) database - a platform hosted at WIPO with an ICT solution to assist with the cross-border transfer of accessible format works; the Inclusive Publishing Project, the aim of which was to ensure that published works were accessible from the outset. The Stakeholders' Platform had been working on those projects for the past three years, and the two aforementioned documents reported on the discussions surrounding those ventures. The Secretariat indicated that, at the current time, the documents were simply reports of the

work that had been carried out, noting that they were posted on the web site and were available alongside the meeting documents.

519. The Delegation of Algeria asked, with regard to paragraph 28, whether the Chair had closed the discussions on part three of the conclusions.

520. The Chair noted that the point regarding paragraph 28 still remained to be dealt with.

521. The Delegation of Algeria explained that it wished its statement to be in line with the announcement to be made and not with the conclusion.

522. The Chair asked for comments on the announcement about the reports of the Stakeholders' Platform available on the Internet and would hear from the Delegation of Algeria.

523. The Delegation of Algeria requested further information on the activities of the Stakeholders' Platform, reiterating that it was very important to the Delegation that work carried out within that framework did not detract from and, indeed, was in line with, the implementation of the Marrakesh VIP Treaty (said Treaty being a priority in terms of the relationship between WIPO and visually impaired persons).

524. The Chair expressed uncertainty as to whether there was an additional comment to be made on the subject, as the reports would not be revised or adopted. The Chair explained that perhaps further action would be possible at a subsequent Committee meeting, once the reports and the documents had been examined. The Chair submitted paragraphs 28 and 29 for discussion under "Other matters".

525. The Delegation of Algeria noted that the Committee had not taken note of the content of the reports and wished to make sure that that fact would be noted in the conclusion. The Delegation suggested that the text should begin by stating, "Without taking note of the contents of the reports it was announced that."

526. The Chair accepted the proposal of the Delegation of Algeria, reading out the following text: "It was announced that the reports of the Stakeholders' Platform, documents SCCR/26/5 and SCCR/26/7, which were not discussed at the 26th SCCR, are available on the web page for SCCR 26." Noting no opposition, the Chair declared the "Other matters" section to be approved.

527. The Delegation of Ecuador proposed that the phrase "starting with libraries and archives" should be inserted after the paragraph stating that two days would be devoted to the agenda item on limitations and exceptions, on the condition that libraries should go first within the items of exceptions and limitations.

528. The Delegation of Brazil, referring to the last part of paragraph 30 about the inter-sessional meeting on limitations and exceptions for libraries and archives, expressed a desire to include the text that had been agreed upon at SCCR 25: "including consideration to hold a three-day inter-sessional meeting on limitations and exceptions for libraries and archives between SCCR 27 and SCCR 28 with a target to submit recommendations on limitations and exceptions for libraries and archives to the General Assembly by SCCR 28." The Delegation reiterated that that had been the text that had been agreed on at the previous SCCR.

529. The Delegation of the European Union and its Member States explained that it preferred the text as it stood, although it had taken note of the suggestion by the Delegation of Ecuador and saw no reason why that precision should not be added to the text.

530. The Delegation of Poland expressed a wish to maintain the Chair's text in its current form.

531. The Delegation of the United States of America expressed a wish to maintain the Chair's text in its current form, but with the inclusion of the Delegation of Ecuador's submission that libraries and archives be the first topic taken up during the two days devoted to limitations and exceptions.

532. The Chair requested clarification regarding Ecuador's suggestion, asking whether it should read "Starting with libraries and archives."

533. The Delegation of Ecuador explained that its proposed text would read: "Two days will be devoted to the agenda item on limitations and exceptions, starting with libraries and archives, and one half day will be devoted to the preparation of conclusions."

534. The Delegation of Japan added its voice to those of the Delegations of the European Union and its Member States and the United States of America concerning the change to the wording on the inter-sessional meeting.

535. The Delegation of Belarus supported the proposal of the Delegation of Ecuador, but wished the other text to be maintained in the form proposed by the Chair.

536. The Delegation of Egypt supported the proposal of the Delegation of Ecuador to add "starting with libraries and archives." The Delegation stated that it understood that certain delegations wished to maintain the text in its current form and proposed adding a citation or reference to the SCCR 25 conclusion.

537. The Chair believed that there had been a consensus on including the proposal of the Delegation of Ecuador. Regarding the second point, several delegations had expressed support for the text proposed by the Chair. However, the issue of the previously-established mandate had also arisen. On that point, the Chair appealed to the Delegation of Brazil to display flexibility because the point in question had been mentioned in other parts of the text.

538. The Delegation of Brazil thanked the Delegation of Egypt for its efforts and explained that inter-sessional meetings on exceptions and limitations would be held in order to meet the deadline for the presentation of recommendations on limitations and exceptions by the 28th Session of the Committee (as stated in the SCCR 25 decision). All were mandated by SCCR 25 to consider whether or not to convene inter-sessional work on the item between SCCR 26 and SCCR 27. The Delegation explained that it had already been agreed by all Member States at SCCR 25 that the Committee would refer to the deadline. The Delegation noted that GRULAC had put forward a proposal at SCCR 26, supported by the African Group, concerning the holding of inter-sessional meetings.

539. The Delegation of Trinidad and Tobago proposed that the language could be rendered more consistent and clearer, stating that there must be some reference to the holding of inter-sessional meetings or the agreement that had been achieved at SCCR 25.

540. The Delegation of Algeria expressed support for the statement made by the Delegation of Trinidad and Tobago.

541. The Delegation of Poland pointed out that there had been no agreement in terms of the inter-sessional meetings and that several delegations had expressed opposition in that regard.

542. The Delegation of the European Union and its Member States supported the statement made by the Delegation of Poland.

543. The Chair noted that the Delegation of Egypt had suggested a compromise in the form of a reference to the conclusions of SCCR 25. The idea of a reference to the holding of an inter-sessional meeting had also been put forward. Such a reference did not imply that a decision had been made, but rather that the issue had been under consideration. The Chair requested the Delegation of Egypt to provide specific wording for discussion.

544. The Delegation of Egypt proposed inserting the following text at the end: “[conclusion of SCCR 25, paragraph 9].”

545. The Delegation of Ecuador suggested the alternative wording “as a conclusion.”

546. The Delegation of Poland declared that if such an addition were to be made, the text would have to state clearly that there had been no conclusion and that there had been disagreement on the issue during SCCR 26.

547. The Chair asked the Delegation of Poland if the Delegation proposed adding the text “some delegations were in favor and others against,” asking if that was perhaps implied where the text indicated, “including consideration of whether to hold an inter-sessional meeting.”

548. The Delegation of Poland declared that it did not feel that point was implied because that sentence referred to something different, and the Committee was referring there to an interpretation of an SCCR 25 decision made by certain Member States.

549. The Delegation of the European Union and its Member States supported the statement made by the Delegation of Poland.

550. The Delegation of Japan explained that, at the conclusion of SCCR 25 it had been decided to consider whether to hold a three-day inter-sessional meeting on limitations and exceptions. The Delegation explained that the Committee could not reach agreement on the issue. In that sense, as the Delegation of Poland had stated, if the text were to refer to the conclusions of SCCR 25, it would be fair to mention that disagreement on the issue had arisen during SCCR 26.

551. The Delegation of Ecuador acknowledged the concerns of the Delegation of Poland and the concerns expressed by the Delegation of Japan and others. The Delegation noted, however, that the proposed text, even with the addition of the text proposed by the Delegation of Egypt, did not differ from the statements of the concerned delegations, given that it would include the phrase “including consideration of whether to hold an inter-sessional.” The Delegation reiterated that the text was not indicating an agreement to hold an inter-sessional meeting, but simply reflecting the same spirit that had existed in the previous conclusions. The issue was already reflected as something to be discussed, and the Delegation suggested that, with the addition proposed by the Delegation of Egypt, the text would have the same meaning.

552. The Chair drew the Committee’s attention to the discussion during which it had been stated that, during the next half day, the Committee would discuss future work. Moreover, the issue of holding an inter-sessional meeting on limitations and exceptions for libraries and archives would be discussed. The Committee could freely decide whether to have an inter-sessional meeting. In that sense, the reference to the conclusions was unnecessary because the same freedom was there, including consideration of whether to hold an inter-sessional meeting on limitations and exceptions for libraries and archives. The Committee would retain the freedom to decide whether to have that inter-sessional meeting. The Chair called on the delegates to maintain the text in its current form.

553. The Delegation of Belarus reiterated its commitment to supporting the Chair’s proposal. The Delegation declared that the proposal expressed a more general feeling, and was more of a

projection and not a judgment of anything. The Delegation expressed support for the general proposal put forward by the Chair.

554. The Delegation of Poland concurred with the Delegation of Belarus and supported the Chair's text as proposed.

555. The Delegation of the United States of America also supported the text as originally drafted. The Delegation considered that it did not really matter what was put into the conclusion document, as all the delegations knew that when the Committee returned for SCCR 27, some would think there was an urgent need for inter-sessional meetings and others would not. The Delegation did not think that adding references back to the conclusion from SCCR 25 really added anything to the text. The Delegation called on the other delegates to maintain the original text put forward by the Chair.

556. The Chair pointed out that, in addition to the added clarification, the last two lines were important because they reflected the request of some members of the Committee for there to be discussion of the matter at the SCCR 27.

557. The Delegation of Brazil stated that, at the end of the day, it would be up to Member States to evaluate whether the issue was urgent, but added that there was in fact a deadline and that it was something that the Delegation would like to have in writing. The Delegation was not opposed to the inclusion of a reference to the failure to reach a consensus at SCCR 26 and the need to discuss the issue in question at the next session. Information should also be included about the deadline.

558. The Delegation of Ecuador proposed an amendment to the end of the text in order to satisfy the concerns of the Delegation of Brazil and other delegations. The amendment would involve inserting the words "having the deadline prescribed or requested by the General Assembly." after "for libraries and archives".

559. The Delegation of the European Union and its Member States, declared that it considered that it had travelled far enough in terms of accommodating the demands for additional inter-sessional work and so preferred the Chair's text as it stood.

560. The Delegation of Italy declared that it also preferred the Chair's language, given that the deadline was already included earlier in the text. The Delegation suggested that a careful reading would make that point clear.

561. The Secretariat explained that paragraph 13 concerned the target meeting of the 28th Session of the SCCR, and read as followed: "The Committee recalled that the terms of the work program adopted by the 2012 General Assembly recommended 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 on exceptions and limitations on libraries and archives to the General Assembly by the 28th Session of the SCCR."

562. The Delegation of Trinidad and Tobago acknowledged the Delegation of Brazil's concern with respect to the deadline set by SCCR 25 and supported the proposal put forward by the Delegation of Ecuador in that regard.

563. The Delegation of the United States of America recalled that what was being discussed was not a deadline but rather a target, and that a discussion would be held at SCCR 27 as to whether or not to hold an inter-sessional meeting. The Delegation considered that a reference to past conclusions or to the mandate was unnecessary.

564. The Delegation of Ecuador put forward a new proposal in the form of the following text: “to meet the dates referred to in paragraph 13.”

565. The Delegation of Brazil reiterated that it could agree to the proposal of the Delegation of Egypt or those made by the Delegation of Ecuador. There existed a consensus concerning the idea that the Committee had either a target or some common goal, and the Delegation wished to see that point set out in writing. The Delegation was unable to comprehend why the Committee should not have that information included in the text. The Delegation acknowledged the comments made by the Delegation of Italy regarding the fact that there was a target and that it was already expressed in the text. The Delegation explained that it simply wished to have a clear connection that the target had been the genesis of the request for having inter-sessional work. The Delegation supported the proposal made by the Delegation of Ecuador and the proposals made by the Delegation of Egypt regarding inclusion of a reference to this common goal of all the Member States.

566. The Delegation of Poland reiterated its support for the text as it stood. In response to the Delegation of Brazil, it noted that there was indeed a target in paragraph 13 that was already in the text. The Delegation noted that, as the Chair had mentioned before, the Committee was not supposed to be discussing the merits that had been discussed already, adding that the Delegation of Brazil had not raised the proposed new version of the text during the discussion earlier that day.

567. The Delegation of Egypt proposed that the text be kept as it was, with an addition at the end consisting of the phrase "with a view to meet the target mentioned in paragraph 13."

568. The Delegation of the European Union and its Member States proposed inserting a footnote to the reference to SCCR 27 that would include a reference to paragraph 13. In other words, the whole paragraph would reference paragraph 13.

569. The Chair asked the Delegation of the European Union and its Member States what the exact text of the footnote it had suggested would be.

570. The Delegation of Trinidad and Tobago expressed support for the compromise proposal put forward by the Delegation of Egypt.

571. The Delegation of Brazil also supported the proposal of the Delegation of Egypt.

572. The Delegation of the European Union and its Member States clarified that it wished for a footnote to be inserted at a suitable point, most probably in the chapter title of that paragraph, referencing paragraph 13.

573. The Chair proposed inserting the phrase “to comply with the goals established by the Committee.” after the word “archives” at the end of paragraph 13. That addition referred to the targets established by the Committee, and was a way of avoiding introducing the specific issue of how to refer to a conclusion that had previously been mentioned. The Chair suggested that the targets had been adequately described in the conclusions of the Committee and asked the Committee to accept the proposal in a spirit of compromise.

574. The Delegations of Belarus, Brazil, Ecuador, the European Union and its Member States, Poland, Trinidad and Tobago and the United States of America agreed to the proposal put forward by the Chair.

575. The Chair thanked all of the delegations for their efforts.

ITEM 10: CLOSING OF THE SESSION

576. The delegations present thanked the Chair, Coordinators, interpreters and the Secretariat for all their efforts.

577. The Chair thanked all of the delegations, as well as the Conference and Language Department, the interpreters headed by Ms. Cristina Fertis Ioannou, the Language Division led by Mr. Lijun Fan, Ms. Carole Croella, and Ms. Michele Woods who had led the Secretariat team. The Chair also thanked the Assistant Director General, Mr. Trevor Clarke and the Director General, Mr. Francis Gurry.

578. Mr. Trevor Clarke, the Assistant Director General, thanked the Secretariat, the Chair and the interpreters.

[Annex follows]

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TURQUIE/TURKEY

Fatos ALTLINC (Mrs.), Expert, Legislation Department, Directorate General of Copyright, Ministry of Culture and Tourism, Ankara

Yasemin ONEN, Assistant Expert, Directorate General of Copyright, Ministry of Culture and Tourism, Ankara

URUGUAY

Juan BARBOZA, Second Secretary, Permanent Mission, Geneva

VIET NAM

PHAM Thanh Tung, Deputy Director of Related Rights Division, Copyright Office, Hanoi

ZIMBABWE

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

II. DÉLÉGATIONS MEMBRES SPÉCIALES/SPECIAL MEMBER DELEGATIONS

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

Oliver HALL-ALLEN, First Counsellor, Intellectual Property, Geneva

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

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

David BAERVOETS, Policy Officer and Legal Advisor, Copyright Unit, Directorate-General for Internal Market and Services, European Commission, Brussels

III. ORGANISATIONS INTERGOUVERNEMENTALES/ INTERGOVERNMENTAL ORGANIZATIONS

COMMON LANGUAGE RESOURCES AND TECHNOLOGY INFRASTRUCTURE AS EUROPEAN RESEARCH INFRASTRUCTURE CONSORTIUM (CLARIN ERIC)

Pawel KAMOCKI, Maisons-Alfort

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

Hannu WAGER, Counselor, Intellectual Property Division, Geneva

UNION AFRICAINE/AFRICAN UNION

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

* 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.

IV. ORGANISATIONS NON GOUVERNEMENTALES/
NON-GOVERNMENTAL ORGANIZATIONS

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

Asociación Argentina de Intérpretes (AADI)
Nelson AVILA, Gerente Legal, Ciudad Autónoma, Buenos Aires
Martin MARIZCURRENA ORONOZ, Consultor Internacional, Buenos Aires
Susana RINALDI (Mrs.), Vice Presidenta y Directora de Asuntos Internacionales, Buenos Aires

Association de l'industrie de l'informatique et de la communication (CCIA)/Computer & Communications Industry Association (CCIA)
Nick ASHTON-HART, Geneva Representative, Nyon
Matthias LANGENEGGER, Deputy, Geneva

Association des télévisions commerciales européennes (ACT)/Association of Commercial Television in Europe (ACT)
Emilie ANTHONIS (Mrs.), European Affairs Advisor, Brussels
Lodovico BENVENUTI, Chargé de mission, Brussels

Association européenne des étudiants en droit (ELSA international)/European Law Students' Association (ELSA International)
Eliana ROCCHI (Ms.), Head of Delegation, Milan
Idil Buke CIVELEK (Ms.), delegate, Istanbul
Tim KOSTKA, delegate, Mainz
Elda MALSHI (Ms.), delegate, Milan
Anamaria Georgiana MARIN (Ms.), delegate, Florence

Association européenne des médias numériques (EDiMA)/European Digital Media Association (EDiMA)
Ville OKSANEN, Vice Chairman, Electronic Frontier Finland, Helsinki

Asociación Internacional de radiodifusión (AIR)/International Association of Broadcasting (IAB)
Carla BRITTO (Ms.), Miembro Grupo de Trabajo de Derecho de Autor de AIR, Montevideo
Nicolás NOVOA, Miembro del Comité Permanente de Derecho de Autor, Montevideo
José Alberto SÁENZ AZCÁRRAGA, Grupo de Trabajo de Derecho de Autor de AIR, Montevideo
Edmundo RÉBORA, Grupo de Trabajo de Derecho de Autor de AIR, Montevideo
Juan Fernando UJUETA, Miembro Grupo de Trabajo de Derecho de Autor de AIR, Montevideo

Association internationale pour la protection de la propriété intellectuelle (AIPPI)/International Association for the Protection of Intellectual Property (AIPPI)
Matthias GOTTSCHALK, Secretary, Special Committee, Zurich
Sanna WOLK (Mrs.), Co-Chair of Special Committee, Zurich

Association internationale pour le développement de la propriété intellectuelle (ADALPI)/International Society for the Development of Intellectual Property (ADALPI)
Kurt KEMPER, Founder Member, Geneva

Association littéraire et artistique internationale (ALAI)/International Literary and Artistic Association (ALAI)
Victor NABHAN, President, Paris

Association mondiale des journaux (AMJ)/World Association of Newspapers (WAN)
Holger ROSENDAL, Head of Legal Department, *Danske Medier*, Copenhagen

Canadian Library Association (CLA)
Victoria OWEN (Ms.), Chair, Copyright Advisory Committee, Toronto

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)
Tomoaki KURODA, Assistant Manager, Legal Department, Tokyo
Samuel Shu MASUYAMA, Secretary General, Tokyo

Centre de recherche et d'information sur le droit d'auteur (CRIC)/Copyright Research and Information Center (CRIC)
Shinichi UEHARA, Member, Graduate School of Kokushikan University, Tokyo

Centre for Internet and Society (CIS)
Puneeth NAGARAJ, Observer, Geneva
Nehaa CHAUDHARI (Ms.), Programme Officer, Bangalore

Chamber of Commerce and Industry of the Russian Federation (CCIRF)
Elena KOLOKOLOVA (Mrs.), Representative, Geneva

Civil Society Coalition (CSC)
Susan STRBA (Mrs.), CSC Fellow, Geneva

Comité "acteurs, interprètes" (CSAI)/Actors, Interpreting Artists Committee (CSAI)
Jose Maria MONTES, Expert, Madrid

Confédération internationale des sociétés d'auteurs et compositeurs (CISAC)/International Confederation of Societies of Authors and Composers (CISAC)
Gadi ORON, Director, Legal and Public Affairs, Paris

Conseil britannique du droit d'auteur (BCC)/British Copyright Council (BCC)
Andrew YEATES, Director, General Counsel, London

Conseil international des archives (CIA)/International Council on Archives (ICA)
Tim PADFIELD, Representative, Wiltshire

Electronic Information for Libraries (eIFL.net)
Teresa HACKETT (Ms.), Programme Manager, Rome

European Visual Artists (EVA)

Carola STREUL (Ms.), Secretary General, Brussels
Marie-Anne FERRY-FALL (Ms.), Director, Paris
Javier GUTIÉRREZ VICÉN, Director, Madrid
Werner STAUFFACHER, Vice-Director, Zürich
Dominique PEYRONNET (Ms.), Consultant, Lyon
Christiane RAMONBORDES (Ms.), Consultant, Paris
Roberto CABOT, Artist, Rio de Janeiro
Julio CARRASCO BRETON, Artist, Mexico City
Laurence CHERRIER (JENKELL) (Ms.), Artist, Nice
Thierry FEUZ, Artist, Geneva

Fédération européenne des sociétés de gestion collective de producteurs pour la copie privée audiovisuelle (EUROCOPYA)

Nicole LA BOUVERIE (Mme.), Paris

Fédération ibéro-latino-américaine des artistes interprètes ou exécutants (FILAIE)/Ibero-Latin-American Federation of Performers (FILAIE)

Miguel PEREZ SOLIS, Asesor Juridico de la Presidencia, Madrid
Paloma LOPEZ (Sra.), Departamento Juridico, Madrid
Carlos LOPEZ SANCHEZ, Departamento Juridico, Madrid

Fédération internationale de la vidéo (IFV)/International Video Federation (IVF)

Benoît MÜLLER, Legal Advisor, Brussels
Alessandra SILVESTRO (Mrs.), Legal Advisor, Brussels

Fédération internationale de l'industrie phonographique (IFPI)/International Federation of the Phonographic Industry (IFPI)

Neil TURKEWITZ, Executive Vice President, Washington, D.C.
David CARSON, Executive Vice President - Global Legal Policy, London

Fédération internationale des acteurs (FIA)/International Federation of Actors (FIA)

Dominick LUQUER, General Secretary, Brussels
Duncan CRABTREE-IRELAND, Chief Administrative Officer and General Counsel, Los Angeles
Robert HADL, Legal Adviser, Los Angeles, California
Bjørn HØBERG-PETERSEN (Ms.), Senior Legal Adviser, Copenhagen
John T. MCGUIRE, Senior Legal Adviser, Los Angeles, California
Anna-Katrine OLSEN (Ms.), General Secretary, Copenhagen

Fédération internationale des associations de bibliothécaires et des bibliothèques (FIAB)/International Federation of Library Associations and Institutions (IFLA)

Ellen BROAD (Ms.), Manager, Digital Projects and Policy, The Hague
Stuart HAMILTON, Director, Policy and Advocacy, The Hague
Barbara STRATTON (Ms.), Copyright Expert, Libraries and Archives Copyright Alliance, London
Enrico NATALE, MA, Geneva
Margaret Ann WILKINSON (Ms.), Professor, Faculty of Law, University of Western Ontario, Ontario
Winston TABB, Sheridan Dean of University Libraries and Museums, Johns Hopkins University, Geneva

Fédération internationale des associations de producteurs de films (FIAPF)/
International Federation of Film Producers Associations (FIAPF)

Bertrand MOULLIER, Senior Adviser, International Policy, Paris
Tripat Paul AGGARWAL, Adviser, Paris
Reynolds MASTIN, Adviser, Paris

Fédération internationale des journalistes (FIJ)/International Federation of Journalists (IFJ)

Mike HOLDERNESS, Representative, Bruxelles

Fédération internationale des musiciens (FIM)/International Federation of Musicians (FIM)

Benoit MACHUEL, General Secretary, Paris

Fédération internationale des organismes gérant les droits de reproduction (IFRRO)/
International

Federation of Reproduction Rights Organizations (IFRRO)

Rainer JUST, President of IFRRO and CEO of VG WORT, Munich
Olav STOKKMO, Chief Executive and Secretary General, Brussels
Anita HUSS (Mrs.), General Counsel and Deputy Secretary General, Brussels
Barbara JOZVIK (Mrs.), Chairman of the Board at Polska Ksiazka, Krakow
Marius KUZMINAS, Head of Musical Works Department of LATGA-A, Vilnius
Mats LINDBERG, Managing Director of BUS, Stockholm
Dora MAKWINJA (Mrs.), Acting Executive Director of COSOMA, Lilongwe
Dalton MORATO, Executive Manager of ABDR, Sao Paulo
Antje SORENSEN (Mrs.), International Department at CCC, Danvers, Massachusetts
George ZANNOS, Legal Advisor of OSDEL, Athens

German Library Association

Armin TALKE, Legal Adviser, Berlin
Oliver HINTE, *Vorsitzender der Rechtskommission*, Berlin

Groupement international des éditeurs scientifiques, techniques et médicaux
(STM)/International Group of Scientific, Technical and Medical Publishers (STM)

André MYBURGH, Attorney, Basel
Carlo SCOLLO LAVIZZARI, Attorney, Basel

Interactive Software Federation of Europe (ISFE)

David SWEENEY, General Counsel, Brussels

International Authors Forum (IAF)

Maureen DUFFY (Ms.), Author, London
Katie WEBB (Ms.), London

International Council of Museums (ICOM)

John G. MCAVITY, Chair, Standing Committee on Legal Affairs, Paris
Samia SLIMANI (Mrs.), Head of Legal Affairs, Paris

Knowledge Ecology International, Inc. (KEI)

James LOVE, Director, Washington, DC
Thirukumaran BALASUBRAMANIAM, Geneva Representative, Geneva
Manon RESS (Ms.), Director of Information Society Projects, Washington, DC

Latin Artis

Abel MARTIN VILLAREJO, General Secretary, Latin Artis, Madrid

Motion Picture Association (MPA)

Christopher MARCICH, President and Managing Director, Brussels

National Association of Broadcasters (NAB)

Benjamin F. P. IVINS, Senior Associate General Counsel, Washington, D.C.

North American Broadcasters Association (NABA)

Erica REDLER (Ms.), Legal Consultant, Ottawa

Gerardo MUNOZ DE COTE AMESCUA, Director Jurídico de Propiedad Intelectual en Televisa, Mexico City

Christopher WOOD, VP and Assistant General Counsel, Univision Communications Inc., Los Angeles, California

Cristina AMADO PINTO (Ms.), IP Attorney, Grupo Televisa, Zug

David FARES, Senior VP, Government Relations, 21st Century Fox, New York, New York

Armando Javier MARTINEZ BENITEZ, Director, Televisa, Mexico D.F.

Bradley SILVER, Senior Counsel, Intellectual Property, Time Warner, New York, New York

Société portugaise d'auteurs (SPA)

José Jorge LETRIA, President and CEO, Lisbon

Paula CUNHA (Mrs.), Strategic Planning and Financial Management Director and Advisor to the Board, Lisbon

Society of American Archivists (SAA)

William MAHER, Professor, Urbana, Illinois

The Japan Commercial Broadcasters Association (JBA)

Hidetoshi KATO, Programming Division, IPR Management Department, Tokyo

Kaori KIMURA, Manager, Copyright Department, Programming Division, Asahi Broadcasting Corporation, Osaka

Union de radiodiffusion Asie-Pacifique (ABU)/Asia-Pacific Broadcasting Union (ABU)

Shailesh SHAH, Secretary General, Indian Broadcasting Foundation (IBF), New Delhi

Anna WARD (Mrs.), Vice Chairperson, Artarmon

Yoshinori NAITO, Senior Manager, Copyright and Contracts Division, Tokyo

Premila MANIVA (Ms.), Kuala Lumpur

Haruyuki ICHINAHASHI, Tokyo

Union des radiodiffusions et télévisions nationales d'Afrique (URTNA)/Union of National Radio and Television Organizations of Africa (URTNA)

Madjiguene MBAYE-MBENGUE (Mrs.), Conseiller Juridique, Dakar

Union européenne de radio-télévision (UER)/European Broadcasting Union (EBU)

Heijo RUIJSENAARS, Head, Intellectual Property Department, Geneva

Peter Cyriel GEOTHALS, Judicial Counsellor, Geneva

Tom RIVERS, Consultant, Geneva

Jane VIZARD (Mrs.), Legal Director, Geneva

V. BUREAU/OFFICERS

Président/Chair: Martín MOSCOSO (Pérou/Peru)

Vice-présidents/Vice-Chairs: Alexandra GRAZIOLI (Mme/Mrs.) (Suisse/Switzerland)
Abdellah OUADRHIRI (Maroc/Morocco)

Secrétaire/Secretary: Michele WOODS (Mme/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

C. Trevor CLARKE, sous-directeur général, Secteur de la culture et des industries de la création/Assistant Director General, Culture and Creative Industries Sector

Michele WOODS (Mme/Mrs.), directrice, Division du droit d'auteur, Secteur de la culture et des industries de la création /Director, Copyright Law Division, Culture and Creative Industries Sector

Carole CROELLA (Mme/Mrs.), conseillère principale, Division du droit d'auteur, Secteur de la culture et des industries de la création/Senior Counsellor, Copyright Law Division, Culture and Creative Industries Sector

Geidy LUNG (Mme/Mrs.), conseillère principale, Division du droit d'auteur, Secteur de la culture et des industries de la création/Senior Counsellor, Copyright Law Division, Culture and Creative Industries Sector

Paolo LANTERI, juriste adjoint, Division du droit d'auteur, Secteur de la culture et des industries de la création/Assistant Legal Officer, Copyright Law Division, Culture and Creative Industries Sector

Rafael FERRAZ VAZQUEZ, consultant, Division du droit d'auteur, Secteur de la culture et des industries de la création/Consultant, Copyright Law Division, Culture and Creative Industries Sector

[End of Annex and of document]