

Standing Committee on Copyright and Related Rights

Twenty-seventh Session
Geneva, April 28 to May 2, 2014

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-seventh session in Geneva from April 28 to May 2, 2014.
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, Angola, Argentina, Austria, Bahamas, Bangladesh, Barbados, Belarus, Belgium, Benin, Brazil, Burkina Faso, Canada, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d’Ivoire, Croatia, Czech Republic, Democratic People's Republic of Korea, Denmark, Djibouti, Ecuador, El Salvador, Finland, France, Georgia, Germany, Ghana, Greece, Guatemala, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Italy, Japan, Jordan, Kenya, Latvia, Lebanon, Libya, Lithuania, Luxembourg, Madagascar, Malaysia, Mali, Mauritania, Mexico, Monaco, Morocco, Mozambique, Myanmar, Netherlands, Nicaragua, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Senegal, Serbia, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Viet Nam, Yemen, and Zambia (98).
3. Palestine and South Sudan participated in the meeting in an observer capacity.
4. The European Union (EU) participated in the meeting in a member capacity.
5. The following IGOs took part in the meeting in an observer capacity: African Union (AU), Arab States Broadcasting Union (ASBU), International Labour Organization (ILO) and World Trade Organization (WTO) (4).
6. The following non-governmental organizations (NGOs) took part in the meeting in an observer capacity: Agence pour la protection des programmes (APP), Alianza de Radiodifusores Iberoamericanos para la Propiedad Intelectual (ARIP), Asia-Pacific Broadcasting Union (ABU), Asociación Argentina de Intérpretes (AADI), Association of Commercial Television in Europe (ACT), Association of European Performers’ Organizations (AEPO-ARTIS), Association of European Research Libraries (LIBER), Central and Eastern European Copyright Alliance (CEECA), Centre for International Intellectual Property Studies (CEIPI), Centre for Internet and Society (CIS), Chamber of Commerce and Industry of the Russian Federation (CCIRF), Charter Institutes of Libraries and Institutional Professionals (CILIP), Civil Society Coalition (CSC), British Copyright Council (BCC), International Council on Archives (ICA), Co-ordinating Council of Audiovisual Archives Associations (CCAAA), Copyright Research and Information Center (CRIC), DirecTV, Electronic Information for Libraries (eIFL.net), European Broadcasting Union (EBU), European Visual Artist (EVA), Exchange and Cooperation Centre for Latin America (ECCLA), Fédération européenne des sociétés de gestion collective de producteurs pour la copie privée audiovisuelle (EUROCOPYA), Federation of Reproduction Rights Organizations (IFRRO), German Library Association, Ibero-Latin-American Federation of Performers (FILAIE), Institute of Intellectual Property (IIP), Instituto de Derecho de Autor (Instituto Autor), 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 Federation of Actors (FIA), International Federation of Film Producers Associations (FIAPF), International Federation of Library Associations and Institutions (IFLA), International Federation of Musicians (FIM), International Federation of Reproduction Rights Organizations (IFFRO), 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), Internet Society (ISOC), Karisma Foundation, Knowledge Ecology International, Inc.

(KEI), Max-Planck Institute for Intellectual Property, Competition and Tax Law (MPI), Medicines Patent Pool Foundation (MPP), Motion Picture Association (MPA), National Association of Broadcasters (NAB), National Intellectual Property Organization (NIPO), North American Broadcasters Association (NABA), Scottish Council on Archives (SCA), Society of American Archivists (SAA), The Japan Commercial Broadcasters Association (JBA), Third World Network (TWN), TransAtlantic Consumer Dialogue (TACD), Union Network International - Media and Entertainment (UNI-MEI) and World Association of Newspapers (WAN) (59).

7. The Standing Committee on Copyright and Related Rights (hereinafter referred to as the "Standing Committee" or "SCCR") held its twenty-seventh session in Geneva from April 28 to May 2, 2014.

ITEM 1: OPENING OF THE SESSION

8. Mr. Trevor Clarke, Assistant Director General, opened the session and welcomed all delegates to the 27th Session of the SCCR. He stressed the importance of discussing the proposed treaty on the protection of broadcasting organizations and the copyright norms relating to limitation and exceptions. The protection of broadcasting organizations formed part of the Committee's agenda since 1998, 16 years ago. Member States were urged to reach consensus on the convening of a diplomatic conference in 2015 and to consider document SCCR 27/2 Rev. Having previously adopted document SCCR/27/REF/SCCR26/3 on limitations and exceptions for libraries and archives, the Committee considered the adoption of a working document on limitations and exceptions for education, teaching and research institutions and persons with other disabilities. The Assistant Director General referred to the Eight Interim Report of the Stakeholders' Platform SCCR/27/4, and explained that its projects were aimed at increasing the availability of published works in accessible formats in line with the Marrakesh Treaty adopted by the Committee in June 2013.

9. The Chair welcomed the delegations and endorsed their constructive spirit and engagement with the topics of the session. He prompted the delegations to complete the work concerning the protection of broadcasting organizations and to demonstrate a consistent degree of progress in the areas of limitations and exceptions. He explained that, while the session would focus on the submissions of regional groups, the statements made by individual countries and Non-Governmental organizations (NGOs) during SCCR/26 would be taken into account.

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

10. The Chair opened the discussions on agenda item No. 2, the adoption of the agenda of the twenty-seventh Session.

11. The Delegation of Brazil, speaking on behalf of the Development Agenda Group (DAG), asked to add a contribution to the Committee's implementation of the Development Agenda recommendations. The request gave effect to the General Assembly Resolution CDIP/4/11 that required WIPO bodies to include contributions in the annual report to the implementation of the respective Development Agenda recommendations and implement them accordingly. The Delegation noted that its approach was consistent with the Committee's past practice.

12. The Chair sought a clarification from the Brazilian Delegation as to whether the request related to the agenda setting for that session or for the forthcoming SCCR.

13. The Delegation of Brazil clarified that the request related to that session and that it was advanced on behalf of the Delegation of Egypt, the actual coordinator of the DAG.

14. The Chair acknowledged the importance of the suggestion advanced on behalf of the DAG and proposed that it should be discussed at that session after the topic of limitations and exceptions, subject to the agreement of the Plenary.

15. The Delegation of Japan, speaking on behalf of Group B, asked the Brazilian Delegation to explain whether the request advanced by the DAG could be discussed during the following SCCR, scheduled to take place in advance of the General Assembly.

16. The Delegation of Brazil reiterated that the proposal to add a contribution to the Committee's implementation of the Development Agenda recommendations was made on behalf of the 20 members of the DAG. It expressed a preference to discuss the proposal at that session in order to formulate a suggestion for the DAG at an earlier stage. That would have enabled the DAG to provide useful comments and feedback during the following SCCR and in advance of the General Assembly.

17. The Chair asked the floor to approve the agenda according to document SCCR/27/1, irrespective of the pending analysis of the DAG.

18. The Committee approved the agenda according to document SCCR/27/1.

ITEM 3: ACCREDITATION OF NEW NON-GOVERNMENTAL ORGANIZATIONS

19. The Chair required the Committee to approve the accreditation of new NGOs listed in document SCCR/27/5.

20. The Committee approved the accreditation of new NGOs listed in document SCCR/27/5.

ITEM 4: ADOPTION OF THE REPORT OF THE TWENTY-SIXTH SESSION OF THE STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS.

21. The Chair invited the Committee to approve the draft report contained in document SCCR/26/9.

22. The Committee approved the draft report contained in document SCCR/26/9.

23. The Delegation of China informed the floor that the eighth session of the Twelve National People's Congress of the People's Republic of China voted in favor of the ratification of the Beijing Treaty and that the country would then focus on its procedural implementation.

24. The Delegation of Belarus, speaking on behalf of the Group of Central Asian, Caucasus and Eastern European States (CACEES), expressed support for the work of the Committee relating to the protection of broadcasting organizations. In light of the slower rate of progress on that issue, the Delegation suggested that any draft text for the treaty should be streamlined and simpler to understand. The CACEES Group formulated its own draft and hoped that it could give a fresh impetus to the work of the Committee.

25. The Delegation of Kenya, speaking on behalf of the African Group, referred to item five of the agenda, the protection of broadcasting organizations, and stated that the African Group would take note of the new text in document SCCR/27/2 Rev, which reflected the progress made in SCCR 24 in achieving a combined single text. It urged the Committee to continue discussions on that text and to recommend the convening of a diplomatic conference to the General Assembly in line with the WO/GA/34 mandate. The Delegation stated that the proposals regarding the definition of "signal" held the key to progress in other areas and represented a critical element in the proposed treaty on the protection of broadcasting organizations. Agreement among the Delegations on the signal-based approach would

facilitate work on this subject and the Delegation confirmed the African Group's keenness to discuss current trends in broadcasting. With regard to item six on the agenda, the African Group noted that limitations and exceptions for archives and libraries were critical in achieving a balance in the international copyright system. It stressed that libraries and archives provided essential information for the advancement of culture and knowledge in society. A legally binding instrument would be necessary to determine the scope of limitations and exceptions available to libraries and archives at the national and international level, and enable them to carry out their functions in an increasingly globalized and digital environment. In order to focus on the discussions, the Delegation wished to take the textual suggestions in document SCCR/26/3 separately from the comments and to register the latter in an annex. This procedure would accelerate discussions and enable the Committee to make a suitable recommendation to the General Assembly. With reference to item seven, the African Group observed that limitations and exceptions for educational and research institutions and for persons with other disabilities were important to all Member States. Education and research played a critical role in enabling societies to meet the challenges posed by globalization and digital environment, which required international solutions. With respect to these limitations and exceptions, the Delegation stated that the African Group had the same textual suggestions as those for libraries and archives.

26. The Delegation of Japan, speaking on behalf of Group B, indicated that the areas of convergence and divergence had been identified, making it easier to address unresolved issues at the session. The Group's expectation was that consensus would be maintained and that future discussions would focus on the text of an international treaty on the protection of broadcasting organizations. Further discussions had to be pursued on key issues from the last session, including the list of rights of protection to be granted. With regard to the limitations and exceptions in favor of libraries, archives and educational and research institutions, the Group expressed its intention to cooperate with all Member States in order to increase the functionality of limitations and exceptions within the existing framework of international treaties and conventions. It pointed out that, in the 2014-2015 biennium, the Committee should convene a diplomatic conference and develop further understanding of limitations and exceptions in the international copyright system. Finally, Group B reiterated its commitment to engage constructively with the work of the Committee.

27. The Delegation of Uruguay, speaking on behalf of the Latin American and Caribbean Group (GRULAC), referred to the WO/GA/41/14 mandate, which invited the Committee to develop appropriate international legal instruments and submit recommendations on items six and seven of the agenda to the General Assembly before SCCR 28 and SCCR 30. The Delegation reiterated its commitment to the WO/GA/41/14 mandate and supported the holding of an inter-sessional meeting on limitations and exceptions for libraries and archives. It pointed out that the flexible nature of limitations and exceptions benefitted the dissemination and promotion of culture and related rights in harmony with the rightsholders.

28. The Delegation of Czech Republic, speaking on behalf of the Central European and Baltic States Group (CEBS), welcomed the significant achievements made in SCCR 26 regarding the protection of broadcasting organizations and emphasized its support of that agenda item. The drafting of an international treaty remained the main priority of the SCCR and the Group hoped to reach consensus on convening a diplomatic conference in 2015. The Delegation observed that the rights of broadcasting organizations should conform to twenty-first century technological developments and that the work of the Committee should increase WIPO Member States' understanding of the international legal system. It stressed that the roadmap proposed by the Group during the last session remained a viable plan for progress on the protection of broadcasting organizations. With regard to future SCCR deliberations, the CEBS Group observed that the creation of a global digital marketplace for copyright content originated issues concerning the licensing of rights in the digital era.

29. The Delegation of the Republic of Korea, speaking on behalf of the Asia-Pacific Group, urged the Committee to remain dynamic and flexible in order to reach consensus. It expressed support for the signal-based approach to developing a treaty on the protection of broadcasting organizations. The SCCR agenda on limitations and exceptions allowed the Committee to move towards a balanced international copyright system for the benefit of rightsholders. The Delegation emphasized the role of intellectual property rights in preserving the social value of libraries, archives and other research and educational institutions. It stressed that a comprehensive framework in that area would particularly benefit persons with other disabilities.

30. The Delegation of the European Union and its Member States explained that in order to develop a treaty giving broadcasting organizations adequate and effective protection, a broad consensus needed to be built on the problems to be addressed and on the extent of the protection to be granted. The Delegation stressed the importance of considering these issues at a diplomatic conference in 2015. Conversely, it observed that the current international copyright framework was balanced and that it provided for sufficient limitations and exceptions while continuing to represent an incentive and reward to creativity. The Delegation considered any further international rulemaking to be unnecessary in that area, but expressed its intention to share ideas and best practice on the implementation of existing rules. It informed the Committee that the European Union would sign the Marrakech Treaty on 30 April 2014.

ITEM 5: PROTECTION OF BROADCASTING ORGANIZATIONS

31. The Chair moved on to Item five of the agenda on the protection of broadcasting organizations. It clarified that the objective of the session was to have fruitful discussions on every topic and consider possible solutions at the earliest stage possible. It referred to document SCCR/24/10 as the basis for the discussions on the text of a treaty for the protection of broadcasting organizations. It also pointed out the annex to document SCCR/27/2, which contained the draft articles prepared by the Delegations of India, Japan and Brazil, as well as proposals for discussions made by the Delegation of the United States of America. The Chair invited the Delegation of Japan to make further comments on the basis of the informal document prepared by the Delegation on that issue during the previous SCCR.

32. The Delegation of Japan, speaking on behalf of Group B, highlighted the progress achieved by all Member States during the SCCR 26 in clarifying their divergent views on document SCCR/24/10, particularly in relation to Article 6 of the draft treaty on the protection of broadcasting organizations. Group B explained that a better understanding of the rights that Member States considered essential for adequate protection was key to future constructive negotiations. It stressed that finding a compromise should be easier if the starting point of the Member States' analysis was a single text reflecting all the progresses made thus far. The Delegation welcomed the British Broadcasting Corporation (BBC)'s presentation on the use of digital technology in broadcasting proposed by the United Kingdom, and interpreted it as a further input to discover creative solutions.

33. The Delegation of Brazil referred to its own proposal to exclude Article 12 from the draft treaty as it appeared in the annex of document SCCR/27/2. It asked the Committee to reinstate the wording "no such provision" within the body of the text under Article 12. The Delegation enquired about the difference in status between statements appearing in the main body of the text as opposed to those appearing in the annex.

34. The Secretariat clarified that the all proposals made during the SCCR 26 concerning the text of the treaty on the protection of broadcasting organizations, including proposals on Article 12, were placed in an annex. The rationale behind it was that only those proposals reaching consensus during the SCCR 27 meeting would be reintroduced in the text itself.

35. The Delegation of Czech Republic, speaking on behalf of the CEBS Group, stressed the importance of considering alternative methods of broadcasting, such as online transmission, when developing a framework of protection for broadcasters. Failure to acknowledge innovative business models and activities of broadcasters would only result in the creation of a short-term protective framework.

36. The Delegation of the European Union and its Member States expressed support for the creation of an international framework for the protection of broadcasting organizations that was meaningful in light of modern technology. It expressed the need for such framework to adapt to the specific problems faced by broadcasting organizations while respecting rightsholders carried by broadcast signals. The Delegation reiterated its allegiance to the objectives of the Committee but reserved the rights to propose technical modifications and textual comments to the working document.

37. The Chair asked the Delegation of Brazil whether its specific suggestion concerning the text of the treaty could be dealt with when considering the main discussion of Article 12.

38. The Delegation of Brazil agreed with the Chair's proposal.

39. The Delegation of Belarus stated that the countries of the CACEES Group prepared a comprehensive document reflecting their views on the protection of broadcasting organizations and was pleased that a single text was formulated. It expressed its concern to discuss issues of principle arising out of document SCCR/27/2 Rev and reiterated its flexible approach to negotiations on that subject.

40. The Delegation of the United Kingdom thanked the Committee for allowing its proposal to have discussions on the presentation of the British Broadcasting Corporation (BBC). It stated that the independent character of the BBC and its use of modern technology made that presentation an opportunity to widen the delegations' understanding of modern international broadcasting.

41. The BBC representative explained the nature of his position within the technology division of the broadcasting corporation and highlighted the corporation's heritage in both traditional broadcasting and interactive television. The presentation was divided into three parts. Firstly, the representative addressed the broadcast red button service: an interactive service delivered over the broadcast signal. Secondly, he talked about connected red button, a hybrid service launched from the broadcast signal but delivered over the Internet. Finally, he explained the functioning of iPlayer, the BBC video on-demand service.

42. The Chair invited the delegations to consider the legal issues exposed by the BBC presentation and to take note of them for further discussions. It focused the attention on the extent of the protection afforded by Article 6 of document SCCR/27/2 Rev.

43. 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 stated 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 copyright 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. Paragraph 3 provided at least a three-year period where there could essentially be a transition 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. or 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. With reference to the annex, Article 6 contained the alternatives provided by the Government of India. The proposed alternative to Alternative A is essentially to delete paragraphs 3 and 4. The Government of India also provided alternatives to Alternative B clarifying that the protection granted by paragraph 1 only extends to signals, not to the programs contained therein, and only to the extent that the rights are acquired or owned by the beneficiaries from the owners of copyright or related rights. Under paragraph 2, the reference to cablecasting organizations is deleted, so that the protection is limited to broadcasting organizations in respect of their broadcasts. The Government of India also sought to include any rebroadcast or recablecast over computer networks within the exclusion of protection under paragraph 4. The Secretariat highlighted the new proposal in Article 3 of document SCCR/27/6, which circumscribed the protection of the treaty to broadcasts and cablecasts, and excluded literary and artistic works or other broadcasts or cablecasts.

44. The Chair invited the delegations to consider the scope of the protection afforded by the various alternatives to Article 6 and make interventions on that issue. It also invited NGOs to clarify any matter pending from that morning's debate.

45. The Representative of Knowledge Ecology International (KEI) questioned the extent to which broadcasting organizations offering an unrestricted, free and over-the-air service related to the task of the Committee. It expressed the view that limiting the scope of the treaty to television and radio broadcasting would be more manageable. It also considered appropriate to have separate intellectual property frameworks for free broadcasting services and other services involving a consumer relationship.

46. The Representative of the European Broadcasting Union (EBU) referred to the BBC presentation and noted that the increasing difficulty for broadcasting organizations to distinguish between types of signals could negatively impact on the effective enforcement of a protection regime.

47. The Delegation of South Africa, speaking on behalf of the African group, aligned itself with the EBU's concerns and observed that technological developments will inevitably require the updating of any treaty drafted by the Committee. It recognized that the BBC transfer of channels to the Internet protocol demonstrated a general move of broadcasting organizations towards new platforms of exploitation. The Delegation pointed out that technological developments would not affect the work of the Committee if the delegations would take a technology-neutral stance on the issue of protection of broadcasting organizations.

48. The Delegation of the European Union and its Member States expressed support for the technology-neutral approach suggested by the Delegation of South Africa, but emphasized the importance of creating a framework capable of protecting modern broadcasting organizations. It stressed that methods of transmission over Internet, such as simulcasting and on-demand television, were already adopted by broadcasting organizations on a regular basis. While the treaty was originally envisaged for traditional broadcasting and cablecasting organizations, restricting the treaty's protection to those methods would create an unfair competitive advantage. The need to protect both on-demand broadcasting and traditional broadcasting was also justified by the current incapacity to identify the channel from which an illegal importation could take place. The Delegation considered that there were several types of on-demand transmissions. One example was the type of transmission that showed previously broadcasted programs. The Delegation stated that the treaty should protect at least that type of on-demand transmission. Further examples of on-demand transmissions included Internet materials that expanded on and were linked to the traditional linear broadcast, and purely online channels that were entirely independent from it. It remained questionable whether the latter examples attracted the protection of the treaty.

49. The Delegation of the United States of America underlined the need for all Member States to have a common understanding of the terminology adopted in relation to the objects and subject matters of protection under Article 6. It adopted the table of broadcasting transmissions developed by the Delegation of Japan during the SCCR 26 and established a framework for the Committee's discussions. The Delegation focused on the difference between item three of the table, the on-demand transmission of broadcasting programs or original programs, and item four, the deferred and unchanged transmission of broadcasting programs. The Delegation interpreted item three as an on-demand transmission made from a fixation of the program, and item four as a new transmission of signal to the public. It questioned whether any of the four categories listed in Japan's table had a universal character and whether the commercial or public nature of a broadcaster affected the choice of transmission and/or its content. The Delegation asked whether all the categories related to an initial over-the-air broadcast or a simultaneous over-the-air broadcast, and what would be the impact on other entities engaged in the same conduct if there was no connection to an over-the-air broadcast. It enquired as to the timing of a shift from traditional broadcasting to all-Internet transmissions and as to the source of any piracy affecting those activities.

50. The Delegation of India agreed with the Delegation of the United States of America that on-demand transmission was a fixed type of transmission. With reference to deferred and unchanged transmission of broadcasting programs, the Delegation stated that that method required fixing the live signal first and subsequently telecast it in unchanged form. It observed that copyright laws, contract business models and technology were all crucial elements when discussing the norms governing the protection of broadcasting organizations. It invited the Committee to insert additional paragraphs or footnotes in the treaty dealing with different business models of content acquisition adopted by broadcasters. The Delegation urged the Committee to have further discussions on the issue of piracy.

51. The Delegation of Canada expressed support for the views advanced by the Delegations of the United States of America and the European Union and its Member States concerning the need to extend protection to signals that were only broadcasted over the Internet.

52. The Delegation of Argentina stated that the scope of the protection under the treaty should be limited to broadcasting transmissions made through any medium process by broadcasting organizations including radio, companies, open TV companies, cable companies but excluding webcasting. With respect to the text of Article 6 the Delegation supported Alternative B.
53. The Delegation of Brazil aligned itself with the concern expressed by the Delegation of Canada about the need to provide further protection, other than copyright protection, in respect of non-simultaneous and unchanged transmissions such as on-demand signals.
54. The Delegation of India, replying to the concern expressed by the Delegation of Brazil, stated that the Indian draft proposal required broadcasters and right owners to expressly state in their agreement where the broadcasted content was acquired and on which terms it could be broadcasted. This approach was aimed at discouraging broadcasters' ability to transmit acquired content without the right owners' authorization.
55. The Delegation of the United Kingdom observed that the need to expand the protection of the treaty to fixations as well as live broadcasts originated from the difficulty to pursue legal actions where the unauthorized transmission took place in a country other than that in which the rights holders resided. This was said to be the case particularly for those jurisdictions in which creators were not allowed to bring an action for breach of copyright via agent broadcasters.
56. The Delegation of Belarus, speaking on behalf of the CACESS Group, proposed that the scope of the protection afforded by the treaty be limited to broadcasting organizations as traditionally understood and cablecasting organizations to the extent agreed at the SCCR 26. The Delegation expressed the view that the scope of the protection should not extend to rebroadcasting, retransmissions or to the subject matter of third party traditional or cable transmissions. It suggested that any resolution advanced by the Committee should not be incompatible with the way in which broadcasting organizations sought to enforce their own rights. The Delegation referred to the section on transmissions over the Internet contained in the table provided by the Delegation of Japan and observed that the subject matter of the protection afforded by that section was not a body creating a new signal, but rather a body picking up an existing signal and broadcasting it.
57. The Delegation of the United States of America expressed the view that once there had been a fixation it was no longer appropriate to talk about signal-based approach. It questioned whether, in the case of on-demand or deferred and changed transmission of a broadcasting program it was possible to talk about signal protection after the signal had been fixed and the fixation used. It invited the Delegation of the United Kingdom to address the issue of enforcement of rights granted by license from a contractual as opposed to an international perspective.
58. The Delegation of South Africa, speaking on behalf of the African group, supported the view that the ability of content producers to license their products to various operators opened new revenue streams and represented an opportunity for the development of the broadcasting industry as a whole.
59. The Delegation of the European Union and its Member States clarified that the protection of broadcasting organizations as envisaged by the treaty would not affect or limit the underlying rights of creators and other right holders. It stressed that the freedom to establish contractual relationships between broadcasting organizations and rightsholders was unaffected by the treaty, which was concerned with the protection of broadcasting organizations from unauthorized signal interceptions. On that basis, the Delegation submitted that the treaty

should protect the signal of traditional broadcasting organizations from being circulated over the Internet regardless of the mode in which the unauthorized transmission was made.

60. The Delegation of Japan referred to its proposal to add Article 6bis to Article 6, Alternative B in document SCCR/27/2/Rev conferring optional protection for transmissions of signal over computer networks by traditional broadcasting organizations. In relation to the protection of on-demand transmissions over computer networks, the Delegation pointed out that such transmissions were conducted by both traditional broadcasting organizations and webcasters. For that reason, due consideration had to be given to granting such protection under the treaty.

61. The Delegation of India acknowledged that it would be inappropriate to grant an exclusive right to a broadcaster over his signal in circumstances where the broadcaster had acquired that right from the creator by contract. However, it suggested that a right to prohibit the interception of its signal by others could be adopted. The Delegation expressed support for Article 6bis provided that contractual rights and the rights of broadcasters were taken into account.

62. The Delegation of Ecuador highlighted the inevitable difficulties of the Committee in incorporating new rights in an Internet environment and questioned whether the analysis of rights post-fixation formed part of the WO/GA/34 mandate.

63. The Delegation of Colombia invited the Committee to consider the protection for broadcasting organizations which already existed under the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations 1961 ('the Rome Convention') and the Agreement on Trade Related Aspects of Intellectual property Rights (TRIPS). It suggested that the treaty for the protection of broadcasting organizations should have gone beyond existing legislation and should have included non-traditional and online transmissions. The Delegation made a proposal to separate the discussions on the protection of broadcasting organizations from those on the protection of content.

64. The Delegation of Brazil explained that broadcasters had a right to the monopoly of the signal that they were transmitting of a given content. That content could be protected by copyright or not. It suggested that when the content was not protected by copyright, the treaty would protect the broadcaster from simultaneous or near simultaneous transmission. If no such right had been granted, the content would be a public good upon the conclusion of the transmission. When the content was protected by copyright it was necessary to question the need of further protection under the treaty.

65. The Representative of the EBU clarified that the Rome Convention did not distinguish between commercial and public broadcasters and that its focus was not the licensing process but rather the availability of a product to the public. It stated that the Convention provided sufficient protection to fixed signals, with the only exception of cable retransmission. It expressed concern for the absence of a WIPO treaty in which rights protection was granted on condition that the rights were cleared.

66. The Representative of the Alliance of Latin American Intellectual Property Broadcasters (ARIP) expressed disappointment for the lingering of the Committee on the interpretation of the General Assembly's mandate. It stated that the WO/GA/34 mandate clearly provided for the protection of broadcasting and cablecasting organizations and that it was superfluous to have uncertain discussions involving other entities. It reminded the Committee that the overwhelming majority of countries had already provided for the protection of broadcasting signal under domestic legislation.

67. The Representative of the North American Broadcasters Association (NABA) urged the Committee to make a careful distinction between the rights in content and the rights that broadcasters were seeking in the signal.

68. The Representative of KEI expressed the view that the Committee should largely focus on the need of broadcasters as opposed to those of cablecasters and ensure that final users were not burdened inappropriately with heavy obligations after receiving a legitimate broadcast.

69. The Representative of the Copyright Research and Information Center (CRIC) identified two main areas of difficulty in relation to the scope of the protection granted by the treaty. It referred to webcasting, a traditional method of transmission over the Internet and on-demand transmission, which was described as non-linear casting. Both types of transmission could be exercised by an entity different from a broadcaster or a cablecaster.

70. The Representative of NABA expressed the view that broadcasters' concerns were not connected to the private use of individual members of the public but rather with the impact that piracy had on the value of the signal. It pointed out that the draft treaty made a distinction between cablecasters and mere retransmitters and that the latter were excluded from its protection.

71. The Chair invited the delegations to consider conclusions four, five, and six of document SCCR/26/REF/CONCLUSIONS and formulate a decision on whether the treaty should protect simulcasting and simultaneous and unchanged transmissions or whether it should extend to deferred and unchanged transmissions of the broadcasted program.

72. The Chair identified the Committee's consensus to introduce traditional broadcasting, radiobroadcasting and cablecasting within the scope of the treaty. The Chair suggested that simulcasting carried out by the same broadcasting organizations was possible and that further discussions should take place without prejudice to copyright. Deferred unchanged transmissions should also be introduced provided that legitimate safeguards for copyright holders and the civil society were included in the form of exceptions.

73. The Secretariat explained that Article 9 of document SCCR/27/2/ provided for two alternatives. 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. 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 and communication to the public. Paragraph 2 of Alternative B provides that direct and indirect reproduction and retransmission rights could be a matter of domestic law where the protection of the right was claimed to determine the conditions under which it could be exercised provided that the protection was adequate and effective. Paragraph 3 provided that with respect to the exclusive rights provided in subparagraphs (ii), (iv), (v), (vi) and (vii) 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. Article 9 was also contained in the annex to document SCCR/27/2/Rev which contained the proposal of the Government of India of a right for broadcasting organizations to prohibit the unauthorized rebroadcasting of the signal via traditional broadcasting means causing the broadcast to be seen or heard in public on payment of any charge and making a fixation of the signal for the purpose of rebroadcast. Paragraph 3 of the proposals from the Government of India stated that notwithstanding anything contained in paragraph 1 the rights therein should be subject to the extent of rights acquired or owned by the broadcasting organization from the owners of the copyright and related rights. Paragraph 5 stated that broadcasting organizations shall have a right to prohibit anyone from broadcasting their pre-broadcast signal. Paragraph 6 granted to broadcasting organizations a further right to prohibit unauthorized broadcast or rebroadcasting signal or signals over computer networks or by any other means, subject to the extent of rights acquired or owned by them. The United States of America also made a proposal that broadcasting organizations shall have the right to

authorize the simultaneous or near-simultaneous retransmission of their broadcast or prebroadcast signal over any medium. That proposal referred back to the definitions of “near simultaneous transmission” and “pre-broadcast signal” contained under Article 5 of the annex. Paragraph 1 of Article 6 in document SCCR/27/6 provided for the exclusive right of both broadcasting and cablecasting organizations to authorize or prohibit other persons to carry out a list of activities. Paragraph 2 stated that nothing in the treaty shall affect the freedom of the contracting party to determine whether the conditions under which the exhaustion of the right in subparagraph 1(c) of that Article applied after the first sale or other transfer of ownership in the fixation of the broadcast or the cablecast, or a copy of the fixation of the broadcast or the cablecast by authority of the broadcasting or cablecasting organization. Paragraph 3 stated that with respect to the acts specified in subparagraph 1(e), the conditions under which this right is exercised could be determined by the legislation of the contracting party where protection of the right is claimed provided that the protection is adequate and effective. In relation to paragraph 4, broadcasting and cablecasting organizations shall exercise the rights provided for in paragraph 1 within the rights acquired from the artists and authors of broadcast or cablecast literary and artistic works.

74. The Delegation of Belarus stated that, with the exception of Georgia, the CACEES Group had set out agreed positions in document SCCR/27/6. Under Article 11, the Group proposed that the scope of the treaty should be as broad as possible in order to ensure the protection of all types of broadcasting organizations and the distribution and transmission of their fixations, including those happening directly over the Internet. With respect to the exhaustion and continuation of those rights, the Group suggested that matters should be dealt with under domestic legislation. It expressed the view that no additional protection of content was necessary in the context of transmissions and emphasized the need to observe existing copyright and related rights. The Delegation observed that a right to prohibit granted under national legislation was insufficient to protect broadcasting organizations and that a broader approach was required.

75. The Delegation of the United States of America explained that their proposal advanced in the annex of document SCCR/27/2/Rev reflected an intention to exclude post fixation rights and focus on the signal. It expressed the view that protection of content after fixation should be addressed through other treaties and under national laws. The Delegation identified that the Committee was essentially divided on this issue between delegations that supported international post-fixation protection and those who discouraged it. It suggested that their proposal could be taken as a starting point and invited the delegations that had formulated alternatives on post-fixation protection to narrow their proposals to a single general right.

76. The Delegation of India agreed that the subject matter of protection was not the content but rather the signal as defined by Article 5 of the annex to document SCCR/27/2/Rev. It clarified that their proposal under Article 9 was entirely founded on the traditional signal-based approach. While it referred to rebroadcasting, that definition had to be interpreted restrictively as near-simultaneous broadcasting and simultaneous broadcasting in the traditional sense. The definition excluded simulcasting and webcasting.

77. The Delegation of Venezuela (Bolivarian Republic of) expressed concern for the lack of cohesion and unanimity within the CACEES Group demonstrated by the opting out of Georgia. It suggested that procedural irregularities of that kind could undermine general consensus.

78. The Chair clarified that the CACEES proposal was put forward by Armenia, Belarus, Kazakhstan, the Russian Federation, Ukraine and Pakistan.

79. The Delegation of Mexico expressed support for the procedural proposal advanced by the Delegation of the United States of America.

80. The Delegation of Japan agreed with the procedural proposal advanced by the United States of America. It highlighted that the disparity of opinions between delegations wishing to restrict protection to minimum fixation rights, simultaneous or near-simultaneous retransmission and the right of prebroadcast and those wishing to extend it to post-fixation uses could be resolved by differentiating between minimum mandatory protection and optional protection.

81. The Delegation of South Africa, speaking on behalf of the African group, expressed support for the proposal advanced by the United States of America to narrow the treaty's protection to signal based transmissions and to leave detailed rights assessments to national jurisdictions.

82. The Delegation of Brazil observed that the proposal advanced by the Delegation of the United States of America to combine an agreed minimum protection with post-fixation alternatives suggested by other delegations could slow down the discussions. In order to avoid that, the Delegation supported the idea of establishing a minimum standard of protection internationally and leaving the imposition of more ambitious measures to national legislators.

83. The Delegation of Tunisia referred to paragraph 2 of both Alternatives A and B under Article 9 of document SCCR/27/2/Rev. It expressed the view that the definition of "adequate and effective protection" had to be clarified before determining the applicable law.

84. The Delegation of the European Union and its Member States suggested that the discussions on transmission rights should be divided into three main categories. The first one related to simultaneous transmissions and retransmissions that should be protected by the Treaty in the opinion of all delegations. The second related to transmissions from fixation, which covered the proposal from the Delegation of the United States of America to the extent that it considered time zones and the proposals from some members of the CACEES Group and the Delegation of India. The third category referred to post-fixation transmissions, which were accurately summarized in the table provided by the Delegation of Japan. The Delegation invited the Committee to consider the distinction between rights to authorize and rights to prohibit and to determine their applicability.

85. The Delegation of Argentina expressed the view that the treaty should grant exclusive rights to broadcasters to authorize the broadcast of their signals. The protection had to include rebroadcasting and retransmission on demand. The right to prohibit non-authorized signals was considered inappropriate. The Delegation favored Alternative B of Article 9.

86. The Delegation of Canada endorsed the matrix of analyzing pre and post fixation methods separately. It emphasized that the relevant protection had to be compatible with existing international treaties and that further clarifications had to be made as to the differences between the exclusive rights approach and the remedy-based approach.

87. The Delegation of the Russian Federation stressed the importance of limiting the rights under analysis in order to reach a concrete solution within that session. The consent of all delegation was needed in order to include additional rights and that would have required an excessively long time to achieve. It observed that agreement at group level represented the key to general consensus, and that CACEES was in the process of negotiating such agreement with Georgia.

88. The Delegation of the United States of America questioned whether the Committee should, in relation to piracy, focus on an issue of infringement as opposed to a an issue of protection. It aligned itself with the suggestion advanced by the Delegation of the European Union and its Member States to divide the discussions on the basis of the type of transmission concerned and agreed that its proposal fell under the category of transmissions from fixation. The Delegation clarified that the proposal did not extend to subsequent uses of the fixation.

89. The Delegation of Ecuador stated that a discussion on the right on content was necessary to define a matrix and in line with Article 14.3 of the TRIPS Agreement.

90. The Delegation of the Republic of Chile accepted the inclusion of cablecasters in the traditional definition of broadcasting but expressed the view that such inclusion was not necessary in light of the limited service carried out by cablecasters.

91. The Delegation of Georgia confirmed its willingness to reach an agreement with the CACEES Group and to provide a revised proposal to the Committee.

92. The Delegation of Iran (Islamic Republic of) emphasized the anti-piracy function of the treaty. It described three forms of piracy: pre-broadcast piracy, broadcast piracy and post-broadcast piracy based on fixation. The Delegation expressed the view that the treaty should provide for the protection of post-fixation rights but that their implementation could be left to national Member States.

93. The Delegation of India agreed with the threefold definition of piracy advanced by the Delegation of Iran (Islamic Republic of) and observed that broadcast and post-broadcast forms of piracy were similar. It explained that the former type involved the removal of the original encryption from the copper plated smart card using an acidic substance and the insertion of a manufactured de-encryption code. The smart card was integrated into the small box and delivered to the consumer. That process allowed unauthorized cable operators to get signal and distribute it. The latter type of piracy, also known as TV tune-up costs, consisted of taking the signal and transferring it over computer networks via tuners. The Delegation explained that their concern was limited to traditional methods of transmission of signal in line with the WO/GA/37 mandate. It clarified that when a broadcaster had access to content subject to a license, the rights of the creator required a higher protection than that offered by Article 14.3 of the TRIPS Agreement.

94. The Delegation of Colombia suggested that the content of Article 9 of document SCCR/27/2/Rev be reorganized in the form of an inventory setting out all the acts that a broadcaster may authorize or prohibit. It expressed its preference for Alternative B of Article 9.

95. The Delegation of the European Union and its Member States noted that Article 14.3 of the TRIPS Agreement did not link the protection of the broadcasting organizations with the protection of the content. It simply offered a type of optional protection. The Delegation clarified that Article 14.3 did not restrict the scope of the protection envisaged by the new treaty.

96. The Representative of the National Association of Broadcasters (NAB) stated that North American broadcasters commenced to retransmit signals simultaneously over the Internet and that such activity would be widespread within the following year. Similarly, catch-up services were largely available in the United States but at alternative time intervals. The evidence demonstrated that European broadcasters were also developing online streaming and catch-up services. The Representative aligned itself with the view that protecting simultaneous but not delayed transmissions would create practical problems of enforcement.

97. The Representative of KEI stressed that the Rome Convention, the WIPO Performances and Phonograms Treaty (WPPT) and the Beijing Treaty addressed different issues from those discussed at that session and should not form the basis of the treaty for the protection of broadcasting organizations.

98. The Representative of the Society of American Archivists (SAA) expressed the view that the new rights should not add further restrictions on content, which was already protected by

copyright. Such an action would limit the public's access to valuable documentary materials forming part of society's historical record.

99. The Representative of the Electronic Information for Libraries Association (EIFL) and of the International Federation of Libraries Associations (IFLA) considered that there was no compelling policy reason for an international framework on the protection of broadcasting organizations because piracy was appropriately controlled under existing treaties and national laws. The addition of further layers of protection on content would negatively affect public access to knowledge and would also impose excessive financial burdens on libraries and archives.

100. The Representative of the Association of Commercial Television in Europe (ACT) confirmed the statements made on behalf of NAB and noted that simultaneous retransmissions over the Internet and catch-up services were common in Europe. It reiterated that a failure to consider those transmissions in the treaty would allow pirates to justify their unauthorized dealings on the basis that they intercepted on-demand as opposed to traditional signals.

101. The Representative of the International Confederation of Societies of Authors and Composers (CISAC) stressed that a balance should be found between broadcasters' concerns about piracy and the right of creators to be duly rewarded for the broadcast of their work. It highlighted that the level of protection granted to broadcasters should be minimal but sufficient to address unwritten transmissions of signal. Further, protection should only be available where the rights had been cleared and the transmission appropriately licensed.

102. The Representative of the International Federation of the Phonographic Industry (IFPI) welcomed the assurance given by the delegations that the treaty was not intended to interfere with the rights to the content itself. It drew the Committee's attention to the statements distributed by the Independent Music Companies Association, the International Federation of Musicians (FIM), the Latin American Federation of Artists and Performers and FIP and asked that any broadcasting treaty considered by WIPO ensured that any grant of rights to broadcasters be made contingent upon the rights of the creators. It stressed that no broadcasting treaty should grant rights that were stronger or more extensive in scope than, or duplicative of, the already existing rights in the content transmitted by the broadcaster. The representative observed that a treaty granting a right to prevent certain uses of signal to broadcasters should also ensure that performers and producers enjoyed the right to prevent broadcasters from using their content and/or a right to equitable remuneration from broadcasters. The latter right was provided by the WPPT but could be avoided by opting-out.

103. The Representative of the International Federation of Actors (FIA) explained that the interest of its members in signal protection derived from the share of revenue which performers were entitled to receive from broadcasters. It expressed support for the Delegation of the United States of America's proposal of a narrow, purely signal-based approach.

104. The Representative of FIM endorsed the view that a balance should be established between the interest of broadcasters and that of content owners. It submitted that the need to protect broadcasters from the piracy of their signals was counterbalanced by the right to fairly remunerate the creators for the content they transmitted.

105. The Representative of CRIC referred to the table provided by the Delegation of Japan in SCCR 26 and identified four types of rights within the category of unfixed broadcast:

106. the broadcasting of unfixed broadcast, the retransmission by any medium, the uploading of content and the public performance right. In relation to fixed broadcast and post-fixation broadcast, the Representative identified the rights of reproduction, distribution, public performance rights of fixed broadcast and the right of uploading. The WIPO Copyright Treaty

(WCT), the WPPT and the Beijing Treaty offered protection for technical majors and rights management information. The aim of that session was to discuss the protection of rebroadcast signals.

107. The Representative of the Trans-Atlantic Consumer Dialogue (TACD) opposed the granting of any further intellectual property rights to broadcasters that made legal access to information more expensive and complex for consumers. It stressed the need to implement clear limitations and exceptions for fixation rights. It suggested the conduction of an impact study to assess the consequences of a broadcasting treaty on consumers, performers and authors.

108. The Representative of the British Copyright Council (BCC) expressed the view that any protection granted by the new treaty should take account of the way in which copyright owners licensed or entrusted the exercise of specific rights to broadcasting organizations under the current copyright framework. It emphasized the importance of the right of broadcasters to consent to the fixation of the service supported by the signal and to any subsequent fixation made available on-demand. It clarified that any protection had to be balanced with the rightsowner's exclusive rights to content and their equitable right of remuneration from broadcasters.

109. The Representative of the Centre for Internet and Society (CIS) stated that Alternatives A and B to Article 9 of document SCCR/27/2/Rev had the unwelcome effect of granting rights over content to broadcasters. It stated that reproduction, distribution and public performance rights were inconsistent with the signal-based approach and did not form part of the WO/GA/37 mandate.

110. The Representative of the Japan Commercial Broadcasters organization (JBA) expressed support for the proposals advanced by the Government of Japan.

111. The Representative of the Ibero-Latin-American Federation of Performers (FILAIE) aligned itself with the FIA's concern that the Committee was exceeding its mandate by failing to confining itself to the protection of signal. It expressed the view that rightsholders and not broadcasters should enjoy an exclusive right to authorize the direct or indirect reproduction of fixation broadcast.

112. The Representative of the International Federation of Film Producers Associations (FIAPF) endorsed CIS's comments on Article 9 and highlighted the distinction between broadcasters' rights to signal and creator's rights to content. It encouraged the Committee to focus on the drafting of the treaty bearing in mind its practical anti-piracy objective.

113. The Representative of DirectTV pointed out that inconsistencies could arise between the rights of broadcasters granted under the treaty and the legal and procedural requirement imposed by national jurisdictions on satellite television providers. It observed that the anti-piracy regime should not negatively impact on the business of licensed providers.

114. The Chair explained that there was a need to identify which technological platforms and rights could be included in the treaty, respectively under Article 6 and Article 9. He explained that the Secretariat had drawn two tables aimed at facilitating the discussion of those issues. The first table dealt with technological platforms and subdivided types of transmission in three columns. Under the first column were the traditional broadcasting signals including wired and wireless cable transmissions, pre-broadcast signals and Internet transmission platforms such as simultaneous and near-simultaneous broadcasting. The deferred linear transmission of the broadcasting program was under the second column. On-demand transmissions and related programs were grouped under the third column. Webcasting was also included under a separate column but the Chairman clarified that it did not represent a proposal. He highlighted

the position of many delegations wishing to leave cablecasting and webcasting outside of the scope of the treaty in light of the disparate ways in which those transmissions were regulated under national laws. Conversely, the majority of the delegations expressed consensus for the introduction of simultaneous and almost simultaneous, unmodified, unchanged broadcast. The second table concerned rights and was divided in five categories: simultaneous retransmission of broadcast signal, near simultaneous retransmission, transmission from a fixation, post-fixation rights (including public communication) and the protection of pre-broadcast signal.

115. The Delegation of India agreed with the Delegation of Brazil that a number of issues had to be clarified before there could be consensus. It suggested that a meeting be held in the following SCCR with broadcasting engineering experts who could clarify technical issues to the Member States.

116. The Delegation of the European Union and its Member States referred to on-demand transmission as the most controversial area of discussion. It invited the Committee to focus the debates on near simultaneous retransmission and transmission of broadcasting from fixation.

117. The Delegation of the United States of America supported the proposal to have a technical meeting at the following SCCR. It stated that a general consensus had been achieved on the introduction of traditional over-the-air broadcasting in the treaty. It considered necessary to clarify the connection between simulcasting and webcasting with over-the-air transmission in the first table prepared by the Secretariat. It recognized that the question of piracy was more connected to enforcement than to protection under the treaty. With respect to the table of rights, the Delegation stated that the simultaneous and near simultaneous retransmission of signal to the public, as well as the protection of pre-broadcast signals, mirrored their proposal. It expressed the concern that item four in the table of rights could result in double protection for content and have an impact on consumer copying.

118. The Delegation of Iran (Islamic Republic of) stated that clarifications were needed on the concept of transmission over the Internet.

119. The Delegation of Trinidad and Tobago agreed that the treaty should impose mandatory protection for traditional broadcasting and cablecasting.

120. The Delegations of Brazil, Canada and Colombia supported the proposal of a technical meeting at the following SCCR.

121. The Delegation of China expressed the view that simulcasting should be within the scope of the treaty.

122. The Director General welcomed the delegations to the signature ceremony for the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled. It informed the Committee that the National People's Assembly of the Republic of China had agreed to ratify the Beijing Treaty and invited the Ambassadors of France, India, Greece and the European Union to comment on the signing of the Marrakesh Treaty. The Ambassadors expressed their support for the Treaty and reiterated their intention to implement it effectively under domestic legislation. The Representative of the European Blind Union (EBU) thanked the delegations for their contributions and reminded the Committee that the Treaty had to be ratified by at least 20 individual members of WIPO in order to be effective. The Representative of the International Publishers Association (IPA) highlighted the humanitarian value of the Treaty and hoped for a swift ratification process across the Member States.

123. The Marrakesh Treaty was signed by the Delegations of France, Greece, India and the European Union and announced by the Legal Counsel.

ITEM 6: LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES

124. The Secretariat referred to document SCCR/26/3 and reminded the Committee that topics one to four had already been discussed at the previous session. The aim of the Committee at that session was to discuss topics five to eleven. It confirmed that Professor Kenneth Crews had been appointed to undertake an update study on copyright limitations and exceptions for libraries and archives.

125. The Delegation of Kenya, speaking on behalf of the African Group, noted that the creative industry had to be protected by upholding and respecting the copyright system while maintaining the necessary balance for public interest. It stated that the current limitations and exceptions for libraries and archives were insufficient to enable them to provide access to information and knowledge in an effective manner. The current copyright regime had to be revisited in order to adjust to technological advancement and particularly to digital modes of transmission. An international framework on limitations and exceptions for libraries and archives would facilitate cross-border research and distance education and prevent librarians and archivists from inadvertently use copyrighted works beyond the provisions provided under national copyright regimes. The African Group recognized the value of technical protective measures (TPMs) to enhance protection of copyright works but highlighted their capacity to undermine existing limitations and exceptions. The Group expressed concern for the difficulties faced by libraries in developing countries to pay fees to access online information and reiterated the need to separate the textual suggestions from comments which should be captured in an annex.

126. The Delegation of Japan, speaking on behalf of Group B, pointed out that the Committee's discussions on the topic of limitations and exceptions should take account of the Member States' legal, traditional and cultural differences.

127. The Delegation of Uruguay, speaking on behalf of GRULAC, expressed the wish to focus on substantive discussions on item 6.

128. The Delegation of Mexico highlighted the role of libraries in ensuring that information knowledge is gathered, disseminated, preserved and used to improve society as a whole. It mentioned Article 148 of the Mexican Federal Copyright Law stating that published literary and artistic works could be used provided that they would not affect the regular exploitation of the work, without the authorization of the owner of the pecuniary right, and without remuneration, invariably citing the source and without altering the work in any way. Paragraph 5 of that article specifically referred to the reproduction of a copy on the part of an archive or library for reasons of security and preservations, and which was exhausted and no longer cataloged or documented or in any danger of disappearing. The Delegation supported the proposal to hold an inter-sessional meeting aimed at facilitating the achievement of an international instrument on limitations and exceptions for libraries and archives.

129. The Delegation of Iran (Islamic Republic of) welcomed the development of a legally binding international instrument aimed at strengthening the capacity of libraries and archives to provide access to and enable the preservation of information knowledge. It supported the African Group's proposal to separate the delegations' comments from the main working document and transfer them in an annex.

130. The Delegation of India endorsed the creation of an international instrument on the limitations and exceptions for libraries and archives. It suggested that limitations and exceptions should not be avoidable by provisions contained in contracts and licenses prohibiting

the practice of inter-library loans. It clarified that increasing the availability of digital material for researchers and institutions was equally important for developed and developing countries. The Delegation supported the proposal to separate comments from the main text in order to maintain a drafting method which was consistent with that adopted for the broadcasting treaty and invited the Committee to set a deadline for the advancement of proposals.

131. The Delegation of Brazil supported the proposal advanced by the Delegation of India to set a deadline for the submission of proposals and agreed on the separation of comments from the main text of document SCCR/26/3. It stressed the importance of limiting discussions to a single text containing a preamble as well as the principles discussed by the Committee.

132. The Delegation of Ecuador pointed out that the General Assembly's mandate in document WO/GA/41/15 required the Committee to make recommendations on the topic of limitations and exceptions in SCCR/28 and specific provisions had to be formulated before that time. It supported the proposals advanced by the Delegations of Brazil and India to separate the delegations' comments from the main text.

133. The Delegation of Morocco reiterated the need to update the current limitations and exceptions for libraries and archives in light of technological developments and endorsed the separation of comments from the main text.

134. The Delegation of the Russian Federation expressed the view that the Committee had to focus on specific limitations and exceptions with a view to protect education and research. It suggested that the Committee adopted the Marrakesh Treaty as a procedural guideline for the formulation of a single text on limitations and exceptions for libraries and archives. It stressed the importance of flexibility in achieving the ultimate goal of protecting the producers of creative work without neglecting the rights or copyright owners.

135. The Delegation of Tunisia expressed its support for an international instrument protecting libraries and archives and made reference to the right to culture enshrined by its constitution.

136. The Delegation of the European Union and its Member States stated that it was not willing to consider a legally binding instrument in that area on the basis that issues related to activities and archives did not require the same treatment offered to the unique case of access to books for the benefit of people who are blind, visually impaired and print disabled. It advanced the view that the Committee substantially failed to explain the rationale behind the harmonization of limitations and exceptions for libraries and archives at the international level. It emphasized that the issues related to access to content on cultural identity held in the catalogs of cultural heritage held abroad did not warrant an international intervention. The Delegation expressly disagreed with the proposal of separating the content from the main text under consideration.

137. The Delegation of Chile endorsed the explanation offered by the Delegation of Mexico on the importance of that item of the agenda and expressed the view that the scope of limitations and exceptions should be extended to museums.

138. The Delegation of the United States of America pointed out that limitations and exceptions must be consistent with existing international obligations including the three-step test. It added that they should also be tailored to address the specific legal, cultural and economic environments of the Member States. The Delegation clarified that discussions on this topic could benefit all countries in improving the scope of their national exceptions without imposing a one size fits all solution on any specific type of use. It referred to its proposal on that item contained in document SCCR/26/8 providing, *inter alia*, that limitations and exceptions should appropriately insure that libraries and archives could preserve and provide access to information developed or disseminated in digital form and through network technologies. The Delegation did not agree to pursue a treaty on those issues.

139. The Delegation of Japan referred to Crews' study in document SCCR/17/2 and expressed the view that the functions of libraries and archives in different countries and the limitations and exceptions provided to them by domestic regimes were not uniform. It hoped that discussions would facilitate the implementation of limitations and exceptions for libraries and archives in individual Member States and pointed out that the established steady step test was helping in maintaining a fair balance between protecting copyright and insuring public interest. With respect to the text proposal, the Delegation preferred an independent approach for each item.

140. The Delegation of Congo (Democratic Republic of) addressed the highly prejudicial impact which TPMs had on the capacity of research institutes, libraries and archives in that country to access certain materials and expressed support for the creation of an internationally binding instrument governing the limitations and exceptions for libraries and archives.

141. The Secretariat referred to paragraph 21 of the conclusions of the 26th Session of the SCCR.

142. The Chair opened the floor to topic five of document SCCR/26/3 on parallel importations.

143. The Secretariat informed the Committee that there were three text proposals on topic five. The African Group had made the first proposal. It concerned the purchase of works and it provided for libraries and archives to purchase and import legally published works to be incorporated into their collections in cases where contracting party did not provide for international exhaustion importation right after the first sale or transportation of ownership of a work. The Delegation of Ecuador elaborated on that proposal and stated that libraries and archives should be permitted to buy, import or otherwise acquire copyright works or materials protected by related rights legally available in any country in situations where there is no provision for international exhaustion of the distribution or importation or exportation rights after the first sale or transfer of ownership. The proposal from the Delegation of India added the element of permission from the author providing that libraries and archives should have had the right to buy, import or otherwise acquire copies of any work published in any other Member State with the permission of the author of that work. The Secretariat stated that a number of comments were made concerning international, regional or national exhaustion. Some comments referred to Article 6 of the TRIPS Agreement on the discretion of countries to choose their own regime for exhaustion. Other comments suggested that the subject of exhaustion didn't need to be specifically linked to library exceptions. Further comments suggested that the application of exhaustion to certain types of exception would lead to fragmentation but it would also enable the parallel importation of library collections subject to specific conditions where no international regime was in place. Final comments sought to clarify the types of works imported or exported under the provisions.

144. The Delegation of Ecuador explained that the type of imported or exported work could vary in format and that it was important that any text suggested by the Committee included a guarantee that libraries would have exceptions for any restrictions irrespective of the system of exhaustion available in specific countries.

145. The Delegation of El Salvador endorsed the statements made by the Delegation of Ecuador.

146. The Delegation of Kenya clarified that its proposal was aimed at ensuring that countries whose budgets were constrained would have an increased access to work in order to make it available to users and particularly to libraries. It suggested that its proposal should be unified to that of the Delegations of Ecuador, India and the African Group.

147. The Delegation of India emphasized the importance of including parallel importing in the international instrument sanctioning limitations and exceptions for libraries in order to ensure the availability of books at an affordable rate. It reminded the Committee that while Article 6 of the TRIPS Agreement left discretion to introduce national or international exhaustion to Member States, it was necessary in the context of WIPO treaties like WCT or WPPT and the Beijing Treaty to adopt a formulation suiting the distribution right under discussion. With respect to libraries, it favored the international exhaustion of parallel imports. The failure to provide a parallel import facility to libraries would deprive them of specialist services such as obtaining and supplying materials from adult and non-commercial publishers, supplying cataloging of national bibliographic databases and offering a second-hand book market. The Delegation agreed with the unification of the proposals made by the Delegations of Ecuador, India and the African Group.

148. The Delegation of Ecuador and Kenya stated that an agreement to merge the proposals could be achieved in the interest of a faster resolution of the issues.

149. The Delegation of the United States of America highlighted the controversial nature of parallel importation as a subject that extended beyond libraries and archives. It stated that under section 17 U.S Code section 602(a)(3) Copyright Act, an organization operated for scholarly education or religious purposes and not for private gain could import up to five copies of works for library lending or archival purposes unless the importation of such copies was part of an activity consisting of a systematic reproduction or distribution.

150. The Delegation of the European Union and its Member States referred to paragraph 98 of document SCCR/26/3 and expressed a difficulty to relate parallel importation to the traditional limitations and exceptions for libraries. It expressed the view that the proposal did not oblige WIPO Member States to provide for international exhaustion. It stated that regional exhaustion applied in the E.U. pursuant to Article 42 of Directive 2001/29/EC, which provided that a distribution right should not be exhausted in the community if in respect to the original or copies of the work except where the first sale or other transfer of ownership in the community of that object was made by the right holder or with his consent.

151. The Representative of Knowledge Ecology International, Inc. (KEI) disagreed with the international parallel importation of certain entertainment goods and educational materials, especially when the relevant product was marketed at a lower price in a developing country and parallel traded into another with higher income. He suggested that the policy of exhaustions should be limited to countries of similar or higher income.

152. The Representative of the International Federation of Library Associations (IFLA) stressed the importance of parallel importation in guaranteeing the global exchange of information between academics, researchers and libraries.

153. The Representative of International Publishers Association (IPA) endorsed the statement advanced by the Delegation of KEI that extreme caution had to be exercised in analyzing the issue of differential pricing.

154. The Representative of the German Library Association pointed out that the difficulty with regional exhaustion was that libraries could not lend books acquired from abroad to their patrons unless the rightsholders had given their consent. He expressed the view that this issue could only be resolved by the imposition of an international regime on exhaustion.

155. The Chair asked the Committee to consider topic six of document SCCR/26/3, cross-border uses.

156. The Secretariat identified three proposals on topic six of document SCCR/26/3. The first was made by the Africa Group and stated that it should be permissible for libraries and archives located in the territory of the contracting party to send, receive, or exchange a copy of a work or material protected by related rights, legally made in the territory of another contracting party, including works and materials protected by related rights. The second proposal was made by the Delegation of Ecuador and qualified the first proposal to the extent that cross-border uses should be permitted when necessary for the exception of a limitation or exception provided for in that treaty. The third proposal was advanced by the Delegation of India and stated that libraries and archives should have the right to share resources in any format available to them with libraries and archives located in another Member State. Two comments were made on topic six. One questioned whether the issue of cross-border uses was already covered by reproduction and distribution issues. The second comment stated that the main goal of that provision was to allow for inter-library exchange.

157. The Delegation of El Salvador endorsed the proposal made by the Delegation of India on cross-border uses.

158. The Delegation of Kenya proposed that the Secretariat should work on a single text including its proposal and those advanced by the Delegations of Ecuador and India.

159. The Delegations of Ecuador and India agreed with the proposal advanced by the Delegation of Kenya.

160. The Representative of EIFL referred to a statistic carried out by IFLA showing that libraries received requests for access to specialized items in their collections from a wide variety of countries. He pointed out that cross-border uses were often blocked by domestic licensing schemes or were held to be incompatible with European law. He called for an international solution to that problem.

161. The Representative of the International Federation of Reproduction Rights Organizations (IFFRO) acknowledged the role of libraries in protecting cultural heritage and the rights of Member States to introduce limitations and exceptions in favor of libraries for defined uses subject to their compatibility with the three-step test. He stated that any international document delivery of copyright work should be conducted in accordance with the existing national regimes and that there was no need for a further legal instrument governing cross-border access.

162. The Representative of the Charter Institutes of Libraries and Institutional Professionals (CILIP) referred to the need for University libraries in the United Kingdom to access digital resources via cross-border transfers in order to guarantee equality of education for those students earning UK degrees from overseas countries.

163. The Representative of Karisma Foundation emphasized the importance of cross-border uses in guaranteeing the human right to access and cultural enjoyment which was held to be more important than copyright by the United Nations Committee of Economic Cultural and Social Rights. She explained the difficulties faced by Colombian researchers to access old studies stored in American and French archives and the negative impact that copyright had on the development of new content and the promotion of knowledge.

164. The Representative of the International Publishers Association (IPA) summarized the scenarios identified by the NGOs when cross-border uses issues arose. Those included traditional cross-border delivery, multi-country universities with campuses located abroad, distance learning, virtual learning environments, remote access to libraries and the distribution of unpublished materials uniquely available in one area. He stressed that each of those issues was regulated by legal and business models implemented by the Member States and urged the Committee to be cautious in considering any further international implementation.

165. The Representative of the International Council on Archives (ICA) explained that cross-border transmission would encourage research and lead to the creation of new works. He expressed the view that licensing could not represent a solution to the access restrictions imposed by copyright on certain materials.

166. The Representative of the Australian Library and Information Association (ALIA) supported the suggestion of a combined text including the proposals advanced by the Delegations of India and Ecuador and by the African Group. She informed the Committee that Australian libraries faced numerous challenges on cross-border projects due to the colonial heritage of the country and stressed that the availability of exceptions for libraries and archives under national laws did not waive the need for the creation of an international instrument.

167. The Representative of the Association of European Research Libraries (LIBER) pointed out that the best research in Europe took place as a result of cross-border collaborations. The importance of international and interdisciplinary collaboration and legal interoperability in that area was highlighted during the G8 Open data Charter of 2013 and facilitated by the research data alliance. He considered that levy-based private copying exceptions could allow materials to travel within Europe but that an international regime became necessary in overseas deliveries where no such levies existed.

168. The Delegation of Brazil supported the proposal to consolidate the text and suggested that the words “send, receive and exchange a copy of work” inserted by the African Group under paragraph 108 should be converted in “import, distribute, lend and make available”. The Delegation invited the Committee to take inspiration from Articles 5 and 6 of the Marrakesh treaty in further discussions.

169. The Representative of the Society of American Archivists (SAA) stated that the lack of international norms on the right to provide copies to users left libraries in an uncertain legal environment in which to meet its social mission. He expressed the view that historical curators should not be forced to deal with legal research when answering a query from a cross-border user.

170. The Delegations of Kenya and Ecuador explained their wish to consider the alternative textual suggestion advanced by the Delegation of Brazil.

171. The Representative of the German Library Association gave practical examples demonstrating the impact of legal uncertainty on the capacity and willingness of libraries and archives to deliver materials across borders. He stressed that students learning from abroad on distance learning programs were victims of unequal treatment and that the imposition of licenses would not *per se* resolve the problem.

172. The representative of Knowledge Ecology International (KEI) reiterated the need for an international instrument aimed at clarifying the complexities created by multiple cross-border licensing agreements.

173. The Representative of Scientific Technical Medical Publishers (STM) explained that a number of services were offered on a transactional or pay-per-view basis to cross-border users and that an international solution was not necessarily called for.

174. The Delegation of Egypt focused on the need to digitalize content and render it available to students and researchers worldwide. It supported the consolidation of the proposals made by the Delegations of India, Ecuador and the African Group and the creation of an international regime on limitations and exceptions for libraries and archives.

175. The Delegation of Congo referred to the difficulty experienced by the people of that country to obtain copies of birth certificates stored in French archives. On that basis it urged the Chairman to accelerate the negotiations of a treaty.

176. The Delegation of Pakistan invited the Committee to focus on the difficulties highlighted by some delegations concerning the applicability of proposed limitations and exceptions.

177. The Chair invited the Secretariat to summarize the position on topic seven on orphan works, retracted and withdrawn works, and works out of commerce in document SCCR/26/3.

178. The Secretariat identified three proposals on topic seven. The first was advanced by the African Group with respect to orphan works and provided that beneficiaries should be allowed to reproduce and use a work or materials protected by related rights when the author or rightsholder could not be identified or located after reasonable inquiry. The proposal went on to provide that it would be a matter for national law to decide whether there would be remuneration provisions in indications of commercial uses of work or materials protected by related rights. With respect to retracted, withdrawn, inaccessible works the African Group stated that except as provided by national law or through the decision of a court it should be permitted through libraries and archives to reproduce, make available as appropriate in any format for preservation, research or other legal use any copyright work or work protected by copyright-related rights which became inaccessible but was previously communicated to the public or made available by the author or rightsholder. The African Group's proposal ended with a final provision establishing that with the notification to the Director General the provisions of the previous paragraphs could be applied only in respect of certain uses, be limited in their scope or remain unapplied. The second proposal was advanced by the Delegation of Ecuador and entitled libraries and archives to reproduce, make available to the public and otherwise use any work or material protected by related rights for which the author or other rightsholder could not be identified or located after reasonable inquiry. That mandatory proposal was accompanied by an optional proposal that contracting parties could provide a provision for equitable remuneration or termination of the use once the rightsholder was located. With respect to access to retracted and withdrawn works, the Ecuadorian proposal stated that libraries and archives could reproduce, make available as appropriate in any format for preservation, research or other legal use any copyrighted work or protected by related work rights which has been retracted or withdrawn from public access, but had been previously communicated to the public or made available by the author or rightsholder. A similar procedure of notification to the Director General is available under that proposal. The proposal from the Delegation of India stated that libraries and archives should have the right to reproduce, preserve and make available in any format any retracted, withdrawn works from works that had been retracted or withdrawn from public access or an orphan work. The comments to those proposals included the description of national legal frameworks including Canada, Japan and the European Union including Directive 2012/28/EU and a Memorandum of Understanding (MoU) on commerce works. Further comments made by the United States of America were included in document SCCR/26/8.

179. The Delegation of El Salvador suggested the consolidation of the three proposals concerning topic seven made by the Delegations of Ecuador and India and by the African Group.

180. The Delegation of Mexico stated that the issue of orphan works had considerable implications on the international copyright system. It explained that orphan works could be freely used without authorization so long as their author remained anonymous. The Delegation described the system of registration of licenses adopted by the Mexican Copyright Office and asked the Committee to consider a similar approach at the international level.

181. The Delegation of Canada explained that its legal system enabled users to obtain the license to use work whose copyright owner could not be located. It clarified that an application

had to be made to the Canada Copyright Board satisfying specific conditions. One condition was that the application could only relate to published works, sound recordings, fixed performances or communication signals. Copyright must have subsisted in the object of the application and the object sought must have been intended for use in a substantial part of a work. The work must have not been permitted by a limitation or exception to the general law. The Copyright Board must have been satisfied that the copyright owner could not be located notwithstanding the applicant's reasonable efforts. The license granted by the Board could not be exclusive and should have an expiry date. The Board could not waive moral rights but could impose specific terms ensuring their protection. Royalties were payable to a collective society or to the copyright owner if claimed within five years from the expiry of the license. The Board retained discretion to refuse the grant of a license and should exercise it reasonably. The Delegation pointed out that a license issued under those circumstances was not valid internationally.

182. The Delegation of the United States of America expressed the view that orphan works were a liability risk and potential source of gridlock in the digital marketplace. It informed that the U.S. Copyright Office was reviewing the issue of orphan works in light of fast-changing legal and technological developments and that the U.S. Patent and Trademark Office supported attention to that issue in its recent green paper on Copyright Policy in the Digital Economy. The Delegation noted that the issue of orphan works extended beyond libraries and archives and that the latter were protected under categories such as preservation, access to collections, limitations and exceptions.

183. The Delegation of Kenya supported the proposal of a single text concerning topic seven and including the recommendations advanced by the Delegations of India and Ecuador and by the African Group.

184. The Delegation of Ecuador clarified that their proposal on orphan works complemented rather than opposed the recommendations advanced by the African Group. With respect to the right to retract, the Delegation pointed out that it was a moral right that was not covered by all legal systems. It referred to the procedure of notification of the Director General of WIPO and explained that it could be used to limit the provisions of paragraph 113(1) of document SCCR/26/3 in respect of certain uses or to limit their application in some other way or avoid their application entirely. The Delegation supported the proposal of a single text.

185. The Delegation of the European Union and its Member States explained that Directive 2012/28/EU provided for an exception to copyright for certain uses of public, cultural and educational institutions of works that had been identified as orphan works following a diligent search for rightholders. The beneficiaries of the Directive were publicly accessible libraries, educational establishments, museum, archives, film or audio heritage institutions and public service broadcasters. The Directive covered works in the print sector, cinematographic and audiovisual works, phonograms and works that were embedded or incorporated in other works and unpublished works. The Delegation referred to the rules of the Directive on how to identify an orphan works and the mutual recognition of orphan works across the European Union. It stated that the Directive provided for a single European registry of all recognized orphan works ran by the European Trademark Office (OEM). The Directive established that the beneficiary organizations should be entitled to use the orphan works to achieve aims related to their public interest mission and were allowed to conclude private-public partnerships with commercial operators and generate revenues from the use of Orphan Works to cover digitalization costs. The Directive foresaw a mechanism to allow the reappearing rightsholder to assert his copyright and end the orphan work status. The Delegation informed that the Directive would be implemented by 29 October 2014 and invited the Committee to refer to point 123 of document SCCR/26/3 for further comments on the topic of out of commerce work.

186. The Delegation of Chile emphasized the need for administrative requirements connected with the identification of orphan works and supported the proposal advanced by the Delegation of Ecuador at point 113(2) of document SCCR/26/3.

187. The Delegation of Ecuador clarified that anonymous works were treated as orphan works under Ecuador's national legislation and that the first editor was treated as the rightsholder.

188. The Delegation of India stated that its government had introduced a system of compulsory license for orphan works rendering them available on the market following an application made by a publisher. The applicant had to show that he made an effort to find the rightsholder by circulating an advert on an English newspaper and following a successful application royalties were determined in the government's fund. The Delegation stated that this regime was unsatisfactory for libraries holding numerous orphan works because an application had to be made for every separate work. It expressed the view that the commercial use should not form part of the Committee's discussions.

189. The Delegation of Colombia agreed with the establishment of an exception for orphan works provided that a stricter requirement than "reasonable enquiries" was adopted in identifying orphan works as suggested by the Delegation of Ecuador.

190. The Delegation of Pakistan stated that its government adopted a compulsory license system similar to that described by the Delegation of India but specified that this regime had not developed as an exception for libraries because only publishers could make an application.

191. The representative of the Society of American Archivists (SAA) expressed the concern that archivists were now burdened by complex rights procedures imposing higher costs than those required by the digitalization of the work or the value of the work itself.

192. The Representative of the Association of European Research Libraries (LIBER) disagreed with the statement advanced by the Delegation of the European Union and its Member State on the lack of an international dimension to limitations and exceptions for libraries and archives. He referred to the impact assessment carried out by the European Commission on policy solutions to the orphan works phenomenon and reminded the Committee that those included specific individual licenses, extended collective licensing, state granted licensing, the mutual recognition of national solutions or a mandatory exception to apply across the European Union. He explained that the European Union had opted for a harmonized solution which was consistent with the operations of the internal market, redressed the international knowledge gap, reduced operating costs and risks for libraries and archives, delivered the best access for researchers and promoted the best cultural diversity. The Delegation stressed that the strategy of mass digitalization advanced by the European Union demonstrated an understanding that copyright law had a cross-border effect and called for an international problem solving approach.

193. The Representative of the International Federation of Reproduction Rights Organizations (IFFRO) recognized the role of libraries in preserving and making available cumulative knowledge and expressed the need to identify solutions to the issues of orphan works and works out of commerce. He stressed the importance of carefully defining those types of works in line with Directive 2012/28/EU and the MoU on commerce works signed by IFFRO and the European Library Author and Publisher Organization. He expressed the view that the digitalization and distribution of orphan works and out of commerce works required a country-specific approach considering national, legal and other petitions. He stated that orphan works legislation should provide for the right of withdrawal and remuneration for reappearing rightsholders. The representative suggested that the distribution of works out of commerce should be coordinated by stakeholders in light of their ability to establish workable solutions for digitalization, provide definition criteria for the rightsholders and modeling license agreements.

194. The Representative of Electronic Information for Libraries (eIFL.net) noted that in the digital environment there were no safeguards ensuring the preservation of the public record for posterity and expressed support for the proposals advanced by the Delegations of Ecuador and India and by the African Group.

195. The Representative of Knowledge Ecology International (KEI) considered the possibility to impose an international obligation requiring Member States to provide adequate and effective legal remedies to overcome barriers to orphan works for libraries. Such obligation would leave discretion to Member States as to the methods of implementation. The Representative referred to the United States Code, Chapter 17 USC 108 paragraph H, which created a specific exception for libraries in respect of the distribution of orphan works, as an example of national governments' willingness to intervene in that area.

196. The Representative of Centre for Internet and Society (CIS) expressed support for the creation of an exception for libraries in relation to orphan works and agreed with the formulation of an international instrument dealing with limitations and exceptions. She aligned itself with the view that there was a lack of uniformity in the national legislations concerning those issues and that exceptions needed to have a cross-border effect in order to be influential.

197. The Representative of Ibero-Latin-American Federation of Performers (FILAIÉ) explained that the rights to retract and withdraw works were of a moral nature. He noted that they were granted to copyright holders and other persons in accordance with article 6bis of the Berne Convention for the protection of Literary and Artistic Works ('the Berne Convention'), mostly on the basis of a change in religious or political convictions or for ethical changes including human rights issues. The Delegation questioned how libraries could make available a work that had been willfully withdrawn by the copyright holder. He expressed concern for the language of the proposal advanced by the Delegation of Ecuador on the basis that it could affect the moral rights of rightsholders.

198. The Representative of the International Publishers Association (IPA) focused on withdrawal, removal and retraction of works and referred to the 2006 joint position statement produced by IPA and IFLA. He expressed skepticism on the ability of Member States to reach consensus on that issue due to the large disparities in the treatment of withdrawn works under national legislations.

199. The Delegation of India pointed out that Article 6bis of the Berne Convention provided for the rights of paternity and integrity but made no reference to the right of withdrawal. The introduction of that latter right depended on the discretion of national copyright regimes and the Delegation stated that no more than ten countries out of 125 had provided for it. He advanced a proposal that regional workshops and consultations be conducted on the functioning of libraries, archives and educational and research institutions in SCCR 28.

200. The Delegation of the Russian Federation referred to Part 4 of its civil code. It explained that orphan works were not protected by copyright under Russian law and libraries were subject to no impediment when circulating them. The same could have been achieved in other countries by amending national legislation. With respect to the rights of withdrawal and retraction, the Delegation warned the Committee about the risks of overreaching the moral rights of copyright owners and encouraging the circulation of inaccurate information.

201. The Delegations of Kenya, Brazil, Ecuador, El Salvador, Guatemala and Chile supported the proposal to hold regional workshops during the following Standing Committee.

202. The Delegation of the European Union and its Member States clarified that harmonization of copyright laws at the European level had different dynamics compared to harmonization at

the international level. European policies of integration had to be considered in light of the single market.

203. The Delegation of the United States of America enquired about the format of the regional workshops proposed by the Delegation of India before expressing its endorsement for the proposal.

204. The Delegation of India suggested that workshops be hosted in each region and for each of the eleven topics under SCCR/26/3 by inviting representatives of libraries and educational research institutions along with copyright experts who could explore the extent to which national regimes or international treaties failed to protect their interests in the international copyright system.

205. The Delegations of the United States of America and of the European Union and its Member States remained neutral with respect to the proposal advanced by the Delegation of India.

206. The Delegation of Iran (Islamic Republic of) referred to Article 8 of its Copyright Act 1970 establishing that public libraries, document centers, scientific institutions, and educational establishments which were noncommercial could reproduce protected works by photographic and similar process in the number necessary for the purposes of the activities according to a directorate issued by the Board of Ministers. It clarified that a draft decree had been proposed on orphan works stating that the moral rights of the author should be protected and should be obeyed, and if the library decided to reproduce an orphan work, it should inform and obtain permission from the Ministry of Culture and Islamic Guidance.

207. The Delegation of Czech Republic sought further clarifications regarding the involvement of the Secretariat in the proposal advanced by the Delegation of India to hold regional workshops.

208. The Secretariat informed the Committee that regional workshops were not currently included in the work plan for the Copyright Law Division but that possible arrangements could be investigated.

209. The Chair opened the discussions on topic eight of SCCR/26/3 on limitations on liability for libraries and archives.

210. The Secretariat explained that there was a proposal to convert the title of topic eight in "limitations on liability for libraries and archives" as reflected it in the text. It highlighted the proposals made by the delegations. The first was advanced by the African Group and mandated that a librarian or archivist acting within the scope of his or her duties should not be liable for copyright infringement when the alleged action was performed in good-faith in the belief there were reasonable grounds for the application of an exception or other international or national provision or the material was in the public domain or under an open content license. The proposal also concluded that where the Member State or Contracting Party provided for secondary liability regimes, libraries and archives should be exempt from liabilities for the actions of their users. The proposals from the Delegations of Brazil, Ecuador and Uruguay presented many similar elements but included options on librarians' criminal liability and copyright infringement. The proposal from the Delegation of India stated that any person working in any library or archive should be protected for any action performed in good-faith against claims for damages and criminal liabilities. With respect to principles and objectives, the Delegation of the United States of America noted that national copyright laws could recognize limitations on liabilities as well as limitations on certain types of damages with respect to libraries and archives and their employees and agents provided that the elements of good-faith and reasonable grounds to believe that they acted in accordance with copyright law were

satisfied. The Delegation of the United States of America provided a list of exemptions to damages as applied under its national legislation as well as draft exemptions from the Digital Millennium Copyright Act.

211. The Delegation of Kenya agreed with the formulation of an exception protecting libraries and archives from liability for copyright infringement. It suggested that the informal documents provided by the delegations on topic eight be compiled in a single text.

212. The Delegation of Canada agreed with the proposal of the Delegation of the United States of America that Member States should recognize limitations on the liability for certain types of damages applicable to libraries and archives and their employees and agents. It informed that Canadian Copyright Act provided that no statutory damages could be awarded against an educational institution, a library, an archive, or a museum that was sued in certain circumstances and imposed a cap on other damages equal to the amount of royalties that would have been payable to a collective society.

213. The Delegation of Brazil supported the proposal of a combined text on topic eight of SCCR/26/3.

214. The Delegation of the United States of America referred to section 504(c)(2) of its copyright code, which provided that libraries, archives, and their employees and agents, acting in the scope of their employment, were not liable for statutory damages for the reproduction of works and phonorecords if they believed or had reasonable grounds for believing that their action was a fair use. Under section 1203(c)(5)(B), courts would not impose civil damages in cases where a nonprofit library or archive proved it was not aware of and had no reason to believe that its acts constituted a violation of the prohibition to circumvent technological protection measures.

215. The Delegation of the European Union and its Member States clarified that topic eight was not treated under the European legal framework and strongly opposed the removal of previous comments made by the delegations from document SCCR/26/3.

216. The Delegation of Tajikistan expressed the view that the word "limitations" should be excluded from the title of topic eight as superfluous in the context of activities carried out by libraries lawfully and in good-faith. It pointed out that under Tajikistan law libraries had to undertake all their activities in strict compliance with the law and that the same principle could apply with respect to international obligations.

217. The Delegation of Kenya supported the proposal of a unified text on topic eight of SCCR/26/3.

218. The Delegation of Colombia informed that its country had no national provisions on limitations and exceptions for libraries and archives but supported the creation of a provision under topic eight SCCR/26/3.

219. The Delegation of Belgium stated that its national regime did not provide for limitations on liability for libraries and archives and expressed the view that the current proposals were too subjective and general to gain support.

220. The Delegation of Ecuador suggested that the representative of IFLA could make further statements to clarify the position of libraries and archives on the issue of liability.

221. The Delegation of the United Kingdom informed that the law of its country presented no specific provision on the limitation of liability for libraries and archives but presented exceptions relating to the making of copies by librarians for users of libraries. Those included a

requirement for librarians to provide an extract from published works upon the making of a declaration by the prospective user stating that he/she would only use the work for non-commercial purposes or private study. Breach of such undertaking raised liability on the part of the user as opposed to the librarian.

222. The Delegation of El Salvador clarified that its legislation contained no provision on the limitation of liability for libraries but that new provisions could be developed under its secondary legal system. It expressed support for the introduction of topic eight in an international instrument on limitations and exceptions for libraries and archives.

223. The Delegation of India explained that no terms and condition were attached to the exceptions granted for education, research and private purposes under its copyright regime. It stressed that while the rule of law required a uniform imposition of legal obligations, it was unfair that librarians exercising exceptions provided by national law in good-faith should be subject to legal harassment when attempting to explicate their social functions at the international level.

224. The Delegation of Pakistan pointed out that no provision limiting the liability of librarians was available in that country but expressed the view that such limitations could assist the process of digitalization taking place in Pakistan's national archives subject to the good-faith requirement.

225. The Delegation of Italy expressed the view that topic eight overturned general principles of civil law on vicarious liability. It explained that relieving libraries' staff members from their professional liability to have the necessary knowledge and skills to practice that profession would deprive copyright owners of legal recourse.

226. The Delegation of Viet Nam agreed with the introduction of limitations on liability under specific circumstances and subject to the good-faith requirement.

227. The Representative of the International Federation of Reproduction Rights Organizations (IFRRO) explained that good-faith infringements of copyright by libraries had a dissuasive effect on the distribution of material to users and could be resolved by the creation of an international instrument.

228. The Representative of the Ibero-Latin-American Federation of Performers (FILAIIE) supported the position taken by the Delegation of Italy and disagreed with the imposition of higher training requirements for librarians.

229. The Representative of the Scottish Council on Archives (SCA) emphasized that archivists had difficulty in understanding the legal functioning of the copyright regime and experienced fear of litigation caused by inadvertent copyright infringements. That issue could not be solved by the imposition of tightly drafted legal exceptions as they turned on situational concepts such as reasonableness and fairness and left librarians in the uncertainty of their lawfulness. In order to be effective, exceptions had to be accompanied by a limitation providing that when archivists and librarians acted in good faith, believing that they had acted in accordance with the law, they would not be held liable for inadvertent or unintended copyright infringement.

230. The Representative of Knowledge Ecology International, Inc. (KEI) referred to the proposal on limitations of liability for orphan works advanced by the Former Librarian of Congress of the United States of America and underlined that its rationale was that none of the restrictions under the Berne Convention applied to limitations and remedies because they focused on rights as opposed to enforcement. Similarly in the context of the TRIPS Agreement, the restrictions found in Part 2 did not apply to the remedies contained in Part 3 and it was therefore important to consider the wider topic of limitations on liability for infringement when drafting exceptions for libraries and archives. The Representative referred to the United States'

compulsory license system on copyright works as a limitation to liability under 28 USC 1498 and considered that the African Group's proposal contained in pages 22 and 23 of document SCCR/26/4/Prov. could extend to libraries in cases of overpriced products.

231. The Delegation of Iran (Islamic Republic of) referred to further articles under its domestic regime. The first article relieved libraries from responsibility where a user committed reproduction in spite of the library's requirements and/or the library allowed reproduction by the user without knowing that the work was published without the permission of the author or his/her agent. The second article mentioned by the Delegation provided that libraries should prevent infringement of the intellectual property rights in the case of information about illegal reproduction by stopping the illegal reproduction, preventing the exiting of the illegal copy from the library and suspending or cancelling the membership of the guilty person.

232. The Chair directed the discussions on topic nine of document SCCR/26/3 on technological measures of protection (TPMs).

233. The Secretariat summarized the proposal advanced by the delegations on topic nine. The African Group proposed that contracting parties should ensure that beneficiaries of the exceptions and limitations in the instrument had the means to enjoy the exception where the technological protection measures had been applied to a work, including, when necessary, the right to circumvent those measures to make the work accessible. The Delegations of Ecuador, Brazil and Uruguay proposed that contracting parties should ensure that libraries and archives had the means to enjoy the exceptions and limitations provided in the instrument when TPMs applied to a work or other protected matters. The Delegation of India proposed that libraries and archives shall have had the right to circumvent technological protection measures applied to any work for the purposes of enjoying any act permitted under the proposed treaty and in their national legislation. The Secretariat identified a number of comments relating to the intersection between the provisions of WIPO treaties and the technological protection measure provisions, which reiterated the importance of allowing circumvention for libraries and archives and prevent piracy. Further comments limited the applicability of the provisions to legal uses of works and identified legal certainty as the rationale for the provisions.

234. The Delegation of Kenya suggested that the proposals under topic nine be converted into a single text.

235. The Delegation of the European Union and its Member States expressed the view that the international legal framework provided by rights-based treaties such as WCT, WPPT and the Beijing Treaty provided sufficient flexibility to WIPO Member States regarding TPMs. It referred to Article 6.4 of Directive 2001/29/EC which allowed rightsholders to take appropriate or voluntary measures and entitled Member States to intervene so as to ensure that the beneficiaries of certain exceptions that were deemed of public interest would benefit from them notwithstanding the absolute prohibition of circumventing TPMs.

236. The Chair reminded the Committee that a consensus on the relationship between Technological Measures of Protection and exceptions and limitations of a general nature had been reached in the negotiations of the Beijing and Marrakesh Treaties.

237. The Representative of the Canadian Library Association (CLA) noted that the functions of Canadian Libraries had been compromised since the introduction of legal protection for TPMs and digital rights management. TPMs did not respect the legislative copyright exceptions for library users generally and for non-profit libraries owned under Canadian law. The Delegation stressed that library archives would remain inoperable unless libraries were allowed to circumvent TPMs by an international exception.

238. The Representative of Knowledge Ecology International, Inc. (KEI) proposed to adopt the language of Article 7 of the Marrakesh Treaty to the extent that the legal protection associated with TPMs did not prevent beneficiaries from enjoying the limitations and exceptions provided for in that Treaty.

239. The Representative of the Charter Institutes of Libraries and Institutional Professionals (CILIP) noted that provisions circumventing the applicability of TPMs had been developed in the copyright regimes of most countries. He pointed out that even at the national level the removal of TPMs was technically challenging because they did not cease to exist upon the expiration of copyright but simply became obsolete on the platforms where copyright expired. The Representative stressed that the development of web harvesting would reduce the ability of libraries to preserve human heritage unless TPMs were subject to internationally recognized exceptions and limitations.

240. The Representative of the Society of American Archivists (SAA) described the time-consuming procedure that researchers encountered in copying materials protected by TPMs before being able to ascertain their enduring value. He expressed the view that archivists should not be dealing with technical procedures and supported the implementation of appropriate exceptions.

241. The Delegation of Ecuador hoped to consolidate its proposal on TPMs with those advanced by the African Group and the Delegations of India and Brazil. It referred to Article 11 of the WCT regarding the use of TPMs to prevent unauthorized acts and stated that the functions of libraries and archives should not be impeded by that provision.

242. The Delegation of Brazil agreed to consolidate the proposals on topic nine and invited the Committee to find inspiration in the Marrakesh Treaty when considering terminology. It referred to the proposal advanced by the Delegation of Switzerland at paragraph 140 of document SCCR/26/3 and hoped to adopt its specific wording.

243. The Delegation of Morocco supported the consolidation of the proposals on topic nine and stated that appropriate exceptions for libraries and archives were required in order to allow those institutions to circumvent TPMs and pursue their social function in a digitalized environment.

244. The Delegation of Uruguay agreed with the merging of the proposals and supported the Committee's agenda on the topic of TPMs.

245. The Representative of the International Video Federation (IVF) expressed dissent for the formulation of additional binding norms at the international level and called for the adaptation of existing copyright laws to the global online environment. He stated that the WIPO Copyright Treaty offered all necessary tools for balancing limitations and exceptions as well as corresponding exclusive rights and TPMs.

246. The Representative of the Centre for Internet and Society (CIS) supported the introduction of an exception to TPMs for libraries and archives and aligned itself with the proposal to adopt the language of Article 7 of the Marrakesh Treaty in further negotiations.

247. The Delegation of Trinidad and Tobago expressed support for the adoption of Article 7 of the Marrakesh Treaty but warned the Committee that the wording of the Article should serve as a guide in the negotiations as opposed to being directly transposed in a new international instrument.

248. The Representative of International Publishers Association (IPA) suggested that only a small portion of the concerns expressed by the representatives of libraries and archives were

linked to TPMs. He expressed the view that in circumstances where libraries sought access from a network of decentralized online databases, the updating of copyright laws was not a solution to the problem. A greater degree of collaboration and interoperability between databases was required and attempting to solve those complex issues in line with the Marrakesh Treaty was not appropriate.

249. The Delegation of Venezuela (Bolivarian Republic of) stated that the objectives and circumstances of implementation of the Marrakesh Treaty presented a human rights matrix and were substantially different from those concerning TPMs.

250. The Secretariat provided a summary of the Committee's position on topic ten of document SCCR/26/3 on contracts. It considered the proposal made by the African Group that contractual provisions providing exemptions from the application of the limitations and exceptions listed in the relevant article shall be null and void. The proposal from Ecuador provided that any contractual provisions that prohibited or restricted the exercise or enjoyment of the limitations and exceptions in copyright adopted according to the provisions of the treaty shall be null and void. The proposal from India directed Member States to provide in their national legislation that any contractual provisions prohibiting or restricting the exercise or enjoyment of rights granted under the treaty or national legislation shall be null and void. The Secretariat highlighted a number of comments concerning the balance between preserving parties' freedom of contract and managing the risk of contractually bypassing the law on limitations and exceptions.

251. The Delegation of Kenya emphasized the importance of preventing parties from avoiding the protection of limitations and exceptions by contract and suggested that the proposals be merged in a single text.

252. The Representative of the Charter Institutes of Libraries and Institutional Professionals (CILIP) explained that most commercial licensing contracts contained clauses restricting or prohibiting acts permitted by the law of other countries and had the effect of restricting access to information. He expressed the need for an international instrument protecting exception for libraries, archives, research and educational institutions from such clauses.

253. The Representative of the German Library Association expressed the view that licensing was not a solution to the access problems faced by libraries and archives. He stated that German libraries would not obtain licenses to lend best-selling e-books from rightsholders and that the principle of exhaustion extended to digital materials. He stressed that exceptions should be mandatory and that the capacity to avoid them by contract was not in the interest of public access to information and research.

254. The Representative of the International Federation of Libraries Associations (IFLA) noted that there were existing precedents for the language proposed by the Delegations of India, Ecuador and by the African Group in relation to topic ten and referred to Article 10 of Directive 96/9/EC and Article 9(1) of Directive 2009/24/EC. He pointed out that limitations and exceptions no longer applied in some countries and that publishers had a strong influence on the terms and conditions applicable to cross-border licenses. The Representative highlighted the growing challenges faced by government policymakers to protect libraries and archives in an increasingly globalized digital environment.

255. The Delegation of Ecuador supported the proposal of a unified text on topic ten of document SCCR/26/3 and welcomed the formulation of an international standard to prevent contractual hindrances on limitations and exceptions.

256. The Delegation of Brazil reiterated that contracts should not interfere with limitations and exceptions at the international level and advanced a further textual suggestion that contracting

parties shall take adequate measures to ensure that libraries and archives had the means to enjoy the exceptions and limitations provided in the instrument notwithstanding contractual provisions that prohibited or restricted the exercise or enjoyment of the limitations and exceptions by libraries and archives.

257. The Delegation of Colombia expressed the view that any hindrance on limitations and exceptions should be null or void and supported the setting of an international standard on contracts.

258. The Delegation of the United States of America asked the Committee to clarify which delegations could accept its proposed objectives and principles and on which terms. It considered that approach to be more useful than focusing on the consolidation of a single text because some delegations were not prepared to accept the formulation of an international instrument in relation to item six of the agenda.

259. The Delegation of Kenya suggested that a list be drawn identifying the issues in need of discussion before focusing on the comments made by the delegations.

260. The Delegation of the European Union and its Member States reiterated that it did not support the implementation of an international instrument on limitations and exceptions and that the Secretariat was not expected to be involved in the merging of proposals from individual delegations. The Delegation asked that the comments made by all Member States during the first session remained in the body of the text under the relevant cluster.

261. The Delegations of Germany and Czech Republic endorsed the statements made by the Delegation of the European Union and its Member States.

262. The Delegation of Kenya expressed the view that the most efficient manner of progressing was to make use of the resources made available by the Secretariat and allow it to consider the textual alternatives advanced by the delegations. It reassured the Committee that comments would not be jeopardized as a result and could still remain where they were after each topic.

263. The Delegation of Brazil supported the proposal advanced by the Delegation of Kenya and pointed out that the practice of delegating text proposals to the Secretariat was in line with the practice of the Intergovernmental Committee (IGC).

264. The Delegation of Italy aligned itself with the statements advanced by the Delegation of the European Union and its Member States and reiterated that the aim of the discussions was to exchange views and facilitate Member States' implementation of limitations and exceptions under their national legislations and not to negotiate a binding international agreement.

265. The Delegation of the United Kingdom warned the delegations to be careful in drawing parallels between Committees with different mandates and expressed the view that it was the duty of the proponents to restructure their proposals in advance of the following Standing Committee.

266. The Delegations of France and Venezuela (Bolivarian Republic of) noted that the Secretariat should not be burdened by the duty to reframe complex text suggestions and that the proponent delegations were better positioned to discuss and agree on their own proposals.

267. The Delegation of Ecuador informed the Committee that the proponents had agreed to deal personally with the preparation of a new text for the following session.

268. The Delegations of Greece, Poland and Latvia endorsed the statements advanced by the Delegations of the European Union and its Member States, the United Kingdom, Germany, France, Italy and the CEBS Group.

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

269. The Chair invited the delegations to discuss item seven on limitations and exceptions for educational teaching and research institutions and for persons with other disabilities.

270. The Delegation of India suggested that discussions regarding item seven be postponed to SCCR 28 in order to allow Member States to formulate legal proposals and send them to the Secretariat.

271. The Delegation of Mexico described its national development plan aimed at developing high quality education via the adoption of appropriate teaching tools including digital operator platforms expanding access to further national and international materials. It informed the Committee that its government had implemented limitations and exceptions for teaching and research institutions.

272. The Delegation of the United States of America referred to draft document SCCR/26/8 and stated that, as in the case of libraries and archives, Member States should have the flexibility to tailor their own circumstances and needs within the constraints of international obligations. The Delegation did not support a binding document for exceptions and limitations for educational purposes. It hoped that the draft principles and objectives could facilitate a useful exchange among Member States in light of its specific framework. The key objective of the draft was to strike a balance between rights and exceptions and limitations that was consistent with international law and capable of sustaining educational institutions. The document encouraged the promotion of high quality educational and research materials by supporting the commercial market and the introduction of innovative licensing models such as open licensing, micro licensing and sublicensing. It stressed that those voluntary models could facilitate educational uses of copyrighted works that were not covered by limitations and exceptions under national law and allow materials to become available in a range of interoperable formats. The document supported exceptions and limitations that were compatible with international obligations including those allowing online and blended learning in technologically evolving learning environments. It invited Member States to recognize limitations on certain types of monetary damages applicable to non-profit teaching and research institutions and their employees and agents when they proved they acted in good faith and having reasonable grounds that their conduct was compliant with Copyright law.

273. The Delegation of Kenya, speaking on behalf of the African Group, acknowledged that limitations and exceptions for educational and research institutions became very important with the advent of self-learning. It hoped to organize the relevant issues under one simplified topic in advance of SCCR 28.

274. The Delegation of Japan, speaking on behalf of Group B, referred to document SCCR/26/4/Prov. and urged its adoption in future discussions on limitations and exceptions for educational and research institutions. It highlighted Group B's concern that ISP liability under section 7.5 and security under section 7.7 were unrelated to education and fell outside the mandate of the Committee. It pointed out that a constructive work on principles was preferable to the treaty approach when considering limitations and exceptions for educational purposes.

275. The Delegation of Pakistan emphasized that education was a basic right under the UN Universal Declaration of Human Rights and expressed support for an international framework of exceptions to copyrights.

276. The Delegation of the European Union and its Member States noted that the existing international copyright framework allowed sufficient legal space to ensure meaningful limitations and exceptions for the benefit of educational and research institutions and reiterated that it was not willing to consider a legally binding instrument in that area. It considered that the best way to proceed was to identify the issues for a useful exchange of national experiences and to update relevant studies.

277. The Delegation of Uruguay, speaking on behalf of GRULAC, informed the Committee of its intention to submit a proposal on that issue at the following session.

278. The Delegation of Ecuador mentioned that mandate in document WO/GA/41/14 emphasized the need for international legal instruments on the issues of limitations and exceptions and urged the Committee to give particular attention to the United States' proposal in relation to the non-commercial use of part of works.

279. The Delegation of Brazil asked whether the Delegation of the United States of America would have considered the creation and support to free access repositories of technical and scientific works as a positive public policy towards promoting access to educational and research materials. With respect to persons with other disabilities, the Delegation requested special treatment allowing access to copyright and related rights and stressed that they should receive the same treatment as visually impaired people under the Marrakesh Treaty.

ITEM 8: OTHER MATTERS

280. The Delegation of Senegal described the financial hardship faced by African artists and acknowledged the importance of copyright in protecting their work. It asked the Committee to add an item on artists' resale right to the SCCR 28 agenda.

281. The Delegation of Congo (Democratic Republic of) aligned itself with the request of the Delegation of Senegal to add an item on resale rights to the agenda of the following session. It explained that as a signatory to the Berne Convention its government had implemented provisions on artists' resale rights in its national legislation. The Delegation expressed the concern that resale rights were not enforceable beyond the country's national borders and provided practical examples of African's artists whose works were adopted by foreign publishers without authorization.

282. The Delegations of France, Cote d'Ivoire, the European Union and its Member States, Italy, Czech Republic, the CESB Group and Morocco endorsed the proposal to add resale rights to the SCCR 28 agenda.

283. The Delegation of Germany expressed the view that the issue of resale rights could be discussed by the Committee but not necessarily at the following session.

284. The Delegation of India stated that Indian Copyright Act recognized artists' resale rights and implemented Article 14 of the Berne Convention as introduced in the conference of rule 1928. The Delegation supported the introduction of resale rights in the agenda of SCCR 28 and noted that the protection granted by Article 14 was optional and depended on Member States' mutual recognition of that option.

285. The Delegations of the United States of America, Japan and Brazil asked for more time to consider the proposal relating to the agenda for the following session.

286. The Delegation of Venezuela (Bolivarian Republic of) supported the proposal on resale rights in principle but warned the Committee that the uncertainty demonstrated by developed countries on adding that item to the SCCR 28 agenda could result in future delays. It suggested that the item would have to be discussed in the first section of the following session and possibly on the basis of an agreement between delegations.

287. The Delegation of Kenya agreed with the addition of resale rights to the agenda of the following session on condition that it would not overshadow existing items of discussion.

288. The Delegation of Switzerland endorsed the position taken by the Delegations of the United States of America and Japan and expressed the view that adding an item to the agenda would slow down progress on important issues that had been discussed at that session.

289. The Delegation of Uruguay stated that it could not support the proposal to add resale rights to the SCCR 28 agenda without prior consultation with GRULAC and asked its proponents in which way they planned to structure the proposal and how they intended to deal with regional groups.

290. The Chair highlighted the concern faced by some delegations to accept a late proposal in relation to the SCCR 28 agenda when they had already conducted long debates concerning the allocation of time for the following session in a good-faith framework. It invited the Committee to welcome the new proposal for future discussions and asked the Delegations of Senegal and Congo (Democratic Republic of) to clarify if they had an intention to change the structure of the discussions for the following session.

291. The Delegations of Senegal and Congo (Democratic Republic of) expressed flexibility to discuss the issue of resale rights at a later session.

292. The Delegation of the European Union and its Member States supported the general proposal to discuss resale rights in the future.

293. The Delegation of Switzerland sought further clarifications as to whether agreement was being reached to discuss resale rights in the future or specifically as part of the SCCR 28 agenda.

294. The Chair clarified that unless further comments were advanced, the Committee would return to the question of discussion of resale rights in discussion on future work.

295. The Secretariat referred to document SCCR/27/4 entitled Eighth Interim Report of the Stakeholders Platform, which summarized the last meeting of the Stakeholders Platform and the proposal to evolve the platform into an accessible books consortium that would be formed to carry out functions like capacity building, inclusive publishing and working on the Trusted Intermediaries Global Accessible Resources (TIGAR) project. The Committee was invited to take note of the information contained in the document.

296. The Delegation of Mexico asked about the implications of taking note of the content of document SCCR/27/4.

297. The Secretariat explained that the process of taking note represented a formal way to acknowledge that the document had been submitted to the Committee for its information.

298. The Committee agreed to take note of document SCCR/27/4.

299. The Secretariat presented document SCCR/27/REF/CONCLUSIONS and the Chair invited the Committee to approve paragraph 1 which stated: “based on the outcome of the 26th Session of the SCCR, the Committee considered Articles 6 and 9 of the working document SCCR/27/2 for a Treaty on the Protection of Broadcasting Organizations and the proposal on a Treaty on the Protection of Broadcasting and Cablecasting Organizations SCCR/27/6 presented by the Delegations of Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan”.

300. The Committee approved paragraph 1.

301. The Chair invited the Committee to approve paragraph 2 which stated: “Following are proposals submitted by the delegation of the United Kingdom contained in document SCCR/27/3. A technical presentation was made to the Committee by an expert of the British Broadcasting Organization, BBC, on types of advanced technology being used by broadcasting organizations”.

302. The Committee approved paragraph 2.

303. The Chair invited the Committee to approve paragraph 3 which stated: “Technical working non-papers which addressed issues relating to the categories of platforms [and activities] to be protected under the object of protection and the protections to be granted to broadcasting organizations were taken into account in informal discussions. These discussions were instrumental in helping to clarify various technical issues and delegations' positions”.

304. The Delegation of India suggested the removal of brackets under paragraph 1 in light of the larger scope of the discussions covering activities such as simulcasting, near simulcasting, deferred and delayed signals and others. With respect to paragraph 2 it asked to introduce the words “in traditional sense” in the third line of the third paragraph after “granted to broadcasting organizations”.

305. The Delegation of Japan, speaking on behalf of Group B, agreed with the proposal of the Delegation of India to include “and activities” under paragraph 1 and asked to substitute the word “protection” with “rights” in the third line of the same paragraph.

306. The Delegation of Brazil asked whether the word “rights” was being added to the word “protection” or intended to replace it. It enquired as to the rationale of that amendment and expressed support for the paragraph as originally drafted.

307. The Delegation of the United States hoped to clarify the proposal advanced by the Delegation of Japan and suggested that use of the phrase “protected under the object of protection and the scope of rights to be granted”. This clarification answered the question advanced by the Delegation of Brazil.

308. The Delegation of Iran (Islamic Republic of) supported the proposal of the Delegation of India with respect to paragraph 2.

309. The Delegation of India noted that the discussion focused on scope and objectives of protection and therefore the word “protection” should not be substituted by the word “rights”. It expressed the view that the approach discussed was signal-based as opposed to being rights-based and that the terminology should have reflected that position.

310. The Delegation of China stated that in order to maintain precision and completeness in the document, the paragraph should have referred to broadcasting organizations in the traditional sense.

311. The Delegation of Venezuela (Bolivarian Republic of) expressed the view that the draft conclusions were supposed to provide a summary of the discussions of the Committee. It suggested that the document had to maintain a more general line in order to avoid further complexities.

312. The Chair asked the Committee to approve the inclusion of the words “and activities” under paragraph 1 of the text and remove the brackets. The Committee approved the proposal. The Chair referred to the three proposals advanced by the delegations on the words protection and rights. It noted that one proposal was to substitute “protection” for “rights”. The second proposal was to add the term “scope of rights” and the third suggestion was to use the phrase “under the object and scope of protection”. The Chair suggested that the proposal advanced by the Delegation of India reflected the position of different delegations and stated that in order to avoid repetitions the draft could read “categories of platforms and activities to be included under the object and scope of protection”.

313. The Secretariat summarized the amended version of paragraph 3 and the Committee approved it.

314. The Secretariat read paragraph 4 of the draft conclusions which stated: “during the discussions, it was understood that broadcasting, (wireless or by wire) cablecasting, subject to clarification of the similar legal treatment of cable casting organizations and national laws, and pre-broadcast signals should be included in the scope of application of the proposed treaty on the signal-based approach. Some Delegations were of the view that such protection should be mandatory under the treaty”. The Chair invited the Committee to consider paragraph 4.

315. The Delegation of India asked to introduce the words “in the traditional sense” after “signal-based approach”.

316. The Delegation of Japan suggested enclosing the phrase “subject to clarification of the legal treatment of cablecasting organizations in national laws” within parenthesis but otherwise supported the draft version of paragraph 4.

317. The Delegation of Brazil asked the Delegation of Japan to explain the need for parenthesis. It suggested that the words “a similar” in the second line of paragraph 4 be replaced with “the legal treatment for cablecast organizations” in order to avoid the presumption that cablecast and broadcast organizations retained similar treatment under national laws.

318. The Delegation of the United States hoped to clarify that the proposal of the Delegation of India on paragraph 4 only modified broadcasting and cablecasting organizations in the mandate and stated that any other intended modification would be opposed.

319. The Delegation of Japan specified that it wished to introduce parenthesis as opposed to brackets and explained that their purpose was to differentiate the main part of the paragraph from its clarification and to make it more readable and clear.

320. The Delegation of Brazil opposed the proposal made by the Delegation of Japan on the basis that it did not alter the text in any particular way and invited the Committee to maintain the original text.

321. The Secretariat responded to a question from the Delegation of Brazil by expressing the view that the introduction of parenthesis in paragraph 4 as proposed by the Delegation of Japan

could put a clear line as to what applied back to cablecasting but was not essential in that sentence and could be viewed as a matter of writing style.

322. The Delegation of Italy pointed out that the draft conclusions represented a summary of the discussions as opposed to a legal instrument and that excessive negotiations on its content were inappropriate. It endorsed the position of the Delegation of the United States of America with regard to paragraph 4.

323. The Delegation of the European Union and its Member States endorsed the statement made by the Delegation of Italy and urged the Committee to proceed more swiftly.

324. The Delegation of Chile supported the amendment proposed by the Delegation of Brazil concerning line two of paragraph 4 and asked the Committee to clarify the reference to pre-broadcast signals in relation to the scope of application.

325. The Delegation of China asked the Committee to clarify that cablecasting was referred to in the traditional sense.

326. The Delegation of the European Union and its Member States pointed out that its previous statement referred to the parenthesis proposal and not to the proposal advanced by the Delegation of India.

327. The Chair highlighted the three suggestions advanced by the Committee. The first one had been advanced by the Delegations of Brazil and India and supported by the Delegation of Chile to delete the similar legal treatment for cable casting organizations in national law. The Chair suggested deleting the words “a similar” and replacing them with “the legal treatment of cablecasting”. Second, the Delegation of Chile proposed to change “a similar” with “the similar”. Third, the Delegation of Japan, speaking on behalf of Group B, suggested the introduction of parenthesis. The Chair referred to the comments made by the Secretariat on that issue and asked the Delegation of Japan not to insist on their proposal if it was not going to affect the meaning of the text. The Chair suggested that the Delegation of India should retrieve their request to add the words “in the traditional sense” after “signal-based” as no consensus had been achieved in that respect.

328. The Delegation of India accepted the Chair’s suggestion and asked to introduce the words “in the traditional sense” after “broadcasting, cablecasting” in the second line so as to mirror the language adopted in SCCR/26/REF/CONCLUSIONS.

329. The Delegation of the European Union and its Member States opposed the revised proposal of the Delegation of India because the mandate referred to “broadcasters in the traditional sense” and not to “broadcasting in the traditional sense”.

330. The Chair stated that the mandate did not foreclose the disparity of opinion on that issue and invited the Committee to approve the proposal in accordance with its last summary.

331. The Committee approved paragraph 4.

332. The Chair invited the Committee to approve paragraph 5 which stated: “Different points of view were expressed with regard to simultaneous and near simultaneous unchanged transmission of broadcasts. Some Delegations considered such transmission closely connected to broadcasting, while some other Delegations were of the view that such transmissions required further discussion in the Committee to consider possible inclusion in the object of protection of the proposed treaty”.

333. The Delegation of China referred back to paragraph 4 and pointed out that its question as to whether cablecasting was included in the concept of traditional broadcasting organization had not been answered.

334. The Chair answered that cablecasting was referred to as such and was not given any specific substantial meaning in the context of paragraph 4.

335. The Committee approved paragraph 5.

336. The Chair invited the Committee to comment on paragraph 6 which stated: "Discussions took place in relation to the possible inclusion of deferred linear transmissions of broadcasts and on-demand transmissions of broadcast, catch up and program related material which will be further examined at the next session of the Committee. If such protection is to be included, further discussions will be held on whether the protection would be mandatory or optional".

337. The Committee approved paragraph 6.

338. The Chair invited the Committee to comment on paragraph 7 which stated: "A significant number of Delegations [several Delegations] did not agree with the possibility of including Internet originated linear transmissions in the object of protection [while other Delegations expressed preference for its inclusion".

339. The Committee approved paragraph 7.

340. The Chair invited the Committee to comment on paragraph 8 which stated: "In relation to the protection to be granted to beneficiaries, various approaches were discussed which will be further examined at the next session of the Committee. Some Delegations expressed support in favor of rights related to the transmission of the broadcast signal from a fixation, while some Delegations strongly questioned the granting of rights taking place after the fixation of a broadcast signal such as reproduction of fixations of broadcasts, distribution of fixations, and performance of a broadcast signal in places accessible to the public. A number of Delegations considered that there should be exclusive rights for broadcasting organizations while some others considered there should be a right to prohibit when third-parties intercept signal by any means".

341. The Delegation of India wished to amend "some others" with "many others" in the last sentence of paragraph 8.

342. The Delegation of Hungary expressed the view that a neutral language should be used and that further discussions on the delegations' position should be avoided at that stage.

343. The Delegation of Czech Republic suggested replacing "some others" with "while others" in order to reach consensus.

344. The Committee approved paragraph 8 as amended by the Delegation of Czech Republic.

345. The Chair invited the Committee to comment on paragraph 9 which stated: "Some Delegations requested further clarification of some technical issues at the next session of the SCCR".

346. The Delegation of Japan, speaking on behalf of Group B, hoped to clarify the paragraph by stating that "some Delegations requested representation and further discussion with experts on some technical issues at the next session of the SCCR".

347. The Delegation of Czech Republic, speaking on behalf of the CEBS Group, accepted the proposal advanced by Group B and wished to specify that only a limited time would be dedicated to the technical presentations.
348. The Chair suggested that details concerning the timing of the presentation could be dealt with as part of the future work discussions.
349. The Delegation of the European Union and its Member States agreed with qualifying the provision as suggested by the CESB Group before engaging with the future work discussions.
350. The Delegation of Brazil stated that it agreed with the proposal of the CESB Group that the conclusions should clarify that technical presentations were welcome provided that they did not negatively affect textual discussions on broadcasting.
351. The Delegations of India reiterated that delegations reacted positively to the proposal of having technical presentations in the course of the discussions and expressed the view that the proposal advanced by the Delegation of Japan on paragraph 9 accurately reflected that position.
352. The Delegation of Kenya agreed with the proposal advanced by the Delegation of Japan and stated that any further clarifications could have been dealt with when considering future works.
353. The Delegation of the European Union and its Member States agreed with the proposal made by the Delegation of Japan and pointed out that technical presentations should be limited to a maximum duration of one hour.
354. The Delegation of the United States of America aligned itself with the concern expressed by the Delegation of the European Union and its Member States that technical presentations would be given adequate time in the following session.
355. The Delegation of Switzerland suggested that the original draft text be adopted considering that no conclusion was reached on the proposal concerning technical presentations and that no consensus had been expressed as to their format, timing and location.
356. The Chair summarized the position on paragraph 9. It reassured the Delegations of the European Union and its Member States and Switzerland that their concerns would be taken into account. The Committee to accept the proposal of Group B on the basis that it attracted the largest consensus.
357. The Chair invited the Committee to comment on paragraph 10 on maintaining the item on broadcasting organizations on the agenda of SCCR 28.
358. The Committee approved the paragraph 10.
359. The Chair invited the Committee to comment on paragraph 11 which stated: “the Committee based its discussions on the working document containing comments on and textual suggestions towards an appropriate international instrument in whatever form on exceptions and limitations for libraries and archives adopted by the Committee, SCCR/27/ 3, and on the objectives and principles for exceptions and limitations for libraries and archives submitted by the United States of America, document SCCR/2006/8”.
360. The Delegation of Japan asked to replace the word “on” with “to some extent” in the fourth line of the paragraph in order to clarify the level of discussions on both documents and take account of the position expressed by Group B.

361. The Committee approved paragraph 11 as amended by Group B.

362. The Chair invited the Committee to approve paragraph 12 which stated: “different points of view remained in terms of the nature of the appropriate international legal instrument or instruments, whether model law, joint recommendation, treaty and/or other forms referred to in the 2012 General Assembly mandate to the SCCR for text-based work”.

363. The Delegation of Japan, speaking on behalf of Group B, sought to replace “the” with “an” in respect of international legal instrument and add the word “guidelines” before the word “treaty”. It also suggested the deletion of “full text based work” because it was not reflected by the WO/GA/41/14 mandate and the addition of “with regard to deferring that mandate, many Delegates remained interested in discussing national laws, development of studies, licensing scheme, and the exchange of national experiences” that was adopted in the SCCR 26 conclusions.

364. The Delegation of India expressed disagreement regarding the introduction of the words “licensing scheme” because it referred to commercial licensing and libraries were non-profit organizations.

365. The Delegation of Kenya opposed Group B’s reference to “guidelines” because no reference was made using that language in the course of the discussions. The phrase “many delegations” was also opposed for portraying an excessively wide consensus and the Delegation aligned itself with the opposition of the definition of “licensing scheme”.

366. The Delegation of the European Union defended the reference to “guidelines” advanced by Group B because it reflected its standpoint in the discussions.

367. The Delegation of India referred to the “text-based” reference contained in SCCR/25/REF/CONCLUSIONS on the topic of libraries and archives and to the definition of “international legal instrument” adopted in SCCR/26/REF/CONCLUSIONS and invited the Committee to be consistent with previously adopted language.

368. The Delegation of Iran (Islamic Republic of) aligned itself with the Delegation of India in opposing Group B’s proposed amendment on the basis that it failed to reflect the pursuit of future text-based negotiations and the intention of some delegations to transfer comments from the main text to an annex. The Delegation asked to introduce an additional paragraph about the merging of the three proposals made by the Delegations of Kenya and Ecuador and by the African Group.

369. The Delegation of Kenya noted that the Delegation of the EU and its Member States had been adopting the term “legally binding treaty” in the course of the discussions and that there was no need to change this into “guidelines” for the purposes of the draft conclusions. It endorsed the need to adopt a language reflecting the previous conclusions of the SCCR.

370. The Delegation of Brazil emphasized that the positions of the Delegations of the European Union and its Member States and Iran (Islamic Republic of) should be reflected in the conclusions because all delegations had a right to be considered on an equal footing.

371. The Delegation of Greece expressed support for the comments made by the Delegation of Brazil.

372. The Chair suggested that the paragraph had been originally drafted with the intention to reflect different views and referred to the language: “different points of view remained in the terms and nature of the appropriate international instrument”. The Chair proposed to adopt the

language of paragraph 15 of SCCR/26/REF/CONCLUSIONS, followed by the qualification that “while other Member States did not agree” so as to reflect the position of the Delegation of the European Union and its Member States. The Chair considered a further proposal from that Delegation on the last sentence of the first paragraph reading “referred to in the 2012 General Assembly mandate to the SCCR, and not to use for text-based work” and suggested that “and not for use for text-based work” be changed in “for text-based work” to reflect the language of SCCR 26.

373. The Delegation of the European Union and its Member States stated that it would support the original draft with the addition of the words “many Delegations have expressed their view that they do not support binding instrument or instruments”.

374. The Delegation of Kenya suggested adopting the words “some Delegation expressed support in a legally binding instrument, while others did prefer a non-legal binding instrument”.

375. The Delegation of the European Union and its Member States welcomed that latter proposal. The text was revised so as to mirror the suggestion of the Delegation of Kenya.

376. The Chair summarized the revised proposal and the Secretariat read it to the Committee.

377. The Delegation of South Africa stated that the revised paragraph was redundant and the language incorrect.

378. The Delegation of the European Union and its Member States noted that the language adopted by the Secretariat did not reflect the language used by the Delegation in its interventions. It reiterated its proposal that “many delegations have expressed their view that they do not support binding instruments or instruments” and interpreted the suggestion of the Delegation of Kenya as an attempt to strike a balance between the delegations supporting a binding instrument and those opposing it. The delegation asked the Secretariat to clarify whether the WO/GA/41/14 mandate expressly referred to “text-based” work.

379. The Secretariat read from WIPO General Assembly document WO/GA/41/14 and clarified that it did not contain an express reference to text-based work.

380. The Chair repeated that the Delegation of the European Union and its Member States proposed to terminate the first sentence of the paragraph with the word “SCCR” and delete the words “text-based”.

381. The Delegation of Kenya opposed the proposal described by the Chair on the basis that a text had to be worked on and presented to the General Assembly regardless of its binding or non-binding nature in order for the Committee to achieve progress.

382. The Delegation of Brazil invited the Delegations of Kenya and the European Union and its Member States to be more flexible in their approach in light of the clear views that they had advanced in the course of the discussions.

383. The Delegation of Iran (Islamic Republic of) pointed out that its intervention had not been reflected in the conclusions.

384. The Chair reassured the Delegation of Iran (Islamic Republic of) that its comment had been noted and supported by other delegations.

385. The Delegation of Ecuador stressed that the draft conclusions should represent a snapshot of the work of the Committee and should reflect the fact that a text was adopted as a basis for discussions.

386. The Delegations of Italy and the United Kingdom stressed that the WO/GA/41/14 mandate did not foresee effect-based negotiations and that it was not appropriate to insert the words “text-based” in the conclusions.

387. The Chair noted the lack of consensus on the use of the language “text-based” and suggested that discussions on that issue be temporarily suspended in order to proceed with the following paragraphs. He expressed the view that a more comprehensive view of the document could assist the delegations in achieving consensus on paragraph 12.

388. The Delegation of Kenya drew a distinction between text-based work and text-based negotiations and stated that the Committee had been working on rather than negotiating a text. The text referred to had a clear format and was represented by document SCCR/26/3. Therefore the Delegation could see no issue in reflecting that fact in the conclusions by using the words “text-based”.

389. The Delegation of Brazil pointed out that no final decision was taken on the nature of the work of the Committee and suggested rephrasing the paragraph as follows: “text-based work was also carried out”.

390. The Delegation of the European Union and its Member States explained that it was outside the powers of that Committee to alter the mandate provided by the General Assembly. It noted that a reference to “text-based” work could be included in the descriptive part of the paragraph relating to the method of work adopted by the Committee.

391. The Delegations of Mexico and India agreed with the suggestion made by the Delegation of Brazil that the draft conclusions should refer to the text-based work of the Committee, particularly in light of the suggestion advanced by some delegations to consolidate proposals on most topics.

392. The Delegation of Uruguay expressed disagreement with the Delegation of the European Union and its Member States and stressed that the Committee had already approved the use of the words “text-based” in the December 2013 mandate.

393. The Delegation of Brazil expressed support for the language adopted by the Delegation of Mexico in framing its proposal. It considered the proposal made by the Delegation of the European Union and its Member States to be appropriate but pointed out that the words “text-based” should be included at the beginning of the paragraph rather than in the final descriptive remarks.

394. The Chair proposed to maintain the second paragraph and transfer the first sentence of the fifth paragraph to it. That sentence objectively reflected the work of the Committee by stating: “it continued the discussions on the pending topics in document SCCR/26/3, in order using the text-based approach”.

395. The United Kingdom noted that the Delegations of Kenya and the European Union and its Member States should negotiate the language of the paragraph independently and that the discussions should proceed.

396. The Chair invited the Committee to approve paragraph 13 which stated: “The Secretariat briefed the Committee on the ongoing work regarding the update of the study on copyright limitations and exceptions for libraries and archives, document SCCR/17/2 by Professor Kenneth Crews”.

397. The Committee approved paragraph 13.

398. The Chair invited the Committee to comment on paragraph 14 which stated: "Several delegations propose that the Secretariat organize regional workshops to address the challenges faced by libraries in relation to the 11 issues identified in document SCCR/26/3, including the application of existing international treaties. The Secretariat was asked to examine the available resources to organize such meetings".

399. The Delegation of Ecuador expressed the view that the workshops should be carried out by library representatives on the issue of cross-border uses as well as by broadcasting organizations.

400. The Delegation of Japan speaking on behalf of Group B proposed that the text should clearly express that some delegations had two levels of reservations on the holding of workshops. It proposed that the paragraph should state that "other delegations expressed workshops should be held after the agreement on principles and objectives in order to provide technical assistance and other delegations expressed the reservation on holding workshops".

401. The Delegation of Kenya reminded the Committee that some delegations asked for clarifications concerning technical workshops and that the Secretariat could not provide full information on that issue. It was therefore imprecise to conclude that those delegations automatically had reservations before being provided with an answer by the Secretariat.

402. The Delegation of Brazil sought a clarification on the suggestion advanced by some delegations that the Committee should have had an agreement on principles before making a decision. It asked the Delegation of Japan to repeat their text proposal and clarify the idea of summation to technical assistance that was not discussed during the session.

403. The Delegation of the European Union stated that their reservation was not conditional. It asked the Secretariat to confirm that its position had been duly noted and stressed that it be reflected in the conclusions.

404. The Delegations of the United Kingdom stressed that the lack of support by some delegations in relation to technical presentations should be reflected in the conclusions.

405. The Delegation of Brazil agreed with the statement of the Delegation of the United Kingdom.

406. The Delegation of Kenya pointed out that the language "did not support" in relation to the regional workshops underlined a reasoned rejection and did not reflect the reality that some delegations simply requested further time for considering the proposal.

407. The Chair acknowledged that there was a lack of consensus on that issue and that the proposal advanced by the Delegation of Brazil reflected that.

408. The Secretariat read a new textual suggestion on paragraph 12. It stated "different points of view remained in terms of the nature of an appropriate international legal instrument or instruments, whether model law, joint recommendation, treaty, and/or other forms referred to in the WO/GA/41/14 mandate to the SCCR. Some delegations expressed their support for a binding instrument or instruments. Other delegations did not support a binding instrument or instruments. The Committee continued the discussions on the pending topics in document SCCR/26/3 in order using a text-based approach." The first sentence of paragraph 5 was deleted and the second sentence read "during the discussions on document SCCR/26/3, there was a rich exchange, and then it would continue from there".

409. The Committee approved paragraph 12 and the Chair re-directed the discussions to paragraph 14.

410. The Delegation of Chile proposed a formulation clarifying that discussions on that topic were explanatory, preliminary and not detailed and that after an initial exchange not all delegations were in agreement.

411. The Delegation of the United Kingdom supported the proposal of the Delegation of Chile in principle and suggested that the last sentence of the paragraph be deleted as no agreement had been reached by the delegations.

412. The Delegation of Brazil refused the proposal to delete the last sentence of the paragraph on the basis that it reflected the request made by the Delegation of the United States of America concerning the available resources of the Secretariat to organize the regional workshops.

413. The Delegation of Mexico expressed the view that the a more general sentence at the end of the paragraph would reflect the concern expressed by some delegations to gather information not only as to resources, but also as to formant, timing and location of the regional workshops.

414. The Delegation of the United Kingdom stressed the importance of clarifying that no conclusion was reached on the topic of technical presentations.

415. The Delegations of the European Union and its Member States and Brazil agreed that archives should be mentioned in the paragraph.

416. The Delegation of the United States of America confirmed that it had made general enquiries as to the resources for funding regional workshops in the course of the discussions but stressed that it had not agreed with the proposal itself. The Delegation reiterated that principles and objectives had to be clarified before an informed decision could be made on regional workshops.

417. The Secretariat presented a textual suggestion based on the proposal of the Delegation of Chile that stated: "during the preliminary discussions, some delegations expressed interest, while others were not in a position to support the proposal".

418. The Delegation of Brazil welcomed the proposal from the Delegation of Chile but expressed a preference for the suggestion of the Delegation of the United Kingdom.

419. The Delegation of the United Kingdom proposed to adopt the first part of the proposal by the Delegation of Chile and the suggestion advanced by the Secretariat plus an additional sentence that stated: "The Secretariat was asked to examine the available resources to organize such meetings but no further action was agreed".

420. The Delegation of Kenya made enquiries as to the meaning and implications of the statement that no further action was required. It expressed concern that it may have the effect of finally disposing of the proposal.

421. The Chair expressed the view that the final sentence did not disclose any further action that might have been taken by the Committee.

422. The Delegation of India proposed to replace the final sentence as proposed by the Delegation of the United Kingdom with "the matter is under consideration", which meant that the proposal was neither rejected nor approved.

423. The Delegation of the United Kingdom pointed out that draft conclusions were a factual report and in relation to regional workshops the fact was that no agreement had been reached on any further action.

424. The Secretariat read an updated version of the text. It provided that “several delegations proposed that the Secretariat organize regional workshops to address the challenges faced by libraries and archives in relation to the 11 issues identified in document SCCR/26/3, including the application of existing international treaties. During the preliminary discussions, some delegations expressed interest, while others were not in a position to support the proposal. The Secretariat was asked about the available resources to organize such meetings, but no further action was agreed. One delegation asked for a presentation during the SCCR by technical experts on the complex issues faced by libraries”.

425. The Delegation of the United States of America expressed concern in relation to the imbalance that could arise if libraries were included in regional workshops and publishers were not. It questioned how much time would be allocated to the presentations.

426. The Chair recognized that the questions advanced by the Delegation of the United States of America were substantial in nature and required open discussions in the plenary. It reassured the Delegation that the Committee would consider those matters in subsequent negotiations.

427. The Committee approved paragraph 14.

428. The Chair invited the committee to make comments on paragraph 15, which read: “during the discussions on document SCCR/26/3, there was a rich exchange of information on national practices and practical experiences, including detailed information and figures. The proponents of Treaty language texts agreed to work on their texts for each of the topics discussed, taking into account other suggestions on those texts made during the 27th Session. This time, the Committee discussed topics 5, 6, 7, 8, 9, and started discussion of topic 10”.

429. The Delegation of Kenya proposed to introduce the words “including the proposal to match the different textual actual proposals” after “exchange of information” and approved the remaining part of the text.

430. The Delegation of Japan, speaking on behalf of Group B, proposed to delete the sentence “the proponents of treaty language text agreed” because that was just an agreement among some proponents and the expression “treaty language” was beyond reality.

431. The Delegation of the United States of America supported the proposal advanced by Group B and asked to introduce a reference to document SCCR/26/8.

432. The Delegation of the European Union and its Member States agreed with the proposal advanced by Group B.

433. The Delegation of Brazil strongly disagreed with the proposal of deletion advanced by Group B. The phrase subject to the proposal contained a statement of fact mirroring the view of several delegations. The Delegation stressed that removing it from the conclusions would have affected the transparency of the discussions.

434. The Delegation of Ecuador and Iran (Islamic Republic of) endorsed the comments made by the Delegation of Brazil and urged the delegations to show flexibility.

435. The Delegation of Kenya stressed the factual nature of the sentence subject to the proposal of deletion and reminded the Committee that after lengthy discussions the proponents of the treaty agreed to merge their textual proposals.

436. The Delegation of India aligned itself with the comments advanced by the Delegations of Brazil, Ecuador and Iran (Islamic Republic of). It stated that the fact discussed in the previous days could not be twisted and reminded the Committee that the drafting of conclusions was a reflective exercise.

437. The Delegation of the United States of America highlighted the disagreement among the delegations with respect to the nature of the document they worked on. It suggested that the paragraph should simply state that work was carried out towards something, without specifying the nature of any document.

438. The Delegation of Iran (Islamic Republic of) supported the proposal advanced by the Delegation of Kenya.

439. The Delegation of the European Union and its Member States recognized that both sides had a strong argument and suggested the introduction of a balancing sentence in the paragraph.

440. The Delegation of Brazil expressed disappointment in the inflexible approach of the Delegation of the United States of America. It reminded the delegations that the language of paragraph 15 had been formulated by the Chair and did not state the precise names of the delegations proposing the adoption of treaty language. In that sense the paragraph assumed that several delegations were supportive of treaty language. The Delegation expressed the view that Member States had the right to propose their language as possible treaty language in the same way as they had the right to oppose a treaty. It considered that by advancing its proposal of deletion, the Delegation of the United States of America conditioned or attempted to condition the delegations' view on that particular issue. It stressed that delegations had a right to be proponents of treaty language and that such right could not be ignored on the mere basis that other delegations would prefer that proponents of treaty language would not be such proponents. The Delegation acknowledged that diversity of opinion was inevitable but clearly stated that deleting mentions that other delegations were pushing for an objective was illegitimate. It appealed to the delegations' reasonableness to guarantee the proper functioning of the Committee by allowing the facts to be recorded.

441. The Chair proposed to amend the paragraph so that it stated: "The proponents of text agreed to work on their proposals for each of the topics discussed".

442. The Delegation of India supported the Chair's revised proposal on the basis that it did not specify the nature of the document worked on by the delegations and was consistent with the language adopted in SCCR/26/3.

443. The Delegation of the European Union and its Member States agreed with the Chair's revised proposal.

444. The Delegation of the United States of America asked the Chair to clarify the use of plural for "texts". It expressed the view that the plural was preferable because it would include document SCCR/26/8 and reassure the Delegation of Brazil that the delegations were working on texts.

445. The Chair confirmed that the proposal adopted the word "texts" in plural and thanked the Delegation of the United States of America for explaining the consequences of the use of that term.

446. The Delegation of Kenya stated that it could agree to the Chair's proposal if it also specified that an initial suggestion had been made and that the proponents finally agreed to work on the texts.

447. The Delegation of Ecuador asked the Delegation of the United States of America to clarify the rationale of its question in relation to the plural of the word "texts".

448. The Chair invited the Delegation of Ecuador to avoid making that question. It highlighted that if delegations wished to work together they were free to do so and invited the Delegation to consider the compromise proposal.

449. The Delegation of Ecuador agreed with the Chair's proposal.

450. The Secretariat read an updated version of the paragraph including the proposal advanced by the Delegation of Kenya. It stated: "During the discussions on document SCCR/26/3, there was a rich exchange of information on national practices and practical experiences, including detailed information and figures, as well as proposals to merge the different texts on various topics. The proponents of texts agree to work on their proposals for each of the topics discussed and taking into account other suggestions on those texts made during the 27th Session. At this time, the Committee discussed topics 5, 6, 7, 8, 9, and started discussion on topic 10".

451. The Committee approved paragraph 15.

452. The Chair invited the Committee to approve paragraph 16 which stated: "As to topic 5 on parallel importations, delegations recognized that it was a cross-cutting, sensitive issue. Some delegations emphasized that the choice for international, regional, or national exhaustion was left to national law by international copyright treaties. A number of aspects of the topic were explored by delegations and observers".

453. The Delegation of Japan proposed to introduce the word "some" before "delegations".

454. The Committee approved paragraph 16.

455. The Chair invited the Committee to approve paragraph 17 which stated: "Paragraph 7, as to topic 6 on cross-border uses, a number of delegations expressed different views on the need to allow libraries and archives to import works and to exchange them across borders as part of their public service particularly for education and research. A number of aspects of the topic were explored by delegations and observers. As to topic 6 on cross-border uses, a number of delegations expressed different views on the need to allow libraries and archives to import works and to exchange them across borders as part of their public service, particularly for education and research. A number of aspects of the topic were explored by delegations and observers".

456. The Delegation of Japan, speaking on behalf of Group B, proposed to amend the text in the second line to state that: "different views on how library import works and to exchange them".

457. The Delegation of Ecuador proposed to replace the word "import" with the phrase "to copy and exchange works".

458. The Delegation of Brazil expressed the view that the word "allow" should be retained on the basis that the discussions focused on the solutions to allow libraries and archives to import works rather than on the ways in which those works were imported.

459. The Delegation of Kenya noted that the issue of importation did not affect the topic of that paragraph and stated that no discussion took place as to how libraries and archives imported works. Conversely, the discussions focused on the need to exchange or to address the challenges posed by the digital environment in exchanging works across borders, particularly for education and research purposes.

460. The Chair summarized the proposal of the Delegation of Kenya to change the word “import” with “exchange works across borders”. The Committee supported that proposal. An issue was pending concerning Group B’s proposal to delete “the need to allow” and the proposition advanced by the Delegation of Brazil to restrict the deletion to “the need”.

461. The Delegation of the United Kingdom suggested allowing the delegations time for considering linguistic amendments to paragraph 17 and invited the Committee to move forward with the discussions.

462. The Chair invited the Committee to approve paragraph 18 which stated: “As to topic 7 on orphan works, retracted and withdrawn works and works out of commerce, delegations discussed the importance of addressing this issue as that subject matter was under development and consideration in many countries. Some delegations were of the view that these categories of work should be treated separately, bearing in mind their own particularities. A number of aspects of the topic were explored by delegations and observers”.

463. The Delegation of Japan proposed the introduction of the word “some” before “delegations”.

464. The Delegation of Kenya considered that the paragraph did not highlight any specific position and questioned the proposal advanced by the Delegation of Japan. It expressed the view that the term “Committee” could be adopted instead of “some delegations”.

465. The Delegation of Uruguay endorsed the proposal advanced by the Delegation of Kenya and pointed out that the Delegation of Italy had expressed the same view in the course of the discussions. It stated that the expression “some delegations” diluted the discussions and expressed support for the adoption of the term “Committee”.

466. The Delegation of Mexico supported the proposal of the Delegation of Kenya but expressed flexibility in suggesting that the impersonal words “it was suggested” could be adopted if that helped achieving consensus with Group B.

467. The Delegation of the European Union and its Member States agreed with the proposal advanced by the Delegation of Mexico.

468. The Committee approved paragraph 18. The Chair inquired about progresses with respect to paragraph 17.

469. The Delegation of Brazil advanced a proposal on paragraph 17. It stated: “As to topic 6, on cross-border uses, a number of Delegations expressed different views on how to enable libraries to copy and exchange them across borders as part of, *et cetera*”.

470. The Delegation of Kenya supported the proposal made by the Delegation of Brazil but expressed the view that it omitted to consider the growing need to take account of new technological developments affecting libraries, archives and research and educational institutions such as the digitalization of documents and the development of new services such as distance learning.

471. The Chair invited the Committee to approve paragraph 19 which stated: “As to topic 8, on liability of libraries and archives, several delegations stated this was a complex topic that needed further consideration. Some were of the view that a limitation on liability would serve as a safe harbor to empower libraries and archives to fulfill their mission. A number of aspects of the topic were explored by delegations and observers”.

472. The Delegation of Japan, on behalf of Group B, proposed that the words “would serve as a safe harbor” be changed with “could” and that a sentence be added stating: “Some delegations expressed their concerns about cross-cutting principle of civil law and international obligation in that matter”.

473. The Delegation of the United States of America presented a further proposal on paragraph 17 stating: “As to topic 6 on cross-border uses, a number of delegations expressed different views on how to enable libraries and archives to exchange works and copies of works across borders as part of their public service mission, particularly for education and research”.

474. The Delegation of Kenya accepted the proposal made by the Delegation of the United States of America.

475. The Committee approved paragraph 17 and the Chairman welcomed further comments on paragraph 19.

476. The Delegation of Brazil clarified that it accepted the proposals made by Group B on paragraph 19 but suggested substituting the word “could” with “would”.

477. The Delegation of the European Union and its Member States agreed with the amendment proposed by the Delegation of Brazil.

478. The Committee approved paragraph 19.

479. The Chair invited the Committee to approve paragraph 20 which stated: “As to topic 9, technological protection members, TPMs, a number of Delegations recognized that technological measures of protection should not represent barriers for libraries and archives in fulfilling their missions. Other Delegations believed that the existing international treaties already provided a flexible framework enabling appropriate solutions at the national level. Various approaches were discussed on how to address the relationship between TPMs and limitations and exceptions for libraries and archives. A number of aspects of the topic were explored by Delegations and observers”.

480. The Committee approved paragraph 20.

481. The Chair invited the Committee to approve paragraph 21 which stated: “As to topic 10 on contracts, a number of Delegations expressed views as to whether contractual practices should override the operation of Lars at the national level. Different views were expressed regarding the need for international norms, regulating the issue. Legal and practical implications of the relationship between licensing schemes and new technologies and services were also discussed”.

482. The Committee approved paragraph 21.

483. The Chair invited the Committee to approve paragraph 22 which stated:” A new working document will be prepared by the Secretariat based on document SCCR 263 and adding new text proposals from Delegates based on proposals during the 27th Session. This document will be the basis for the future text-based work to be undertaken by the Committee in its 28th Session”.

484. The Delegation of Japan, speaking on behalf of Group B, proposed to amend the first sentence so that it read: "A new working document will be compiled by the Secretariat based on document SCCR/26/3, and include submissions from Delegations". It expressed the view that that formulation reflected the working method in a more appropriate manner.

485. The Delegation of Kenya suggested that the term "prepared", as opposed to "compile", reflected the intervention of the Delegation of the United States of America that they would submit principles in relation to some of the topics. It noted that the proposal of Group B would contradict that understanding.

486. The Delegation of Iran (Islamic Republic of) made a proposal stating: "Several Delegations proposed that for facilitating negotiations on the text of limitations and exceptions about libraries and archives, the comments were separated from the text and transferred to an annex in the working document".

487. The Delegation of Japan referred to the submissions advanced by the Delegation of Kenya and stated that no conflict subsisted between the term "compiling" and the inclusion of principles by the Delegation of the United States of America. It considered that the term "compile" reflected the work that the Delegation of the United States of America intended to carry out at the following session. Further, it proposed the deletion of the words "text-based" on the basis that it was narrow and failed to consider other types of work that could be carried out at the following session.

488. The Delegation of Canada clarified the proposal made by Group B by informing the Committee that the amendments were aimed at integrating comments advanced by the Delegation on various topics that did not appear in the working documents of that session or of SCCR 26.

489. The Delegation of Kenya accepted the adoption of the term "compiled" but strongly opposed the deletion of the words "text-based" from the paragraph. It expressed concern that such an amendment would preclude the delegations from working on a text-based approach during SCCR 28. The Delegation expressed support for the proposal made by the Delegation of Iran (Islamic Republic of) regarding the inclusion of a paragraph reflecting the request of some delegations that comments be moved to an annex.

490. The Delegation of India observed that the language "text-based" appeared in all previous SCCR conclusions concerning libraries and archives and questioned whether its deletion was motivated by the proponents' decision to consolidate their texts. It expressed the view that the proposal to remove that wording was pointless.

491. The Delegation of the United States asked the Committee to consider the addition of a reference to document SCCR/26/8 within that paragraph.

492. The Delegation of Brazil endorsed the position taken by the Delegations of India and Kenya.

493. The Delegation of the United Kingdom suggested resolving the "text-based" controversy in the same way as in paragraph 12. It urged the Committee to avoid stating what was proposed in the paragraph in order to circumvent substantial discussions where there was no agreement. Further, the Delegation proposed to adopt a new working document which could be compiled and take account of new submissions.

494. The Delegation of Kenya supported the proposal of the Delegation of the United Kingdom on new submissions but opposed the inclusion of a reference to document SCCR/26/8 in the paragraph on the basis that it did not represent a new document.

495. The Delegation of Brazil recognized that the proposal advanced by the Delegation of the United Kingdom was inspired by paragraph 22 of SCCR/26/REF/CONCLUSIONS and supported it.

496. The Secretariat read paragraph 22 of SCCR/26/REF/CONCLUSIONS to the Committee.

497. The Delegation of the United States of America insisted that a reference to document SCCR/26/8 should be introduced in the second sentence of paragraph 22 of that session's conclusions.

498. The Delegation of the United Kingdom expressed favor for a simple and brief paragraph and invited the Committee to avoid including proposals on which there was no consensus.

499. The Delegation of Uruguay aligned itself with the intervention of the Delegation of the United Kingdom and suggested that paragraph 22 of SCCR/26/REF/CONCLUSIONS formed an appropriate basis for the document that was under scrutiny. It considered that the proposal advanced by the Delegation of Iran (Islamic Republic of) should be reflected in the conclusions subject to appropriate qualifications.

500. The Delegation of the European Union and its Member States supported the request of the Delegation of the United States of America to introduce a reference to their principles in the paragraph.

501. The Delegation of Italy opposed the proposal of the Delegation of Iran (Islamic Republic of) on the basis that the WO/GA/41/14 mandate specifically required by paragraph 7 that working documents should include text proposals and comments.

502. The Delegation of Kenya stated that it would accept the reference to SCCR/26/8 and suggested to amend the second line of the paragraph to: "this document will be the basis for the future discussions on text-based approach work to be undertaken by the Committee in its 28th Session".

503. The Delegation of Brazil supported the proposal of the Delegation of Iran (Islamic Republic of) as clarified by the Delegation of Uruguay. It also expressed a preference to adopt the language of paragraph 22 SCCR/26/REF/CONCLUSIONS as suggested by the Delegation of the United Kingdom.

504. The Delegation of the United States of America communicated its wish to keep document SCCR/26/8 separate notwithstanding the inclusion of the objectives and principles in the working document.

505. The Chair advanced a number of suggestions on paragraph 22. First, that the word "compiled" be used instead of "prepared" as the former term had received larger consensus among the delegations. Second, it suggested to adopt the phrase "including submissions from Delegations" that was perceived as more inclusive by some delegations. Third, that a reference to document SCCR/26/8 be made in the second sentence of the paragraph. Fourth, that the text-based controversy be resolved by stating that the SCCR 27 conclusions and SCCR/26/8 would be the basis for future discussions "following the mandate of the 2012 General Assembly and previous agreements of this Committee on this matter". The paragraph would therefore read: "A new working document will be compiled by the Secretariat based on document SCCR/26/3, including submissions from Delegations. This document as well as document

XX/XX will be the basis for the future discussion to be undertaken by the Committee in its 28th Session following the 2012 mandate of the General Assembly and previous agreements by this Committee on this matter."

506. The Delegation of India congratulated the Chair for the proposal but pointed out that the past three SCCR had been adopting the words "text-based" and that it seemed surprising to avoid them on that occasion.

507. The Chair reiterated the compromise nature of the proposal and reassured the Delegation of India that the language of previous agreements was included by reference to the mandate.

508. The Delegation of the European Union and its Member States reiterated that the work of SCCR 28 would not necessarily fall under the definition of "text-based" work and that such language should be avoided. In order to achieve consensus, the Delegation proposed to add a sentence stating that some delegations supported a text-based approach to the work

509. The Delegation of Iran (Islamic Republic of) expressed the view that the agreements referred to by the Chair's proposal be identified.

510. The Delegation of Kenya reminded the Committee that it had agreed to compile a new text using what had been previously agreed in other SCCR meetings, which concerned discussions on text-based approach. It expressed the concern that changing what some delegations felt in terms of preference when working on the basis of a clear mandate would undermine the progress of the Committee. The Delegation stated that adopting the reference to "some delegations" as proposed by the Delegation of the European Union and its Member States meant splitting the Committee between delegations working on a text-based approach and delegations working on the basis of exchange of views. It stressed that separating the comments from the main text and placing them in an annex would allow the proponents to work on a text-based approach while leaving non-proponents to share national experiences. On the basis of those submissions the Delegation maintained its position that the words "text-based" should be kept in the paragraph.

511. The Delegation of Brazil clarified that it fully supported the interventions made by the Delegations of India and Kenya and that it would approve the proposal advanced by the Delegation of the United Kingdom.

512. The Delegation of the European Union and its Member States expressed strong opposition for the finality which some delegations wished to see imposed on the work of the Committee and asked the delegations to seriously consider the level of discomfort created by the introduction of the words "text-based".

513. The Delegation of Kenya reminded the Committee that the words "text-based" had already been adopted in paragraph 12 and questioned the reasons for not using them again in paragraph 22.

514. The European Union clarified that the words "text-based" under paragraph 12 referred to the past work of the Committee while their introduction in paragraph 22 would commit the delegations to work on a text in future sessions.

515. The Delegation of Kenya reiterated that the work conducted by the Committee at that session was based on a specific text containing proposals from various delegations and reflecting the past approach of the Committee. It asked the Delegation of the European Union and its Member States to clarify which alternative approach would the Committee follow at the subsequent sessions if the text-based approach was excluded.

516. The Chair invited the Committee to approve paragraph 24 which stated: "The Committee based its discussions on the provisional working document towards an appropriate international legal instrument in whatever form on limitations and exceptions for educational, teaching p and research institutions and persons with other disabilities, containing comments and textual suggestions, document SCCR/26/4 Prov."

517. The Committee approved paragraph 24.

518. The Chair invited the Committee to approve paragraph 25 which stated: "The Committee discussed and recognized the importance of the subject of limitations and exceptions for educational, teaching and research institutions and persons with other disabilities. The Delegation of the United States of America offered a draft document containing proposed objectives and principles for further consideration by the Committee".

519. The Delegation of the United States of America proposed to amend the paragraph so that it was clear that the Delegation had submitted a document entitled objectives and principles for limitations and exceptions for educational, teaching, and research institutions for further consideration by the Committee.

520. The Delegation of the European Union and its Member States proposed that the text could read: "The importance of the subject of limitations and exceptions for educational teaching and research institutions and persons with other disabilities was discussed". That proposal mirrored the text adopted in relation to libraries and archives.

521. The Delegation of Brazil supported the proposal made by the Delegation of the United States of America and suggested that the phrase "offered a draft document" be changed to "presented a draft document" to reflect the fact that Member States saw that document for the first time during the session.

522. The Delegation of the United States of America clarified that their proposal was to introduce the term "submitted" as opposed to "presented".

523. The Delegation of Brazil enquired about the rationale behind the use of the term "submitted". It noted that the document had not been given a specific reference by the Secretariat at that stage and that it had not been circulated among the delegations.

524. The Secretariat clarified that the document was submitted for the Committee's consideration during the meeting and it would be referenced after the end of the meeting.

525. The Delegation of Brazil confirmed its proposal to use the term "presented" on the basis that the document's content had not been discussed.

526. The Delegation of Kenya proposed to change the article "the" to "a" in relation to the term "document".

527. The Vice Chair proposed to phrase the paragraph so that "the Delegation of the United States submitted a document with the title...for further consideration by the Committee at the next session". She pointed out that the proposal clarified that the document had not been the subject of discussions at that session.

528. The Delegation of Brazil suggested that the term "further considerations" be changed with "future considerations".

529. The Delegation of the United States proposed to use the simpler version "for consideration by the Committee".

530. The Delegation of Brazil proposed the use of the word “introduced” rather than “submitted” and expressed the view that unless the paragraph referred to “proposed principles and objectives”, the deletion of the term “future” would inevitably give the wrong impression that the content of the document was discussed at that session.

531. The Delegation of Brazil agreed with the adoption of the word “future”

532. The Vice Chair asked the Committee to approve the first part of paragraph 25 as proposed by the Delegation of the European Union and its Member States.

533. The Delegation of Brazil proposed the addition of the words “and recognized” after “was discussed”.

534. The Committee approved the first part of paragraph 25 as proposed by the Delegations of the European Union and its Member States and with the addition suggested by the Delegation of Brazil.

535. The Delegation of Uruguay submitted that a further paragraph should be considered in respect of limitations and exceptions for educational and research institutions and persons with other disabilities stating that the item would be maintained on the SCCR 28 agenda.

536. The Vice Chair invited comments on paragraph 26 which stated: “Committee members were invited to send the Secretariat additional text proposals to be added to the provisional working document by May 20, 2014”.

537. The Delegation of the European Union and its Member States proposed that the term “text” be deleted and that the term “proposals” be changed to “submissions”.

538. The Delegation of Brazil recognized that the proposal of deleting the word “text” would have raised the same concerns that the delegations were still trying to resolve in respect of paragraph 22 and offered no comments on it. It asked whether consensus had been reached about the deadline of May 20, 2014 for presenting new proposals.

539. The Secretariat clarified that the Chair proposed the deadline and that the Committee had not yet discussed it.

540. The Delegation of Brazil suggested that the conclusions should state the fact that the Committee analyzed or agreed to have a future deadline for the submission of new proposals on that text. It reminded the Committee that the deadline provided by the mandate in respect of limitations and exceptions for educational purposes was SCCR 30 and that a deadline predating the following session was unnecessary.

541. The Vice Chair explained that the deadline to submit comments on the text was placed in advance of the following session in order to ensure that there was sufficient time to prepare the documents for discussions. It clarified that missing the deadline *per se* would not preclude delegations from making submissions at the following session, but that it represented an incentive to speed up the preparations. The Vice Chair took the point that there was no agreement as to the use of “proposals” or “submissions” with respect to paragraph 26 and left the terms in brackets.

542. The Delegation of Brazil clarified the position that document SCCR/26/8 did not form the basis of the discussions because it was presented in the course of that session and referred to in a preliminary manner. Similarly, it was premature to refer to SCCR/26/8 as the basis for future discussions and that the use of the term “proposals” would be more appropriate.

543. The Delegation of the United States of America reiterated its concern in respect of references to the word "text" and remained firm in its intention to treat document SCCR/26/8 as a working document of the Committee.

544. The Chair invited the Committee to approve paragraph 28 which stated: "Delegations suggested the inclusion of a new topic on the resale royalty right in the Future Work of the Committee".

545. The Delegation of Greece proposed that the text of paragraph 28 should reflect the fact that a number of other delegations supported the inclusion of resale rights.

546. The Delegation of Kenya suggested the addition of a statement concerning the need to be cautious in respect of the heavy agenda and unfinished business.

547. The Delegations of the United States of America and Japan agreed with the proposal advanced by the Delegation of Kenya.

548. The Secretariat proposed the phrasing: "Some Delegations supported the proposal while others expressed concern about adding topics at this time to the existing Agenda of the SCCR".

549. The Delegation of the United States of America observed that suggestions for future works were not introduced in the conclusions of the past session and that they would be better placed in the SCCR report. It expressed the view that it would have sufficed to state that suggestions were raised for additional topics to be considered at future meetings of the SCCR.

550. The Vice Chair deleted the reference as suggested by the Delegations of the United States of America and Kenya and reassured them that every comment would be captured by the minutes of the session.

551. The Delegation of Congo asked that the paragraph specifically made reference to the Delegation of Senegal and others who supported the inclusion of resale rights in the agenda for the following session.

552. The Delegation of the European Union and its Member States reserved their position on the adoption of the general statement suggested by the Delegation of the United States of America on the basis that it was a fact that several WIPO states supported the introduction of resale rights in the agenda and many Member States expressed flexibility to address that topic in future works.

553. The Chair invited the Committee to approve paragraph 29 which stated: "The Committee took note of the eighth interim report of the stakeholders' platform SCCR/27/24".

554. The Committee approved paragraph 29.

555. The Delegation of India reiterated its position in relation to paragraph 22. It observed that regardless of the delegations' views as to whether a treaty should be negotiated or not, the work conducted by the Committee was based on a written document and it was therefore appropriate to define it as "text-based". On that basis the Delegation introduced the proposal that: "A new working document will be prepared by the Secretariat, based on document SCCR/26/3, and adding new text proposals from Delegates based on proposals during the 27th Session. This document will be the basis for future text-based work to be undertaken by the Committee in its 28th Session of SCCR towards an appropriate international legal instrument or instruments [whether model law, joint recommendation, treaty and/or other forms]."

556. The Delegations of Kenya, Brazil and Uruguay agreed with the proposal advanced by the Delegation of India.

557. The Delegation of the United States insisted on the inclusion of a reference to document SCCR/26/8.

558. The Delegation of Canada asked whether comments made during SCCR 26 would be reflected in the proposal of the Delegation of India.

559. The Delegation of the European Union and its Member States endorsed the view of the Delegation of the United States of America that the word “proposed” should be replaced by “compiled” and that “proposals” should be changed to “submissions”. It insisted on the deletion of the “text-based” qualification of work and suggested to amend “Delegates” into “Delegations”.

560. The Delegation of Uruguay firmly stated that it would not agree with the withdrawal of the words “text-based” as suggested by some delegations on the basis that the reference had consistently been adopted in previous sessions of the SCCR.

561. The Delegation of Kenya supported the statement made by the Delegation of Uruguay and suggested to state that the Committee had reached no agreement as to the future work of the Committee.

562. The Delegation of Brazil asked the proponents of the text-based approach to clarify the meaning and implications of the words “if decided” as stated in their proposal of paragraph 22.

563. The Delegation of Iran (Islamic Republic of) aligned itself with the position taken by the Delegation of Uruguay and informed the Committee that the time had elapsed and that the session was formally and legally concluded.

564. The Delegation of Mexico expressed the view that the inclusion of the “text-based” language would not be prejudicial to future negotiations and reiterated its adoption in previous sessions of the SCCR. It observed that the existence of divergent opinions as to the nature of future proposals was abundantly clear and invited the delegations to be flexible.

565. The Delegation of Chile observed that the Committee had previously adopted the terminology “text-based” and that documents from previous sessions of the SCCR did not contain any comments doubting the procedural regularity of that language. It proposed to maintain the text-based work concept with a clarification in its broad sense.

566. The Chair informed the Committee that there would be no more interpretation services due to time.

567. The Secretariat referred to the intervention of the Delegation of Iran (Islamic Republic of) and clarified that it had been the practice of the SCCR to “stop the clock” and go over time on the understanding that discussions would be formally treated as having taken place during the previous day.

568. The Delegation of the European Union advanced a final proposal on paragraph 22 which stated: “A new document will be compiled by the Secretariat based on document SCCR/26/3, and adding submissions from Delegations based on proposals during the 27th Session. This document will be the basis for the future work, including through a text-based approach to be undertaken by the Committee in its 28th Session”.

569. The Delegation of the United States supported the proposal advanced by the Delegation of the European Union and its Member States but asked to add a reference to document SCCR/26/8.

570. The Delegation of the Czech Republic, speaking on behalf of the CESB Group, agreed with the proposal advanced by the Delegation of the European Union.

571. The Delegation of Brazil asked the Delegation of the European Union to justify the deletion of the passage "of the SCCR towards an appropriate international legal instrument or instruments, whether model law, joint recommendation, treaty, and/or forms", which formed part of the proposal by the Delegation of India.

572. The Delegation of Kenya expressed the view that the proposal advanced by the European Union could only be acceptable on the terms of a new mandate. It expressed concern as to the status and relevance of future negotiations if the basic policy objectives of the Committee were not clear and shared.

573. The Chair recognized lack of agreement on that subject and proposed to conclude that: "There was no agreement in relation to the preparation of a new document by the Secretariat, and on the basis for the future work of the Committee on this Agenda Item".

574. The Delegation of Brazil expressed concern on the implications that the Chair's proposal on the Committee's general incapacity to reach agreement could have on future discussions of other topics such as the protection of broadcasting organizations.

575. The Delegations of the United States of America, Japan and Belarus observed that the Chair's proposal would have no implication of the agreements reached by the Committee on previously discussed subjects such as the protection of broadcasting organizations.

576. The Secretariat noted that there was no rule of procedure specifying the approach on the adoption of conclusions and that the relevant discretion on that matter rested with the Member States. It summarized the position regarding paragraph 28 and the Chair invited the Committee to make further comments.

577. The Delegation of Switzerland supported the adoption of the proposal that: "A suggestion was raised for an additional topic to be considered at future meetings of the SCCR."

578. The Delegation of Brazil neither agreed nor opposed any proposal on paragraph 28.

579. The Secretariat read the Chair's proposal which stated: "The Committee agreed that at SCCR 28, the first half of the session will be devoted to the Agenda Item on the protection of broadcasts organizations and the second half of the session will be devoted to the Agenda Item on limitations and exceptions. It is understood that the SCCR 28 session will start and finish with the standard procedural Agenda Items." The proposal contained a footnote which stated: "Namely opening of the session, adoption of the agenda, possible accreditation of observers, adoption of the report of the 27th Session of the SCCR and respectively all other matters and closing of the session".

580. The Delegation of the European Union and its Member States agreed with the Chair's proposal.

581. The Delegation of Kenya explained that decisions on future work depended on agreed conclusions and that it was unprepared to express its opinion on the Chair's proposal in their absence.

582. The Chair recognized the strenuous work of the Committee during the session and stressed the importance of the NGO contributions to the debates. He acknowledged the different positions taken by the delegations and expressed its intention to reflect them in a document titled Chair's conclusions (SCCR/27/REF/CONCLUSIONS). He explained that such conclusions would refer to each topic separately and would reflect both agreed proposals and instances of disagreement.

583. The Delegation of Brazil invited to Chair to include a clear reference to the effect that the conclusions were the Chair's conclusions as opposed to the Committee's conclusions and a clarification that not all delegations were in a position to maintain the opinions that they had expressed on paragraphs 28 and 29 during that session.

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

ITEM 8: CLOSING OF THE SESSION

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

586. The NGOs present thanked the Chair, the Secretariat and the Member States for all their efforts.

587. The Chair thanked all the delegations, the Secretariat and the Vice Chair for their contributions and closed the session.

CHAIR'S CONCLUSIONS

Protection of Broadcasting Organizations

1. Based on the outcome of the 26th Session of the SCCR, the Committee considered Articles 6 and 9 of the Working document for a treaty on the protection of broadcasting organizations (SCCR/27/2 Rev.), and the Proposal on a Treaty on the Protection of Broadcasting and Cablecasting Organizations (SCCR/27/6) presented by the Delegations of Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Russian Federation, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.
2. Following a proposal submitted by the Delegation of the United Kingdom contained in document SCCR/27/3, a technical presentation was made to the Committee by an expert of the British Broadcasting Corporation (BBC) on types of advanced technology being used by broadcasting organizations.
3. Technical working non-papers which addressed issues relating to the categories of platforms and activities to be included under the object and scope of protection to be granted to broadcasting organizations in the traditional sense were taken into account in informal discussions. These discussions were instrumental in helping to clarify various technical issues and delegations' positions.
4. During the discussions it was understood that broadcasting (wireless or by wire), cablecasting subject to clarification of the legal treatment of cablecasting organizations in national laws, and pre-broadcast signals should be included in the scope of application of the proposed Treaty on a signal-based approach. Some delegations were of the view that such protection should be mandatory under the Treaty.
5. Different points of view were expressed with regard to simultaneous and near simultaneous unchanged transmission of broadcasts. Some delegations considered such transmission closely connected to broadcasting, while some other delegations were of the view that such transmissions required further discussion in the Committee to consider possible inclusion in the object of protection of the proposed treaty.
6. Discussions took place in relation to the possible inclusion of deferred linear transmissions of broadcasts and on demand transmissions of broadcasts (catch up) and program related material, which will be further examined at the next session of the Committee. If such protection is to be included, further discussions will be held on whether the protection would be mandatory or optional.
7. Several delegations did not agree with the possibility of including Internet originated linear transmissions in the object of protection while other delegations expressed a preference for its inclusion.
8. In relation to the protection to be granted to beneficiaries, various approaches were discussed which will be further examined at the next session of the Committee. Some delegations expressed support in favor of rights relating to the transmission of the broadcast signal from a fixation while some delegations strongly questioned the granting of rights for activities taking place after the fixation of a broadcast signal, such as reproduction of fixations of broadcasts, distribution of fixations, and performance of a broadcast signal in places accessible to the public. A number of delegations considered that there should be exclusive rights for broadcasting organizations while others considered there should be a right to prohibit when third parties intercept signals by any means.

9. Some delegations requested presentation and further discussion with experts on some technical issues at the next session of the SCCR.

10. This item will be maintained on the agenda of the 28th session of the SCCR.

Limitations and exceptions: libraries and archives

11. The Committee based its discussions on the “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”, adopted by the Committee, (document SCCR/26/3), and to some extent on the “Objectives and Principles for Exceptions and Limitations for Libraries and Archives”, submitted by the United States of America (document SCCR/26/8).

12. Different points of view remained in terms of the nature of an appropriate international legal instrument or instruments (whether model law, joint recommendation, treaty and/or other forms) referred to in the 2012 General Assembly mandate to the SCCR. Some delegations expressed their support for a binding instrument or instruments; other delegations did not support a binding instrument or instruments. The Committee continued the discussions on the pending topics in Document SCCR/26/3 in order, using a text-based approach.

13. The Secretariat informed the Committee of the state of the on-going work regarding the update of the Study on Copyright Limitations and Exceptions for Libraries and Archives (document SCCR/17/2) by Professor Kenneth Crews.

14. Several delegations proposed that the Secretariat organize regional workshops to address the challenges faced by libraries and archives in relation to the 11 issues identified in document SCCR/26/3, including the application of existing international treaties. During the preliminary discussions, some delegations expressed interest, while others were not in a position to support the proposal. The Secretariat was asked about the available resources to organize such meetings but no further action was agreed. One delegation asked for a presentation during the SCCR by technical experts on the complex issues faced by libraries and archives.

15. During the discussions on Document SCCR/26/3 there was a rich exchange of information on national practices and practical experiences, including detailed information and figures, as well as proposals to merge the different texts on various topics. The proponents of texts agreed to work on their proposals for each of the topics discussed, taking into account other suggestions on those texts made during the 27th Session. This time, the Committee discussed Topics 5, 6, 7, 8, and 9, and started discussion of Topic 10.

16. As to topic 5, on parallel importations, some delegations recognized that it was a cross-cutting sensitive issue. Some delegations emphasized that the choice for international, regional or national exhaustion was left to national law by international copyright treaties. A number of aspects of the topic were explored by delegations and observers.

17. As to topic 6, on cross-border uses, a number of delegations expressed different views on how to enable libraries and archives to exchange works and copies of works across borders as part of their public service mission, particularly for education and research. A number of aspects of the topic were explored by delegations and observers.

18. As to topic 7, on orphan works, retracted and withdrawn works, and works out of commerce, the importance of addressing this issue was discussed, as that subject matter was under development and consideration in many countries. Some delegations were of the view

that these categories of works should be treated separately bearing in mind their own particularities. A number of aspects of the topic were explored by delegations and observers.

19. As to topic 8, on liability of libraries and archives, several delegations stated this was a complex topic that needed further consideration. Some were of the view that a limitation on liability would empower libraries and archives to fulfill their mission. A number of aspects of the topic were explored by delegations and observers. Some delegations expressed their concerns about cross-cutting principles of civil law and international obligations on that matter.

20. As to topic 9, technological protection measures (TPMs), a number of delegations recognized that technological measures of protection should not represent barriers for libraries and archives in fulfilling their missions. Other delegations believed that the existing international treaties already provided a flexible framework enabling appropriate solutions at the national level. Various approaches were discussed on how to address the relationship between TPMs and limitations and exceptions for libraries and archives. A number of aspects of the topic were explored by delegations and observers.

21. As to topic 10, on contracts, a number of delegations expressed views as to whether contractual practices should override the operation of exceptions and limitations at the national level. Different views were expressed regarding the need for international norms regulating the issue. Legal and practical implications of the relationship between licensing schemes and new technologies and services were also discussed.

22. There was no agreement in relation to the preparation of a new document by the Secretariat and on the basis for the future work of the Committee on this agenda item.

23. This item will be maintained on the agenda of the 28th session of the SCCR.

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

24. The Committee based its discussions on the “Provisional Working Document Towards an Appropriate International Legal Instrument (in whatever form) on Limitations and Exceptions for Educational, Teaching and Research Institutions and Persons with Other Disabilities Containing Comments and Textual Suggestions” (document SCCR/26/4/Prov.).

25. The importance of the subject of limitations and exceptions for educational, teaching, and research institutions and persons with other disabilities was discussed and recognized. The Delegation of the United States of America introduced a document entitled “Objectives and Principles for Exceptions and Limitations for Educational, Teaching and Research Institutions” for future consideration by the Committee.

26. There was no agreement in relation to the preparation of a new document by the Secretariat and on the basis for the future work of the Committee on this agenda item.

27. This item will be maintained on the agenda of the 28th session of the SCCR.

Other Matters

28. Two delegations suggested the inclusion of a new topic on the resale royalty right in the future work of the SCCR.

29. The Committee took note of the Eighth Interim Report of the Stakeholders' Platform (SCCR/27/4).

Next Session of the SCCR

30. Chair's proposal for the future work to be considered at the 28th Session of the SCCR: At SCCR/28 the first half of the session will be devoted to the agenda item on the Protection of Broadcasting Organizations, and the second half of the session will be devoted to the agenda item on Limitations and Exceptions. It is understood that the SCCR/28 session will start and finish with the standard procedural agenda items¹.

[Annex follows]

¹ Namely opening of the session, adoption of the agenda, possible accreditation of observers, adoption of the report of the 27th session of the SCCR, and respectively all other matters and closing of the session.

ANNEXE/ANNEX

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

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

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

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UNION DES RADIODIFFUSIONS DES ÉTATS ARABES (ASBU)/ARAB STATES BROADCASTING UNION (ASBU)

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UNION AFRICAINE/AFRICAN UNION

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VI. BUREAU/OFFICERS

Président/Chair:	Martín MOSCOSO (Pérou/Peru)
Vice-présidents/Vice-Chairs:	Alexandra GRAZIOLI (Mrs.) (Suisse/Switzerland)
	Abdellah OUADRHIRI (Maroc/Morocco)
Secrétaire/Secretary:	Michele WOODS (Mrs.) (OMPI/WIPO)

VII. BUREAU INTERNATIONAL DE L'ORGANISATION MONDIALE DE LA
PROPRIÉTÉ INTELLECTUELLE (OMPI)/
INTERNATIONAL BUREAU OF THE WORLD INTELLECTUAL
PROPERTY ORGANIZATION (WIPO)

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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

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