

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

**Twenty-ninth Session**  
**Geneva, December 8 to 12, 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-ninth session in Geneva from December 8 to 12, 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: Afghanistan, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Brazil, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Central African Republic, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Czech Republic, Democratic People's Republic of Korea, Denmark, Ecuador, El Salvador, Equatorial Guinea, Estonia, Ethiopia, Fiji, Finland, France, Georgia, Germany, Ghana, Greece, Guatemala, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Israel, Italy, Japan, Jordan, Kenya, Latvia, Liberia, Lithuania, Malaysia, Mauritania, Mexico, Monaco, Montenegro, Morocco, Mozambique, Myanmar, Nepal, Netherlands, Norway, Pakistan, Panama, Paraguay, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saint Kitts and Nevis, Saudi Arabia, Senegal, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, United Kingdom, United Republic of Tanzania, United States of America, Uzbekistan, Viet Nam, Yemen, Zambia and Zimbabwe (94).
3. The European Union (EU) participated in the meeting in a member capacity.
4. The following Intergovernmental Organizations (IGOs) took part in the meeting in an observer capacity: African Intellectual Property Organization (OAPI), African Union (AU), International Labour Organization (ILO), Organization of Islamic Cooperation (OIC) and the World Trade Organization (WTO) (5).
5. 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), Association for the International Collective Management Audiovisual Works (AGICOA), Association of European Performers' Organizations (AEPO-ARTIS), British Copyright Council (BCC), Canadian Copyright Institute (CCI), 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), Chartered Institute of Library and Information Professionals (CILIP), Club for People with Special Needs Region of Preveza (CPSNRP), Computer & Communications Industry Association (CCIA), Copyright Research and Information Center (CRIC), DAISY Consortium (DAISY), Electronic Frontier Foundation (EFF), Electronic Information for Libraries (EIFL), European Broadcasting Union (EBU), European Law Students' Association (ELSA International), Fédération européenne des sociétés de gestion collective de producteurs pour la copie privée audiovisuelle (EUROCOPYA), Fédération internationale des musiciens (FIM)/International Federation of Musicians (FIM), German Library Association, Ibero-Latin-American Federation of Performers (FILAIE), International Association for the Protection of Intellectual Property (AIPPI), International Association of Broadcasting (IAB), International Authors Forum (IAF), International Center for Trade and Sustainable Development (ICTSD), International Confederation of Music Publishers (ICMP), International Confederation of Societies of Authors and Composers (CISAC), International Council of Museums (ICOM), International Council on Archives (ICA), International Federation of Actors (FIA), International Federation of Film Producers Associations (FIAPF), Fédération internationale des associations de bibliothécaires et des bibliothèques (FIAB)/International Federation of Library Associations and Institutions (IFLA), International Federation of Reproduction Rights Organizations (IFRRO), International Federation of the Phonographic Industry (IFPI), International Group of Scientific, Technical and Medical Publishers (STM), International Literary and Artistic Association (ALAI), International Publishers Association (IPA), International Society for the Development of

Intellectual Property (ADALPI), International Video Federation (IVF), Karisma Foundation, Knowledge Ecology International, Inc. (KEI), Latin Artis, Max-Planck Institute for Intellectual Property, Competition and Tax Law (MPI), Motion Picture Association (MPA), North American Broadcasters Association (NABA), Pan-African Composers and Songwriters Alliance (PACSA), Program on Information Justice and Intellectual Property (PIJIP), Scottish Council on Archives (SCA), Society of American Archivists (SAA), The Japan Commercial Broadcasters Association (JBA), Transatlantic Consumer Dialogue (TACD), Union Network International - Media and Entertainment (UNI-MEI), World Association of Newspapers (WAN) and World Blind Union (WBU) (59).

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

6. The Chair welcomed delegations to the twenty-ninth session of the SCCR and introduced the new Deputy Director General, Culture and Creative Industries Sector, Ms. Anne Leer and invited her to say a few words to open the meeting.

7. The Deputy Director General thanked the Chair and stated that as it was only her fifth day at WIPO she had a lot to learn. She was honored to accept the position and informed the Committee that her background was in the creative industries, including the Kopinor Collecting Society in Norway and Oxford University. She had also been on the board of The British Library and worked there at a time when it was developing its digital content plan in the late 1980s and 1990s. Over the past 14 years she had worked at The British Broadcasting Corporation (BBC), in the broadcasting world. She had worked with intellectual property (IP) her whole life and felt honored to be at WIPO, due to the importance of the role of WIPO in the new world. The Deputy Director General stated that an apt analogy was that they were sitting in the eye of the storm, which might appear calm, but on the outside it was not calm. It was a full blown storm on all fronts. The marketplace and their world had been turned upside down for the past 15 years due to the development of the digital marketplace and the Internet. It was terribly important that they understood how the world was changing and how they could redefine their role in that new world. She stated that she knew that the work of the SCCR had been long and torturous for the past ten years and that that was very understandable because the issues dealt with were incredibly complex. It was hard to get on top of them but they should not give up. She urged them to persevere and give it their best shot during the coming week. She advised them that when they ran into issues that they had been working on, progressing for so many years at so many meetings, they might suffer from what one delegation called “treaty fatigue”, questioning whether they were ever going to get results or whether there was any point. She suggested that they gave it their best shot and when they ran into very technical issues to take a step back and think about the broader issue. They should not lose sight of how important it was to have multilateral treaties in place in the new world. It was the only thing that was going to work in the protection of the creation of IP because they lived in a borderless world. The old landscape where they could operate on the basis of jurisdictions on a country by country basis did not work anymore. The Internet more than anything demonstrated that. The activities of Apple and iTunes, the activities of Google Libraries, Google TV and YouTube all demonstrated that the world had changed. It was no longer possible to say that it was only the traditional players that were going to produce and distribute content because that did not match the real world. There were many different types of libraries and broadcasters. A definition should not limit the role one played but one should rather concentrate on what was at the heart of IP protection and that was IP and the creation of IP. She wondered if it really mattered if new types of libraries or broadcasters existed. The Deputy Director General stated that she would do a lot of attentive listening during the week with the competent and resourceful Secretariat. They were there at the service of Delegations if they wished to come and discuss issues with them. She welcomed ideas on how they could move forward.

8. The Chair thanked the Deputy Director General and wished her luck in the important task she had started with the collaboration of delegations and the resourceful Secretariat. The Chair

thanked the Deputy Director General and proposed that the conclusions from the SCCR 28 should be considered as the basis for their work during that week. Consequently, the first half of the week would be dedicated to the topic of broadcasting and the second half of the week to the topic of exceptions and limitations. After the preliminary agenda items were discussed in the morning the Committee would start with the discussions on broadcasting. On Wednesday afternoon they would start with limitations and exceptions that would begin with a presentation of the updated study by Professor Kenneth Crews. That presentation would provide information to trigger an interesting exchange and discussion on that topic. As had been discussed in the framework of the regional coordinators for the SCCR, the Chair would prepare a brief factual Chair's Summary that would be presented during Friday afternoon in order to efficiently make use of the Committee's time. The Chair's Summary would be distributed to receive some inputs. The use of this format would avoid unproductive discussions. The Chair informed the Committee that he would deal with some preliminary procedural matters before opening the floor for opening statements by regional coordinators. The Chair stated that he had received a request to start and finish on time and asked that all delegations helped in achieving that. Difficult times had occurred during the previous weeks, however taking the optimism of the new Deputy Director General, they were there to work, to try to understand each other and to work on a consensual basis. They were not there to force anyone to accept a position, which they were not ready to accept. They were there to convince with arguments, to discuss, to exchange views, to give evidence and try to talk substantially because they were lucky to have technical expertise. They would try to avoid discussion on procedural matters, on mechanisms and on superficial matters while the rest of the world was waiting for them to discuss substance. The Chair passed the floor to the Secretariat.

9. The Secretariat thanked the Chair and welcomed delegates to the new WIPO Conference Center. It stated that certain things were different from Room A. If a delegation wished to speak they did not need to put up their flag up but rather, they should press the red button in front of their seat. It was important that delegates stayed in their assigned seats, as the red buttons would list on the screen the delegation that had been allocated that seat. The Secretariat suggested that if assistance was needed then delegates should work with the conference service staff. Delegates were informed that when the Chair called upon them, the microphone automatically turned on and the camera would focus on that delegation. The Secretariat confirmed that Professor Kenneth Crews' presentation was scheduled for 3 p.m. on Wednesday afternoon, at which time the discussion on limitations and exceptions would commence. Finally, there was an excellent series of side events that coming week, a list of which would be distributed. During that day there would be a panel discussion on international cooperation in film production organized by the International Federation of Film Producers Associations (FIAPF) in Room B. There would be a presentation followed by a screening of *The Railway Man*, a 2013 British/Australian film. There would be buses departing from the WIPO Access Center at 6:15 p.m.

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

10. The Chair opened Agenda Item 2, the adoption of the agenda of the twenty-ninth SCCR. The draft agenda for the meeting was included in Document SCCR/29/1 Prov. The Chair invited comments on the proposed agenda. No comments were provided and the agenda was adopted.

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

11. The Chair opened Agenda Item 3, the accreditation of Non-Governmental Organizations (NGOs). The Secretariat had received two new requests for accreditation, which were contained in Document SCCR/29/2. The Chair invited the Committee to approve the representation in the SCCR of the following organizations: The Committee of the Canadian Copyright Institute and the Program on Information Justice and Intellectual Property. As there

were no comments from the floor, these were approved. The Chair welcomed those NGOs to the SCCR.

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

12. The Chair opened Agenda Item 4, the adoption of the report of the twenty-eighth SCCR, SCCR/28/3. Delegations were invited to send any comments or corrections to the English version of the report, which was available on the website, to [copyright.mail@wipo.int](mailto:copyright.mail@wipo.int). Comments or corrections should be sent to the Secretariat by the end of the week on December 12, 2014.

#### **OPENING STATEMENTS**

13. The Chair asked delegates to limit their statements to the regional coordinators so that the Committee could move immediately to discuss the substantive items. The Chair stated they would provide time as usual for NGO statements on the substantive agenda items at some point during the meeting, in accordance with the methodology that had been used in previous sessions. The Chair noted that previous general statements regarding the different topics would be recalled and that they now requested some statements or participation and contribution regarding the specific topics that they were dealing with. The Chair opened the floor for general statements.

14. The Delegation of the Czech Republic, speaking on behalf of the Group of Central European and Baltic States (CEBS), thanked the Chair and the Secretariat and welcomed the delegations to Geneva. It welcomed and thanked the Deputy Director General for her enthusiasm and wished her success in her role. The Delegation affirmed the need for fact based substantive discussions. It was noted that the time and resources invested in holding the SCCR should be used with care and should not be spent on debates regarding procedural matters. The Committee should exert effort to work on discussions. Nevertheless they should all face the fact that the SCCR found itself in a difficult situation and acting as though it was "business as usual" was not advisable. Despite all their efforts, progress on the agenda items had been very modest and concrete outcomes on the several past sessions of the SCCR had not been reached. The fifty-fourth General Assembly had also failed to provide the SCCR guidance on how to resolve their difficult situation. Therefore, as guidance from the upper level was missing they needed to search for guidance from within. Within that framework the Delegation reiterated its long standing priority, namely that it was striving for a successful conclusion of the work regarding the protection of broadcasting organizations with the aim of recommending that the General Assemblies convened a Diplomatic Conference to take place as soon as possible. The Group was ready to continue in negotiations that might entail making difficult choices by all of them and demanded willingness to reach a compromise. At the same time, it was necessary that the results of the substantive work, based on helpful documents and on papers, were eventually reflected in a draft treaty text. With regards to exceptions and limitations, the Group reminded all delegations of their constructive statements made during the sessions of the SCCR, the General Assemblies and their informal consultations. The Delegation welcomed the updated version of Professor Kenneth Crews' study and its future presentation on Wednesday. It believed that such material could give new perspectives on the debate and serve as a valuable basis for an extensive exchange of views. The aim was to have discussions and not engage in international norm setting in that regard. The Delegation concluded by assuring the Committee of its commitment to the work of the SCCR and its intention to contribute to the outcomes of the session.

15. The Delegation of Japan, speaking on behalf of Group B, thanked the Deputy Director General for the enthusiasm presented in her opening remarks. The Group wished her the best for her work at WIPO. The Delegation believed that the technical committees of WIPO,

including the SCCR, had to focus on substance without wasting time on procedural issues in order to achieve the mandate of the Committee, through which the objectives of WIPO would also be achieved. From that viewpoint, the Group showed flexibility to accept the agenda included in SCCR/29/1 Prov. as proposed despite the lack of conclusion at the General Assembly. The Delegation also agreed with the time allocation of the agenda items included in paragraph 17 of the Chair's summary, as it was more likely to achieve an outcome in an efficient and effective manner. The Delegation expected that those flexibilities would be reciprocated during the session so that they could focus on substance. The Delegation reaffirmed the importance of the SCCR's work on the protection of broadcasting organizations in the digital world. It was the only missing element of WIPO's Internet Treaties, responding to the changes of the environment around copyright in the Internet era. As the Deputy Director General had stated, broadcasting rights generated enormous value. Appropriate protection for such economic value at the international level, without being left behind the times, could be achieved through a better technical understanding of the contemporary issues. Through informal discussions using technical non-working papers at the last several SCCRs, mutual understanding had been deepened on the delegations' positions and in particular on the categories of platforms and activities that were to be included, under the object and scope of the protection granted to broadcasting organizations in the traditional sense. Those two areas formed a fundamental basis upon which the framework should be established and should be the most effective goal. The Delegation suggested that a further continuation of the technical discussion on those subject matters, but not limited to them, was the best way forward at the SCCR. With respect to exceptions and limitations for libraries and archives, it expected that they could reach a shared understanding on the consensual basis for their further work, taking into account the discussion of the General Assembly. It continued to believe that the exchange of experiences could serve to improve the function of limitations and exceptions within the existing past international framework and that that exercise could be a consensual basis for the work in that area, bearing in mind that no consensus existed within the SCCR for the normative work. The Group looked forward to the presentation of the study by Professor Kenneth Crews and the subsequent discussion. Additionally it was noted that the SCCR should give further consideration to the discussions on objectives and principles in the proposal by the Delegation of the United States of America. Finally, the Delegation observed that it was encouraged to seek growing consensus, noting that the sessions should end with the Chair's summary and should start and end on time. It pledged its commitment to constructive engagement to the work of the SCCR.

16. The Delegation of Paraguay, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), stated that it was pleased to see a representative from its region leading the work of the SCCR and thanked the Secretariat for having carried out informal consultations in the weeks prior to the meeting. Those consultations had facilitated discussions and the approval of procedural methodologies and had enabled GRULAC to focus on substantive issues right from the beginning of the Committee's discussions. The Delegation stated that the agenda for the meeting would enable a balanced way forward, led by the Chair, on the two main issues of the Committee, broadcasting and the exceptions and limitations, with a view of seeing how they could cover the priorities in the interests of all Member States. With regard to exceptions and limitations for archives and libraries, the Delegation thanked the Committee for the work it had carried out to date and expressed its pleasure at the commitment of Member States. It was always valuable and timely to look at all of the proposals and to look at the compilation of texts that had been presented in past sessions by the Delegations of Brazil, Ecuador, India and the African Group. At the last session of the Committee, the proposal had not been discussed but had been introduced during the debate with regard to conclusions. Member States were not able to make specific comments relating to Document SCCR/28/3, especially with regards to Paragraph 69. The Delegation had a special interest in updating the report that had been made by Professor Kenneth Crews dealing with the exceptions and limitations in favor of libraries and archives. In line with that study, it was confirmed that a number of provisions of national legislation needed changes, in order to incorporate in a more

specific way, all of the flexibility that was needed. Professor Kenneth Crews had presented the different areas of copyright that had been reformed in a standardized or regulatory way by different countries. All of that information would be of great use to them during the week of discussions. The Delegation expressed its gratitude to all delegations for continuing the discussion with regards to broadcasting in order to strengthen its protection. With the SCCR's leadership they would be able to cover all the agenda items they had before them in a balanced way. In order to do that, they could count on the support and participation of GRULAC. The Delegation took the opportunity to express a warm welcome to the new Deputy Director General, who would be dealing with the work of the Committee, amongst other things, and dealing with all of copyright and related rights. The Deputy Director General would be able to count on GRULAC's assistance as a group as well as the individual delegations in their national capacities. In the previous week, Paraguay had ratified the Marrakesh Treaty in order to facilitate access to published works for visually impaired persons and for people with difficulties in reading printed text. Paraguay had supported that process from the beginning of 2009 and it continued to support the process through the negotiations, as well as through the Marrakesh Diplomatic Conference, which took place in the previous year. It was there to work and achieve substantive and tangible results. The Marrakesh Treaty was an example of how they could work to make it possible. 300,000 people who had visual disabilities could now benefit from the work that was carried out in the SCCR and GRULAC hoped that they would be able to have more ratification instruments submitted in the coming days. The Delegation encouraged other countries to do the same.

17. The Delegation of Kenya, speaking on behalf of the African Group, thanked the Chair and the Secretariat and welcomed the Deputy Director General and wished her the best in her new assignment. The Group was committed to working in a constructive manner to advance the work of the Committee in all of the three topics. On the protection of broadcasting organizations, it had always been the African Group's position to see a treaty concluded in that area as per the General Assembly's mandate, which called for negotiation and conclusion of a treaty on the protection of broadcasting and cablecasting organizations in the traditional sense based on a signal-based approach. On exceptions and limitations for libraries and archives and educational research, the Delegation asked that the discussions in those areas proceed based on the 2012 General Assembly's mandate, which called for the SCCR to work towards an appropriate legal instrument or instruments with a treaty and other forms. It did not believe the target to submit a recommendation to the General Assembly in relation to exceptions and limitations for libraries and archives had changed the mandate for the topic. Based on the precedent set by the Committee when it had missed a target for convening a Diplomatic Conference in 2007 for the adoption of the Treaty for the Protection of Broadcasting Organizations, the Delegation noted that it did not change the method or the topic of discussion. The Delegation expected the same to be accorded to the two topics dealing with exceptions and limitations. The two topics should remain on the agenda of the SCCR until they were resolved and the discussions should proceed as per the 2012 General Assembly mandate. The Delegation welcomed the updated study by Professor Kenneth Crews and hoped to provide the necessary basis to move discussions forward.

18. The Delegation of Belarus, speaking on behalf of the Group of Central Asian, Caucasus and Eastern European States (CACEES), thanked the Chair and noted the enthusiasm and efficiency with which the Chair was about to lead the work in the Committee. It welcomed the Deputy Director General and wished her every success in her future activities. The Delegation noted that CACEES Group had consistently appreciated the importance of the Committee and was convinced that the subjects that they dealt with there were some of the subjects that had been the most dynamic and most difficult issues in the international scene. Cooperation amongst Member States was vital in that area. The Delegation stated it had a number of concerns. During the last session, the substantive discussions had been bogged down with procedural issues and obstacles, such as basic notions like conclusions. The Delegation was convinced that the texts that had been drawn up were already balanced. It regretted that they

had spent so much time dealing with procedural issues at each one of the sessions, when those issues could have been dealt with once and for all so that they did not have to take time away from the substantive discussions in order to deal with them. Furthermore, it was pleased to see that the presentation had started on an optimistic note, in that they were able to adopt the draft agenda. That corresponded to its way of seeing how the work of the Committee should be carried out. Concerning the substantive discussions, the Delegation informed the Committee that the CACEES Group's position remained the same. The Group was in favor of the adoption of a treaty for broadcasting organizations and believed that the legal regulations were behind with regard to the technology that existed and the SCCR needed to fill that gap. They were at a stage of maturity, which had moved them forward to a point where they only needed a few small efforts in order to have a text brought to the level, which would enable them to submit it to a Diplomatic Conference. It appealed to all Member States to make the necessary efforts in order to attain that goal, which was at that time near. Regarding limitations and exceptions, the Group continued to be willing to contribute to the discussion in a constructive way as other groups had said and its view was that in order to work effectively on the topic, they needed to have a common understanding as to what the objectives were and the working methods and they needed to be able to examine all of the substantive issues from the point of view of what their common usefulness was. The Delegation was looking forward to the presentation of Professor Kenneth Crews that would no doubt have a positive influence on its understanding of all of the subjects. The Delegation wished the Committee a successful session of the SCCR.

19. The Delegation of Bangladesh, speaking on behalf of the Asian Group, stated that it deeply appreciated the Chair's continued leadership and guidance. The Chair's wisdom, experience and endeavor to reach a common understanding had benefitted the proceedings of the Committee. It commended the Secretariat for organizing all the elements for the meeting including the logistics and documents for the session. It welcomed the new Deputy Director General and thanked her for her valuable introductory remarks and the large overview of the issues from the eye of the storm as she best described the current situation. The SCCR was engaged with three very important issues. For the record, the first one was the protection of the broadcasting organizations; the second, limitations and exceptions for libraries and archives and the third, exceptions and limitations for educational and research institutions and for persons with other disabilities. Though all three issues were extremely important for the role of copyright unfortunately they could not display the same level of commitment and understanding for the importance of those matters based on the socioeconomic realities of different Member States. The Asian Group was ready to provide proper value to each of the topics according to their relative significance to the Committee. For the proposed work, the Delegation noted that the Asian Group had shown sincere commitment and had contributed actively to develop the text. In that session the Group would be engaged constructively to finalize the discussions on the protection of the broadcasting organizations. The Delegation was not against a balanced treaty on the protection of broadcasting organizations, which would be based on the mandate of the 2007 General Assembly to provide protection on the signal based approach for cablecasting and broadcasting organizations in the traditional sense. The Delegation's intervention was based on the consensus of all Asian Group members. Regarding the other two issues, for most of the Member States in the Group, exceptions and limitations were of extreme importance, as far as the question of domestic development for the individual and the collective entities were concerned. Lack of adequate will to discuss and develop those two exceptions and limitations had made all of them go around in circles on all three issues in the last SCCR sessions and led to the eventual disagreement in the General Assembly of 2014 on SCCR issues. The Delegation believed that Member States would sincerely develop their engagement in the session on those two issues based on previous discussions and new inputs so that in the future they had text to discuss and work on. The Delegation recalled that they had achieved the Beijing and Marrakesh Treaties in that very Committee. There was no reason to believe that they would be unable to do so to reach the development of appropriate international instruments on all three issues soon. The Delegation thanked all the Member States in anticipation of their sympathetic understanding in the session.



20. The Delegation of China congratulated and thanked the Chair and the Secretariat for their great deal of constructive and hard work. It was confident that under the Chair's able leadership the SCCR would achieve substantive results. It also thanked the Deputy Director General for her passionate speech. The Delegation congratulated her on her appointment and stated that it was confident that the Copyright and Culture and Creative Industry Sector would achieve and continue to achieve substantive results under her able leadership, with regard to the agenda items for the meeting. The Delegation would continue to actively participate in the discussions as it had always done in the past and would be open to all constructive proposals. The Delegation took note of the fact that Member States still had divergent views with regard to the agenda items of the SCCR. It hoped that just as the Deputy Director General and the Chair had said, they would continue to work in a positive flexible manner and engage in constructive discussions on the agenda items so that they could break the deadlock, bridge the gap and reach consensus on key issues so that the SCCR could continue its work towards success.

21. The Delegation for the European Union and its Member States thanked the Chair and the Secretariat for the preparation of the twenty-ninth session of the Committee. It hoped that the Committee could work constructively during the week and it relied on the stewardship and the dedication of the Secretariat and the goodwill of all Member States for that purpose. It welcomed the Deputy Director General at the start of her mandate and wished her every success in the future. Their common aim was to ensure the best possible use of time and resources, which required clarity as to the goals and expected deliverables under each agenda item. The Delegation had been actively involved in the discussions on the Treaty for the Protection of Broadcasting Organizations and attached great importance to those discussions and had worked tirelessly to advance work on a matter that undeniably was a complex and technical one at times. It believed that in order to achieve a treaty that provided broadcasting organizations adequate and effective protection, a broad consensus needed to be built as to the extent of the protection to be granted. It was trying to build such consensus. The aim needed to remain the conclusion of a treaty, which was meaningful in view of the technological realities and of the needs of broadcasting organizations in the twenty-first century. The Delegation was willing to participate constructively and concretely in discussions on limitations and exceptions. It acknowledged that the absence of a new mandate from the last General Assembly on that matter had raised the question of the nature of the discussions that the Committee should have on exceptions and limitations on libraries and archives. Nevertheless there should be a meaningful way forward in that area, despite defining differences, as to the most appropriate course of action and desired outcomes, which had become only too apparent in the last meetings of the Committee. Traveling required a direction, particularly when there was a collective effort and the Delegation would like to see the Committee proceed on a shared understanding of what that direction should be. It would like to see the Committee succeed through that approach. For that they needed to overcome the difficulties, which had resulted in the SCCR not being in a position to make recommendations on exceptions and limitations for libraries and archives at the last session. It reiterated its belief that work on exceptions and limitations for libraries and archives and for educational teaching and research institutions and persons with other disabilities could be done within the current international copyright framework and the flexibilities that framework offered did not need for further normative work at an international level. The Delegation's belief was that a solid international copyright system was also a function of the actual implementation that the Member States undertook of international norms and of the use they made of the space that those norms provided. International cooperation subject to further discussion might be of assistance on those aspects. With regards to the working methods of the SCCR it would move to the Chair's fact based summaries as in previous meetings.

22. The Chair thanked the Delegation of the European Union and its Member States and noted that there had been no other requests from the floor. There was almost a consensus not to waste their time in procedural discussions and to try to get involved in substantial discussion

as much as they could. The Chair also noted that there was an agreement on the agenda. They would give importance to the two topics they were dealing with and that that was a good basis for their work, given the importance that those topics required.

#### **ITEM 5: PROTECTION OF BROADCASTING ORGANIZATIONS**

23. The Chair moved to Agenda Item 5, protection of broadcasting organizations. The Chair asked the Secretariat to provide a brief description of the documents submitted to the Committee.

24. The Secretariat noted there was a document called “Working Document for a Treaty on the Protection of Broadcasting Organizations”, Document SCCR/27/2 and in addition there was a proposal presented at the twenty-second session of the SCCR, which had been taken into consideration in the discussions. It was contained in Document SCCR/27/6, which was presented by certain countries of the CACEES Group. Finally, an informal discussion had taken place at the previous sessions on several non-papers submitted by several Member States and the Chair, as well as an informal document prepared by the Delegation of Japan on the main issues of the draft Treaty on the protection of broadcasting organizations.

25. The Chair reminded the Member States that they had all the tools and information in the documents mentioned by the Secretariat. Additionally, they had used metrics in order to foster understanding of both the technical platforms they were going to deal with and the framework of the instrument and what they could call the set of rights that could be covered in those instruments. Those matrices had triggered an interesting exchange of views and discussion, which were mainly technical and substantial. The intention was to continue using such kinds of tools. The Chair opened the floor for the Member States’ initial comments or general comments regarding the topics contained in the initial charts. Some of the delegations had said that they were going to make consultations in capital and would ask for technical clarifications in their respective countries. The Chair stated that he had prepared other metrics trying to foster discussions on the terms understanding. It could be called a “definitions chart”, in order to try to see the different options they were dealing with. The Chair recalled the informal format of discussions, which had been very rich previously and planned to keep on working in that way, if the Member States agreed to do so. They would be flexible in that approach. The Chair suggested that they start by listening to initial specific comments on the broadcasting issues that the Member States might have.

26. The Delegation of Bangladesh, speaking on behalf of the Asia-Pacific Group stated that its intention was to present and clarify the Group’s position regarding that important agenda item. Regarding the proposed draft Treaty, the Group reaffirmed its commitment towards developing an international treaty for the protection of broadcasting organizations as per the 2007 General Assembly mandate which was agreed during the twenty-second SCCR and later reiterated in the forty-first General Assembly in 2012. The Group based its position on two key aspects of that mandate. The first was that the agreement would be developed on the signal based approach. The second was that the position would be for the broadcasting and cablecasting organizations in the traditional sense. The Group thanked all the regional groups and Member States for the textual and consensual contributions and welcomed their proposals. The Group supported in principle the adoption of the proposed Treaty once a balanced text could be developed, which would not provide disproportionate benefits to any party. Some members of the Group underscored the need to have more clarity on the objective’s specific scope and the object of protection that all Member States could agree upon. The Group had previously proposed textual suggestions like that proposed by the Delegation of India and it hoped that those proposals would receive proper attention from the Member States which had to understand that the development of technology was going very fast and they had to preserve that benefit. If they could stick to the original mandate without introducing any new layers of protection, it would be much easier to reach a balance of on the rights and responsibilities of the

broadcasting organizations. The Group would continue to participate in all meaningful, technical consultations to settle the outstanding issues in the finalization of the scope of protection for broadcasting organizations.

27. The Delegation of Japan, speaking on behalf of Group B reiterated the great importance that it attached to the effective protection of broadcasting organizations. Formal discussion about technical papers had successfully clarified the issues and Member States' positions in a more organized way, in particular, relating to the scope of application prescribed by Article 6 and the scope of protection to be granted prescribed by Article 9. Through those exercises some concrete ideas had been floated as a possible compromise which could be a pathway for their future consensus. It was a wise way forward to establish a basis for future compromise, including the two subject matters but not limited to them, at that session. Additionally technical contributions by broadcasting organizations were useful in the last session. In that connection the Group continued to welcome the necessary interaction with broadcasting organizations for the purpose of facilitation of the negotiations based on precise technical and legal understanding. The Group believed that it could lead them to a consensus that would enable broadcast organizations to give effective protection at the international level. The Group committed itself to continue the work during the 2014 2015 biennium in line with the 2007 mandate given by the General Assembly towards convening a Diplomatic Conference.

28. The Delegation of the Czech Republic, speaking on behalf of the CEBS Group reiterated its strong support for the introduction of up to date and effective protection of broadcasting organizations. As stated by the Director General on several occasions that segment of the copyright system remained the last one that had not been updated within the international legal framework. The Group believed that it was clear to everyone, not just to the expert diplomats and IP professionals, but to the wider public that the environment had significantly changed in the past decades and demanded adequate modern protection for broadcasting organizations. The protection should correspond to technological developments of the twenty-first century and to the current and also to the extent possible, potential future business models and other activities of broadcasters and cablecasters. In that regard they could not ignore alternative ways of transmission when contemplating the Treaty. The outcome of their work should be applicable to the present and in the days to come and the upswing of online transmissions should be definitely reflected in their deliberations. The Group understood that the views on the scope of the Treaty still varied. That fact however, should not lead to their resignation of their common goal. On the contrary, it should encourage them to work harder on finding the final consensus acceptable to all Member States and satisfying both stakeholders and the public. With regard to procedure, the Group believed that the work was being aided by helpful documents, for example, the non-papers had yielded some results. However, for those results to be upheld they needed to be properly reflected in a single draft treaty text. The Group believed the best working method was to work on a single document with a view to produce a basic document and to convene a Diplomatic Conference as soon as possible in accordance with their longstanding proposal on the timeline to that end.

29. The Delegation of Belarus, speaking on behalf of the CACEES Group called for a balanced and effective system of protecting the copyrights and rights of broadcasting organizations given the broadcasting technologies that were being used. In addition the system of copyright, which was the object of their work, should be adaptable given the changing situation of technological platforms and the dissemination of signals of broadcasting organizations. The rights of broadcasting organizations should not at the same time come into contact with copyright. The Group was ready to work on specific standards within the agreement, which would allow them to achieve the named objectives. The Group had submitted its proposals on the protection of broadcasting organizations.

30. The Delegation of the European Union and its Member States stated that the draft Treaty was a high priority and it had been actively involved in advancing work on various technical

issues discussed in previous Committee meetings and had shown an open, constructive and flexible approach by agreeing to focus the discussion on those aspects of the scope of application and rights even though it also attached great importance to other aspects such as webcasting. The Delegation was prepared to continue working in that manner and was ready to deepen its discussions and extend them to other elements of the working document. It had a number of modifications to propose and textual comments to make on the working document. It stressed that it was convinced that in order to achieve a treaty giving broadcasting organizations adequate and effective protection a broad consensus needed to be built as to the extent of the protection to be granted. While trying to build such consensus their aim needed to remain on the conclusion of a treaty which was meaningful in view of the technological realities and of the needs of broadcasting organizations in the twenty-first century. That was why it strongly believed that not only transmissions made by traditional means but also international transmissions of broadcasting organizations needed to be protected from acts of piracy, wherever those acts of piracy occurred simultaneously with those transmissions or after those transmissions had taken place.

31. The Delegation of the Republic of Armenia supported the adoption of a draft treaty on the protection of broadcasting organizations and welcomed the consultations which would provide an opportunity to exchange concerns and to get a better understanding of the position of Member States on that matter. It was necessary and urgent to establish adequate and effective protection for broadcasting organizations at the international level to fight against the unauthorized use of signals.

32. The Delegation of China thanked the Secretariat for its work in promoting the discussion of the topic on protection of broadcasters, which was very important work. The Delegation had also noted the progress achieved by the SCCR since its twenty-seventh session. The progress had been very positive. It fully understood that the discussions of the topic should take into account the factors afforded by the changing technological landscape. It supported the other delegations in putting forward a full discussion of the topic and was seeking a solution that would be acceptable to all parties, so that they could expedite the negotiation of the Treaty and progress the topic towards more substantive results.

33. The Delegation of India reiterated its commitment to comply with the signal based approach in the traditional sense which was consistent with the 2007 General Assembly mandate. It also expressed its flexibility in supporting the issue of unauthorized live transmission of signal over computer networks provided the broadcasting organization had rights over the broadcast. The Delegation's alternative proposals submitted at the twenty-sixth SCCR were in complete conformity with the mandate of the 2007 General Assembly. The Delegation reiterated its position of not expanding the mandate for inclusion of any elements of webcasting and simulcasting issues under the framework of the proposed Treaty. It was opposed to any attempt to amend the mandate of the General Assembly to include retransmission over computer networks or retransmission over any other platforms because those activities were not broadcasting in the traditional sense. A provision of the Treaty needed to provide protection to the broadcasting organizations for broadcast in a traditional sense to enable them to enjoy the rights to the extent owned or acquired by them from the owners of copyright or related rights. It should include protection against retransmission. In order to implement the above the content should be owned by the broadcaster's content, creator or assignee. No extra layer of rights should be awarded to broadcasters on the content they had license to broadcast only. They should not be given rights over other platforms. Any such extension should be granted to the authors and rights owners. In the case of submitting broadcasts contained on other platforms, the broadcaster should get a course of action to protect its rights if the rights are granted to them on these platforms by the owners. In a situation where the broadcaster was granted the satellite rights, which was a transmission of a signal in a traditional sense the broadcaster could get a right to prohibit the unauthorized retransmission of that broadcast contained on any other digital or online digital platforms.

Those steps were necessary as they were within the mandate of the 2007 General Assembly. The Delegation supported the position that no post fixation rights should be allowed under the proposed Treaty, as the scope of protection covered only signal protection. However fixation could be allowed only for rebroadcasting and time shifting purposes. The Treaty should provide for exceptions and limitations to the protection in the case of private use and use of short excerpts in connection with the reporting of current events used for purposes of education and scientific research. WIPO was requested to undertake a comprehensive study on the impact of various stakeholders of expanding the scope of broadcasting rights as the existing studies were partial and not contemporary in their facts. The currently available studies of 2008 for Asia, including India, did not reflect the contemporary scenario for any meaningful way forward. The Delegation reiterated its request made in the previous session for having a presentation by broadcasting organizations and the Secretariat, for all developing countries, for half a day during the next session, which would help resolve some legal and technical issues that remained unanswered during the debate on broadcasting organizations. It looked forward to participating in the meaningful, technical consultations to resolve the outstanding issues in finalization of the scope of the Treaty.

34. The Delegation of Japan stated that although it was a pity that the Committee could not reach any conclusions at the last two sessions and also the General Assembly in September that year could not make any decisions on the Committee, the Delegation had no doubt that substantial progress had been achieved, particularly in the discussions on the draft Treaty. It sincerely hoped that the Chair's dedicated chairmanship would lead them in the right direction towards the early adoption of a Treaty. As for making a Chair's summary instead of conclusion for the Committee, it believed that that would enable the Committee to concentrate not only on procedural issues but also substantial ones. Updating the international legal framework on the protection of broadcasting organizations was an urgent task of the Committee and therefore it had been actively and constructively engaged in the discussion towards the early adoption of a treaty. The discussion at the last two sessions helped Member States understand what kind of transmissions by traditional broadcasters and what kind of activities by third parties should be discussed as the possible subject matters of the Treaty. Such clarifications were very useful in order to find commonalities. The next step was to carry out more in depth discussion on each issue. It hoped that after reaching a common understanding on the key issues such as the scope of application and scope of protection they could work on the text in a more detailed way, with a common understanding in the not too distant future. The scope of application and scope of protection should also be discussed.

35. The Delegation of Iran (Islamic Republic of) associated itself with the statement of the Delegation of Bangladesh, speaking on behalf of the Asia-Pacific Group. It attached great importance to the continuation of the work on the subject of signal based protection of broadcasting organizations consistent with the 2007 General Assembly's mandate towards developing a legal framework for protecting broadcasting organizations against signal piracy. It was pleased with the progress, which had been made earlier and hoped to see a binding treaty, which would protect the legitimate rights of broadcasters, especially those arising from the fixation and production of broadcasting materials, which would be defined as not to conflict with the other interests of the rights holders. It reiterated that the Committee should not establish a second layer of protection for broadcasters through the proposed legal framework and also should not restrict society's free access to knowledge and information in order to balance the Treaty for the benefit of rights holders, broadcasters and societies at large. In accordance with the discussions in previous meetings there was a general agreement that a treaty was necessary to protect broadcasting organizations and there was also a general consensus that a treaty should be a signal based treaty. However the Committee should try to find a way forward to resolve the divergent approaches that had been under discussion in previous sessions consistent with the General Assembly's mandate in 2007.

36. The Delegation of Chile expressed its warm welcome to the Deputy Director General, thanking her for her opening statement and wishing her success in her work. The Delegation associated itself with the statement of the Delegation of Paraguay, speaking on behalf of GRULAC. It was willing and available to work in order to come to an agreement on the broadcasting issue. It would like to have a focus on the mandate that was given to the SCCR in 2007. That was why it believed that it was vital that they come to a consensus with regard to the principles and the basic concepts that still had not yet completely been clarified. It believed it was necessary that they dedicated sufficient time to studying the definitions and if they could not come to agreement on what it is that they were talking about when they talked about a broadcasting organization, broadcasting and retransmission, then it would be difficult for them to come to agreement on issues such as the scope of protection and the rights that were granted. Finally, the Delegation made one clarification with regard to the draft report in English, coming from the twenty-seventh SCCR, Document 27/9. In the translation it did not clearly reflect its position. The concept of broadcasting could include broadcasting by cable but not necessarily. In Chile, cable broadcasters were not broadcasters or broadcasting organizations.

37. The Delegation of the Russian Federation stated that the protection of broadcasting organizations was something that had been dealt with for a long time in the Committee. Members states needed to intensify their efforts collectively and individually in order to move forward on the draft they had before them. The Delegation supported the statement made by the Delegation of Belarus, speaking on behalf of CACEES Group. The Committee needed to concentrate its work on the scope and the object of protection. With regard to the draft for the protection of broadcasting organizations, given that there were considerable divergent views it was important that they continued to work actively on the draft Treaty. Technical developments and broadcasting technologies meant that they had to change the way they protected those organizations and they had to ensure that they had a legal framework and framed legal issues to account for the new development of new technologies in their day and age. That legal instrument should guarantee the necessary protection against any illicit use or illicit broadcasting by broadening the rights of broadcasting organizations. The Treaty should be able to strike a balance between the rights of society at large and rights holders. It was clear that all of the proposals made had to be taken into account, including the document that was submitted by its Group. They would have to take into account other existing approaches as well as the concerns broadcasting organizations and all of the experience that had been accumulated in different national legislation in that area. It was indispensable that they aimed to find consensus on those pending issues which had not yet found consensus, for example, the scope of rights granted. They were going to have to work in a constructive way on the different elements of the document and the proposals contained therein, as well as the document as a whole.

38. The Delegation of the United States of America stated it was committed to making progress on that agenda item within the scope of the General Assembly mandate. It had proposed a narrow targeted treaty aimed at addressing the core needs of broadcasting organizations in the digital environment without creating extra layers of protection for the content that was broadcast. In its view the Committee had moved forward over the past two sessions of the SCCR in clarifying their common understanding of the complex issues involved in the proposed Treaty. Working from the charts prepared by the Chair they had been able to take steps forward in improving and narrowing the proposals on the table. It believed that it would be fruitful to continue on that path through further technical work in informal discussions. There was still more to be done, to be able to achieve a draft treaty text that could be acceptable as a basis for meaningful negotiations. As was noted at the last session, the Delegation believed that additional information through the update of the 2002 Secretariat's technical background paper and also presentations from a diverse range of broadcasters about their use of technology would be very valuable to the Committee as it continued its examination of the issues. The Delegation looked forward to learning more and working together to improve the text that they were considering.

39. The Delegation of Brazil stated that its position regarding the discussions on broadcasting was well known and it only wished to reiterate its view that a treaty on broadcasting should not provide extra layers of protection for broadcasters. A treaty should be signal based only and therefore limited to simultaneous or a near simultaneous transmissions. It was fully engaged in the discussions of a future treaty on broadcasting and hoped that they could make progress in that regard during the current session of the SCCR.

40. The Secretariat repeated the ground rules that had been used at the previous meetings. With respect to the ground rules for having sound in another room while the informal discussions were being carried out in Room B, delegations and observers must refrain from communicating to the public, whether live or at any future time, the content or nature of the discussions taking place in the informal session, whether in general terms or by way of quoting specific individuals or delegations or via Tweet, blog post, news stories, list serves or any other medium. The requirements were aimed at ensuring the integrity and informality of the informal group was maintained. The text of the ground rules had been developed from the language used in the IGC proceedings. The Secretariat noted that with respect to the continuation of the meeting in the afternoon, it would put on the notice boards where that meeting would take place, whether informals would continue or whether they would be in Plenary. As they might not be together in Plenary again before lunchtime, the Secretariat repeated the announcements regarding the events to be held during that day.

41. The Chair reminded the delegations of the work they had done with the two previous charts or matrices, which were used in the previous sessions of the Committee. One of those charts was a technological platforms chart, in order to clarify the scope of protection of the new instrument and the second chart was called a rights chart. The delegations had reviewed those charts with initial comments. The Chair had also prepared a third chart called a definitions chart, which contained the definitions of broadcasting organization, broadcasting transmission and signal. That chart had been delivered to foster discussion on a common understanding on the terms and the implications of taking the different contributions they had regarding those concepts. The Chair had received very interesting comments from the different delegates regarding those terms and the differences in the concepts that were included in the different proposals contained in the documents submitted to the Committee. There was a suggestion to emphasize not the texts themselves, but the elements that were part of those concepts, which might be recognizing the different proposals. That chart was based on the contributions made by different delegates in previous documents submitted to the Committee. Additionally, it was requested that they consider the definitions contained in some international legal instruments already in force, like, for example, the WIPO Performances and Phonograms Treaty (WPPT). A new version of the third chart had been prepared considering the inputs provided. . It also contained the references to the definitions that were part of previous documents submitted to the Committee, and finally, references to related definitions contained in previous international treaties. That chart was delivered at the end of the previous afternoon for reflection and to be shared and understood and discussed by the delegations. The Chair suggested to continue discussions in informals and asked the NGO's to be prepared to make some contributions on the topics of platforms, rights and concepts.

42. The Deputy Director General, Ms. Leer asked the Committee to keep the big picture in their heads and not to get stuck on the detail and was very encouraged to see consensus about the kind of treaty the member states wanted to achieve. Valuable contributions had been provided from several Member States. The Delegation of the European Union and its Member States had urged the Committee to work on drafting and developing a treaty, which was meaningful in terms of the technological reality. The Delegation of the Czech Republic had echoed that position and stated that alternative forms of distribution couldn't be ignored as the technology was moving forward. The Delegation of Belarus had also echoed that position, stating the treaty should adapt to technological developments. It was urgent to achieve a

workable and meaningful treaty that would enhance, promote and protect IP in the broadcasting world. The Committee was asked to maintain the momentum.

43. The Chair stated that the use of charts was a methodology, which had been welcomed by most delegates. The first chart, which had been distributed, related to technological platforms to be possibly covered under the scope of the treaty. The second chart related to rights. Those two charts had triggered interesting discussions in previous Committees and had allowed to update the charts. A third chart had been prepared by the Chair addressing definitions closely related to the Treaty, which were considered to be key. The first definition related to a broadcasting organization, given that some delegates wanted to understand whether it was necessary to incorporate cablecasting organizations, as there were some concerns that such an extension would lead to difficulties in the recognition of the different national legal treatment given to the relationship between broadcasting and cablecasting. The second definition related to the broadcast itself, which in some cases was not defined as a broadcast but as the activity of broadcasting. The chart included the terms broadcast and broadcasting and contained details of the substantial differences among the definitions, which were submitted by the different delegates in documents submitted officially to the Committee. There was a third column in definitions, which referred to the signal, which was a crucial definition that had been the subject of different interventions by the delegations. When they had delivered the first version of the chart, they had received comments from different delegates asking for some precision. That precision related to clarifying the sources of the different definitions, namely from the previous documents submitted to the Committee and adding references to some international instruments which contained such definitions or definitions related to those they were working with. At the same time, it had been requested that the chart did not include the definitions themselves, but highlighted the elements contained in the definitions in order to conceptually understand which elements should be part of the definition in order to discuss the differences that might arise from the inclusion or exclusion of some elements. A new version of the third chart had been prepared and delivered. Definitions were interconnected with the platforms to be included in the scope of protection of the Treaty. With regard to the technical platform chart, some progress had been made trying to reflect graphically the common understanding of the discussion. For example, one of the columns which had been deleted in previous meetings related to Internet originated transmission. A column on Internet Originated Transmission had been added with a check in the box, indicating its exclusion from the Treaty at this stage. A consensus had been reached that traditional broadcasting should have mandatory protection in the new proposed Treaty, so there was a second check on the chart. With regard to the pre-broadcast signal, a discussion had begun in the last Committee, to recognize its interconnection with rights. Depending on the set of rights to be provided, some flexibility could be provided to protect the pre-broadcast signal from piracy, even through a possible mandatory type of protection, which had not been excluded. Further reflection was required.

44. The Representative of Knowledge Ecology International (KEI) stated its comments would initially be on the definitions. Its position was that it was more appropriate to provide protection for free services that were traditionally provided by radio and television and less appropriate for pay services. First, they should take into consideration the possibility that a country might want to implement the Treaty only for the broadcasting services which were really traditional and of the kind that were intended for the Rome Convention. That was, radio and television that were free and available to the public. So, in the definition of a broadcasting organization, either they would redefine it to say that if the communication to the public was something that had to be paid for otherwise you could not get it then that was a different concept than a communication to the public that was stated in the Rome Convention. There was a possibility to limit the benefits to entities that provided free services to the public and actually there was almost no rationale for cases when it was an encrypted signal that needed to be paid for because then it was just a business relationship between the person providing the service and the person receiving it. All of the areas where people paid for cable, for example, or satellite services were encrypted and people lost access if they did not pay. So that was a completely different situation compared to



a free-to-air service. The definition could provide that possibility so that it only applied to free services. Second, some of the discussion in the informals and over the past several years had focused on sporting events. A definition of a "live sports" broadcast should be provided as Members States might want to provide more extensive protections for live broadcasts than other types of transmission, as they might present special challenges within the copyright system that were not the case more generally. There might be a case where there was a missing definition for a sports broadcast if people wanted to tier or tailor the rights protections differently for sports broadcasting than they did for other types of broadcasts. Its preference on the broadcasting organization definition was to ensure, based on a review of the definitions in the table of alternatives for Article 5 and Article B for Article 5, from SSCR/27/2/REV, that it did not cover just anyone who created a Web page or anybody that created a method of distributing information. That was problematic in the sense that wireless technologies were now quite ubiquitous in terms of receiving Internet transmissions. There was a wide variety of Internet based originated services that were delivering over the wireless telecommunications network. Delegations were addressing a generic inclusive definition, which meant many people would be considered broadcasters and that was quite problematic. In terms of broadcasting transmissions and the definition of a broadcast, it was better not to include broadcasts that were done at a time and place chosen by the user. For example, the definition should not apply to the kind of services Hulu offered in the United States of America, such as on-demand services or play-lists.

45. The Representative of the Transatlantic Consumer Dialogue (TACD) stated that it was concerned about the discussion on the Treaty. In the past, due to the lack of definitions, it had called it an unidentified flying object, now, as the definitions had got a bit clearer, it felt it was becoming a more identified flying object in the air as a transmission. Precisely because it was becoming identified, some of the definitions were of concern and it worried about the definitions because it thought that definitions and the protections of rights could mean a threat to access to culture, a threat even to freedom of speech and a threat to the public domain, namely public broadcasting signals. It thought that those threats were coming from a scope that was much broader than was recommendable. It was a scope that could take into account a lot of the digital rights that millions of young people around the world were fighting for and defending. The sensitivity of digital rights of mixing, of the type of things that went on everyday millions of times on the Internet should not be threatened by the Treaty. How could they avoid that? They could avoid that by avoiding any post fixation rights. They could avoid that by a very narrow definition of simultaneous or near simultaneous traditional broadcasting signals to the public in the air. Broadcasting should mean, similar to the Rome Convention, the transmission by wireless over the air means for public reception of sounds, of images and of words. Additionally, what was a signal? A signal obviously could not just mean everything. A signal meant an electronically generated carrier over the air with sounds and images. What they really needed was to narrow down the scope to a point where they did not see it as something that could be a threat to the creativity, innovation and new business models at a time when they knew that new business models needed flexibility. What they did not need was yet another layer of bureaucratic costly rights that would be burdensome for the future of the Internet. For consumers, for Internet users, for culture and for new innovation, the Representative called for a very narrow definition of the scope of the Treaty.

46. The Representative of the Electronic Frontier Foundation (EFF) stated that the year marked the tenth anniversary of its discussions over the Treaty. During that time its position had been constant that any such treaty should be limited to addressing the unauthorized simultaneous and near simultaneous retransmission of traditional broadcast signals to the public without assigning new exclusive rights in the content of those signals. It would be possible to include a right to prohibit the transmission of pre-broadcast signals within a signal-based approach and without assigning any new exclusive rights. Although that had been nationally accepted in the past with the General Assembly 2007 agreeing to follow a signal-based approach, the current discussions on post fixation rights had backtracked from that

commitment and that, more than anything else, had led to the negotiations becoming more protracted. Creating new exclusive rights in post broadcast fixations would impede access to public domain material and material over which copyright limitations and exceptions might apply. That was because some material might not be readily available other than from broadcasts such as was the case for broadcasts of sport or use events. It would impede the use of technological innovations that added value to broadcasts. Especially if it curtailed the use of circumvention devices it could affect digital media players and new innovations they could not even envision yet, especially those running on free and open source hardware and software. The Representative urged delegates to be disciplined in their adherence to a narrow signal-based approach, as it saw that as the only way that a treaty for broadcasting organizations could be concluded in 2015 or at all.

47. The Representative of the BCC stated that he represented the interests of those who created, held interests or managed the rights in literary, dramatic, musical and artistic works, performances, films and sound recordings, broadcasts and other material in which there were rights of copyright and related rights. It recognized the significance of the proposed Treaty on the protection of broadcasting organizations, leaving intact and not in any way affecting the protection of copyright and related rights in the subject matter that was carried by the broadcast signals. It was in that context that it wished to emphasize that the protection of broadcasting signals should not depend on respect for copyright and that it should depend on respect for copyright in the subject matter. Respect was ensuring that broadcasters had relevant licenses. As was noted the previous day, greater international recognition for the protection of broadcast signals appeared to be a gap within the international framework for recognition of copyright and related rights. It was a gap that was being used increasingly by those who wished to side step the legitimate interests of copyright owners in an increasingly technological world. However, it was also a gap, which could not be filled by one set of rights replacing the others, but instead be filled in a way that complemented their effective application in the future. The way in which broadcasts were already recognized by some Member States within the copyright framework was surely an indication that a consensus of a treaty was a basis for practical realities in the future. The renewed focus on definitions was extremely welcomed because it was enabling a focus on the type of signals which were vulnerable to unauthorized access. Such unauthorized access undermined not only the value of the services provided by the broadcasting organizations but also the value of rights carried by the signals issued by those broadcasting organizations. The practical reality of the way in which copyright owners were licensed or entrusted the exercise of specific rights to broadcasting organizations under licenses remained a vital backdrop to the protections that were being debated for the new Treaty. Technical demonstrations of the range of electronic signals that were now possible for broadcasting organizations to emit seemed important to show how the same service could be interrupted by unauthorized users in increasingly sophisticated ways. The end result of such interaction was usually the same. The value of the service and therefore the value of the rights carried by the service were undermined. Once the signal was fixed, that signal was no more. Retransmissions of the fixation would involve new signals. It was that structure, which any treaty and the definitions they were discussing would need to accommodate. Therefore, keeping the definition of broadcast distinct from broadcasting organizations, who might be recognized as the owners of any relevant rights to be recognized was important. If that was not done, some organizations who were not in their minds the genuine beneficiaries of the rights could seize the signal and undermine the very structure that they were hoping to build. An ability for duly defined and recognized broadcasting organizations to be in a position to prevent misuse of separately defined groups of signals was therefore important for all rights holders who laid behind the authorization of the signal in the first place. It was hoped that the focus on definitions and the scope of protection and the elements of those concepts would support important copyright balances being preserved for the benefit of all rights holders in the future, while also dealing with the gap in the international framework, which was being addressed.

48. The Representative of the Copyright Research and Information Center (CRIC) wished to discuss the nature of the rights of broadcasting organizations and the reason why protection should be given to them. The first ground was quasi-creativity. Sharing batch of programs for broadcasting was quasi-creativity and also broadcasters were quasi-creative by providing the premises where they could present the works to the public. The second ground was the protection of investment. Broadcasters invested much money in order to broadcast a wide range of programs for the interests of their audience. The protection of such investment as a commercial enterprise would be financially insecure. The last and the most important ground for the protection was that broadcasting was an indispensable infrastructure in society. Television and radio were the most basic and important technologies for communication all over the world. People were receiving and enjoying information, education, news and entertainment from broadcasts. Without that, many people would suffer from lack of vital information and that would cause a very big information divide and further, they would lose an important tool for communication to the public. Therefore, the transmission by traditional broadcasters itself was a fundamental social information communication tool. That was the main reason why traditional broadcasters should be protected. However, now there were two types of transmission. One was traditional broadcasting. The second was a transmission over the Internet. Those two transmissions were different from each other in their nature. As the Delegation of India had stated, traditional broadcasting was a point-to-point and one-way transmission. Receiving people did not need access to a broadcaster to enjoy traditional broadcasting. On the other hand, transmission over the Internet was a point-to-point and an interactive transmission. Receiving people needed access to the server to enjoy transmission over Internet, for example, through simulcasting, on demand or catch-up TV. As the Delegation of the European Union and its Member States had stated earlier transmission over the Internet done by traditional broadcasters, transmitting broadcast signals was of, simulcasting, which was similar to traditional broadcasting. The definitions of broadcasting in existing treaties such as the Rome Convention, the WPPT etc., were a good basis.

49. The Representative of the Asia-Pacific Broadcasting Union (ABU) noted that it represented over 110 broadcasters as members, as well as its parent organization, China Central Television (CCTV) with a united voice. There was a great need for protection against infringement of broadcasters' signals. Its members were in the business of broadcasting. They encountered cases of signal infringement on a daily basis and increasingly in the Asia Pacific region suffered from online piracy. Broadcasters had a mandate to fulfil and as most delegations agreed, it was important that broadcasters were protected in order to serve their audiences. That protection would safeguard all of the content provided legally by the broadcasters to the public and not by legal entities. Piracy not only harmed the rights of broadcasters but also those of the content owners. It was also unhealthy for the economic development of the country. The protection that broadcasters were asking for was only protection of their signals from infringement. They were not taking away any rights from the rights owner or other parties. In conclusion, the Representative stated that the Asia Pacific region was an economically growing region with new technology being introduced rapidly. It was therefore important to have a treaty that could meet the demands of the region in the digital era.

50. The Representative of the Centre for Internet and Society (CIS) referred to the chart detailing the concepts as it corresponded to the various definitions that they had been discussing. It believed that there were certain elements to those concepts that were inconsistent with a treaty based on a signal-based approach. In the first column, under broadcasting or cablecasting organization in the traditional sense, communication of the signal had been listed under the scope of responsibility. As it had submitted in other statements before the Committee, it believed that communication was a concept that was an element of copyright and its distinction with broadcast rights was that they were related rights. A signal could be broadcast or transmitted and accordingly under the element that dealt with the scope of responsibility. It was of the opinion that it should read broadcast or transmission of the signal,

and not communication of the signal, and the focus should not be communication to the public. That concept had also been discussed in certain alternatives to the definitions under Article 5. Second, in the second column in broadcasting and cablecasting transmission, it had three observations. First, under the means of transmission, it believed the transmission over computer networks was wide enough to encompass IP based transmissions, and therefore, should be excluded in order for the Treaty to be consistent with the signal-based approach. Second, on the reception of the broadcast or cablecast transmission, it believed that it should be qualified using the phrase “general public”. It was of the opinion that there was a danger that a limited public, say, family members, could be covered under the term public but would be excluded from the term general public which in any case was the targeted audience of a broadcast. Third, on whether the transmission would be encrypted or not, which also flowed into the column on the signal, and whether the signal itself was encrypted or not, which would also then relate to whether broadcasting organizations would have the right to prevent unauthorized decryption, the Representative did not think there should be a separate right to prevent unauthorized decryption. Finally, in the third column and on the meaning of the signal, it submitted that its preferred definition would be one where the definition of a signal would be confined and would be understood as an electronically generated carrier transmitting a broadcast or a cablecast and not one which had the capability of such transmission as it had been stated in the third chart.

51. The Representative of the Japan Commercial Broadcasters Association (JBA) noted that the SCCR had not been able to reach a conclusion for the past two sessions, which was quite regretful. On the issue of the protection of broadcasting organizations they had deepened the discussion during the last two sessions and narrowed the most contentious areas. That was miserable progress. In the present session, in the informal meeting, there was a discussion about whether the scope of traditional broadcasting extended to the transmission over the Internet such as simulcasting. In that regard, the Representative believed that the flexible approach proposed by the Delegation of Japan, namely in Article 6 of Document SCCR/27/2/REV could help to bridge different views on the issue.

52. The Representative of the European Broadcasting Union (EBU) stated that it wished to be brief because the time for delegations to discuss substance was more important than interventions from its side. Its position was generally known and it asked whether delegations wanted it to give some specific input into the documentation which had been discussed. At the same time it needed to be flexible because it knew that there would always be differences in details and those might remain until the very end of the Conference. One important element to note was mentioned by the Deputy Director General was that it was important to have a treaty, which was future-proof or at least was adaptable to future technological developments because that was especially the environment where broadcasters were active in. There were links between the different charts, so that meant that they might not need to have solutions in each individual part or it might be that the solutions could be found elsewhere in the Treaty. It was important that the pre-broadcast signal that was part of the signals were a mandatory part of the Treaty, as had been mentioned by a number of Member States, since piracy of the signal could take place, and it could take place before the scheduled broadcast of the broadcast, which had acquired the rights to that signal or at least to the content of that signal. Very simply stated, it was possible that sports events could take place in one part of the world, but the pre-broadcast signal was taken in another part of the world and might be made available by the pirates before the official broadcaster had planned to broadcast that particular signal. Therefore, it was important that the broadcaster, had a right of its own to act quickly and was not dependent on, say a mere contractual issue which was, of course, dealt with in another matter. The Treaty was not intended to interfere with any contractual relationships and that was typical for related rights treaties. Another point, which was important, was the question of the definition of a broadcasting organization. If there was no consensus in including broadcasting organizations, which were active only on the Internet, then, of course, it had to be made clear that these were not part of the beneficiaries of the Treaty. There were different ways to deal with that because

there was also an article dealing with the scope of application. It could be better to look at those two elements rather than excluding transmissions over the network from the definition of broadcasting, also because there were already existing definitions of broadcasting.

53. The Representative of the International Federation of the Phonographic Industry (IFPI). Stated that recorded music was essential content for broadcasters, yet in some countries artists and record companies had no or very limited rights for the use of the sound recordings in broadcasting. It did not object to a treaty that would ensure that broadcast organizations were adequately protected against signal theft, but such a treaty granting yet another layer of rights to broadcast organizations, should as a precondition, require that Contracting Parties grant adequate, at least WPPT minimal, broadcasting rights to artists and record companies. With regard to the adequate scope and application, the definitions in a new treaty should not blur the traditional definitions used in international copyright treaties, in particular that of broadcasting and other transmission activities. Broadcasting was and had to remain limited to over-the-air, one-to-many transmissions. It was essential to maintain the distinction between broadcasting on the one hand and other forms of transmissions including transmissions over computer networks on the other hand. Distinction therefore should also be made between broadcast organizations and other transmitting entities. A new treaty should be limited to protections that were required to fight signal theft. Broadcasting organizations should not be granted rights that would effectively give them control and rights over the content carried by those signals. A new treaty should not result in the peculiar situation in which broadcasters would enjoy rights relating to music content, which would prevail over the rights of those who created and produced that content. Such a targeted approach would, of course, not prejudice the legal protections broadcasting organizations might have as separate use of content.

54. The Representative of FIAPF acknowledged that a global treaty on the protection of broadcaster signals might be warranted as part of the deployment of international legal tools to combat piracy. Signal theft affected the economic sustainability of broadcasting organizations which represented an important market for the films and programs that its members made. It supported a signal-based, technologically neutral treaty with limited scope, which would enable broadcasters to prevent unauthorized retransmission of their signal whether pre-broadcast or broadcast. It did not believe that protection required granting exclusive rights as they might conflict directly with exclusive rights of individual content producers and distributors. It urged delegations to ensure that broadcasters under their jurisdictions be required to comply with copyright law and with best practice in fair trading with programming content produced by film and television production companies. It would be ironic for the broadcasting sector to be granting new legal means of protection if they themselves failed to apply good legal standards in their dealing with content producers. It hoped that Member States could work together in resolving the other outstanding issues that were under consideration since the start of the Committee so that the negotiations might come to a fruitful conclusion.

55. The Chair recalled that the road to consensus on the inclusion of the minimum traditional broadcasting was shown graphically in the first chart. There was a consensus to focus on other platforms such as Internet originated transmissions. Regarding the pre-broadcast signal column, it had been agreed to make a reference in the chart to the fact that even a mandatory approach might be possible depending on the form of right which might be attributed to that platform because the views were different if they referred to exclusive rights or alternatively if they used the right to prohibit in the platform. Therefore the term 'some form of right' had been used with a question mark, as some delegations had requested to grant exclusive rights for the pre-broadcast signal and others a simple right to prohibit. Second, with respect to the "Object of Protection", they had tested if there was some agreement regarding the column of simultaneous or near-simultaneous broadcast of the signal. It was decided that further technical clarification should be made regarding the platforms in order to discuss the possible inclusion as the object of protection. Some technical expertise was needed to share specific comments regarding their questions, which were related to those specific platforms. Regarding the second chart, "Rights

to be Granted” chart, a discussion had occurred regarding the interconnection of the first category and the other categories of rights. Regarding the first category of rights, delegations had shown positions, which were closer to those categories of rights under some conditions. Those conditions still differed from each other but included the possibility to clarify that they should not be positive rights and more probably in the form of a right to prohibit. On the other extreme, regarding the category of rights, which could be seen in the charts, fixation of a broadcast signal, reproduction and fixation of broadcasts and performance of broadcast signals in places accessible against payment of entrance fee, the delegations had expressed the need for further discussions. Horizontal issues had been mentioned again and they had been stated in the chart. Some Member States could implement the possible instrument through related rights and others through other types of legislative framework. The importance of flexibility was highlighted and needed to be remembered. On the horizontal issues, the treatment of pre-broadcast signals was still under discussion. Regarding the third chart on concepts, a new version with elements of different concepts and references to the sources of the different contributions, which had been received, regarding the definitions, had been produced including references to existing international treaties, mentioned in the last page of the chart. While all countries were not parties to these treaties, they contained useful definitions on which the work could be built. The first definitions of broadcasting and a cablecasting organization deserved additional work. However, a good exchange had taken place, on the definition of broadcasting, suggesting once agreement was reached on the type of platforms to be covered, the rights to be granted to those corresponding platforms could be decided upon. Requests for further technical expertise at the next session of the Committee had been made, as well as requests to update the existing studies on broadcasting to give delegations the tools that they needed.

56. The Delegation of Belarus, speaking on behalf of CACEES thanked the Chair and the Secretariat for the efforts they had made for a concerted dialogue aimed at harmonizing the positions of parties on the main issues of the Treaty. In relation to the heading “Rights to be Granted” on the chart, there was the possible option of ensuring the rights of broadcasting organizations. In the Group’s view that was a good factual basis, which would allow them to focus on the most important aspects of the problem and to ensure that the discussion was targeted. It would also allow them to move forward in achieving a compromise between all interested parties and stakeholders. The Group expressed its gratitude for the participants in their active part in the discussions and their contributions. That had allowed them to analyze substantive issues, in terms of the volume of rights and the organizations that were involved. It was noted that the Group was committed to coming up with an effective and modern mechanism of protecting the rights of broadcasting organizations, given the diversity of those organizations and the variety of technologies involved in broadcasting.

57. The Delegation of Mexico thanked the Chair and expressed its heartfelt thanks to the Secretariat for having prepared all of the charts in an expedient fashion. The charts had helped the Delegation a lot because in one gaze or one glance, it could see all the various options that the delegations had put forward. The Delegation pointed out that the improper use of property, not only had an impact on broadcasting, but all sorts of related rights, as well for authors, artists, performing artists, technicians and all the people who were taking part in audiovisual performances. Hence, they must bear that in mind. The importance of that theme was a very far reaching one and the prejudice that could be caused by the pirating or improper use of signals could undermine authors’ rights and other rights.

58. The Delegation of Kenya, speaking on behalf of the African Group thanked the Chair for the work he had undertaken. It stated that while it was not opposed to any proposals, which had been made, it would like to have more clarity in terms of the studies being proposed and more reflection before the Group could make a decision.

59. The Chair thanked the Delegation of Kenya, speaking on behalf of the African Group and stated that it was a very reasonable request and something that they would do prior to giving

the floor to the NGOs, who had started to request the floor. Regarding the technical presentations, the initial idea that came from the informal room was that they would like to represent the jurisdictions and countries with an emphasis on the developing world experience. Presentations from three to four representatives, of different parts of the world, with specific backgrounds in the broadcasting industry, could answer technical questions raised by the Committee. The questions would be formulated in advance and would be related to the matters discussed. Regarding the studies, the Chair asked the Secretariat to provide clarification.

60. The Secretariat stated that following the requests that had been made by several delegations in the informals, the request was to update some existing documents and studies that had been undertaken in the past years. The first study was a technical background paper which had been prepared by the Secretariat in 2002 called "Protection of Broadcasting Organizations, Technical Background Paper", which focused on the broadcasting organizations and their activities. That document, with the quote SCCR 7/8 was done in 2002, so it reflected the technology of 13 years ago. The other study, which had been referred to was a study, which had been undertaken in 2010 upon the request of the SCCR. It was a study on the socioeconomic dimension of the unauthorized use of signals and it was divided in three parts, and in particular, the parts, which had been referred to in the discussions in the informals, related to the current market and technology trends in the broadcasting sector, and part two, which related to unauthorized access to broadcast content, cause and effects, and then particularly focused on the extent of signal piracy in the broadcasting sector. According to the Secretariat's understanding, there had been a request to update those studies, which specifically related to how technology was being used by broadcasting organizations and how broadcasting organizations were also affected by piracy with a particular focus on issues relating and concerns relating to developing countries.

61. The Chair thanked the Secretariat for its explanation, which reflected what had been suggested in the informals with the emphasis on the developing countries' experience and in the use of new technologies, since technology was evolving rapidly and it was important to update it. However, it had been said that the study had to be very focused in order not to stop the discussion, but rather to contribute to the state of the discussion. Given the initial clarification, the Chair asked the Plenary if there was support for the request coming from the informals.

62. The Delegation of Kenya, speaking on behalf of the African Group stated that it was not opposed to the idea, but that it needed some time to consult in its Group. It requested that they postpone the decision to before the Chair closed the session for the SCCR. It needed some time to coordinate and then it could come back to the Chair on that particular issue.

63. The Chair thanked the Delegation of Kenya and suggested that it consider that the request had originated from the informal group and had been made by several delegations.

64. The Delegation of Togo stated that in terms of broadcasting, there were countries who broadcasted and they had specific needs. It wondered whether those special needs were taken into account in the document. Some countries were at various levels of development and so some countries might use their more developed neighbors to transmit their signals.

65. The Chair thanked the Delegation of Togo for reminding delegates of the perspectives and specific needs from different parts of the world and reiterated that different states of development should be taken into account. That was why the study to be commissioned would emphasize the experience of developing countries.

66. The Representative of KEI stated that it had looked at the tables and it seemed like the only thing that had been ruled out at that point on the Treaty was Internet originated transmissions. As it understood it, the rule was once the broadcast had passed through a

traditional broadcaster, it might be protected even if it did not want it to be. If they looked at services like iTunes, Amazon.com, Netflix or Hulu or those kind of web streaming services that distributed films and TV programs, it seemed that for them to benefit from the right, all that had to happen is that they had to show that the content was sent over a cable television station, a satellite, a TV or a radio to somebody, somewhere on the planet, at least once, and then it got a new status through the new, non-copyright, sui generis right. It was basically like giving a property right to a book store because it had sold a book and giving it a right in the work. It might be that was not really a broadcasting right anymore, maybe that was like the digital version of the book sellers' right. They were a distributor of audiovisual works. The SCCR was designing a right, a sui generis right, a layer of rights for distributors of audiovisual content that had passed through a cable or a radio station at one point in their life span and they had not, in terms of the rights to be granted, closed the door on anything. It was a pretty frightening instrument that they were designing. If the purpose was to come in and reassure people that the SCCR was doing a narrow, anti-piracy thing for traditional broadcasting, it had not been accomplished. The tables needed to be made public.

67. The Representative of the Computer & Communications Industry Association (CCIA) stated that it was quite persuaded by the comments of the Representative of KEI about simultaneously streaming a conversation regarding the documents, which were unavailable to the public. Perhaps there was some way to bridge that gap. With respect to the discussion on rights and the object of protection, but especially the rights, as the Representative of KEI had said on a number of occasions, the emission of electronic carrier waves did not appear to it to be a necessarily creative act. Assembling transmissions, assembling content for transmission, certainly was the assembly of creative works into a program, but since the exercise was dedicated to protecting signals, it could not see any argument that supported the word "rights" or "authorization" or "unauthorized" to be used in connection with protection against piracy. It was much more persuaded by the approach in the Brussels Satellite Convention, which had been discussed at some length. It was certainly the case that a broadcast signal ceased to exist upon reception of the live signal by any device capable of either retransmitting it or of making it perceivable to a natural person. Interestingly, protecting anything that was not live and calling it a signal was simply an impossibility. The only signal that existed was the live signal. It did not see it as logical, nor actually recognizing reality, to protect near simultaneous anything, when they were talking about signals. With respect to the pre-broadcast signal, again if it was a program being transmitted before it was actually made available to the public, it was still a transmission but it was not a broadcast. They were all sympathetic to preventing the piracy of transmissions before they were made available to the public as part of the process integral to doing so, but the Representative did not think they could call that signal the same thing as the live broadcast itself. It suggested that some of the discussion would have to retreat to make it clear that protection was not going to be extended to fictional objects which were any kind of a fixed signal.

68. The Representative of the Ibero-Latin-American Federation of Performers (FILAIIE) referred to the previous speakers who had referred to broadcasting organizations. The protection of a signal against piracy was important, but the SCCR was not the right body to provide that protection and perhaps other organizations should be looking at that. It was frightening that a user, such as a broadcast company, could become an owner of signals. It had spoken a lot to different broadcasting organizations about it and unfortunately, in certain territories, when content was being disseminated, content owners' rights were not being protected.

69. The Representative of Latin Artis stated that for Latin American and Spanish speaking organizations, actors, dancers and others, when it came to creative value, it was very often the input from those artists that could generate great income, rather than going through satellites or any other pipeline. With the long standing discussions, it had greater doubts than certainties regarding the way in which the Treaty protection should be provided. It seemed as though the



delegates had gone into a dead end. It found it very concerning that they had not been able to reach agreement regarding what should be the object of protection under the Treaty. It believed that broadcasting companies should not have any exclusive rights for any of the signal stream. It did not make any sense to add another level of protection to those that were piggybacking on authors' rights and related rights. If they were only protecting signals as being the only logical alternative, then they must point out that authors' rights and related rights were not the best way forward to arrive at such a result. . Independently, from the level of protection that was agreed upon, all broadcasting companies had to respect the rights of the content that they were exploiting, rights that were the rights of authors and the performing artists.

70. The Representative of CIS stated that on the making available of the documents it supported the Representatives of CCIA and KEI and wanted to see the informal papers. In relation to some of the rights to be granted, which were set out in one of the informal discussion papers laid out in the third column, these were essentially fixation and post-fixation rights and whatever was done after the signal was fixed was already covered by copyright law. It found it inappropriate to provide two sets of incompatible and overlapping rights where copyright already existed and the Treaty sought to create a sort of a para-copyright for the same underlying content.

71. The Delegation of Iran (Islamic Republic of) had two suggestions. One was with respect to the new study. As the Delegation had suggested in the last session, the new study in addition to the technical aspects of the new technologies in broadcasting industry should emphasize the possible effects on the other stakeholders such as authors, performers and the society as a whole. The other suggestion regarding the charts was that another chart could help regarding rights. If a chart could be prepared regarding the rights, with reference to the existing international instruments, such as the Rome Convention, the Brussels Convention and the Trade-Related Aspects of Intellectual Property Rights (TRIPS), it could help to clarify the discussion.

72. The Chair thanked the Delegation of Iran (Islamic Republic of) who had suggested a reference to the Brussels Convention, which had been included in the last page of the definition charts. The Chair called upon the Committee to observe one minute of silence in memory of a great creative artist - one of the most important comedians in the Spanish speaking world and in the twentieth century - Mr. Roberto Gomez Bolanos, better known worldwide under the name "Chespirito". His name Chespirito was given to him in reference to Shakespeare, because he had been very good at writing plays and screenplays for cinema and television. He was the author, writer of screenplays, actor, director and producer of the various audio products and plays that he put on the screen. It was thanks to broadcasting that the entire world was familiar with his content and able to identify with him. The Chair stated that they would watch a brief video film and then pay respect with one minute of silence for the passing of that man. Instead of a moment of silence, the Chair suggested that the Committee give him a round of applause.

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

73. The Chair opened the discussion on Agenda Item 6, which was the important topic of limitations and exceptions for libraries and archives. The Chair welcomed Professor Kenneth Crews, who had been invited to share the results of the updated study on limitations and exceptions for libraries and archives. That study had been very useful in its first version to trigger discussions on that topic and that was the reason that they had received several requests from the delegates to update the study. He noted that the study's executive summary was available in all official languages. The Chair passed the floor to the Secretariat.

74. The Secretariat introduced Professor Kenneth Crews, the author of the updated study on libraries and archives, Document SCCR/29/3. The Secretariat had met with Professor Kenneth Crews in 2007 and commissioned the first study on limitations and exceptions for libraries and

archives, that was discussed by the Committee in the seventeenth session of the SCCR. The first version of the study was Document SCCR/17/2. A lot of water had passed under the bridge since 2008 and the role of libraries had been no exception. The remarkable updated study encompassed the copyright laws of 186 countries and showed that library exceptions were included in the copyright laws of most countries at present. Professor Kenneth Crews would provide an insightful and analytical overview of his findings. The Secretariat invited Professor Kenneth Crews to the floor.

75. Professor Kenneth Crews thanked the Secretariat and the Chair for the opportunity to present at the SCCR. His goal for the presentation in 2008 and 2014 was to provide the facts, to reveal what was happening around the world in the context of the making of law or copyright exceptions with respect to libraries. With that, came a number of definitions, which were provided in the report. The study looked at the statutory exceptions, which meant that the law could appear in case decisions and in other sources. It started with the statutory exceptions that applied to libraries in a general sense, or at least in broad categories. The study was not about the statutes that applied only to a specific library, a national library or something else. It was about libraries in broad classes or in the general sense. He would present the facts as best as he was able to and there was also some degree of interpretation, which he hoped was plainly obvious. His goal was to make sure that the facts were clear and if he was providing some interpretation that that would be clear as well. He emphasized without any equivocation that he was not endorsing any position or criticizing any position. He was there to provide information, so that they could explore it together. Invariably he would be naming countries, which was not a criticism or endorsement, it was just the facts as best as research had revealed. To put that in the context of the study, there were two studies, one from 2008 and one from 2014. The two reports were to be read together. The first report reached out to the full range of countries, but there were some countries where they could not find the statutes. The new report filled in those gaps and underscored the countries where there had been some changes in the relevant law. The reports were to be read together and if a country was not listed in the 2014 report that was because the research revealed that there was no change in that aspect of copyright law. If in any way they had made any errors of omission or interpretation or description, he was very eager to hear from the Member States. With 187 Member States, finding the law, being sure that he had understood it accurately and being sure that he had the most recent law from each country was a difficult task. If there was something that he had missed and a Member State could present it, then he welcomed it and invited the delegates to share what added knowledge they had. If they looked at the 2008 study, there were some basic numbers. At that time, there were 184 Member States and he was able to find and identify the statutes from 149 of those 184 Member States and had confidence that they were current. If translations were necessary, he was able to get a useful and usable translation. Of the 149 Member States, there were 21 Member States that had no statutory exceptions applicable to libraries within the scope of the study. Within the 149 Member States there were 27 Member States that had a statute that was very general in its scope. He explained that that meant the statute did not apply specifically to a certain type of activity. They would look at statutes that applied to the activities of preservation, for example, or the activity of making copies to give to library users for their own research and study. By contrast, some statutes were very general and allowed libraries to engage in reproduction and other activities for meeting the needs of the library, not necessarily for any specific purpose. That was a general exception and he would come back to that concept a few times during the presentation. There were a few Member States, just a small number, that had a general statute, but they also had separate statutes for one or more of those other specific tasks. Those 27 Member States had a statute for general application, but not another statute for a specific application. Looking at the 2008 numbers and folding in the 2014 numbers, the study had been expanded and changed. For example, there were 184 Member States and now, 187 Member States. Originally he had been able to identify and locate statutes from 149 Member States, whereas for the 2014 study he was able to locate reliable statutes from 186 Member States. That was a tremendous expansion on what was possible years ago. Looking at those numbers, the Member States with

no statutory exceptions applicable to libraries went from 21 to 33. Member States relying on just a general exception went from 27 to 34. Proportionately those were not radical changes but it indicated that the findings overall continued. In addition, behind the scenes, one of the reasons why the numbers moved from 149 statutes up to finding 186 was principally because of the hard work by some key people at WIPO. The WIPO Lex database was an enormously valuable asset and he encouraged the delegates to use it and to make sure that the laws from their countries were in the database and made available for researchers and for their colleagues to be able to use. The development of the database had profound implications for the success of the study. On the substance, no library exceptions jumped from 21 to 33 Member States and general exceptions jumped from 27 to 34 Member States, which was not a radical change over the years. In relation to the other Member States, looking at their statutes they generally found some combination of statutes that applied allowing libraries to make uses, reproductions and other uses of works for purposes of preservation or replacement of lost and damaged works in the library or, statutes that permitted the libraries to make copies to give to users for their own private study and research. He referred to the statutory provisions about making available of copies at dedicated terminals on the premises of the library and stated that that had become part of the study. Statutes for research and study were about making available on the premises and were largely aimed at serving the needs of individual users for their own study and for their own research. In the 2008 report, he had identified a small number of Member States that had extended the private study and research for interlibrary loans, but there were not many new ones to report in 2014. He also identified a small number of countries that had statutes that gave protection for the library, with regard to copyright infringements resulting from the use of copy machines and other equipment on the premises. There was not much more to add. There were some numbers in both the 2008 and the 2014 reports about Technological Protection Measures (TPMs) and the prohibition against circumventing TPMs, but with an exception for the benefit of libraries. There had been growth in those numbers as more and more Member States implemented, for example, the WCT with its anti-circumvention provisions. The differences between the 2008 and the 2014 reports in that regard were not really radical. They had seen a slowdown in the adoption of a few statutes, but a general continuation of statutes for the preservation of materials, replacement of damaged and lost materials, single copies for the benefit of researchers and other users and the further implementation of law related to TPMs. In other contexts, there were some patterns and trends that would emerge, particularly through the updated study. He provided a little bit of legal context to understand how the exceptions fit in the larger plan. The basic structure of copyright law granted rights to owners and it subjected those rights to certain limitations and exceptions. The topic on that day was one of those and there were many others. There were statutory exceptions for the benefit of the blind, for education and there were statutory exceptions to promote cable television and to advance the recording industry. There were statutory limits on the duration of copyright. All of those served to find some kind of equation of putting together the rights of owners, as creators and owners of copyrighted works, and added to that equation, some interest of the public addressed through limits in duration and addressed through exceptions, such as the ones they were looking at. A lot of the law of the Member States was defined or influenced by multinational treaties and other instruments. Most important for copyright purposes was the Berne Convention, the WCT, the World Trade Organization and TRIPS. There was also a growth of regional agreements, which were very important and influential. Much of the equation that was set up in those international instruments included the adoption of the so-called, three step test. The three step test appeared in the Berne Convention and a few other instruments. The Berne Convention permitted signatories to create exceptions, so in general the library exceptions were not mandated but were permitted. It was a matter for legislation to permit the reproduction of copyrighted works. The language identified the three elements, the three steps, to permit the reproduction of copyrighted works, one, in certain special cases, provided that such reproduction did not, two, conflict with normal exploitation of the work, and three, did not unreasonably prejudice the legitimate interests of the author. The TRIPS carried over similar language but did not limit it to just reproduction. It referenced the exclusive rights of owners and it did not limit it to just the legitimate interests of the owner, but the legitimate interests of the

rights holder. The language was different in an important way, but it was still language that adopted the so-called, three step test. The words of the three step test really did not define very much. They still required that they give some meaning to them and apply them in certain circumstances. The challenge of the three step test for lawmakers and legislative bodies was how to adopt exceptions within the framework of those three steps. They had to give them meaning and that was a challenge as they were pretty rough steps. They were not even. They were not smooth. They really had a hard time figuring out what they meant and whether they would get them to any given place. The three step test could be worked through. Step one, certain special cases, step two, did not conflict with normal exploitation, and step three, did not unreasonably prejudice the legitimate interests of the author. Those were words that were meant for Member States to work with, to come to terms with, to address, to be sure that their statutes conformed to whatever those words meant. They were not meant to be words that were part of the statute or part of the law itself. Instead, they defined the way Member States related with one another. Within those contexts, they debated the language and created statutes but because those were rough steps and because the meaning of the three step test was open to renewed definitions, they had a diversity of exceptions. The three step test was not prescriptive because the treaties were not prescriptive, thereby Member States could experiment and move in a number of different directions and to a great extent they did. If they looked at the common topics of statutory exceptions applicable to libraries starting with the concept of having no exception, that was a decision in itself. Once a Member State carved out an exception they took different forms. A general exception, permitting libraries to engage in certain activities for the benefit of libraries or the benefit of users, had a lot of openness in that language. How was that conforming to the three step test? Or provisions that applied to preservation and replacement or private study, or even any of the other issues that they might come up with. In certain special cases, normally a statute was defined to be applied only to the specific activity in the context of libraries. The exploitation of the work and the interests of the rights holder were normally captured by virtue of limiting the activity to certain types of works or making copies under certain circumstances under which they could be used in furtherance of the public interest, which might or might not be an interference with the interests of the rights holder. In that diversity, there were still some patterns that began to emerge. One way to understand them, and in part the charts for each Member State in the reports reflected that kind of breakout, was to ask the “who”, “what”, “when”, “where”, “how”, even “why”, as part of the analysis of a statute. That could be seen on the slide and those slides coming up. He asked the delegations to imagine a statute that permitted a library to make copies of works for purposes of preservation of the works in the collection. That statute could take many forms. They could ask “who”, who was it that was able to apply that statute? Was it libraries or should it also include archives? Did it include museums, did it include educational institutions and the list went on. The “what”, did it apply only to published works, works made publicly available, which were different from published? Did it apply to unpublished works? Did it apply only to articles? Should it apply to books? Should it apply to music and movies? . The “when” was an important question and there were a couple of statutes in the study that, where the exception applied only after the economic rights had expired, it was really an exception perhaps to the moral rights or an exception to the right of payment for the public domain. Part of defining the “when”, “how” and “why” was in part defined by the rights that somebody held with respect to that work. The “why” was especially important with respect to preservation, where a statute applied only if the work was deteriorating, damaged or stolen etc. It could also apply to the copies for research. In respect of the range of statutes permitting libraries to make copies for or to give to users for their research and study, there were some subtle but important differences. One Member State said it was for research purposes only and left it at that. Another Member State said it was for research purposes but the user must sign a declaration confirming that it was for those purposes. Another Member State said it might be provided by the library, as long as there was no notice that it was for any reason other than research and study. So even on a basic point on the concept of what was research and study, Member States would approach the issue differently. The “why”, involved more conditions and levels of proof. Analog or digital was a main point under “how”. They still had newly enacted statutes that were limited to

reprographic reproduction, which raised issues about the simple reality that more and more activity in the processing of information and providing of library services was inherently digitally based. So they had some struggle with the how as well. A statute could take on many different forms, depending upon which of those provisions, which answer, a Member State came to, with respect to each of those elements of a particular concept that went into the statute. However despite the rich diversity and the opportunity for wide diversity, there were still some patterns. It was through geography that they could begin to see a few patterns. Combining the two studies together, there were 33 Member States that were identified that had no copyright exceptions. There was a little bit of a definitional problem because some Member States were borrowing provisions through treaty adoption and were not part of the statute. But there are 30 plus Member States that had no statutory exceptions and there was some geographic clustering of those statutes. There were definitional issues in other ways, but specifically they were focusing on exceptions to the economic rights of the copyright owner. There were also 27 Member States that relied solely on a general exception. By folding them in, a pattern emerged of clusters of Member States that had a simple provision or no provision at all. By way of example, but not the only example, the so-called Tunis Model Agreement hosted by UNESCO in 1976, provided language about a library exception that allowed the reproduction by a photographic or similar process by public libraries and other kinds of organizations of certain types of works, literary, artistic or scientific works, which had already been lawfully made available to the public with such copies, etc., limited to the needs of the library activities. That was an exception that had a core and allowed libraries and other organizations to make copies of certain types of works for the needs of the institutions' activities. It was not limited to preservation. It was not limited to research. It was not limited to anything else. That was an example of a general statute. In terms of the "who", it was the types of institutions that were listed. The "how", the statute and its language predated the digital revolution but it referred to the photographic or similar process. That language still had influence that day. The "what" might be copied was literary, artistic or scientific works. What about musical works? What about artistic works? Where were they in the spectrum? The "why", it was the needs of the library or other institution. Then at the end of it was the language that they saw in some statutes around the world where the exception said that copying was allowed as long as it did not conflict with the normal exploitation of the work and did not unreasonably prejudice the legitimate interests of the author, carrying over the language of two of the three steps into the statute. There was a lot that could be said about that and it might come up in questions. Referring to the slide, there was a model of a statute that had had some influence on lawmaking around the world. However it was a model within a model, because it was a model that was also borrowing the model of the three step test and bringing that into statutory language that was offered for adoption into the domestic laws of the Member States. That was an example of a general library exception. Going back to the map on the slide they could see those clusters. One for example was a clustering of Member States that had no library exception in South America. They were beginning to see some regional trends and influence with neighbors and influence with culture. In the Middle East, there was a cluster of both, a cluster of countries that had a general exception and a cluster of countries that had no library exception. In Africa, there were some really truly fascinating dynamics in lawmaking that had occurred. First, there were groups of Member States that had no exception and another group of Member States that had the general exception only. Added to the map on the slide was a yellow asterisk, which noted the Member States that were members of the Bangui Agreement. Adopted in the capital of the Central African Republic, the Bangui Agreement established an interrelationship among a dozen or so countries of Africa and that cooperation extended to IP. The Bangui Agreement included provisions that were incorporated into the domestic law of each member country and included a provision related to libraries and exception for the benefit of libraries. That exception was relatively brief. Notwithstanding the rights of the copyright owner, a library or archive whose activities were not directly or indirectly profit making, a different way of beginning to define the "who", might, without the consent of the author or other owner of rights, make individual copies by means of reprographic reproduction. That language dated from 1999 or had been endorsed most recently in 1999. Digital transition had occurred and was taking place

by that time, but it was still a statute about reprographic reproduction. The “what” could be done was covered in sub-paragraphs 1 and 2, where the work was reproduced in an article or short extract from a written work, like a chapter from a book, other than a computer program, with or without illustration, published in a collection of works, and so on, where the purpose of the reproduction was to meet the request of a natural person. Paragraph 1 was about the ability of the library to make a copy of a certain type of work, article or short extract etc., for the purpose of meeting the needs of an individual who had requested it. Paragraph 2 permitted the library to make a copy for the purpose of preserving and if necessary replacing a work that had been lost, destroyed or made unusable or rendered unusable in the collection of the library, or into the collection of another library. It too was about providing or making the copies for purposes of preservation or replacement. As stated previously, many of the statutes around the world were really about preservation and really about single copies for researchers. That was true in the study in 2008 and it was true for the study in 2014 and was underscored by the language from the Bangui Agreement, which captured those issues in relatively brief terms. The Bangui Agreement language in comparison to other statutes from other Member States was simple. Simple was a relative term. It was simple compared to other kinds of models and the competing model, dubbed the British model. In the history of copyright exceptions for the benefit of libraries, they could look back to the pivotal time of the enactment of the British Copyright Act of 1956. It created another kind of model for lawmaking, a model that involved multiple statutes, mostly addressing the familiar issues of preservation and copies for research but with elaborate breakout of statutes reflecting nuanced provisions for diverse types of works under elaborate conditions, so that instead of a statute that filled only one slide, the British model grew into a set of statutes that filled at times many different pages in the statutes of a given country. If they looked around the world at the former British colonies they could see the model in places such as Belize and Jamaica, where countries had carried over that British heritage, and in the lawmaking of the United States of America, where they had carried over that British model and added their own influence. Perhaps the longest statutes as copyright exceptions in the world were from places such as Australia, New Zealand and Singapore. Those were elaborate statutes that applied different rules to different kinds of works under different circumstances. The models could have profound influence on lawmaking in different places in some very surprising ways. By doing the supplemental study in 2014 and looking back on developments identified in 2008, they could see one particular example that illustrated the point in a most interesting way. The country of Sierra Leone had a rich history of its indigenous peoples and of the continent. In terms of its political history and its legal heritage there was the British influence. It was a British settlement beginning in 1787, evolving into a colony formally established in 1924, but then becoming an independent country ultimately in 1961. Starting in 1961 as an independent country, it began to adopt its own statutes covering a wide variety of issues. As expected the British model had an influence on the former British colony. The Copyright Act of 1965 in Sierra Leone was very much modeled on the British Copyright Act of 1956. That was true not only with respect to the library exception but more broadly. That was not surprising given its history and given the trends in lawmaking around the world. Sierra Leone revised its Copyright Act in 2011 and swapped out the British model for the Bangui Agreement model. That was true not only with respect to the provisions for library uses, but more broadly. What made that particularly striking was that Sierra Leone was not a member of the Bangui Agreement. That suggested that there was a transformation in the political and lawmaking influence going on at least within one country. The point was that when a country such as Sierra Leone and it could be any country, first adopts the relevant law, they looked to models as was the nature of the lawmaking process. When it came time to revise a statute they looked to models and they borrowed from models. Those models might be an international agreement or just what neighbors were doing. That was a normal human tendency in so many ways. That was not an endorsement or criticism, it was just a reflection of how statutes had evolved and how they had developed. It was not just Sierra Leone. If they looked at other countries that had adopted or changed their statutes in recent years, Mali, Moldova, Oman, Rwanda, Sierra Leone, Tunisia, Sri Lanka and Turkmenistan, some were in the Bangui Agreement and most were not, but whether or not they were borrowing specifically the Bangui

Agreement was not the point. The point was that those were countries that in their recent revisions of their library exceptions had adopted provisions that were following the model of relatively brief language about preservation and relatively brief language about copies for researchers. Whether that is a good or bad thing was not clear. That was for each of them to decide. The point was that the pattern in looking to models for lawmaking was increasingly clear. When they looked around the world at recent lawmaking on copyright exceptions for libraries there were relatively few countries who were doing something relatively original and crafting their own elaborate language to address even familiar issues. To highlight some of those in 2008 was New Zealand, which had added technological uses and digital technology to their exceptions and then added some safeguards for the interests of rights holders, as it expanded the ability to use the new digital technologies. Another country that had done something fairly recently in 2008 was the Russian Federation who had done something more again. Looking at countries that had done something relatively original was a fairly short list for recent years. Canada had adjusted its language about making copies for research and copies for interlibrary loans. The Russian Federation had expanded the provisions about research copying and preservation with some detailed provisions. The United Kingdom had adopted a wide range of new exceptions, not only for libraries but for education and others, recognizing the diverse media, the diverse ways that materials are used and the diverse technologies and expanding its provisions to new works and new media. Japan and France had adopted provisions that were not specifically within the scope of the study, but related to it, permitting the national libraries to engage in large scale digital programs for the benefit of not only researchers, but also sharing those copies out to local libraries. In the case of the Russian Federation, it also added some fascinating provisions that recognized open access licensing and securing it, which were not specifically part of the study but were certainly related and of great interest to libraries. The United Kingdom had added new provisions allowing data and text mining, which were provisions that were not explicitly applicable to libraries, but were importantly related to the works of libraries. The European Union had also engaged in some really innovative and new provisions that were very influential and important and were significantly related to the study. When the European Union adopted a Directive it was applicable to 28 countries and went through a complex decision making process. Of specific importance to the study was the Information Society Directive from 2001 which permitted exceptions and one that was permitted but not mandated, was the communication or making available of copies for study by individual members of the public at dedicated terminals on the premises of the library or archives. Just by virtue of having that provision in the Directive, it became influential on 28 countries. Many of those 28 countries had adopted it and outside of the European Union, several other countries had looked to it and also had chosen to adopt that provision or something like it. It was a model that was a template for a particular statute. In the context of the European Union, it had direct influence, but because it was being picked up and tested and adopted by a large number of countries within the European Union then it found further influence with associated countries and countries that were not associated directly with the European Union. The big picture was that there were a number of models. Where was the originality and where was the true innovation in developing and drafting statutory provisions? There were not many examples to find because it was model making that was leading the way in law making. The broader implications were numerous and there was much to say. One thing that could definitely be said was that libraries and archives were evidently a priority among lawmakers in the countries of the world because most countries had exceptions. If they looked further beyond the statutes they might also find other developments. Starting in the United States of America, those issues had been debated extensively. No new enactments had occurred at that point, but many Member States were considering to one extent or another some revision. From the overview it was clear that there was also an uneven application of digital technologies. Digital technologies, if they were not inevitable currently, they would be inevitable in every Member State in the near term and that was something they needed to face up to. There was little innovation in the scope and heavy emphasis on those models for lawmaking. If they looked deeply into the laws of each country, they could find political tensions and political realities: the struggle of working with competing interests, the influence of economic

and cultural values and their own history. Each country had a history that it brought to the task. There were regional agreements such as the European Union developments and the Bangui Agreement and many more. So far, libraries had not been part of the regional trade agreements, but that might change in the future. So what was the role for WIPO in all of that? To answer that they would have to look at the first map on the slides which indicated in red the Member States that had no library exceptions. When they looked at the blue, it meant a rich diversity of statutes, subject matter and so on, but that diversity was also defined to a great extent by the models. The role for WIPO then might be to shape the conversation about where the law might go, because the challenge ahead in lawmaking for library exceptions was not only to integrate digital technology, but it was also to reckon with the expanding range of activities that were part of their libraries, archives, museums and educational institutions. "Libraries" was a shorthand term because it was the expansion of those activities and services. There was relatively little about interlibrary loans and library services for the visually impaired. There was little or nothing about mass digitization of works for preservation. There was little to be reckoned with the statutes that were dealing with the interrelationship of ownership and exceptions and licenses and whether licenses could override the statutory exceptions. It was not within the scope of the study, but increasingly they knew it was relevant and that it had implications for orphan works. The European Union had begun to take the lead on that issue and so there was a need for them all to begin to address it. The challenge ahead also included some things that were not typically copyright, but they really operated as part of copyright: the buying and selling of works, the first sale and the exhaustion of rights and especially the cross-border transfer of works, that digital files that had been made in one country for preservation purposes could be transferred to another country for preservation purposes in that other country as well. That involved not only the copyright laws of both countries, but the import and export laws of those countries. The last bullet point on the slide was copyright education. Professor Crews noted that he had been deeply immersed in copyright education for the last 25 years, not only educating students in the classroom, but educating professionals through workshops, meetings, programs, writings, web site and much more. Educating professionals was important to help them adopt and deal with the terms of the relevant copyright laws in their country, applicable to their activities. Copyright education was vital for the successful implementation of whatever law came from the SCCR's discussions. It was vital, because it required time and attention to adhere to the law. They could take a great deal of consolation knowing that the reason why they struggled with the issues in a global context in the SCCR and in a local context where somebody was just working with their own laws and their own projects. The reason why they struggled with it was because there was a tremendous amount of respect for that law. The reason why they struggled was because they knew as lawmakers that they wanted to make good laws and they struggled with it because they knew as owners of works, they wanted their works to be respected and they wanted to have the benefits of ownership. They struggled because they knew as library professionals and as archive professionals and other members of the research community that they struggled because they respected the law and because they wanted a law that really worked and that they could all really use. So the challenge was good lawmaking and good information resources. It was good education. The point was really to go back to the evidence of model making on law making. What was the role for WIPO at that point? There was no prescription or answer and that was not his job, rather he was eager to learn from the delegates before really arriving at a decision. He would say that because models of statutory language were demonstrably so prevalent in the lawmaking on that point, so when a Member State wanted to adopt a statute, thought of the new issues that might come up, or came before a legislative body, they were going to look for a model. Who else had already done that? That was an opportunity for WIPO to step up and say there was, if not a model, at least some guidance to help Member States develop some law on the point. Because those models were proven to be so influential, because Member States would in fact be looking to models for their innovative lawmaking, if WIPO did not do it, he would hazard to say somebody else would. So, if they did not take some kind of action - and he was careful not to say what the right action was because he did not know and was eager to hear- he believed that that did not mean that no action was the right decision. Instead, no action meant there was an opportunity



left for somebody else to pick up the issue where WIPO had left off. He hoped that was a constructive note to leave on. He thanked them for the opportunity and concluded by inviting the delegates' questions, comments and additional information.

76. The Delegation of Italy stated that the report on the situation that existed in the world in terms of exceptions was very interesting. It asked about non-commercial transactions, which had not been mentioned. If they looked at the statistics, non-commercial transactions represented almost 80 percent of protected works, works protected under copyright. That was a tremendous volume of works which were not covered. How would libraries be able to use that wealth of works for the benefit of mankind? Some countries had already undertaken legislation in the area. In Italy, for example, they had looked at those aspects.

77. Professor Kenneth Crews said the question was related to the use of out-of-commerce books. There had been some exciting initiatives that had been done in cooperation with publishers and other rights holders to begin to identify ways to digitize and make available that enormous collection. As the Delegation had stated, 80 percent of materials were in that category, book materials were in copyright, but were out of print and otherwise not available. Short of some very dramatically different approaches to lawmaking, that was a ripe area for rights holders and library groups and others to be able to meet and to identify ways that they could provide the digitization services and define how those works might be available. Some of that had been done in the lawmaking that he had mentioned briefly in France and Japan, by virtue of the participation of the national library engaging in some of that activity. He would encourage that effort to continue. There were other large scale digitization projects that had been allowed under the laws of some countries but they almost always were going to have some sharp limitations on the accessibility and usability of the materials in the digital collection. If they wanted to really get them into the hands of users, they needed to bring together the efforts and objectives of publishers and authors together with libraries to see how they could share in those efforts cooperatively.

78. The Delegation of the Russian Federation drew the attention of delegations to the very clear nuance that Professor Kenneth Crews had mentioned that had to do with the initiatives that were under way in certain Member States on copyright. In the Russia Federation they were adopting exceptions and limitations, but at the stage of the discussions on the law, they had heard some very interesting remarks about applying the laws to digital copies and libraries, which was of concern in the publishing world. Society did not have a clear position on limitations and exceptions. There was a certain hesitation or concern about the unlimited use of copies in digital format and that would have an impact on copyright.

79. Professor Kenneth Crews said that, in general terms, even where a Member State had enacted new legislation, there was still some remaining tension and uncertainty. Some of that could be addressed through educational initiatives and some of it could be addressed through providing safeguards, so that in relation to the widespread use of digital works, there were safeguards to prevent their misuse, so that they could pursue the good uses and not be distracted by the misuse of certain works.

80. The Delegation of Saudi Arabia stated that it had been mentioned as one of the Member States where no exceptions existed, yet if they went back to the law on the protection of copyright which was issued in 1984 in Saudi Arabia, they would find that there was an exception, especially in Paragraph 3. There was an exception regarding the use of a work for educational purposes or for making one or two copies for public libraries or for archives and documentation centers for a non-commercial purpose. There were several conditions, which said that the use could not be commercial for profit making or for other activities. The second paragraph referred to the possibility of quoting or obtaining copies for scientific purposes, provided that a scientific methodology was applied. The Delegation hoped the position of Saudi Arabia's copyright law was then clear.

81. Professor Kenneth Crews suggested that he would revise the study to refer to the statute it had referred to.

82. The Delegation of Mexico stated that the report would be particularly useful for the work of the Committee. It referred to Article 9.2 of the Berne Convention with its three step test, together with Article 3 of TRIPS. It had understood that they were very similar mechanisms since they were general measures. Mexico also had limitations and exceptions. The Delegation asked whether they were moving towards a harmonization exercise internationally by looking at the Berne Convention and other conventions, in that they were moving on to a new generation of rules. As they were doing so, should they not try to look for ways to harmonize things in the area of exceptions and limitations for a country?

83. Professor Kenneth Crews stated that there were two parts to the question. The first part was referred to whether they were moving towards an era of harmonization. The answer was clearly no, they were not. They were moving, as he had pointed out, towards similar models and gravitating to certain types of models. However even within that, they were making their own changes and adjustments. They were moving towards what he sometimes called rough harmonization. Yet he was not sure it was even rough harmonization. It was more like groups of somewhat harmonized countries, as a result of the influence of certain models, whether it was because of a treaty or because of history or something else. So to the first question, were they in an era of harmonization, the answer was a simple no, they were not. The second part of the question was should they be in an era of harmonization. He had some mixed feelings about that. On the one hand, there was virtue in harmonization, in allowing for the predictability of the law as you moved from one country to another, as your business activities moved from one country to another. That had advantages in many ways. It made the law easier to understand. It made it easier to apply. It made it easier to address some of the issues of cross-border exchange of materials that he mentioned toward the end of the presentation. There definitely were some advantages in harmonization. The major disadvantage of harmonization was that they would lose the opportunity for countries to experiment, to test new ideas in lawmaking and to move in some new directions, to see if they were successful. If they really tightly harmonized the law, then they might lose that. It might be that there was an answer in the middle, which harmonized the law to a certain extent and then left some of the details to individual countries to resolve as they saw appropriate. That could be a nice middle ground for creating law and at the same time allowing some flexibility to reflect local needs. Changing the answer slightly, if the question was about harmonization of the text of statutes, then he had already responded to that. There was something else that they might harmonize and that was looking at the harmonization of the subject matter of the statute. Many countries had a statute on preservation but not a statute on copies for individual researchers. Many countries had a statute for researchers, but not on preservation. Very few countries or fewer countries had a provision on interlibrary loans. Very few countries had protection in the remedies for liability that libraries might face. Virtually no countries had addressed the issues of cross-border transfer of content. If the question were a little bit different, should they harmonize the subject matter of the exceptions for libraries then he would give a much stronger yes to that question. That would help all of them move in a certain direction toward developing laws that could serve the needs of their populations.

84. The Delegation of France had a few comments and corrections. It knew that there were countries that had modified their legislation since 2007, within the framework of library exceptions. Indeed, since 2009 France had a new law, which broadened the scope of the exceptions. The original text went back to 2006 and covered the copying of a work, which could be done to preserve the work or to ensure consultation in libraries. France used the model from the 2001 European Union Directive and transposed it into its national laws. In 2009, France went further and transposed another mechanism from the 2001 European Union Directive into law, to cover another scope, which had to do with representations for research or private studies on specific terminals. To be more specific and to highlight the issue, the Delegation wanted to

better present its national system and that was clearer if it looked at the different objectives that it had tried to meet for exceptions and prior to that, the special conditions, which underpinned the system. There were basically two objectives that France had tried to achieve in its national exceptions rules. The first had to do with the fact that reproductions or copies had to be made to preserve works or to preserve conditions of consultations. The second had to do with research or private studies. On those two objectives, the Delegation wished to respond to the statement of the Delegation of Saudi Arabia. For France too, it had excluded any commercial or economic objectives in its law, as these were not authorized within the framework of its exceptions laws. Looking at the conditions for application, these were very strict because they were limited to the premises of the library. Looking at some of the elements of the presentation, the Delegation commented that the study indicated that it was the regulatory authorities that were really responsible for the library, but really since 2007, it was TRIPS, which was responsible for library exceptions within the framework. The last issue was that it wished to thank Professor Kenneth Crews for his recognition of France. In the oral presentation he had said that it had been innovative and its mechanisms were innovative because they dealt with the mass digitalization of works. The Delegation was very pleased to be among the innovative countries in that realm and it was very pleased as well that the study had also looked at other systems that did not have to do with exceptions, because France's mechanisms for managing out-of-commerce works or books was very interesting as well. Why was its mechanism new and very creative? Because France put in place a mechanism, which allowed it to transfer the rights of those entitled, the transfer exercise of those rights to a collective management company. There was an aspect of transferring rights, private rights to a collective management entity. The Delegation wished to highlight that issue and thanked Professor Kenneth Crews for taking into account those elements, which were very important because they were working in national law. When it looked at the mass utilization problem and found a solution to use out-of-commerce books, it also looked at what was going on abroad and had found other models, other than those that he mentioned, because there were other possibilities to manage the situation. Perhaps the study would be even more useful if it were more exhaustive, and more useful for delegates, because there were other delegates who were also trying to look at solutions for massive utilization problems. As they would be very interested in a more exhaustive list of possibilities on models, it would be a good idea to include that in the study. In conclusion, it thanked Professor Kenneth Crews once again for the massive work that he had carried out, which was absolutely essential.

85. Professor Kenneth Crews looked forward to continuing the conversation and gaining more information. He stated that he had included the update on the French law about the mass digitization, the out-of-commerce books and the dedicated terminals. The Delegation had raised in general a real challenge and a good challenge for preparing a study like that one, and that was that the context of the study was the status of the law, and in fact, even more specifically, the status of the copyright statutes. Some of what they were struggling with and some of the innovative solutions that were in conversation about the digitization and availability of out-of-commerce books was taking place in most countries outside the framework of statutes. He welcomed the opportunity to further pursue that issue and other issues related to it, but he would definitely need a different kind of support and a different kind of help, because it reached into a body of information that was outside of the statutes. If they could get that and bring that into the conversation, that could be enormously valuable.

86. The Delegation of the European Union and its Member States said that the study was an excellent basis for the Committee to further develop an exchange of best practices and exceptions for libraries and archives. It highlighted the excellent work that had been done in the study in identifying the national experiences of countries that had revised their statutes on exception and limitations since the completion of the 2008 report. Particularly, the supplemental charts were a useful tool for sharing national experiences. It drew particular attention to certain results of the study and highlighted that out of the 186 Member States, only 33 had not yet introduced exceptions that could be qualified as library exceptions using a general term. The

assistance of WIPO and the experience of other Member States could be useful for those willing to update and introduce new exceptions. With that in mind, it believed that it could be useful for the Secretariat to build on the study, by more clearly identifying the different relevant issues, for example, by arranging the information in a way that made it easy for Member States to compare and analyze the experience of others. There was a clear increase in the number of Member States adopting exceptions and limitations in their statutes since 2008. It noted that the WIPO membership had changed since that time, and with reference to the 37 Member States that featured in the new update of the study, it asked the Secretariat to provide a list distinguishing between those that had introduced or modified exceptions in their national laws after 2008 and those that had it from before, but it did not show up in the study for the reasons that Professor Kenneth Crews had explained. The Delegation generally invited the Committee to consider what lessons had been learnt and to explore ways of securing experience sharing and collaboration with relevant national experts. It highlighted that in the study, Professor Kenneth Crews had singled out countries in the European Union, where noteworthy developments concerning libraries and archives had recently taken place. It was naturally very glad that those developments had been recorded in the study as a possible source of inspiration for others. That, together with the invitation by Professor Kenneth Crews himself to add any knowledge that he could consider complementary, gave it the opportunity to briefly illustrate the exception system of the European Union, which had been repeatedly mentioned in his presentation and which, had a bearing on the individual systems of the European Union Member States. Some of the European Union Member States themselves might wish to provide interesting insights into their exception and recent changes they had introduced. The European Union legislation contemplated various exceptions to the reproduction right only or also to the reproduction communication to the public, in making available rights. One recent addition to that list was the exception for reproduction making available of orphan works. Even in an integrated legal system such as the European Union's, only a very few of those exceptions, the orphan works was one of them, were obligatory for European Union Member States to implement or transpose into their own systems. Member States remained free to implement most of the exceptions in the European Union legislation into their national systems, which resulted in certain variations that could also be attributable to the wording of some of the exceptions. The list, however, in the European Union legislation was considered exhaustive and in that sense the national exceptions should not fall outside of the list. With regard to libraries and archives, specifically, there were four main exceptions in European law to be considered. One was an exception to the reproduction right for specific acts of reproduction for non-commercial purposes, which was largely used for preservation purposes but not only. That was the only one to pick up on an important point of the presentation, where the European Union Directive explicitly referred to the first element of the three step test, meaning that the exceptions must be limited to certain special cases. In the same Directive, where that provision was found, there was a separate more general provision that mandated the three step test for all the exceptions that were introduced in the European Union. There was then a narrowly formulated exception for the communication to the public and the making available for the purpose of research and private study by means of dedicated terminals on the premises of such establishments. That was mentioned several times in the presentation. The exception was quite clearly worded, but it had still been the subject of discussion, particularly in relation to the condition that it only applied in the absence of purchasing a license. That was the object of a recent reference for a preliminary ruling from a German court to the Court of Justice of the European Union, which is the court to which the national courts in the European Union could submit questions on the interpretation of European Union law. There was also a public lending right for authors and performers, for specification of the performance in front of them, and for producers of the film, in respect to the original copies of the film, which was the basis of the activity of lending by public libraries in the European Union. There was that right for rights holders and at the same time, the possibility to introduce the allocation to that right, which was widely used by Member States and was the basis of the lending practices of libraries. The exception required remuneration for authors, although Member States could exempt certain categories of establishments from the payment of that remuneration, which could be determined according to cultural promotion activities and the

considerations of the Member States themselves. Finally, the new Orphan Works Directive in the European Union, allowed for collectively calling on certain categories of institutions of cultural heritage to reproduce available works that were identified as orphans, following a diligent search to identify and locate rights holders. The Delegation stated that it wished to ask two or three questions regarding the study. The first question was beyond the rich factual information in the study: what were the drivers for individual countries and Member States introducing or updating libraries and archive exceptions? The second question was based on the observation that exceptions and licenses often coexisted well in systems where exceptions to the benefit of certain institutions were complemented by licenses, often collectively negotiated, which covered broader uses, often than the exception itself, and were negotiated so as to cover and provide convenience to large categories of beneficiaries, for example, a large part of an educational system in a country. There were some examples of that in the European Union. Did the study explore that aspect or did Professor Kenneth Crews come across that elsewhere in the world? Another question was whether in the course of the study he had come across any interesting or useful definitions in that area, for example, for notions like private study or preservation?

87. Professor Kenneth Crews said that the statement underscored the general point that multinational efforts had had a really had a profound and important influence on lawmaking in individual countries. The first question was about what were some of the driving influences, the motivations that had led a country to enact a particular statute. That answer might be very different in many countries and lead countries to adopt some very different statutes. Getting that information was extremely difficult. Some countries kept very careful records and had publicly accessible records of hearings, reports, studies and deliberations leading to enactment of a statute. For many other countries, that kind of information was difficult to find. Sometimes the exciting and helpful resources for doing research on the origins and motivations behind the law could sometimes come from secondary sources. Newspaper coverage of legislative events could be really helpful and insightful in many ways. The answer to the other part of the question about examples was yes. Some countries they knew of, that had moved toward extending their provisions to digital technologies had done that because of the value of digital technology. At the same time, they had heard the arguments that digital technology could pose certain other risks for somebody who had a different interest in the transaction. Then you could see how countries had enacted some added conditions or safeguards. They had examples of that. In the United States of America in 1998, there were some revisions of the library exceptions. They were motivated in large part by concerns among the library and archive community about digital technology and preservation opportunities. Its Congress had added digital technology, but with some added conditions. In retrospect, the United States of America was still struggling with that issue as it did not feel resolved for many of the people who were affected by it. Around the world, getting that detailed information was very difficult and it would be an exciting project to identify a few countries, where that information was available and then provide some case studies that showed what had been argued, who were the interested players and what had led to the making of the law. The other questions were on something different relating to the relationship to licensing. The availability of licenses was the legal interpretative question that was before the European Court of Justice, with respect to the making available right and the German statute on that point. Looking at the 2008 study and previous research, they knew, for example, that Belgium had a provision that secured those exceptions even if there was a license agreement so the license agreement did not waive the exception. The new report mentioned the relationship to licensing particularly if licensing was part of the statute. There were a few other instances where at least some small aspect of the statute could not be taken away or affected by a license. An issue conceptually in the lawmaking process that countries needed to reckon with, was the relationship not only of the rights of owners and the public rights of use or the copyright exceptions, however described, but also the role of licenses and their availability, or could they or should they be allowed to override an exception that was in the law. That was a tough question. It not only went to the balance of rights, but it also went to lawmakers deciding if they were going to invest in creating the statute, was it okay if an

agreement wiped the statute away that they were working hard to develop. That was a hard lawmaking question that Member States needed to reckon with in the process.

88. The Delegation of the European Union and its Member States wished to follow up on the points made in Professor Kenneth Crews' response. Its question had not necessarily been focused on the relation between exceptions and licenses, in the sense of one, taking precedence over the other, but rather on whether the study's overview of what had happened in the world, looked into or came across examples where the two worked together? Were there cases where there was an exception that gave certain space to certain beneficiaries, typically in the world of research, location etc. and then was complemented with a licensing system, that was built in a way that provided convenience to both parties, in terms of negotiating the license, the validity, the uses covered, etc., which was often voluntarily taken up? While it was necessarily voluntarily taken up as a license system by the parties was it in practice used for the users that were also covered by the exception because it provided more convenience, covered a large panoply of uses, rather than what the exception covered, etc.? That was the scenario previously referred to in the Delegation's question. The Delegation's third question was whether Professor Kenneth Crews had found any interesting or useful definition of definitions in the study, for example, of notions like private study or preservation?

89. Professor Kenneth Crews said that the study captured the licensing issue to the extent that the licenses were part of the statute. If the statute existed, but on the side parties made a license then that was not part of the study. If the statute reflected the licensing or something was subject to licensing or otherwise, then it was within the study. The answer was yes, in part. On the point about definitions, some definitions were absolutely critical and fascinating. They were not definitions of things like preservation, but one thing that was particularly fascinating was how rarely a country defined a library or an archive or anything else. Right from the start, the most fundamental concept of the statute was rarely defined. The lack of definitions was very telling. Where there was a definition of anything that was relevant, it was generally included in the report. One of the definitions that was consistently important was, if the statute, for example, said a library might make a copy of a work for, whatever the rest of the statute said, if the statute defined copy, or a library might make a reproduction, if the statute defined reproduction, that was extremely important because it was usually there that you got the answer to the question, does the statute cover digital technologies. The answer was usually in the definition of "copy" because if the definition of "copy" said it was a reproduction of the work in any technological format, there was the answer. If it was only in the paper format, photo or reprographic reproduction, then there was the other answer. Those definitions were extremely important but they were not plentiful.

90. The Delegation of the Czech Republic said that the studies were for all of them who were responsible for national copyright legislation, a very important and useful source of information and inspiration for their legislative work. They could also exploit them as a rich source of information to be provided to their libraries and archives and other institutions and stakeholders as well also students and the public in general. As the Czech Republic was not included in the updated version of the study because its law had not changed during the relevant period, the Delegation wished to briefly inform the delegations about the latest development in its national legislation in the area. Just the previous month, a new amendment to the Czech Republic Copyright Act entered into force. That amendment brought a new exception for libraries and archives and for other cultural and educational institutions and for public broadcasters, enabling them to use under specific terms and for certain specific users, orphan works existing in their collections. It was preparing an unofficial English translation on the entire consolidated version of its Copyright Act as amended since 2006 and the translation would also be provided to the WIPO Lex database. It was also intensively working on another amendment, which should enact further provisions related very closely to several activities of libraries and archives. There would be new licensing schemes introduced by the law, namely an extended collective management scheme, which would enable libraries and archives to digitize and communicate to

the public copyright protected materials, including but not limited to so-called out of print, or out-of-commerce materials and to spur funds for digitization. A similar scheme should enable archives, libraries and schools to make copies of sheet music for educational purposes or study. The draft legislation had been already prepared in 2011, with very close and intensive cooperation with representatives of all relevant stakeholders including libraries, archives, schools, publishers and collective management organizations. However, due to the extraordinary elections there had been a delay in submitting and reading the Bill so the legislative opportunities were planned to be adopted in the spring of 2016.

91. Professor Kenneth Crews looked forward to following the new developments in the Czech Republic. It was particularly interesting to note in the discussion that the exception was applicable to sheet music as very few of the statutes mentioned sheet music, and most of them that did often excluded sheet music from the coverage of the statute. Addressing a work like sheet music, if they were in the music industry and representing the interests of composers and publishers of the music, they would have a very different concern, perhaps even different from the interests associated with a book or an article. Statutes often diversified in that there were the rules for sheet music and there were the rules for journal articles. That reflected the British Model, which had separate statutes for different kinds of works under different circumstances. He urged the Delegation to keep moving ahead and to find a good useful formula that worked well for its community.

92. The Delegation of the Czech Republic responded by stating that to be precise, it was not planning to introduce an exception for making copies of sheet music, but to introduce a licensing scheme because it was obliged under the European Directive to follow the Information Society Directive, which had an exception for sheet music. At the same time it would like to find some kind of solution to enable schools and students to make copies of the material. It planned to introduce a licensing scheme to facilitate that.

93. The Delegation of Tunisia said its intervention concerned two matters: first, the reference to the Tunisian legislation in the study. It thanked Professor Kenneth Crews for his reference to the amendments, which were done in 2009 under Law No. 94. The legislation was on the web site of the WIPO Lex. It referred to the exception in favor of public libraries and it was a new text with Chapters 13 and 12, which the study referred to. That was as far as the Tunisian legislation was concerned. With regards to the study as a whole, it referred to a very important matter, which was the legislation and statutes, and to define and to explain many of the legislation and statutes of countries in the world, and also other practical aspects regarding the work of the libraries. It was not just relegated to that which the laws and legislation referred to, but it also referred to the many difficulties that public libraries could face, especially with being able to use the exceptions within the legislation. In many cases, it found that libraries were fearful of the complications around the legislation. They did not in fact implement the exceptions, as they preferred what was possible and available, particularly in view of the great technological changes, which had taken place in the world and which enabled libraries to use digitalized works. There was also information for the countries, whose legislation stipulated those exceptions. How were those exceptions used, to what extent were they fully implemented or fully used in the countries? How far did the libraries actually use and exploit positively the exceptions or the licensing? The Delegation was concerned that they were not fully used or fully exploited even when the legislation was available to the libraries. The Delegation asked whether Professor Kenneth Crews had referred to certain solutions or whether there was certain technical assistance, which could be provided.

94. Professor Kenneth Crews said that the point was even if there was a statute, the study could reveal the details of the statute, but whatever that statute said to what extent were libraries really using the statute? The answer to that was any answer that could be imagined. In other words, there were in some countries some libraries making detailed careful use. There were some being very selective. There were some who were adopting interpretations where the

statute was not as clear as one might expect. Then there were libraries that were just choosing to set it aside entirely. That was the case not only in the library statutes but in the education statutes and many other statutes. The take away from all of that, was finding the right formula for drafting a statute detailed enough, so that the users - well-meaning, law abiding citizens, that they were really expecting to follow the law - had enough information from that law so that they could make a responsible decision. At the same time, the structure of the law should not be so complicated that it was difficult or impractical for most trained professionals to follow. A related problem was that a statute in the end, after whatever process of learning, understanding and implementation, was so burdensome or demanded so much staff time, or it did not allow very much for the library to do, was a statute that just would not be used because the value was not there. Part of the challenge in lawmaking was to provide for the public interest, provide for the private interest in one statute and in the process be very practical and very reasonable in the way they developed statutes, so that real people could really use them and really enjoy the benefits of the statute. He emphasized that in the process of enjoying the benefits of the statute, they should be respecting the interests of the rights holders because every copyright exception was itself a defined space with limits and therefore it was also an act of respecting the rights that were outside of that space and the rights of copyright owners. That was an extremely important point. The answer to the Delegation's question was diverse, but the lessons from the question were very important for all of them as they developed new statutes in their respective Member States.

95. The Delegation of Brazil stated that the report, combined with the first report from 2008, provided a very comprehensive analysis of the different national legislations, which was an important input for their work at the SCCR, as it allowed the delegations to have a better understanding of the similarities and differences among their respective laws and practices in that particular area. At the same time, the report shed light on certain areas where, in its view further cooperation would be welcomed, taking into account the dynamic evolution of digital technologies and the growing cross-border cooperation among libraries and archives. The research that started with the 2008 report had been updated, and indicated that from the universe of Member States, 33 countries still did not provide limitations and exceptions for libraries and archives in their national legislation. An even greater number of Member States did not appear to provide limitations and exceptions that could be deemed adequate, in order to address the new challenges libraries and archives increasingly faced with the emergence of the digital environment. According to the report the limitations and exceptions provided for by national legislations varied deeply from country to country, a fact that posed a concrete problem for cross-border cooperation. Those were realities that directly affected the work of libraries and archives and should be further discussed in the Committee. The report showed that in the last six years a relatively small proportion of the world's nations had made changes to their copyright exceptions, affecting libraries and archives and that those had not resulted in much harmonization of laws. They also knew there was an increasing trend for libraries and archives to provide online services internationally to researchers, educators and students, demanding cross-border supply of electronic copies of documents or cross-border access to electronic journals and other database to, which the library or archive subscribed. Given that the report showed that with a few changes the patchwork of uneven provisions for copyright exceptions around the world identified in 2008 still persisted, it asked Professor Kenneth Crews what could be done to address the problems presented by the cross-border on line environment, in which libraries and archives in every country must operate? Other interesting trends could also be observed in the report. In particular, the fact that TPMs could have a negative impact on a country's ability to legitimately implement exceptions and limitations was a matter of growing concern as countries sought to better regulate and avoid abuses in the use of these measures. It would be interesting for Professor Kenneth Crews to further elaborate on that issue. The Delegation concluded by reiterating that it considered the updated report a very important input for the SCCR's work. It thanked Professor Kenneth Crews for providing such a valuable tool that would most certainly contribute to the progress of the SCCR's discussions.



96. Professor Kenneth Crews said that the points about trans-border activity and cross-border activity and the difficulty of cooperation, when the laws were so diverse were important ones and they were exactly some of the right issues to debate. It could be argued that perhaps one of the single most important things that WIPO could address, if they had to narrow it down to one, could easily be the question of cross-border. Some of the most familiar examples included a researcher in one country who would like to have copies made at a library in another country, or that a library in one country was allowed under law to have preservation copy, but the digital file was made in another country and sent to the country requesting it. What circumstances could be allowed? That really called for them to bring some fresh and imaginative thinking to the way they structured the legal challenge because the traditional way of looking at it had been to say that it needed to be lawful on equal terms in both countries in order to be made in one country and delivered in another. With the diversity of detail in all the statutes, even though the models were influential the details varied greatly. If the goal was to have the statutes in the two countries matching precisely, that was just not going to happen, because there were going to be differences in detail in most examples. That meant they needed to structure the law differently. It might be that the works that were shared across borders needed only to be judged for their lawfulness in one of the countries, particularly the country where it was going to be used. Might be it passed through a trusted third party that facilitated the transfer of the work, so that it was not necessarily one person in one country and one person in another country, checking their laws, rather they could facilitate it in a very different way. If they did it right it could allow for a sharing of resources, but at the same time having structures that protected the interest of rights holders so that they could participate and encourage the activities as well. They needed some original thinking on the task. That was one that was appropriate, if not the most important for WIPO to address.

97. The Director General greeted the delegations and apologized for not being at the SCCR on the first day as he was away from Geneva on a mission. He regretted that he had been unable to introduce the new Deputy Director General, Culture and Creative Industries Sector, who was a great addition to the Secretariat. He had been following from a distance the SCCR's work and the Chair had briefed him extensively on it. He thanked the delegations for the constructive tone in which the discussions had taken place and the mutual respect for the different views that they had shown. He understood that they had made considerable progress on some of the difficult technical issues and that was extremely encouraging. He encouraged them to do that work in the future on the area of broadcasting, with which they had been dealing. He reminded the delegations that the rhythm of the meetings meant that they did not have a great deal of time before the General Assembly in September 2015 and urged them to expedite their technical discussions and their understanding of the subject matter, with the goal that they might be in a position to make a recommendation about the future work, with respect to broadcasting when the September General Assembly came around. As they had only just started the discussion on exceptions and limitations, there were still a number of days remaining. The Director General thanked Professor Kenneth Crews and congratulated him for his monumental work, which was universally appreciated. He was delighted that he had committed the time to prepare the study and looked forward to hearing the results of the SCCR's consideration of the issues as they went forward. He also thanked the Chair and stated that they were proud that he was presiding over the SCCR and wished them good discussions for the remaining two days.

98. The Chair thanked the Director General for his inspired and unjustified words in reference to him. Regarding the work that they were doing, the previous day they had the chance to hear the monumental work of Professor Kenneth Crews, which was very inspiring and timely and had triggered a lot of questions and opinions. They had not stopped that process and would continue in that regard with the list of requests from the floor.

99. The Delegation of Kenya, speaking on behalf of the African Group, said that the presentation highlighted important elements such as the use of exceptions and brief exceptions

in some countries, the challenges posed by the environment, the prevalence of exceptions on production despite the environment, the use of the three step test as an exception and not as a framework, in which to craft exceptions, among others. In light of all of those observations, how could they deal with the challenges brought by the digital environment, especially also in regard to the cross-border exchanges and what could WIPO do to address all of those issues, which had been highlighted?

100. Professor Kenneth Crews said that the Group's question and observations were really critical. They went right to some of the most fundamental, most important parts of the study. On the one hand, they itemized some of the specific challenges in working with and adopting statutory exceptions. Then the Group really posed the question about the ability or the possibilities for WIPO to address some of those issues. There were so many answers to the question, but it was important to find one. The first step in the discussion would be to explore some of the options. Some of the options that had been talked about as an organization and as a group of delegates were different approaches and different options. That was for them to decide. When it came to the substance, some effort to move towards some degree of harmonization would be important. It might be that the approach or the technique could be to harmonize the issues that they would address, rather than specifically harmonizing the details of how they would address them. Due to one of the issues that the Group had pointed to, they could start out by putting the question in the context of the digital revolution. That revolution had barely begun. They were in a very different world that day due to digital technologies. They were in a very different world that day from five years, 10 years or 20 years ago. To the extent that anybody dared to make a prediction, they would be equally in a different world in five, 10 and 20 years into the future. The transformation of technology and the way they communicated and the way they shared information was only beginning. It was important not to prescribe exact details, but it was important to take some steps to open up the issues. An example that had been given was the cross-border issue. It was important for WIPO to address that issue in one fashion or another, because it had to do with sharing of information and the nature of the use of information, but it also had a lot to do with technology. It had a lot to do with law and politics and it had a lot to do with the international context of WIPO. There needed to be some effort to open the issue and guide the issue, which at a minimum was an enormous step towards harmonization and the creation of an effective and important law.

101. The Delegation of the United Republic of Tanzania thanked the Chair, the Secretariat and WIPO. Its comment and request was based on page 95 of the report. It had a very unique system and so sometimes authors or researchers tended to confuse some of the issues. In the United Republic of Tanzania, there were two different IP systems; one was for Zanzibar and the other for mainland Tanzania. The report only applied to Tanzania. If the study was intended to cover the country as a whole as shown on the map, the Delegation requested that the mainland part was also included, which had Section 12 of the Copyright Act, which provided for general provisions and there was also one provision on libraries. That provision might not be detailed enough, but the Delegation would appreciate if the report at page 95 would include both. It stated that it was currently amending its legislation.

102. Professor Kenneth Crews stated that the 2008 and 2014 report should be read together and there was a discussion of Tanzania in the 2008 report. He had taken notes to ensure that the information was current and would look at it specifically in the reports.

103. The Delegation of Sudan stated that Sudan was one of the countries that had called for the study. It shed light on issues that the Committee had been struggling with for the past four sessions and it highlighted the role of France, the Russian Federation and the European Union and the impact of the Bangui Agreement. Those points could provide an answer to the harmonization question because they were part of the original number of countries who had called for the clarification. It hoped that it would help the Committee highlight the desire of the Member States to improve the question of limitations and exceptions for libraries and archives

and for scientific research and for persons of other disabilities. The study referred to the fact that Sudan had developed its law in 2013. Its new legislation included more than 13 articles on exceptions and limitations. In its subsections, there were more than 32 exceptions, which covered several aspects and details, including compulsory copying. The law in Sudan covered another aspect, which was related to folklore expressions, and contained a very important part on musical notes and for other expressions of folklore. Those had been clearly set out in its legislation and were worthy of being highlighted. The legislation in the Sudan, in addition to folklore, tradition and knowledge, also stressed creative sciences and cultural ones, and that had helped it to establish a connection between TRIPS and the WTO. The Delegation found it very important for the development of activities within WIPO. The study contained vital aspects. It wished for greater detail, especially where common interests and economic culture and historical interests were concerned, as that would help the SCCR to highlight and open up an approach that would help WIPO. It hoped that the Secretariat would adopt an analytical procedure for comparison between legislations and also regarding implementation of conventions in national territories, especially Member Countries of the Berne Convention or the Berne Union. It stressed that they were discussing and giving special attention to groups. If the study had highlighted the aspect of the importance of harmonization between national groups of the national laws of the various groups with a view to facilitating debate and discussion for treaties, it would have to take that into account. The Delegation had two questions: first of all, digitizing for preservation. Did Professor Kenneth Crews believe that it would open up another door to facilitate implementation of exceptions and limitations or would it allow increased piracy and circumvention of rights in that aspect? Secondly, as stated in the report, they needed to find a creative, innovative way to respond to other aspects because much of the legislation dealt with hard copies, archives and books. However, the legislation of the Russian Federation had been referred to and the Delegation of the Russian Federation mentioned that there was also that aspect regarding the collections in museums of a creative nature and out of which rights could arise and which could be of use in creative sciences. These could be a source of certain aspects of IP. Was that a case of a comparative legislation aspect or would it be an opportunity for such an activity and exercise? As they were on the verge of concluding one or two conventions on those issues, namely exceptions and limitations for libraries and exceptions and limitations for scientific research, institutions and for person with disabilities, it wondered whether they should link those endeavors with something else because development in WIPO concentrated and stressed that point. Many of the agreements and treaties had opened up the door, left the door slightly open for settling certain issues between countries. The United States of America dealt with those issues in teaching law and the European Union and its Member States also tackled those issues in their own way. There was one aspect that had been left open or rather one related to moral and ethical issues arising out of modern technology. The facility of transposing and copying gave rise to a moral aspect and it believed that WIPO needed to deal with that matter in its annual reports. The Delegation had one last question. Within its groups it debated and very often spoke of competition. WIPO was more concentrated and aimed at dealing with cooperation. The Delegation noted that it had emailed Professor Kenneth Crews an unofficial translation of Sudanese legislation as requested by him.

104. Professor Kenneth Crews started with the Delegation's last point about the ethics and agreed that they had talked a great deal about law. That was their principle attention there, but it was quite right that there was a strong ethical component, but it could be defined in so many different ways. There were the ethics of respecting the creative energies of people who had done the writing, produced the film and composed the music. There was an important part of respect for that. There was an ethical component to the exceptions in providing for the public interest to support scientific research, education, knowledge and to preserve the heritage of their countries, of their peoples, and to make sure that that work was available for the many, many generations to come. There was also an ethical aspect of obeying the law, being good citizens, respecting the law and adhering to the law as best they knew how. That was an ethical issue as well. The law itself had much to do with supporting all of those ethical ideals, because the law was about honoring, respecting the rights of creative people, while at the same time

honoring and respecting the socially beneficial goals that were supported by the limitations and exceptions. The law also reflected back on some of the things they had discussed the previous day, the desire to have a law that people could really use, that they could make sense of, that they could apply in their real lives in their real contexts and a law that was like that, actually earned the respect of the people and encouraged people to follow it. The Delegation's second point was about whether the exceptions were an opportunity or supporting piracy? He had not said the word "piracy" in the SCCR previously because the topic as he saw it was not at all about piracy or about violating the law. It was about encouraging and having a good law that they could honestly expect and encourage people to understand and follow. The problem with piracy and all of the visions that that word brought was that there was probably no law that was going to stop it. The issue that they were talking about of modifying, having or modifying exceptions to support research, to address the problem of orphan works were areas that needed a creative solution as they were laws about honest people trying to do good, honest things. If somebody was determined to do something on a large scale that caused large scale harm to somebody, the topic they were discussing would not affect what happened in that arena one bit. Should countries address piracy? Yes, they should address piracy but that was a separate topic. He was not encouraging piracy; he was encouraging respect for the law. He hoped that he had addressed the Delegation's questions, perhaps not in the same order, but he thought its questions were extraordinarily important and its views had helped shape a lot of the conversation because it had just brought some important concepts to the discussion.

105. The Delegation of Israel stated that, from its experience in Israel, where it had specified permitted uses and an open-ended fair use exception, both with regard to libraries and archives, as well as educational uses, that in practice it had started to see a different element that impacted on the scope of the exceptions and limitations. It derived from statutory damages on the one hand, a remedy that tended to scare behavior and on the other hand, at times the availability of collective licenses at reasonable prices, that put the end users in a dilemma in terms of the risk-utility dilemma. Did the end user take the chance on statutory damages or did it take the collective license when it thought that may be it did not need the collective license or the blanket license because it was paying for things that it was entitled to do. In measuring the scope of any limitations and exceptions, it might be worthwhile to expand to the element of licensing alternatives on the one hand and the risk from particularly statutory damages as opposed to actual damages on the other hand.

106. Professor Kenneth Crews stated that what the Delegation had described of its laws, as having fair use and open-ended, did not mean it allowed anything and everything. That was not at all what it meant. It was a very limited ability to use copyrighted works, but it was open-ended in the sense that it could apply to many different activities. It could apply to many different types of work but it was not an unlimited right to use by any means and that was combined with the more specific provisions, as they had been talking about. He was familiar with that because the law of the United States of America did the same thing and the law of a few other countries around the world followed a similar kind of model. There were a small number of countries that had adopted language that was comparable to the fair use provisions that they could find in United States of America, in the law of Israel and elsewhere. There was the structural approach to the law as well. He wanted to focus especially on the Delegation's point about damages. Very few countries, as identified in the 2008 study, had some kind of provision that limited the damages that an infringer might face when the infringer was adhering to or attempting to adhere to any of the exceptions. He urged that the Member States look at the damage issue or the remedies, at the same time as they were looking at exceptions. It was back to the notion that they writing exceptions for the honest, well-meaning law abiding citizen as that was person that they really wanted to encourage. That was the person who was attempting to understand the law, bring meaning to the law and apply it to a situation that benefitted the larger society, through libraries, through education or something else. Yet there was always room for somebody to make a mistake. There was always room to not understand the law exactly right or to interpret it in a way that was not exactly right, or when they were in front of a judge, the

judge just did not agree with them. It was the reduction of damages for that good faith user that was really important because it not only helped to prevent the fear of large legal liability, but it was also a way of encouraging people to use the exceptions of that there might be a benefit if they got sued, if they lost and were facing the judge. There was a benefit for them if the judge found that they made a good faith effort to understand and follow the law. The arrangement encouraged people at the beginning, before they did anything to understand and follow the law. It went back to the ethical issue. The ethics of being good law abiding citizens and giving some kind of benefit through reduced damages as a result. It might be as important as having appropriate exceptions themselves. He encouraged the SCCR to have that issue on its list of concepts to address, as it addressed the issue as a whole. Collective licensing went into that formula as well. It was effective in some countries. It had been used in many years in some countries. It had a hard time fitting with the systems of some other countries because of traditions, because of economics, and the question of the money. Where was it going to come from if the license required a new expenditure? They should keep in mind too, that as countries adopted laws that they expected the libraries or educational institutions or museums to follow, those organizations were already spending a good amount of money on the staff time and other support to learn and understand and follow and apply the law. The process that they were describing was actually a pretty expensive process when it was applied by professionals in using a good share of their time and their resources to implement it.

107. The Delegation of Guatemala asked about Professor Kenneth Crews' views on what should be considered and were relevant at the time of establishing an exception or a limitation on the use of orphan works.

108. Professor Kenneth Crews said that the European Union had adopted a Directive with respect to orphan works and only a modest number of countries outside of the European Union had addressed it in any way. Among the countries that had, were the Republic of Korea and Canada. The issues with respect to orphan works were very real and important for lawmakers to address and perhaps important for them to address in the context of WIPO, because ironically, the problem of orphan works was created by the legal system that granted the rights to copyright owners upon creation without the requirement of formalities and then applied the full protection of copyright for the full term of copyright. Due to that they had orphan works, these were published works or unpublished manuscripts and either they did not know who the author or current owner was or they were unable to identify or find that person. Orphan works were defined in different ways but those were the typical examples. Having some type of relief for the user, perhaps through the reduction of the damages for the good faith investigation and the reasonable investigation might be the most effective approach on a limited scale, where the user was a researcher and interested in one book. There was also the problem of the large scale project and providing some kind of safeguard for so-called mass digitization projects, where may be they were going to digitize a thousand photographs, a thousand manuscripts and there was no realistic ability to investigate all of them. How did they address that? That had been problematic so far and even in the few countries where the issues had come up, it had usually been addressed through certain exceptions like fair use and then, even then, because fair use was not unlimited, it had provided for sharp controls on the usability and the accessibility of that content. He thought that they were back to the individual use and it would be important for a good law to encourage people to act in a good faith manner, and then give them some protection when a copyright owner did appear and made a claim. That was an approach that he had had conversations about and made good sense.

109. The Delegation of Chile highlighted the work of WIPO in providing the WIPO Lex tool for Member States for that type of analysis. It was struck by the large number of revisions of national laws in the area of exceptions and limitations for libraries and archives. As the study itself had shown and confirmed the need for changes in legislation, it felt that it was important to emphasize the changes in exceptions and limitations, so as to incorporate precisely that flexibility and to modernize the tools, to have balanced copyright laws. It felt that the analysis

had reaffirmed its view of the need to continue to debate and analyze that very important issue there in the SCCR. Secondly, it emphasized that the study had concluded that the exceptions were fundamental in the legislation of many Member States, as shown by the fact that 156 countries had some type of exceptions for libraries. Nonetheless, it was clear that the actual details varied considerably from one country to another. Moreover, in terms of specific elements in the study, it emphasized the low number of countries that were thinking about exceptions for interlibrary loans. In the study, only nine countries were thinking of exceptions for that type of loan and yet that was one of the clear interests that had been raised during the course of their discussions through trans-border loans in particular. Like the Delegation of Brazil, the Delegation asked how could they promote and increase that type of exchange and cooperation on an international basis? It agreed with Professor Kenneth Crews that it was one of the major tasks to be undertaken by WIPO. On TPMs, for those countries who had incorporated standards, only 40 had an exception for those types of institutions and it would be interesting to know in those cases, why it was not feasible to actually have such exceptions in reality. They had also dealt with the first hearing and fair use in relation to some countries and believed that it would be interesting to have legal instruments that gave greater legality in that sense to exceptions. In the case of Chile, the report reflected the various changes introduced into its legislation in 2010, which were designed to enhance the balance in copyright. It had included in the law on IP exceptions and limitations for libraries and archives with respect to preservation, digitalization and other reasons. The Delegation felt that the study was an important tool for developing public policy in its country, and it would undoubtedly be taken into account as an input to be used in debates, as it brought together a great deal of information that could be processed for the second stage of coming up with quality conclusions, or a detailed analysis on the differences and points of common agreement.

110. Professor Kenneth Crews highlighted the importance of being able to learn from one another and then to start address some of the issues that were just not there at all, starting with the familiar local interlibrary loan to the larger global trans-border exchange of materials.

111. The Delegation of Ecuador thought the study would undoubtedly help to develop the SCCR's discussions on exceptions and limitations for libraries and archives within the SCCR. Ecuador was at that time working on a substantial reform to its IP legislation and that included exceptions and limitations seeking to solve the problems of persons with some type of disability, as well as teaching and educational institutions and important developments in libraries and archives. In terms of the study it was concerned that the work being done by library services was moving towards digitalization and the digital environment and it was one of the areas to be taken into account for exceptions and limitations for libraries and archives, and to be harmonized. The Delegation stated that it should be taken into account as an essential element in the current evolution. The Delegation asked Professor Kenneth Crews about those two trends.

112. Professor Kenneth Crews stated that, in regards to the Delegation's point about digital development, he agreed that it needed to be a part of the context of how the SCCR moved forward. The transition to digital technologies was just simply inevitable. It was going to happen and so the task for law making was not to try to keep activities to non-digital formats, but to find ways to work together and to be comfortable and confident moving forward in the way they worked together in the digital environment. He hoped that addressed all of the Delegation's points together.

113. The Delegation of Spain stated that in Spain, there was an exception for libraries and archives, which had been transposed into copyright law in 2007, taking into account the European Union's Directive 2006 on loan rights and rental rights. That had allowed it to establish copyright exceptions for library loans so that the authors would be able to receive compensation for the loans. Article 33 of Spain's copyright statutes allowed it to guarantee a balance between the protection given to authors and guaranteed access to library users. Those

were articulated essentially around three points. First, the copyright beneficiaries could not oppose the copying of their works if that was carried out within the framework of libraries or public archives, the better part of cultural institutions or scientific institutions, as long as the copying was being done for preservation purposes or research purposes, which excluded any commercial objectives. Second, libraries or public archives which were parts of the public system, non-profit organizations or teaching institutions did not have to request an authorization from the beneficiary of copyright to loan out their works. Spanish law allowed equitable compensation to be given to the authors in order to ensure a balance between access to culture and the protection of the authors and the editors' rights. Third, libraries and archives did not need an authorization to communicate those works or to give them to individuals from the general public, provided certain conditions were met. First, that could only be carried out for research purposes, within a closed network, via dedicated terminals installed in the archives or the libraries. Second, the works needed to be part of the collection of the library archives itself and they were not under particular license agreements. It also offered balanced remuneration for the authors. In July of that year, Spain had updated its legal framework by developing the article of the law, which had to do with the remuneration or the compensation of authors for works loaned out. That gave rise to a Royal Decree in July, which developed compensation for authors when the library and institutions were making loans. The Royal Decree allowed Spain to define the obligations for which that would take place. The institutions were public institutions or institutions that were part of a non-profit organization that had educational, cultural or scientific links. That standard also highlighted or noted the institutions, which were exonerated from compensating the authors in conformity with Spanish law and neighboring countries, libraries and the better part of the educational system were not obliged to those payments. As to remuneration and the conditions under which it was given, they had to do with loans of works that were still subject to copyright and yet there were still a series of exceptions only. For orphan works, on November 4, 2014 the Spanish law 21/2014 was adopted. That was a law that reformed its general regime of copyright and would come into force in January 2015. It covered the European Directive 2012 on the authorized use of orphan works. Given the European context, Europe had also developed a legal framework, which covered copyright law whose authors had not been able to be identified or localized after what it call a due diligence research by public archives or libraries. In conclusion, the Delegation stated that the Spanish legislation was a legal framework, which set down a fairly good balance between the protection of copyright, IP and access to culture, and libraries and public archives were institutions, which contributed to the development of growth.

114. Professor Kenneth Crews said it was fascinating to look at the role of licensing and the role of compensation to rights holders, as it was included in the exceptions. He had no problem with compensation to rights holders, but how they were included in the exceptions was something that varied tremendously in different countries. The ability of a country to include a license system and a compensation system was one that really needed to be addressed locally because it had a lot to do with the economic systems and the structure of other laws, indeed the willingness of rights holders to be a part of a collective licensed system which was hardly universal. It also had a lot to do with who was ultimately going to be responsible for paying those costs and whose budget it would come from. Those were some very important developments. The Delegation's presentation of orphan works at the end as part of its response to the implementation of the European Union Directive underscored the important role that the European Union had and its support for harmonization and for furthering some of those goals.

115. The Delegation of Sweden noted that Sweden was mentioned in the update and that prompted the Delegation to make a few remarks. Sweden was a fairly small country with a small language area, which posed particular problems in the sense that, of course, it wanted to encourage creativity in its national language and from that point of view IP was a very important instrument. On the other hand, it had to be recognized that the public had a legitimate right to access to the works. The balancing between the two issues, creativity and access had led it to

a dual system. There were some traditional limitations in the law, preservation, private study, replacement and so on and libraries were also allowed to provide copies of articles in paper form to the library customers, but they were not allowed to provide digital copies. They were not allowed under limitations to make available to the public and they were not allowed to make copies for purposes other than the ones mentioned in the limitations. How was that solved? It was solved through some licensing agreements they had. In Sweden there was a long tradition of the collective management of mass-use situations and it had in place a system, which meant a public library could conclude an agreement with a representative organization of all of the specific fields on such uses, which were not covered by the limitations. That collective contract contained all of the important elements. It was important that there were statutory supporting provisions on the conditions and the scope and the effect of those voluntary collective agreements. It was the Delegation's impression that the system worked very well. Since 1961, when Sweden first included that particular system in a specific field, it had full confidence in the willingness and the capability of collective management organizations to conclude such agreements. The system of statutory limitations, then completed with a complimentary function of a collective agreement had worked very well. Thanks to the fact that the law contained statutory provisions, which were aimed at facilitating and making more effective the operation of the agreement, it thought that the laws satisfied the need for access to the collections and also preserved the interest of the authors.

116. Professor Kenneth Crews appreciated learning about the system in Sweden and the nearby countries that had extensive collective licensing and many years of experience with it. It was a long discussion and he looked forward to continuing it, but there were reasons why it worked well in one context and one country and then there were reasons why it had not been adopted and did not appear to be promising in other countries. It would be wise to encourage such a system where it worked, and but not to require it because there were many reasons why it had not been adopted in other countries. It deserved their respect and attention, but he expressed some concern about requiring it as an international matter.

117. The Delegation of Algeria stated that it would share some of the findings that it had gathered from the study. Then it would have some questions to ask of the professor and end with a general observation. Regarding the findings, it was very interested to see how each country tried to find an internal balance when it came to exceptions and limitations, especially in two cases. In some countries, they might have general exceptions or specific exceptions, but then they limited their exception by limiting it to the fact that it was only the published work that could be copied or it was only the non-published works that could be copied. That was a sign of an internal balance that they were trying to seek in implementing the exception. It was very interesting to see exceptions and limitations that would be applied to both published and unpublished works if they wanted to make access and provide access to knowledge. The Delegation was interested in the tables in the report that showed how some countries limited the rights of teachers and the rights of some others. They had limited exceptions, so for example, giving a lot of rights to teachers, to researchers and to users. The most interesting part was to see how countries were trying to find a balance. Regarding the questions, the Delegation noted that there were no countries that had cross-border provisions and it wanted to know whether having or trying to create an international system that could provide for cross-border exchange would require harmonization of national laws. It did not think so because it was just a way for them internationally to make sure that a library could offer access to its students or to its users by cooperating with other libraries, without taking the risk of whether or not to apply the law or take some kind of risk. Its main question was whether harmonization was really needed in order to provide at the international level a cross-border exchange mechanism. Secondly, they had seen a lot of variation in the provisions of national laws and wondered whether a soft law approach or an approach based on objectives, principles, code of conducts internationally, for example, would address the need for predictability and consistency in international dealings when it came to library and archives or research institutions and whatever. Those were the two main questions that it had. It concluded with a general observation stating that it was true that



the exceptions and the limitations were supposed to be national. It was a national issue, but actually, the access to knowledge and the work of libraries and archives, was an international problem. It was wondering whether an international problem could be solved just through national exceptions and limitations.

118. Professor Kenneth Crews stated that the Delegation's points were really very sensitive and he very much appreciated its close reading and informed understanding of the issues and some of the more difficult challenges that they had. It was exactly right that as countries, they had not addressed the cross-border issue directly and he agreed that there was there was the possibility of a solution that did not request complete harmonization of the laws among the countries. If they believed that complete harmonization was necessary then they would never get there. They would never get there because complete harmonization, as they could imagine, was difficult to say at the least and probably realistically impossible. They needed to think about other ways of addressing cross-border exchanges and in the interests of time he referred to the responses from the previous day when they discussed having some definition of how to transfer and under what conditions works could be transferred cross-border, and perhaps the most important issues was where the work was used, rather than where it was made. He did not want to lose track of the Delegation's opening points about how the statutes appeared to be the same but then they addressed different works. It mentioned published versus unpublished and how they addressed those. They might include one and might not include the other and then the next country did it the opposite way. That was part of an extended discussion that countries needed to have. The British model was one that said that there might be reasons to have different rules for different kinds of works, but they would have different roles for different kinds of works, as opposed to other models that addressed only published works or only unpublished works and ever got to the other types of works. In relation to the last point about the development of the law, the Delegation had used the expression 'soft law' and it was the first time that expression had come up. He knew it had been discussed widely among the delegations. He was not there to recommend nor did he have a specific recommendation as to whether one type of instrument was the right instrument for the SCCR to adopt. Either way, the most important thing if they were going to accomplish a goal of supporting good exceptions was that the appropriate instrument ultimately had the effect of encouraging countries to address those issues and the new issues that were part of the expanding and changing nature of library services. That at least, as he described the previous day in another context, gave guidance to Member States on how to develop good law. He referred to guidance rather than prescribing exact language because there probably were reasons to have differences in the law in different countries. There were certainly reasons to stay flexible because the needs in each country would be different in five and 10 years from then. Each of the Member States would need to revisit those issues again and again and so some degree of flexibility was important, but whether that was in a soft law instrument or treaty instrument, that was something for the SCCR to explore and there were implications of that, which were beyond what he was bringing to the table. He encouraged them to just find the right instrument and at a national level develop good law. That was the bottom line.

119. The Delegation of Japan said that, as had been pointed out in the presentation from the previous day, the Japanese Government had amended the copyright law and the other laws relating to national libraries and national archives in 2012. Those amendments allowed the National Diet Library to make interactive transmissions of some works, which met certain requirements to other rivalries. Works, which could be transmitted, were those, which were out of print or similar works, which had been digitized in the National Diet Library and the National Diet Library could only transmit them to the public libraries or the university libraries, not to the public itself. At the same time, public libraries or university libraries, which received digitized, out of printed works could make a single copy of a part of that work, not all of the work, and provide it to users, but the purpose of its use was limited to the users' own research and study. In the course of the discussion of those amendments and the Advisory Committee of Copyright, most people had pointed out that the transmission by the national libraries should not

reasonably prejudice the legitimate interests of not only authors but also publishers. It meant that the activities of the national libraries should not prevent the development of the e-books market or other economic activities in the market. In that sense, the objects and the destination were restricted to strike a balance among rights holders, the public and the libraries. In addition to the copyright amendments, Japan had amended two relevant laws, one was the National Diet Library law and the other was public documents management laws. The amendment of the national law allowed the National Diet Library to allow government materials that were provided online, in circumstances where such records were considered necessary to collect them. National libraries were allowed to make a copy of such online materials under the amended National Diet Library law. Under the revised copyright law and the revised public records amendment law, which deeply related to the national archives, the national archives was permitted to reproduce the copyrighted work without the authorization of copyrighted orders. Such reproductions were confined to cases where it was considered as necessary and the objective of the reproduction was restricted to provide such copyright work to the public. Those were the recent amendments to Japanese copyright legislation.

120. Professor Kenneth Crews hoped that other countries would look at that example, even if that particular activity and that particular issue was not what they wanted to do. He encouraged them to look at it as an example of how to advance some innovative thinking about statutes and incorporate technologies and then also incorporate safeguards and protections for the benefit of rights holders. That tied into an earlier point made by the Delegation of Algeria about the different types of works. He could see how in drafting the statute, they might look very differently at commercially published books versus the kinds of documents that were in the national archives as many of them were not made to be marketed in the first place. Looking in a more nuanced way could provide for an optimal solution.

121. The Chair welcomed the delegates back to the session and stated that they were going to continue immediately with the list under the excellent guidance and moderation of the Vice-Chair. There were still several requests for the floor from different Member States and some NGOs had also requested the floor. He advised and urged the different NGOs that it was a time to pose questions to the report made by Professor Kenneth Crews and not the time for general statements. After that exercise was finished, they would listen to general statements from regional groups.

122. The Delegation of Senegal commended the report and referred to Article 14 of the Bangui Agreement, which had set in place mechanisms for exceptions, for libraries, for archives and also raised the issue of preservation. The Bangui Agreements also called for exceptions for education, yet the signatory countries that were presented did not have exceptions. That was a small problem because the signatory states considered the Bangui Agreement as an international treaty. In the text, it explicitly stated that the Bangui Agreement mechanisms were applicable in all of the signatory states and that all states had adhered to it. Finally, the mechanisms of the Bangui Agreement did not seem to call for compensation and sometimes they seemed to be excluded in a very specific way. That appeared to be in contradiction of the Charter of African Renaissance that the same signatory states had signed, which talked about establishing an environment which was conducive to the creation of rights for authors. That was the crux and a condition for a flourishing, African creative environment.

123. Professor Kenneth Crews stated that he was eager to learn from it and other delegations because he believed that a part of what was happening, that he was seeing with just that focused study, was a real growing awareness, as well as an opportunity for a fresh look at some of the copyright issues in the context of African countries, many of whom had a colonial heritage. They had a heritage that was rooted in part in colonial law, but were having, as the Delegation had said, a renaissance, in that they were developing their own laws, moving in their own direction and meeting some of their own needs. That was a very exciting development and one that allowed for a fresh look at some of the issues. Indeed, it was countries in that position

that might be in the best position to explore alternatives and consider some of the issues that had not been included in the other laws around the world. Law making was a challenging task under any circumstances, but there was a particularly special opportunity for African countries and that was in part why he had highlighted them because there was already something very interesting happening there. He looked forward to following the developments.

124. The Delegation of China wanted to share the situation in China, in its different laws and revisions. Just as Professor Kenneth Crews had demonstrated in the map on the previous day, in China they had a relevant law, which protected the traditional environment and the digital environment with regard to exception and limitations for libraries and archives. For the third time, China was revising its copyright law. In the draft text, it had taken orphan works into consideration and was sending that text to the legislative parts. It had provisions about orphan works, which was a work that was not a public work, where the identity of the author was not clear and where there was no result after researching the author. In such cases it was possible to apply for the right of use of the orphan work, but the detailed application of the orphan work would be publicized by the relevant authorities. The draft law was being reviewed and it was hoped it would be adopted after that review. It supported the SCCR in terms of more discussion about that subject and the further sharing information. The Delegation thought that libraries and archives did have public interests in mind, so that kind of discussion was very important for the balance between the access and the rights of the rights holders.

125. Professor Kenneth Crews noted the Delegation had mentioned that China was proposing a system that involved applying for permission for use and that might be very appropriate for many types of works. He encouraged them to think about the types of works that were incidental for example, an archival photograph or letter or something, where the use might be modest in connection with a research project but it was an orphan work. How did a researcher use that work in connection with writing a book of history or biography? That was some of the other kinds of challenges. It was very small, but for the researcher, very important and very troublesome in the process. That was part of the consideration.

126. The Delegation of Thailand noted that it was not sure whether Thailand had been included in the 86 Member States that had statutes or not. It felt that it missed out a little bit given that four other ASEAN countries were included. In its statute, the only exemption provided was for libraries, as it did not have any exemptions for archives or education institutions. On the November 27, 2014, it had passed an amendment to its copyright law with regard to the protection of TPMs, as well as the right management information. In that amendment, there was an exemption for the circumvention of TPMs for library and archives, educational institutes and public broadcasting organizations. The amendment had just been passed in the Parliament and would be announced in the National Gazette within the next month or so. The Delegation asked to what extent libraries and archives should be exempted in regard to circumvention, with respect to safeguarding the violation of exemption rights. That issue had been raised during the consideration of the previous amendment to the copyright law by the rights owners, claiming that they would have an additional burden in keeping an eye out for libraries to do the right thing regarding that exemption.

127. Professor Kenneth Crews said that, first, Thailand was there in the study when the two reports were put together to total 186 Member States. On TPMs, it was difficult to come up with a really truly satisfactory kind of way of constructing the exceptions because many Member States had exemptions. The United States of America, the European Union and many countries around the world had exceptions for TPMs. There were two basic procedures, one was an exception that just allowed the user to do the act of circumventing the measures to access the content and then the other was a legal system that called on the rights holder to provide the means to users, to facilitate opening the access. Neither version was really very satisfactory because the first one allowed users to make the act of circumvention and naturally for rights holders, that could be a very disconcerting kind of development and the second one

called for the rights holders to provide the means to unlock the resource and that too could be very unsettling. On the other hand, he thought that the latter had a little bit of an advantage in that it allowed the parties to be aware of what each other might have done, but sometimes being aware of activity undercut the purpose. If the purpose of the circumvention and the access was to undertake data mining kind of research into the database, then sometimes people did not want anybody to know what research they were pursuing and there was a need for confidentiality. So all of the systems were a little bit unsatisfactory and there was not really a good solution as yet. Sometimes, whichever system a country put in place, they were at least serving the purpose of beginning the conversation among the parties, so that they could begin to work with each other, because each one had some rights and privileges that motivated them to come together at an appropriate time and discuss their differences.

128. The Delegation of Latvia thanked Professor Kenneth Crews for his update on exceptions for libraries and archives. It could serve as an effective instrument for both current and future developments of the legal frameworks of Member States. The study could be very helpful in adjusting national legal regulations to the needs of libraries and archives in the analog and digital world, while ensuring the appropriate level of protection of economic and moral interests of authors and other rights holders. It wished to use the opportunity to provide some clarification and additional information on the respective legal framework of Latvia. First, with respect to making replacement copies, it should be clarified that such copies could be made not only in order to replace the work from the permanent collection of any other library archive or museum, as was reflected in the updated study, but foremost in order to replace the work from the collection of the library conducting the copying. Secondly, in Latvia, like in many other countries, as was reflected in the study, libraries and archives could benefit from public language legislation and general copyright exceptions on private copying and reproductions. It hoped that information would help to increase the coherence of the study. It also believed that further developments in the study, identifying the common models and concepts of the regulations could help Member States advance their national regulations.

129. Professor Kenneth Crews stated that he would make sure that the information about Latvia read properly for the next version.

130. The Delegation of Zimbabwe wished to talk about the way laws were developed in developing countries, which was more to do with political assertions. If they looked at most developing countries and how they had come to structure their exceptions, it was something to do with politics, be that bilateral or multilateral agreements. It could be a directive, for example in the case of the European Union. They also had laws coming in through lobbying that was, for example, what happened in the United States of America where librarians pushed for exceptions to be included in the law. There was a third dimension, which was a bit of a concern. That dimension came from the fact that most developing countries borrowed their laws from their former colonial masters. The inclusion of exceptions and limitations was not by default but was something that was accidental. There was something that was taken through, whilst trying to create laws, which were being borrowed from other countries. That was a huge concern because to try and look at the efficacy, the workings of those exceptions was very difficult. They had seen that the European Court of Justice was very good at making sure that the system, the corporate system, was very efficient. It had so much case law, which was absent in the developing countries. What they needed was probably a situation for developing countries, where there was a basis to start to build upon the minimum that they could have. Then from that minimum, they could start to build and have exceptions and limitations that could work in the future. Zimbabwe was a former British colony, as was South Africa. They had adopted the same kind of limitations and exceptions, but the interpretation itself was very different. Zimbabwe interpreted its own limitations and exceptions in its own way. Therefore, the same kind of statute borrowed from the British was also interpreted differently. There was a need for a basis to try and have a sort of harmonized system where they could have a basis, a flat line, where they could start to build their laws upon.

131. Professor Kenneth Crews stated that the evidence of law coming from colonial powers on copyright, on many issues, was clear and that was part of the understanding they needed to bring to it. It did produce some very unusual situations. For example, the United States of America was a former colony and it had borrowed a lot of its law from Great Britain in the origin of the laws, but countries often then moved in their own direction. A couple of countries had on the specific issue of library exceptions, borrowed the United States of America's law as their model. With the passage of time, the United States of America had made some changes but the other countries had not. With the passage of time, the countries began to diverge and it was really a fascinating development, but it also reminded them of the importance of making the law cooperative and harmonized. That was why they were there. To the extent that countries were making their own laws it needed to reflect the need of the particular country, which again drew the question of the degree of harmonization that might be ideal. Those were really not only interesting questions, but they were questions that were of profound importance for the people of each of the Member States. He liked the Delegation's idea because its country by comparison would not develop its case law the way another country would and it needed something else. That was a great idea, exactly what had been proposed. There were some things that he and others would say to watch out for. There were problems with that approach, which they could talk about later. On the whole, it might be a very good idea to look at how internationally and cooperatively they could frame the issues, but then how they could allow each country to implement them in a way that was relevant to their own needs.

132. The Delegation of Togo noted that the tables from the previous day included those countries without exceptions. The Delegation stated that in Togo the law did not expressly speak of libraries and archives. Rather, it said that reproduction could be done for private use or for purposes of teaching or research. In libraries, copies could be made available to students or researchers. The law was being revised and it was going to clarify the text. On the digital issue, it knew that that was part of the future and that it had a tremendous amount of influence on the way in which libraries and archives operated. The Delegation would like to hear more about that.

133. Professor Kenneth Crews said he would like to learn more from the Delegation about how it saw the role of digital technologies in the libraries in Togo. The use of digital technology was inevitable. The challenge was how did they bring that into the law? The importance of digital technology would vary greatly, not only in countries but in individual transactions, but still it was important for the law to accommodate digital technologies. That was often true, not only in big countries but small countries, countries with a long history, countries with a relatively short history of copyright, it did not matter. The use of digital technologies was critical because it allowed for the easier storage and preservation, the sharing, the searchability and the transmission of materials, to be sure that they could reach students, researchers, and other citizens in all parts of the country, reaching into corners of the country, where they might not have easy physical access to the library. Digital technologies held out that promise, and so for that reason, the implementation of digital technologies was an important part of the laws of all of the Member States.

134. The Delegation of the United States of America appreciated the contribution that the updated study had made to informing discussions on the issue within the SCCR. The study's emphasis on the number of countries with library exceptions supported its objective on the adoption of national exceptions for libraries and archives. As Professor Kenneth Crews had pointed out, library exceptions were clearly fundamental to the copyright law of most countries. Like the Delegation of Chile, it was glad to learn that the research was greatly assisted by WIPO Lex, which provided access to Member States' laws. Access to government information was critical to effective research and informed engagement, and, of course, the critical role of libraries and archives. The Delegation was pleased to see an increase in number of exceptions for libraries and archives and particularly noted the increase in the exceptions, at least in some form for preservation and research. It was also glad to see that a number of countries had

made adjustments to their laws in light of the digital environment. It knew that was a critical issue and that exceptions would help to ensure that libraries and archives could continue to carry out their public service mission in light of new and evolving technologies. Its Congress was currently reviewing elements of its domestic copyright law, including library related exceptions and limitations and it was engaged in national studies and reviews. The United States of America had a library community that relied on a strong and balanced copyright system to serve the needs of the public. There was much work to be done to ensure that national exceptions continued to support library and archival services throughout the world. The discussions that they were having on that topic were very important and it knew that much could be accomplished with attention to those issues.

135. The Delegation of Iran (Islamic Republic of) stated that the survey clearly approved that limitation and exceptions were a reasonable and fundamental need of the whole countries in the globe. As Professor Kenneth Crews had mentioned in page 48 of the report, Article 8 of the Iranian Copyright Act of 1970 recognized those exceptions for public libraries and documentation centers, scientific institutions and educational establishments, which were non-commercial. The law provided that those institutions might reproduce protected works by a photographic or similar process, in a number necessary for the proposal of their activities according to a decree issued by the Board of Ministers. The decree had been delayed. The Delegation stated that the guidance for the draft decree was based upon the comprehensive and comparative study consistent with 37 articles and was inspired by the three step test of the Berne Convention, which tried to make a fair balance between the needs of the users, especially the scientific society, as well as visually impaired persons and then in the interests of the authors and the rights holders. In that decree, due consideration had been given to the opportunities, traits and challenges of the digital technology.

136. Professor Kenneth Crews thanked the Delegation of Iran (Islamic Republic of) and looked forward to learning more from it about the developments and the way that the decisions were made in the legal system of its country.

137. The Delegation of Sri Lanka thanked Professor Crews for correctly identifying that there were no exceptions and limitations under Sri Lankan law. The Government was interested in taking and amending the law to follow the United States of America's laws on fair use. The Delegation's question was along the same lines as the Delegation of Thailand and had then been dealt with.

138. The Delegation of Malawi said that, for Malawi, the Copyright Act of 1989 had general provisions on exceptions and limitations for libraries, archives, documentation centers and education institutions, but these were subjected to the three step test. However, issues such as the cross border exchange of information had not been covered. This was usually covered through bilateral agreements that the Copyright Society of Malawi signed with other international or foreign collective management organizations, such as the Copyright Licensing Agency of the United Kingdom, so as to provide for legal access to copyright works from other countries. Nonetheless, it had a revised copyright bill, which provided for more detailed exceptions and limitations. They were also general in the sense that libraries, archives and educational institutions were allowed to reproduce commercial works for the purposes of conservation and guidelines for copyright works that were not for commercial purposes. They were also allowed to reproduce copies of work, which could not be easily obtained from the publishers. It also had provisions for extended collective licenses for the purposes of the reproduction of copyright works. The presentation provided insight for it to assess whether it would need to revisit the provisions in the copyright bill. It was mindful of the need to strike the balance between the rights of rights holders and the needs of the libraries and archives.

139. Professor Kenneth Crews looked forward to the Delegation's news and developments about the pending legislation in Malawi. It had raised a very interesting point about the use of

consortium licenses for trans-border activity. They needed to consider that as one of the alternative means of accomplishing their goals. The difficulty with using licenses was that they were only as good as the license. If they were between Malawi and the United Kingdom, they might be wonderful but there were all of those other countries in the world that the license did not cover. One of the risks of licensing as a solution was that it left the terms to private negotiations. Many countries had laws on licensing and laws on, for example, publisher and author agreements, whereby statutes defined some of the basic terms or minimum terms and that would be something for a country to consider as well. Licensing within the framework of some statutory terms might be a good solution as well.

140. The Delegation of the European Union and its Member States stated that the report and discussion had been very useful and they should make the most out of it, particularly for mutual learning and for the exchange of good practices. Its question was based on some practical points about whether the rich information and also the intellectual elaboration of the study by the Secretariat could be arranged in such a way that was easier for Member States to draw comparisons or to find the information quickly, for example, by subject. It asked the Secretariat about whether the WIPO Lex tool had a functionality that allowed a Member State to rapidly extract parts of national legislation that it might want to read according to certain subjects, for example, in the case of libraries and archives. The final question was regarding the amendments or updates that Member States might want to send. Some of the Member States had already raised them during the invention and it was asking what the practicalities of that would have to be.

141. Professor Kenneth Crews stated that he wanted to do everything that the Delegation had suggested, but was not sure how they were going to get it done. There was search ability in WIPO Lex and he would let others who were responsible for WIPO Lex speak to that. He was happy to share an email address that could be communicated and if Member States had developments to report, he asked that they please send them to him. On one small aspect of the Delegation's suggestion about how to make the content more accessible, he could do another update, consolidation and coordination of all of the material and so that was a perfect time. If there was new information and there were new statutes, he encouraged Member States to send them in to him. He would love to see the Delegation's proposal happen, but others would need to speak to how to get that done.

142. The Secretariat confirmed that there was a search function in WIPO Lex. The Secretariat could assist those who wanted to do more complex searches and assist them in the use of the system. The Secretariat used those functions to do just that kind of search to find everything that had to do with libraries and all the statutes. It was not so much that the information was categorized that way, but there were fairly robust search functions. In terms of how to put the study information in a format that might compare across countries etc., the Secretariat had started to talk to Professor Kenneth Crews about that. It was a little more complex and there were some information technology resources needed. The Secretariat was definitely happy to explore it but it was not something that could be done immediately, it would be a project where the Secretariat would have to look for funding and think about how it could carry it out. There was not a lack of willingness to do that but it was also something that it could not turn around immediately and was not in its budget for the year. It understood the request and how useful it could be and the Secretariat was definitely going to look at it further.

143. The Delegation of Belgium noted the numerous comments on the report, which highlighted the importance of the report and the exceptions detailed in it. It supported the concluding comments of Professor Kenneth Crews because it was important to harmonize exceptions and limitations for libraries and archives. That was to put out very clear rules, which had to be adapted and applied to the national traditions in each country. Professor Kenneth Crews talked about guidance and orientation, which would allow them to adopt good laws in light of the technology. That was very useful. Belgium had mechanisms for libraries and

archives which allowed them to reproduce work for their presentation and allowed Belgium to ensure a right of communication, which allowed libraries and their visitors to consult certain works in digital formats on computers. At the same time, that kind of communication could only be used via special terminals on the premises. Belgium also had general mechanisms, which stated that in general, there could not be any exceptions to those rules. Belgium was currently working on the implementation of issues on orphan works, in line with European Union Directive and was looking at the problem of digital libraries overall and the possibility of massive digitalization of works not only orphan works but also using means of collective management. That would allow it to preserve the exclusive rights of authors within an opt-out mechanism. France and the Czech Republic were useful examples. Licensing demonstrated libraries' responsibilities but they were not always within the framework of exceptions.

144. The Delegation of Greece noted that Professor Kenneth Crews' study erroneously referred to the name "Macedonia, Republic of" rather than "the former Yugoslav Republic of Macedonia" and asked that WIPO proceed to correct the name.

145. The Representative of the African Intellectual Property Organization (OAPI) wished to share some additional information over and above the Bangui Agreement that had been mentioned. The Bangui Agreement provided a common regime for protection for its 17 Member States. There were 16 in 1999 but the Republic of Comoros had joined the organization later on and the Republic of Madagascar, which was one of the founding members of the organization, had withdrawn. In fact, it withdrew in 1977. In relation to exceptions and limitations for archives and libraries the Bangui Agreement mentioned the possibility for reproduction or copying for the requirements of people, natural persons or for placement. As was the case for all legal instruments, the Bangui Agreement was not something that was static once and for all. The Bangui Agreement was something that was being rewritten. A new addition was being prepared and it would take into account digitalization. Digital technologies were something that were useful, unavoidable and inevitable and that needed to be borne in mind, as was the case with other new technologies that would come to the floor in the area of author's rights and related rights.

146. Professor Kenneth Crews agreed that the most recent version of the Bangui Agreement was not the first and would not be the last. That might be an environment for exploring some alternatives. Referring to the statements by the Delegation of Senegal, he stated that it was an agreement that by its own terms was applicable to its Member States and so carried the weight of law and made it a very powerful instrument.

147. The Representative of the Scottish Council on Archives (SCA) said that libraries and archives were clearly a priority in national laws. Its assessment of the report suggested that that was true of libraries but it was far from true of archives in 2008 and was still far from true of archives in 2014. Professor Kenneth Crews had stated that there were two types of copyright law across the world, which were described in terms of the models from which they were drawn, notably the Bangui Agreement and the United Kingdom's Copyright Act of 1956. As an archivist, it must consider the broader implications of those two approaches, which appeared to be based from the perspective on the civil and common law traditions. One of the fundamental distinctions between those two traditions related to whether and how a work was released to the public. That went to the heart of the function of archives dealing with a work that had never been released to the public by a rights owner. Where did that leave the rights owners internationally in a digital world?

148. Professor Kenneth Crews stated that when they looked at the chart for each country, they had sought to include the language that defined the scope of the provision in the chart. One of the very first elements of each chart was which institutions could use the exception. If the exception said libraries, then the chart said libraries. If the statute said libraries, archives, museums, educational institutions, then the chart said all of those. Therefore they could quickly



determine that archives were often omitted from the list. Museums also shared many of the same interests because they were also often repositories of some of the same kind of archival and published materials. That was the point made by the Representative of Sudan earlier that day. There was a real void when the statute did not address the issues related to archives and then with that, very often, unpublished materials. They had to look closely at the language. In many of the Member States there was a distinction between published and unpublished, which were two categories. In many other countries there was language of the law including particular definitions about a work in the middle, a work that was not published, not unpublished, but it was a work that was made available to the public and then that often had a definition, which took them all the way back to one of the earlier questions from the discussion and that was definitions. Definitions could become enormously important. If the statute only referred to libraries then in the definition of library the archive could find its way back in, although very few did. In the common law tradition where there was no definition then they would argue about what was a library. If there was a word in the statute and there was no definition in the statute and there was no case that had already defined it, then they could argue it. The common law tradition of debating the interpretation of each word was part of the process of understanding the statute. In the civil code tradition that might be problematic. The legal systems were different and they represented differences in the process. As they discussed those issues in the worldwide context they were also discussing the development of law that needed to have some appropriate applicability in at least two very different systems and there were more systems of the world than just the common law and civil code. The key take out point from the Representative's raising of that issue was the need to attend to the interests of archives and very importantly attend to the issues related to unpublished works because sometimes there were greater interests associated with the rights holder, but in almost every instance there were extraordinary interests associated with the point of view of the library, the archives, the researcher and publishers who wanted to use those materials and preserve those materials for future generations. Those needed to be addressed.

149. The Representative of KEI had three questions. The first question was whether he agreed with Professor Sam Ricketson who in 2008 had told the seventeenth session of the SCCR that the copyright three step test contained in the TRIPS did not apply to the specific limitations and exceptions to remedies for infringement in Part 3 of the TRIPS, the section on enforcement? The second question, was that from the nineteenth century until 1971 the Berne Convention periodically revised its standards for copyright exceptions creating new exceptions and changing the standards for others making some exceptions mandatory and some optional. After colonialism ended in Africa and Asia that practice of periodically revising the Berne language on exceptions ended. Did he think the periodic revision of standards for exceptions was more useful than a static definition of what the standards should be and did the Berne Convention get the mix of mandatory and optional correct? Finally, the third question and last question, there was apparently a Spanish text on snippets from news organizations. It had been applied to people that operated search engines such as Google. Germany had reportedly considered something similar, also directed at search engines but potentially broader. The Berne Convention had two mandatory exceptions, one for the news of the day and the second one for quotations. Did he think that the Spanish text violated those two mandatory exceptions in the Berne Convention?

150. Professor Kenneth Crews did not think it would be helpful to answer to the specifics and say that the proposed Spanish rule was appropriate or not appropriate. That would not be right for him to do. Also Professor Sam Ricketson was not there to defend himself. He would not respond specifically to what he might have said, but would respond to the point. The point was did the three step test apply to remedies? Did it apply to other matters? That was one of the difficulties with the three step test. The short answer was that it did not apply to the remedies. It did not apply to other kinds of matters. It was on its own terms applicable to the limitations and exceptions. Thinking through the language of the terms of the different provisions of the Berne Convention, the three step test was about limitations and exceptions and it was raised in

the context of the discussion on the rights of the owners and therefore was really about that and not about all of the other possible elements of the legal system that could be construed as a right. That was the short answer to that question. In relation to the second question about the revisions over the first century of the existence of the Berne Convention, his short answer to that point was that if the Representative was suggesting that it might be good to revisit the Berne Convention, his response was that it might be good. He would leave it at that because it was a bigger subject than which they had been convened there to discuss. If they moved to that subject it would probably stop them from getting to all the other things that were within their reach. Conceptually the answer was yes, but pragmatically he would not take that any further. Similarly, the issue of whether there was a more general question about snippets of news in some European laws and regulating those, that posed a very interesting issue that again they were certainly not going to be able to resolve there. It was the issue about the interrelationship of copyright with other areas of the law. The lunchtime session about the interrelationship of copyright with competition law suggested that they could solve the copyright issue but then they still had a competition problem to resolve. That was what was going on in the news example. They could solve in a copyright framework the snippets of news but then may be the law in question was a tax law and that was different. That was a different legal system. There was also the relationship with licenses, which had already been discussed. It was possible for a country to say that if the news of the day was without copyright protection, consistent with the Berne Convention, there would be no other legal method, licensing or otherwise that would hinder that objective that it had accomplished of keeping the news free of legal restraints. That was going to be up to each country in their domestic law. He hoped that to a certain extent, WIPO was interested in taking up that issue, especially on the licensing relationship, but he did not know if it was ready to pick up the issue beyond that. Others would have to speak to that.

151. The Representative of the Electronic Information for Libraries (EIFL) stated that the report contained positives and negatives from its point of view. The positives included the fact that law makers were to some degree responding to the need for legal change and a small number of countries had over the last six years enacted new exceptions, especially with regard to digital services. Those changes were to be commended. On the other hand, it was discouraging that 18 percent of countries including five EIFL partner countries had no exceptions for libraries and over one third, located almost totally in the developing world, still did not have an exception allowing libraries to make copies of their works for the users. The trend regarding digital library services did not look good. Even for Member States that introduced the 2008 amendments, digital was barred in 50 percent of cases for preservation. In Member States with anti-circumvention protections, while some had applied library exceptions as mentioned by Professor Kenneth Crews, half of the countries had provided no library exceptions. While a small number of Member States were moving ahead and reforming their copyright laws, the digital divide was being perpetuated at a time when libraries everywhere were adopting new technologies and developing countries were rapidly moving to mobile. The Representative's question was how that situation could be addressed. How could WIPO as a United Nation's agency with a commitment to work with developing countries, to enhance their participation in the global innovation economy, most effectively support countries to be at the forefront of digital developments, to ensure that libraries that were working hard to support education and development were not operating with one hand tied behind their backs? The Representative's second question was considering that between 2008 and 2014 only a handful of countries had implemented changes benefitting libraries and their users, and imagining that the current rate of support for change stayed the same, how long would it take before all Member States had exceptions good enough to support library activities in the digital age? The final question was with regard to the fact that libraries' collections contain materials of unique cultural and historical significance to people in other countries, due to national border changes, shared languages and a host of other reasons. In addition, collaboration among researchers that day was international. Therefore libraries increasingly needed to send and receive information across borders. How did copyright laws accommodate or not accommodate those activities?

152. Professor Kenneth Crews suspected that a few countries that did not have library exceptions would probably come forward and say they did, because they were members of an agreement and thereby they would be brought in, which was good. Then they might respond, but what did that agreement provide, which got to the Representative's questions. As it noted, many countries either had no exceptions or they had exceptions that were very limited in application to the extent that they applied to different activities but still did not apply to digital technologies. Then there was the complicated issue that they had already discussed of cross-border. How could WIPO be most helpful? He believed that WIPO was in a position to shape the next model, to provide that guidance, to help countries develop statutes that were cognizant of the technology, that were cognizant of the growing range of library issues and activities and that were cognizant of the fact that the information exchange was crossing borders and therefore crossing into multiple jurisdictions. Of all of the kind of models of law making that they had talked about, a model from a multinational organization such as WIPO could have the promise of being more effective than a model that came from another source and another organization. So how could WIPO help? By reaching a decision about first the extent to which it was going to engage with the issue in a formal manner and producing some formal guidance on that and to provide that guidance in a way that addressed the issues. Two, the Representative had mentioned digital and cross-border and others that could be added to the list. How long would it take? That was up to the SCCR. If WIPO acted quickly it could move quickly. If WIPO postponed a decision, then it would take longer. Or, as he had said in his presentation, the decision to do nothing was not a decision to endorse doing nothing. It was a decision to instead leave the opportunity open to somebody else. It was not WIPO's decision anymore. It was somebody else's decision to shape how that would move forward.

153. The Representative of the International Publishers Association (IPA) stated that the 33 Member States that currently did not have any exceptions in that area then had 153 model laws that they could study. The 153 Member States that did have some kind of provision could more easily look over each other's shoulders and become inspired by other countries' solutions. It hoped that the study would be updated at regular intervals. It was particularly appreciative of the fact that Professor Kenneth Crews had been frank about the scope and the limitations of the study. The Representative asked him to clarify a little bit one particular aspect because so far over the previous two days he had been very clear that trying to harmonize and create some kind of single text in that area was actually the opposite of what he would recommend. Professor Kenneth Crews gave three clear reasons why he felt that that was not a good route to take. First, he said that the solutions that were enumerated were just very broad and very diverse. There were so many different ways to arrive at perfectly adequate and functional solutions. Second, he mentioned the issue of definitions, which he referred to twice during the day and said that actually core technical terms were not clearly defined in many laws. They did not know what people meant when they said library or when they used the term library or out-of-commerce or preservation or archive or research, etc. Anybody who had followed the discussions on the possible broadcasting treaty over the previous days knew how important and how detailed those fundamental definitions needed to be discussed. Third, all they saw was the legal text and that had been illustrated so clearly by the Delegation of Zimbabwe who described that the same wording used in South Africa and in Zimbabwe could be applied in completely different ways. That demonstrated again that when they saw a legal text they actually saw very little about whether something was working or not. The Representative sought Professor Kenneth Crews' views on what was working well and what was not, because the study gave them text and while it was very important it could not tell them that. It did seem to be clear that it was not enough to look at a law and then to come to a judgment on whether it was good or not. The question was whether they should broaden their horizon and find out not just who had what kind of text but what was working, what kind of practice actually solved the problem and how those problems were being addressed. Many times the problems, particularly the new ones, particularly the ones in the dramatically changing areas, were being solved alternatively. He had referred to collective licensing several times but there were many other ways that that could be done. Law was by definition slow. International law was glacial. In most cases it did

not provide the solution in itself. Perhaps he could help them shed light on other types of solutions. Solutions that complimented, superseded or simply did not rely at all on statute and laws. Solutions in particular that brought together stakeholders, provided space and flexibilities for experimentation, adaptation and further change as the world around them changed. If all stakeholders were not happy with them, then they were at least supportive of them. The Representative particularly highlighted one issue, which was the issue of cross-border document delivery. That was not an empty space. It was not true that documents were not crossing continents or crossing borders. International document delivery was a well-established place. It was common practice and it was declining rapidly and dramatically, at least to the extent that it was supported by collective licenses, simply because there were then so many alternative ways of receiving content across borders. It paid tribute to the EIFL because not only were they partners of many libraries and library consortia, they were also partners of many publishers and public consortia and groups who worked together to ensure that content was freely accessible and available in many developing countries. He referred to two brochures that the IPA would be distributing, one was called Access to Research in the Developing World and it talked about four specific projects. For example, that the universities in over 110 countries had access to the same amount of medical information as Yale University. The other one was called Growing Knowledge and it listed some 20 to 24 different projects, all increasing, improving knowledge where collaboration between libraries, between users, between rights holders was actually doing great work to improve access in particular in the developing world. They should not just look at statutes but also at projects that were working, that were solving the problems while they were still staring at the law and thinking it was the solution.

154. Professor Kenneth Crews welcomed an opportunity to do further work and to supplement it with the understanding of alternatives, alternatives that fit within the law, alternatives that wrapped around the law and that operated outside of it. There was always an interrelationship with the law. The law served a few different purposes. In some situations it functioned as the standard, in that it was the rules. In some situations it functioned as a starting point, to get people to communicate with each other and work out their differences. In other instances it just provided a kind of minimum, some framework, some opportunities and rights of use that were then negotiable beyond that. He was a strong supporter of the variety of alternatives outside of the law and had participated in some of those developments to a great extent. There were a couple of problems with them that they needed to be aware of going into them. Not to be discouraged, but just to be aware that they were not the optimal solution that one might hope for. One was that they often take no less time than writing law to develop. They were still talking about bringing the different stakeholders together to the table to negotiate their differences and just as a practical matter in a lot of those discussions that he had witnessed, the groups that came together were not even authorized to make decisions or decision points needed to be taken back to the groups that they represented. So the process could be painfully slow. Some of the examples that the Representative had referred to - about creating favorable license terms to make the content that some of its associates were providing, and making them available on favorable terms, and working well with the libraries to make sure that they were acceptable terms to the library - were admirable and ought to be supported and advanced as much as possible. They needed to keep in mind that those kinds of solutions were available only with respect to certain types of works. Generally they were talking about license terms for databases and collections of published works. Whereas the statutes had the opportunity to apply to all types of works, works where there was no economic interest or economic motivation for somebody to create the database, assemble it and make it available. They applied to all types of works. So they still needed the statutes because the private, extra, legal systems were not going to solve all of the issues that the statutes had the opportunity to address. There was much more that they could say and he looked forward to picking up the brochures.

155. The Representative of the Society of American Archivists (SAA) stated that archives had been mentioned often during the past couple of days, but it was only the second archivist to be addressing the issue at the SCCR. Archivists knew that the general population did not

understand what the archives were and how and why they did what they did. However, it seemed reasonable that those who drafted copyright laws should understand that archives were fundamentally about the unpublished legacy of humankind. When looking at the 70 or so countries in the 2014 study, archives were seriously overlooked. Despite whatever minimal improvements there had been for libraries, archives have been left out of 53 percent of the exceptions for preservation and out of 72 percent for exceptions for copying for research. The Representative had two questions. Did the absence of provisions also reflect the fact that the laws lacked definitions of archives or could that oversight be read as meaning that archives did not matter to the country's copyright systems? Did it mean that copyright should not matter to archives?

156. Professor Kenneth Crews said he had spoken very strongly about the distinct interests of archives and reinforced as more important, the distinct interests of citizens in archives and in the work that they were doing and their ability to use the copyright provisions for the benefit of the country and of its citizens. He could not emphasize that enough. He would not read into the lack of reference to archives, the kind of meaning that the Representative had asked about, but instead suggested that archives might not have been recognized by the drafters of many of the statutes. In the context of models influencing domestic law, it might have been the case that archives had not come to the attention of the individuals who had been responsible for developing some of the models. Future statutes in individual countries and the drafting of different kinds of instruments or models that might come from WIPO or any other organization needed to encompass archives. Preservation and research, access and other kinds of beneficial uses of archival material went directly to the preservation of the culture and the history of countries and people. It was vital that they were able to do that and keep archives at the table.

157. The Representative of the CCIA hoped that the Secretariat was recording the whole debate because in the 14 years it had been in Committee it could count on one hand the number of lengthy discussions that would equal that one both in terms of the interest and the accessibility of a very complex subject. The revision of report made an eloquent argument for why the body of library and archive reports that had been done for the Committee should be brought up to date. Libraries and archives were essential to the digital economy. For example, a country could not really be competitive in the networked economy without an intermediary safe harbor regime that was robust and effective. It could be argued that a society could not be effective without a library and archive regime that was supportive of the work of libraries and archives amongst others. The Representative asked Professor Kenneth Crews how he would approach the question of trans-border uses as it seemed that the point of international copyright was to facilitate legal certainty in copyrighted works crossing borders, in situations of normal commercial usage. National treatment applied to the rights but it did not speak to any limitations by default. While they were not there to endorse that as a particular approach, did he have thoughts about how national treatment of such a well understood concept might be a useful technique, if it were applied to the exceptions just as it was to the rights?

158. Professor Kenneth Crews said that documents were, in fact, crossing borders but under various circumstances, not all of which might be covered by either a license or agreement or law. He adhered to his belief that, even with other instruments and other opportunities available to them, they still needed good law. The Representative had asked about national treatment. National treatment was a fundamental concept of the international instruments such as the Berne Convention, that each member country would provide protection at least on the same terms as they provided protection for their own. That raised a meddlesome, complicated legal question about the role of exceptions in the country where the use was taking place. Many experts had made the argument that they could not apply to foreign works which was quite overreaching. There was a more grounded argument about the role of WIPO in doing so. He did not adhere to that argument and thought that there might be an argument for something that really took them into a conceptual discussion about the role of law and the role of agreements,

about whether or not the work created in a country that had exceptions had rights associated with it beyond the scope of those exceptions, or to put it another way, if the rights associated with that work were inherently subject to the exceptions of the home country. That was not a theory that had been tested legally. It was breaking new ground. It was probably not the direction they wanted to go, if they wanted to get the job done. Instead they should think about how to create a space where that cross-border transfer of a copyrighted work could occur and be subject to protections for the rights holders, simultaneously with the protections for the public interest, through the library, to have and receive that work from another country. Maybe it was the trusted intermediary context that he had mentioned previously, but embodied with exceptions and limitations adhering to that work, so that it could be moved into another country and find a useful life with respect to the interests of the rights holders and the process. There was room to answer the Representative's question.

159. The Representative of the German Library Association stated that as it was the very first librarian speaking it took the liberty of speaking on behalf of the rest of the library world and all the organizations representing libraries. It had a short question which followed the Representative of CCIA. The updated study stated: "The role of the European Union is strong with direct effect on its 28 member countries, but there is also evidence of influence on the laws of other countries that might be looking at the EU as a trade partner or simply as a source of ideas." The question had to do with the principle of territoriality, as laid down in the Berne Convention which meant that national copyright law ended at the national borders in all countries of the world. In Switzerland it was only Swiss copyright law that applied to the question of whether a person could make a copy for private use or not. The recent European Union Directive on the use of works by libraries and archives created a mandatory exception and established that the declaration of a work as orphaned in one Member State had the same effect in all other Member States of the European Union. Did that development show for the very first time in history a cross-border effect of copyright law?

160. Professor Kenneth Crews said it was enormously important that it had underscored that, in fact, there was an example where to put it into concrete terms, it had picked two countries in the European Union and if it was determined to be an orphan work in one country, it was therefore an orphan work in the other country. The answer to the question was in pieces. It was a trans-border concept indeed but it existed because of the opening principle that copyright law was territorial, was domestic. Courtesy of the European Union's structure, each member country implementing the Orphan Work Directive was then agreeing by domestic law to bring over that status from another country. One could argue it was not a conveyance of a law from one country to another, an extraterritoriality gesture, but it was rather a coordinated effort among 28 countries to arrange their laws so that they borrow a concept from each other but it was still domestic law doing it. The Representative had asked whether it was the first. If they looked at it that way, it was not the first. If they were looking at the question of whether countries were already borrowing, not just borrowing examples and law from each other, then no. Making their law dependent on the law of another country in a way was contrary to basic principles or seemingly contrary anyway. The answer was countries had been doing that. The rule of the shorter term under copyright duration meant that they looked to whether that work was protected in another country before determining whether it was protected in the original country. The restoration of copyright occurred in countries, which had joined the Berne Convention and other multinational agreements. Copyright was restored in one country based upon whether it had continued protection in its country of origin. Whether the work was protected or in the public domain in its country of origin had a direct implication on whether it was protected in the other country. That was not exactly limitations and exceptions nor was it exceptions. It was the limitations of the reach of copyright being in effect exported into the scope of protection in another country. That was a complicated concept. The key point was that there was precedent for looking to structures in the law, where countries were depending on the status of works and the rights associated with works in another country to determine whether that work had status and rights in the home country.

161. The Representative of the International Federation of Library Associations and Institutions (IFLA) said that the update showed in detailed country charts one of the reforms that the United Kingdom had made to its copyright law during the year, which was one that that it considered to be most pivotal. That was to include for the first time provisions that prevented contracts and licenses from overriding all the exceptions and limitations relied upon by libraries and archives for non-commercial uses. As it understood it, the United Kingdom Government's motivation for that was to preserve the public policy space that copyright exceptions represented from being undermined by contract or licensing terms for information content. The update did not elaborate on that point but digital content licenses were international yet few countries as of yet had provisions to prevent override of the statutory exceptions and limitations. The question was how did the universal use of digital content, licensing or contracts impact the efficacy of national statutory copyright exceptions on which libraries and archives relied?

162. Professor Kenneth Crews said that the general notion in the legal systems that he had worked with most closely was that there was a freedom of contract. If you had rights and wanted to negotiate for something, then you were generally free to do that. However, probably in every Member State there were limits to what they could contract for and they did not have complete freedom. Even just narrowing it down to copyright, there were examples all around the world where copyright law did define to some extent some restrictions on the freedom to contract for whatever they might want. So there were in some countries regimes of licensing law, regimes about inheritance and transfers of works, and regimes about conveyances of the full copyright itself, where the law said that you could not make a contract to do that. The law limited the scope of full freedom of contract. For a country to say it by statute established the exception and then by law that you cannot waive that exception under by contract, that was actually not a very radical statement. In fact, it was consistent with general kinds of limits on freedom of contract that existed in probably every country to one extent or another. It was not a radical concept. He believed that it was one that needed to be on the agenda as they looked at those issues in WIPO and as they looked at them domestically because the Member States were doing a lot of hard work in their capitals and in Geneva to give shape to new law. They should be asking the question as they did that hard work, as they met with different interested parties and stakeholders, as they addressed differences, as they made difficult decisions, as they moved language through legislative bodies and brought it into law, as they set up educational programs and informed the community and properly implemented the law to know, to address the question about whether that entire effort that they had invested could be taken away by a contractual clause. That was a serious problem that existed. They needed to look closely at the extent to which as a matter of good business policy and good information policy and good public policy, the interrelationship of the scope of contract and the scope of copyright exceptions.

163. The Representative of the Karisma Foundation said that her question was simple and straightforward because the Berne Convention was set up to promote mutual recognition of authors' rights between the countries. Looking at national laws it would like to know whether it could be said that the international system was adequately serving the needs of archives and libraries and to what extent, what effective ways could they actually evolve international rules, especially when talking about libraries and archives in the digital world? It asked that because in Colombia where it was based, public libraries were starting to make major efforts to transfer collections from the United States of America, France and other countries as well. Those were collections that had funds that could be seen as cultural heritage, but they were not in Colombia. They were in the other countries. It had national legislation that was quite limiting in that regard. If compared to the legislation of the United States of America or France, which were very different to Colombia, it made the process of transfer very complex, restricting the protection of the work of archives and libraries.

164. Professor Kenneth Crews stated that he would respond to the very general concept that there were works in collections in one country that were an important part of the cultural

heritage of the Representative's country. That could be a wide range of materials and it could be recent important books. It could be motion pictures and music, but to a great extent, a lot of the material that was subject to the situations the Representative had described were usually very early materials that had not been carefully collected in the early years, meaning 50, 75, 100 years ago in its home country. The materials were scattered or were in archival collections by somebody, say who was from its country or associated with its country, but his or her papers ended up in the collection of an institution in some other country. That happened frequently. Unlike a lot of the situations that they might explore and discuss or have license agreements about, those examples were about rare materials, early materials, out of print materials, unpublished archival materials or orphan works. It was about that kind of content. That content was very different from the database of journal articles of the last 10 years and medical science and engineering and so on where there was a market and there was an established system and an incentive to build and license and an incentive to buy that content and pay for it. That kind of unique material was just not like that. So they needed statutes to be able to clarify the ability to secure that material and preserve the cultural heritage. The statutes could address that kind of material in a nuanced way without getting into conflict with the other kinds of published material that had a current market value.

165. The Representative of the Scientific, Technical and Medical Publishers (STM) stated that it was the voice of academic, scholarly and professional publishers worldwide. It thanked Professor Kenneth Crews for the interesting and well-presented study, which had led to the fantastic debate which was enjoyable and they could all benefit from. In the European Union, orphan works recognition was dependent on a diligent search in the country of first publication of the work in question. It was not the random recognition of a designation in one country and another country. In terms of examples of cross-border deliveries, it would list the Berne Convention Annex as an illustration of allowing works produced in accordance with the Berne Convention Annex in countries where there might be a shortage of works. Its publishers had always acknowledged that copyright must be fair and balanced to all concerned and that remained true for the digital environment. In its view and with its experience with licensing, licensing was the smart route to providing access to knowledge and was preferred over exceptions and limitations. Exceptions played a useful role in the past, mostly because publishers were unable to communicate with the users and customers in a direct way. Much of that was now possible thanks to the powerful communication systems that were in place. That said, there was undoubtedly a role for exceptions, even when licensing was a more direct and preferred route. The Representative had two questions and then two suggestions. In the Anglo Saxon legal system case law was binding and could be viewed as part of legislation. In the continental legal system, it interpreted legislation. A rich diverse and evolving source of law relating to many provisions existed and the provisions that Professor Kenneth Crews had brought to the Committee's attention were in a way bloodless, without considering that rich case law, especially on general exceptions and fair use, as the looser type of provisions were harder to distinguish from that case law, that gave it shape and specificity. How could that case law be surfaced in the same way as the provisions had been? It might be useful to demonstrate that the exceptions were in fact, dynamic and alive and not the dead letter of the law. If one were to harmonize them, how could one prevent the kind of lock in at a certain point in time of the exceptions that continued to evolve? The Representative's second question was a related question and to some extent had been posed by the Delegation of Zimbabwe, but it wished to pose it in a more general way. Imagine a magic wand. By waving it magically all or some of the exceptions framed in local language and legal tradition would mutate into the same wording in one singular world language, a kind of "Esperanto of Copyright". Did Professor Kenneth Crews believe that the law in each of the Esperanto countries would be identical as a result of having the same verbatim wording? In conclusion the Representative made two suggestions. One was for WIPO to correlate the study with the treaty ratification status of Member States. Much could be learned from which countries knew exceptions in relation to which rights those very same countries recognized. The final suggestion was to look at the Global Innovation Index and other very useful documents that WIPO had produced, especially its 2014 additions. That



could be a rich source of looking at some correlation of countries that did really well and what they did under that Global Innovation Index and exceptions as surfaced by the study. In the Global Innovation Index it became clear that countries did not need to all do the same thing at the same time. They must have the freedom to do what is right for them at the same time.

166. Professor Kenneth Crews agreed with the previous statement about the case law. For 187 Member States sorting out the case law, even picking one country or a couple countries, was a formidable task. What would also be helpful was if they learned in which countries the case law was not very important or not plentiful. There just was not much there to shape that law. The United States of America had a statutory exception for libraries since 1978 and in those 36 years since then there had been no significant case law interpreting that language and telling them what it meant. That was in a common law country, where they depended on those cases to tell them what the law meant. Case law was an important but often illusive thing to bring into the project, but to the extent it existed it would be wonderful to bring it out in the next iteration of the study.

167. The Representative of the CIS had two questions. The first question was whether in the terms of, or on the question of limitations and exceptions, he had found there was an equal or equitable treatment of digital resources in comparison to resources available in more traditional formats? If not, where did he think that lever of change lay, to ensure that fair use of fair dealing provisions were extended equitably to the digital environment as well? The second question was on the interoperability of limitations and exceptions. Given that copyright was a very national thing and countries had a whole range of very diverse approaches and practices on limitations and exceptions, but also given the fact that they lived in an increasingly globalized world, they needed a system that was interoperable with respect to the trans-boundary movement of works, with as little fiction as possible. That was both in the physical and digital environments. What did the examination show of how interoperable or not the range of limitations and exceptions actually were?

168. Professor Kenneth Crews responded that, on the second question, he might find himself only repeating some of the concepts that had already been said about trans-border and the statutory lack of recognition of trans-border. The trans-border concept seldom, if ever, appeared in the library exceptions to the extent that they would find it in copyright law or some other part of a national law. It might be over in the import/export area of the law but that also went to the interoperability and the lack of exact harmonization. He was not a fan of exact precise harmonization and indeed it might not be possible or even desirable, but some degree of harmonization could help with that interoperability. The Representative's question about digital resources was interesting. They had talked about use of digital technologies in the exercise of the rights of use under the exceptions. However the question was about the ability to apply the exception to works that were digital in the first place that were "born digital". The statutes did not address that. Sometimes a statute said that it applied to all different kinds of works but not computer software, which meant that someone was thinking that software was different and there were problems with that. Software had changed and been incorporated into many different works. Generally, they saw a statute that was about books or archival materials or some other kind of work without specifying the technology. Could it apply to an e-book in addition to the paper book? The statutes did not go there. In the common law tradition that came down to a question of interpretation. In a civil code system, they might look for the scope of what the word book really meant. The statutes had not really picked up on that question.

169. The Representative of the International Federation of Reproduction Rights Organizations (IFRRO) said that the copyright ecosystem had three main components: primary markets, secondary markets and copyright exceptions. Each of those components were important, but they were not equally important. The primary market consisted of authors and their publishers operating in a competitive, commercial environment. They produced works, which were responsive to user needs. The secondary market included uses administered by RROs, which

facilitated user needs, copying practices, domestic laws, delivering benefits to all stakeholders in the value chain. The secondary market complemented the primary market but it did not supplant it. Exceptions and limitations to the exclusive rights of rights holders, based on internationally agreed conditions might be appropriate in certain circumstances. However, limitations without remuneration to copyright holders should be limited to where the primary and secondary markets did not function properly. It agreed with the numerous Member States, which had stated that current international legal frameworks allowed the introduction of appropriate exceptions and limitations in national legislation. For instance, as documented by the updated study by Professor Kenneth Crews, nearly all surveyed 186 countries had library exceptions and limitations, most of them multiple ones. Rather, the challenge was their implementation. It maintained that the preferred outcome of the SCCR discussions on exceptions was made up of a combination three elements. The first was experience sharing. The second was a capacity building program, which was demand driven, coordinated by WIPO and with stakeholder involvement, through organizations such as IFRRO, IFLA, IPA, STM and the International Authors Forum (IAF) when required. The third was cooperation among governments, within and across continents, and whatever was appropriate and with the possible involvement of WIPO and regional bodies such as the African Regional Intellectual Property Organization (ARIPO), OAPI and el Centro Regional para el Fomento del Libro en América Latina y el Caribe (CERLALC). Unremunerated exceptions and limitations could not respond to dynamic user requests for seamless uses of copyright text and image works the same way as agreements with authors, publishers and RROs. With the aim of contributing to the sharing of information on how user access was provided by copyright holders and RROs, it had organized a side event on Easy Access to copyright text and image works in education. The presentations and material prepared for the event were available on its web site. The Representative congratulated Professor Kenneth Crews on the study and the excellent presentation of it. An important conclusion that it could draw was that internationally, countries basically had exceptions and limitations in favor of libraries and archives in their legislation. The challenge seemed to be on the implementation and the technical assistance that might be required. Would he agree with that conclusion that technical assistance would help with the amendments and also making cultural heritage a highly topical issue? In Europe, the three library associations, relevant authors and publishers associations and IFRRO on behalf of the collective of print and publishing referred to as RROs had signed a Memorandum of Understanding (MOU) on the making available out-of-commerce works by publicly available libraries and similar cultural institutions through collective licensing. Those were solutions developed collaboratively by all parties concerned. The mechanism agreed to also address the issue of orphan works. Several European countries had started or made preparations to start digitalization and making available programs inter alia on the basis of designed MOU. Those were countries like Norway, France, Germany and Slovakia to mention a few. It noted the response to the question from the Delegation of Israel regarding collective licensing. Nevertheless for the study to be complete it would have included those European and similar initiatives.

170. Professor Kenneth Crews referred the Delegation to the 2008 study and to the report that preceded the charts of the different countries, where there was considerable discussion on collective licensing. He was happy to expand on that in any future work that he did. He agreed, and as he stated in his response to the Delegation of Sweden, he recognized the real value, importance and genuine effectiveness of the collective licensing systems in those countries where they had built the system and had had many years of experience and implementation of them. It was part of the larger equation. The Representative's reference to the MOU about out-of-commerce works was a terrific kind of experiment. It would be easy for somebody to look at it and have critical questions. That was easy. It was important for different stakeholders to be able to find a way to address the question and to find some kind of extra, legal system. They still needed the law but they still needed licensing and innovative extra, legal solutions. The United States of America did not have that kind of collective licensing. How could an innovative approach to a problem like the MOU, be used, revised and extended in to a country where there

was no collective licensing the way there was in the other countries named? The Representative did not need to answer that. The first point about technical assistance fit really nicely with the last bullet point in his entire set of slides, which was copyright education. That also fit nicely with the concerns raised by a couple of the delegates during the discussion about the reality of the implementation of the law by professionals in libraries. Technical assistance was extremely important.

171. The Representative of the International Society for the Development of Intellectual Property (ADALPI) said that model laws had been mentioned as a possible bridge forward for a more harmonious landscape, with regard to limitations and exceptions for libraries, education and archives. That raised a fundamental question, which lay in the specifics of the local systems. First, there were differences with regard to rights protection systems, the Anglo Saxon system, the copyright system and the nuances within those systems. They all knew the differences, as they had already been mentioned. The second specificity at a local level came down to the role of libraries. The role and consequently the needs of libraries varied from one country to another. That was reflected in the specific regime for libraries. Far more often they were public institutions than private. Their particular role in the country was determined by regulations coming or stemming from public law. That was valid equally for education. In order to be effective, any exception in the area of libraries or for education should take into account that specificity and should be aligned with the specific regime. The Representative's question was how to take up that challenge on a road to a more harmonized landscape in the area of limitations and exceptions for libraries and education?

172. Professor Kenneth Crews stated that the Representative of ADALPI had set up a paradox. How did they all recognize that the role of libraries would differ greatly? Not only country to country but easily within each country, different libraries served different functions and had different priorities. How did they address that diversity of libraries fitting that with the question about how did they advance harmonization? As mentioned previously, what they needed was an instrument that provided direction and guidance, motivation and a framework for addressing the variety of issues, but then room for each country to address the realities of what was necessary in the construct of other related law and the role of libraries in that particular country. He was giving a fairly direct answer to the question as to how he would address the harmonization. The proper role might be to address it in part, in a larger scheme and then let the details evolve geographically and let the details evolve over time.

173. The Representative of TACD stated that the Internet and the digital reality were obviously global. Copyright laws were national. Economic power was global. Politics was national. That was very relevant to the discussion and the other relevant factor was that copyright law and the idea of exceptions and limitations were very complicated. It was for small circles of specialists usually and when those things came out into the open to the greater public opinion things changed radically. It reminded the SCCR of the debate on the Anti-Counterfeiting Trade Agreement (ACTA) or the debate for the Stop Online Piracy Act (SOPA) and Protect Intellectual Property Act (PIPA) in the United States of America. When those issues came out of the closet things were seen in a very different light. The opinion of copyright specialists, especially in the European Union was totally different to the opinions of the general public. The vast majority of the general public was frustrated by copyright law because of the social reality that applied de facto, and it was not referring to piracy. It was talking about de facto flexibilities and exceptions and limitations, which were very far from the legal reality of copyright. The vast majority of Europeans would like to have harmonized and mandatory exceptions and limitations that the SCCR was speaking about, whether it be for text and data mining, whether it be for libraries, whether it be cross-border, or whether it be preservation of cultural heritage. Opinions of political structures were captured by certain experts and very special groups that were interested in what they wanted, especially as the European Union was at a crossroads. That could be seen politically because around a year ago the European Union had launched a process called "Licenses for Europe", where some of the ideas presented by some of the

industry people were brought up, namely MOUs and that the solution to exceptions and limitations for the issues could be found in voluntary measures between stakeholders. That was a failure, a terrible failure. It had received letters from many Nobel Prize winners who were asking for legal exceptions and limitations for text and data mining for other scientific research and stated that the orphan work legislation did not go far enough, etc. How the democratic debate took place at those crossroads could be made positive by real decisions. The real decisions had to deal with the public opinion, what was public knowledge and things about the commons. The knowledge commons needed to have a democratic debate and democratic management. That could not be done by delayed mediations that end up in the hands of a few copyright experts, who were very close to a very narrow industry that was defending outdated models, or they could open a democratic debate, where exceptions and limitations for libraries or archives for preservation for scientific limitation would be beyond borders. Even within the European Union it was hard to imagine there to be harmonization in the internal market. The people making money preferred a fragmented market even though European citizens wanted a harmonized market for those things. The Representative's question was an impossible question and he was sorry to put Professor Kenneth Crews on the spot in asking how to open up the door, how to bring the issue out of the closet and how to involve millions of people who really wanted that change?

174. Professor Kenneth Crews said he did not have an answer to the how but he believed that public involvement with the issues was of enormous importance. He would start at a different place right at the beginning of copyright. The system of copyright applied to a broad range of material. Original works in most of the countries. They needed to be fixed and as soon as they met those qualifications they had instant, automatic copyright protection for the full term. That was the very beginning of copyright. When he gave a presentation to newcomers to copyright or taught his class, when he asked them to raise their hand if they were a copyright owner, very few would raise their hand not because they were timid but because the ones who did raise their hands said, yes that they registered a piece of music once or they think that they wrote an article once and had copyright in it. They did not realize that they were all copyright owners. Everyone. They were all copyright owners and they were all users of other people's copyrights to some extent, to the extent that they picked up and read materials or watched television or went to a movie. They were all using somebody else's copyright protected works when they did the simple exercise of going to a store and buying a book or going to a library and checking out the book, they were using somebody else's copyright protected work. They were able to do that because of the law that was structured in a way to secure rights to those owners but to limit those rights so they could do ordinary things. To whatever extent each member of the public realized that they were all owners and all users of copyrighted works on a daily basis, the more that they knew that they needed to become participants in the process, they knew that they were affected by the process. They become smart consumers in the process and they become smarter authors in the process as well. For that reason starting in the beginning and foundation of copyright by bringing the public into it could make not only the system better but it could make everyone a smarter participant in that system.

175. The Representative of FILAIE said that, with regard to the term exceptions and limitations, it was sometimes put as one term amongst many, but with regard to its language Spanish, limitations and exceptions set it aside. It sounded as though they were not applying copyright to it. An example was given of a statue set out in a public place somewhere, which did not get any copyright protection. Anyone could see it. They could photograph it. They could copy it or do anything with it. However when there were limitations it limited in some way the benefit of those rights and that was where they saw the application of the limitation to the theory. Logically it made sense to differentiate what was an exception and what was a limitation and not have the two terms together all the time. In regards to archives and libraries, they should be able to distinguish what a library was and what a collection of works was such as a video collection, audio collection, etc. Whether or not those were things that you could use in a library, what you could check out, etc., whereas archives did not have the categorization of all works, a collection

of works. That might be documentation. That might be services, etc. Then they would not have to apply the limitations to archives. The archives should be freely accessible to the public so that they could copy works for research, etc. What limitations did they have on archives? It was just all policy, limiting certain archives because of national defense or whatever for a certain number of years.

176. Professor Kenneth Crews said that, on his previous comments on archives, he had referred to national archives, where most of the items in the collection of works were government documents and policy documents and so on. It was true that many archives were exactly that, but in the conversation these were only a small part of it. They were talking about the archives of corporations, the archives of associations, the personal papers and the rich variety of archival material that came from many different sources that indeed had copyright protection. Therefore the exceptions and limitations were of vital importance to that content. It was far outside the scope of the study, but from what he had seen and studied, copyright protection for government works varied widely. The Representative's home country might have no copyright protection for the works of the government and therefore they were not subject to copyright such that their use was not conditioned on the exceptions. Its point was exactly right in that context. If they went to the next country, those works were protected. When they went to another country, some of them were protected. There were a big variety of laws. In the United States of America even the government archives still had copyright and therefore the exceptions and limitations remained important. Maybe they wished that it was not so, but unfortunately it was.

177. The Representative of the Chartered Institute of Library and Information Professionals (CILIP) stated that it was the main UK professional association for librarians, information and knowledge managers. There was significant growing demand for both cross-border information transfer and access to mine text and data held in library and archive's digital holdings, but as the library and archive interventions at the twenty-sixth and twenty-seventh SCCRs had demonstrated, there were many obstacles to it, which was why the community had come to WIPO. Professor Kenneth Crews' 2014 findings showed that there were still no national laws facilitating cross-border information transfer by libraries and archives and indicated that only a few countries have extensively modernized their copyright laws since the original study, so the patchwork of national laws which did not fit well together to meet the needs of a global electronically connected information society, that he had exposed in 2008, still persisted. The proposals in Document SCCR/26/3, consolidated in Document SCCR/29/4, appeared to be largely derived from exceptions contained within the European Union copyright framework, as well as from "fair use" in the United States of America and the "fair dealing" provisions in the United Kingdom, so most of the proposed exceptions actually already existed somewhere. What was new was the desire of a significant number of Member States that a way be found to provide an international context for those best practice concepts, to create better functioning cross-border information access and transfer by libraries and archives for not-for-profit uses, for which those proposals were key. The European Union was due to produce proposals next spring to modernize its copyright framework of Directives, to create its own Digital Single Market. It was clear from its public consultation a year ago and public statements made since the new Commission took office in November 2014, that the need to facilitate cross-border information transfer and services was the driving force for copyright reform, that would affect all 31 European Economic Area countries plus five more European Union candidate countries, which totaled some 36 countries not just the 28 existing Members States. Yet, perplexingly, the European Union itself had said that WIPO should not follow its own internal example. It hoped therefore, the Delegation of the European Union and its Member States might explain how, in the absence of international contextualization, piecemeal updates of national copyright laws would help libraries and archives globally to meet the non-commercial cross-border demand for their services. The Representative welcomed the Chairman's chart of the Library and Archive Topics (tabled on December 12, 2014) as a useful tool to help the Committee move forward from where it had been stuck that past year. It respectfully requested that the Committee use it

to engage in open discussion based on the proposals contained in Document SCCR/26/3 as consolidated in Document SCCR/29/4, to explore the issues and find international solutions that would work, keeping an open mind as to the form that the solutions might take.

178. The Representative of the International Council of Archives (ICA) stated that archives existed in every country of the world in all types of governmental and non-governmental institutions. Wherever documents were preserved and made available so that people could use them, they were dealing with archives. All governments, all companies, all organizations, all families created records and preserved them so that they knew what had been agreed and done in the past, so that they preserved their past and supported accountability to the public or to their successors. Those documents then became the essential sources for cultural, academic, social and scientific research. Archives existed to ensure that that human record survived and was available for all to use. Archives however had a problem. They held billions of copyright works. Those were not created or intended for commercial purposes. Yet, from the poorest countries to the richest, archives were hamstrung by a web of copyright laws that were intended for commerce and that had failed to keep up with social and technological development. The Deputy Director General in her welcome introductory remarks reminded them that they lived then in a borderless world. For archives, though, the world was far from being borderless. At successive meetings of the Committee, the Representative and other representatives of archival NGOs had given many examples of the need for mutual recognition by Member States of exceptions and limitations to copyright so that archives everywhere could serve people across the world. Nevertheless, it continued to hear assertions from groups representing developed countries that national solutions were sufficient. They were very far from being sufficient. A borderless world needed solutions that applied in a borderless manner. Its understanding was that the United States of America, Canada and Australia and possibly several more countries, had federal copyright laws. If copyright were left to the constituent states of those countries, they would be unable to provide solutions to internal cross-border issues. The federal laws made copyright borderless within those countries. Likewise, the European Union had copyright directives that applied to all its Member States and they had been told that the European Union was different because of the needs of its internal market. The European Union had then provided in its Orphan Works Directive that the Member States must give "mutual recognition" of each other's national laws. The availability of material online would give citizens of the European Union access to their cultural heritage. That was a response to a cultural, not a commercial, need, though it would at the same time assist the internal market by giving creators the materials to inspire the creation of new works. That non-commercial availability of library and archives materials was a facilitator for the internal market. It was not itself a function of the internal market. It depended on "mutual recognition" across borders. It was that mutual recognition that archives and libraries needed worldwide. If it was good for the European Union, why would it not be good for the rest of the world? Archivists were well aware of copyright. They thought about it every time they were asked for a copy, every time they decided that something needed to be made available online to the wider world. When they thought about copyright, they were thinking about how to protect the commercial and personal interests of rights owners. However, they had a job to do. Government ministers, members of the public and creators all wanted access to the records held in archives and it was the job of the archivist to provide that access. Resistance to change by rights owners and by backward-looking Member States would, in the end, result in copyright being ignored, not respected. That had already happened in society generally with the widespread copying of music to new media for personal use. The Representative believed that change was essential, but that uncontrolled change would cause far more damage to rights owner interests than the carefully measured movements requested by libraries and archives.

179. The Representative of IFLA stated that it sought to garner the assistance of WIPO in promoting an environment where libraries and archives across the globe could fulfill their professional and institutional obligations. Obligations for public entities were often mandated by governing documents and legislative or regulatory instruments to facilitate the preservation of

national and cultural heritage, foster education and research, promote literacy and social inclusion and contribute to economic development and employment. Even the most privileged among them was poor in some way with respect to information. Access to knowledge was essential to closing the information poor/rich divide among them. Earlier during that week, the Representative had attended the Grey Literature 16 conference hosted by the Library of Congress. It was an international gathering of librarians, archivists, professionals and scholars who worked with and relied on access to association, scientific and technical reports, theses and dissertations and other forms of ephemeral works known as "grey literature". Attendees reported efforts to share a wide variety of content across borders including topography and cartography content from the Czech Republic, research literature from the Korean Institute of Science & Technology Information and community awareness of fracking in Nova Scotia, efforts that were impeded without legal support for cross-border exchanges. Securing a common, international copyright framework for libraries and archives allowed for the collection and dissemination of content critical not only to the grey community but to all those dedicated to the dissemination of knowledge. The Representative welcomed the updated findings presented by Professor Kenneth Crews, which showed that a number of countries as well as the European Union were seeking to reform their copyright laws. Still, too few countries had a useful legislative framework of library and archive limitations and exceptions, especially in regards to cross-border flows of digital content. It believed that was one area, as Professor Kenneth Crews had observed, where national solutions could be unsatisfactory. That reality prevented libraries and archives from fulfilling their mission and function, which was often prescribed by law or government mandate as mentioned earlier. A framework of copyright limitations and exceptions would maximize economic development, preservation and education in its many forms and at the same time minimize global inequalities regarding access to knowledge. It appreciated the proposals from Member States on libraries and archives and we looked forward to continued discussion on a way forward. The United States of America's Objectives and Principles Document, SCCR/26/8, presented the beginning of that meaningful way forward. Nonetheless, it respectfully requested that the Committee continued to discuss the list of copyright exceptions and limitations for libraries and archives articulated in Documents SCCR/26/3 and SCCR/29/4. Finally, the Representative asked that the Committee forego consideration of new topics until the existing agenda items of limitations and exceptions for libraries and archives, limitations and exceptions for education and research institutions and persons with other disabilities and protection of broadcasting organizations were successfully concluded. It looked forward to discussions furthering those topics.

180. The Representative of the IAF stated that, for authors, libraries were vital to enabling their works to reach the widest possible audience and for the preservation of literary and cultural heritage that existed through their creative expression. Authors believed those libraries' activities for the purposes of archiving and replacement of damaged or lost materials needed not necessarily be dependent on fair remuneration. However, document delivery, especially delivery off the premises, should be paid for either on a transactional basis or through a blanket license. In either case, payment should be directly to authors, through the medium of a collective management organization. Who should be responsible for paying the fair compensation was a matter for national decision. In some cases, libraries would be responsible for such payment, in some cases governments and in others, the recipients of copyright, library material. In the United Kingdom, for example, the Government provided funding for a Public Lending Right, which should be extended to e-lending. It supported the establishment of a Public Lending Right in all countries, to include the lending of books in printed and electronic forms. Payment for secondary uses of authors' work was then more vital than ever for the creation of new works in the changed and ever-changing conditions of not only publishing but the whole experience of reading and access to literature and the visual arts. Authors appreciated and supported Professor Kenneth Crews' point that educating society about copyright, which was the author's right to begin with, was vital in ensuring appropriate measures were taken so that libraries were able to meet the needs of readers everywhere, whilst ensuring

authors were able to make a living, which means they could continue to provide libraries with their content.

181. The Chair stated that they had extended the time to allow for Professor Kenneth Crews to receive questions and comments from the delegations. It had been a tremendous effort on the part of Professor Kenneth Crews, who had been invited for the previous afternoon and was still receiving comments and questions. The enormous, monumental work, undertaken by him was added to the other monumental effort of receiving questions, comments and opinions. The Chair asked the Delegations to express a special thank you to Professor Kenneth Crews. The Chair thanked the delegates for being there, after the rich exchange of questions and answers to the magnificent report and study and presentation they had heard. It was time to continue their work on the agenda topic. They would also require time to undertake the effort to understand the implications of the report. That was a study and it was clear that some of the statements have been made even before the study. However, it would be interesting to contrast the general statements that they had made before and to think about those positions regarding the study they had made.

182. The Deputy Director General thanked the Chair and stated that she was incredibly encouraged to see that there was broad consensus in the room about the role of libraries and archives in the digital world. There had never been a more exciting opportunity at their disposal for the way they looked after their cultural heritage and facility to take access to the world's knowledge. Professor Kenneth Crews' study had been incredibly valuable and she stated it was an area in which WIPO could do more. That was an area where she proposed that WIPO focused more on bringing more practical insight into what it meant for libraries and archives and what it meant to be broadcasters and most importantly of all what it meant to be rights holders and users. She wished them good luck and wished that she could sit there all the time and soak up everything that they had to teach her. It was her eighth day at WIPO and she was still learning. She would continue to listen attentively and encourage all the Member States to communicate with her and be in touch. She was at their disposal if she could help further the agenda and use the resources of the Secretariat to service them. She stated that the participation of the NGOs had been incredibly valuable and useful and encouraged them to keep communicating with the Secretariat. They valued every one of them. All the opinions and those representing practitioners in the public and private sector were very important to their learning curve in the Secretariat. That was an ongoing learning curve for all of them because nobody could claim to be experts in the new digital marketplace. It was changing too fast. They had to keep learning and talking and focusing on helping each other clarify the issues and never lose sight of what they were trying to do. They were trying to protect IP rights holders and access to IP for the benefit of humanity. That was their role. She would keep lifting it up to that view whenever they got stuck on bones of contention on very technical bits.

183. The Chair thanked the Deputy Director General for her invitation, which was very useful in developing their challenging work. The Chair invited regional coordinators to give regional general statements regarding the topic.

184. The Delegation of Bangladesh, speaking on behalf of the Asian Group, thanked the Deputy Director General for her proposal to continue work on the limitations and exceptions for libraries and archives. Limitations and exceptions were integral parts of all norm setting exercises and understandings in different national and international fora. The provisions were necessary for the developing countries and the less developed countries for a more balanced and efficient international copyright system and for the benefit of rights holders, as well as for society as a whole. The balance of interests was also secured in Article 7 of the TRIPS which read, "The protection and enforcement of IP rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare and to a balance of rights and obligations." The Delegation



recognized the importance of respecting the benefits of rights holders in a balanced manner and that balance of interests required considerations of the interest of rights holders in the context of the rights of the public at large. Every country, either developed or developing, had benefitted from exceptions and limitations for libraries and archives. However, instead of keeping the benefits isolated to individual countries an agreement on exceptions and limitations for libraries and archives would enable them to share the benefits for the common good of mankind. Such an agreement would require uniformity and balance at a national level including the harmonization of domestic laws and policies. Needless to say, that approach should take care of the legitimate interest of all stakeholders. The Delegation thanked all the Member States and different organizations that had contributed to develop and enrich the current working document. The Group had previously proposed appointing a facilitator or “friend” of the Chair like other WIPO Committees to shape up the text to a full working text. Libraries and archives were two vital institutions of their society, which mostly operated on a non-commercial basis. The contribution to their history, culture and heritage could not be measured by any account. It did not see any reason they should deny essential institutions of their life. The Asian Group would count on the understanding of all Member States in that regard.

185. The Delegation of the Czech Republic, speaking on behalf of the CEBS Group, paid tribute to Professor Kenneth Crews for his 100 percent focus, for the many hours of work and for being responsive to a very wide range of questions. The Delegation believed that libraries and archives continued to represent the vital network of institutions that supported societies, educational, cultural and integration aspirations by offering universal and well organized access to the broad spectrum of information sources. It noted that the future of traditional libraries and archives had become a matter of concern. Since the Internet, the use of textbooks and documents lost their material maturity once their content had become subject to digitization and online accessibility. The digital world had also been changing the functions of libraries and archives as they addressed new social and cultural challenges. The Delegation believed it would be beneficial to the topic itself and all interested parties and stakeholders to search for a common denominator to frame their discussions. It had been clear for some time in the Committee and in the discussions at the fifty-fourth General Assemblies, there was no consensus on embarking on normative work on that topic. It saw it as beneficial to consider a common framework to be able to depart from procedure and derivative substantive discussions. There were different models of limitations and exceptions in different countries that reflected the diversity of their respective traditions and cultural policies. The Delegation believed that it was crucial to preserve the flexibility of Member States to shape their cultural and other related policies via different copyright mechanisms. The current international legal frameworks still provided room for adapting national copyright legislation for the benefit of libraries and archives not only via introducing new exceptions but, for example, introducing a new and simple system of licensing through extended collective management of rights. As there were many different models of limitations and exceptions for libraries and archives in different countries the existence of future development of the WIPO studies presenting and finalizing these models and systems were very important and useful tools for all legislators all over the world. The Delegation declared its participation in the exchange of views on national experiences that related to the limitations and exceptions for libraries and archives in the past several SCCR meetings and for the future.

186. The Delegation of Japan, speaking on behalf of Group B, reiterated its recognition of the importance of libraries and archives in society. It recognized the wider interest on the agenda item and therefore was willing to show flexibility to find a way forward on the topic. The Delegation thanked Professor Kenneth Crews for his study on library and archives exceptions, which provided a comprehensive selection of national studies and overview of those exceptions, which could serve as an informative basis for policy making on the subject matter. The SCCR had had a very good discussion and exchange of experiences and views based on the study. Further exchange of the concrete and actual experiences of Member States, based on the study could enrich the sources of reference in policy making. That was consistent with principles that

recognition and respect should be given to differences in legal systems relating to libraries and archives. Through the question and answer sessions on the study they had reconfirmed the importance of allowing flexibility for respective countries on the subject matter. The Delegation believed that that could form a core part of the SCCR's consensual basis for future work. The SCCR should give further consideration to the Delegation of the United States of America's contribution, document SCCR/26/8 titled Objectives and Principles for Exceptions and Limitation for Libraries and Archives. The reality, which they had faced at the General Assembly, clearly showed that the exchange of national experiences was a common component, namely a consensual basis on which all Member States could further work at the Committee, and the discussions on an objective and principle level could compliment that exercise. Consensus now existed within the Committee for the normative work or for the way forward. It would be wise to look at that reality and try to make steady progress on the common component. Group B would continue to engage in the discussions on the limitations and exceptions for libraries and archives in a constructive manner.

187. The Delegation of Paraguay, speaking on behalf of GRULAC, stated that it valued the work that had been undertaken by the Committee on the topic to date. It considered that it was timely to have a discussion on all of the proposals submitted, specifically the compilation of the text that was briefly presented at the last session by the Delegations of India, Brazil, Uruguay and the African Group. That proposal had not been duly discussed, given that it was introduced late and Member States had not been able to make specific comments on the proposal as reflected in the Draft Report, document SCCR/28/3, specifically from Paragraph 369.

188. The Delegation of Kenya, speaking on behalf of the African Group, thanked the Chair and stated that it considered that the exceptions and limitations for libraries and archives were extremely important. The African Group had submitted a proposal on the topic in the past. It highlighted five issues, which it considered to be critical for advancing the discussions on exceptions and limitations for libraries and archives. First, the mandate of the SCCR was to advance discussions on the substance of an issue, to the point where the main characteristics of the possible solution were clear and then formulate recommendations for consideration by the General Assembly on the appropriate form and procedural steps for the solution to be adopted and implemented, whether by a formal treaty or by other means. Two, the 2012 General Assembly mandate called the SCCR to work towards an appropriate international legal instrument or instruments, whether model law, joint recommendation, treaty, and or other forms, with a target to submit recommendations or limitations and exceptions for libraries and archives to the General Assembly by the twenty-eighth session of the SCCR. Third, there was a precedent set by the Committee in 2007, when it met the target to convene a Diplomatic Conference to adopt a Treaty for the Protection of Broadcasting Organizations. At that time the Committee decided to maintain the topic of broadcasting organizations on the agenda until it was resolved. Further, the General Assembly in 2012 requested the Committee to submit a recommendation for the protection of broadcasting organizations to the 2014 General Assembly. That did not happen, but discussions had progressed smoothly over the previous two and a half days with statements from various delegations on the need to concentrate on substance and not procedural matters. Fourth, the excellent study and presentation of the results of the study by Professor Kenneth Crews and the discussions that had followed. In that regard, the African Group believed that the time had come to move discussions on exceptions and limitations for libraries and archives forward and proposed that the discussions be based on the consolidated text put forward by the African Group and the Delegations of Brazil, Ecuador and India, as the text captured in Document SCCR/29/4. Finally, the Delegation requested that the Secretariat compiled the results or the summary of the discussions that followed from the presentation of the study in a format that could be useful in advancing the SCCR's discussions in that area.

189. The Delegation of China thanked the Chair and the Secretariat for the work that had been done regarding exceptions and limitations for libraries and archives. It reminded the Committee

that in an earlier statement it had said that various institutions were of a nature of public service. Discussions on that topic would contribute to balancing the rights of both the claims of rights holders and the public interest. In its existing copyright law, it had stipulated for exceptions and limitations. In its third amendment it had given fuller consideration to exceptions and limitations. The Delegation supported continued discussions on that subject matter. At the same time, it also welcomed other delegations to provide more information to further the discussions. It would take a flexible and open attitude to accept any contributions to the discussions.

190. The Delegation of the European Union and its Member States believed that libraries, archives and other memory institutions played an essential role in society in the dissemination of knowledge, information and culture and it supported their work across a wide range of policy areas. It was not willing to consider a legally binding instrument on limitations and exceptions for libraries and archives and in that respect it thought that any proposals containing language geared towards that goal were not helpful to reach a consensual basis for the SCCR's further discussions. It believed that there was a role for WIPO and the SCCR to work on the subject. The ultimate goal should be that exceptions were implemented effectively in a way that helped those institutions fulfil their public interest missions well. It was very much in favor of an exchange of national experiences, which could be based on the update of the study by Professor Kenneth Crews. It remained committed to constructive and concrete contributions to the work on exceptions and limitations for libraries and archives, which needed clarity. In that respect, it was unfortunate that the General Assembly had not taken decisions as to what the Committee was instructed to do on libraries and archives. After the failure of the SCCR to fulfil a mandate to provide recommendations that only extended to its twenty-eighth Session, it could not afford to proceed in the same manner and to repeat the same mistakes. To succeed, the SCCR must set a common objective so that the wealth of expertise and energy present in the Committee was used for a fruitful purpose, which was their shared goal. It recommended that the Committee, with the help of the Secretariat make an objective assessment of where they stood, what was possible and what their goal should be in light of that. It was important that they had clarity on the parameters of the discussions on exceptions and limitations for libraries and archives in the new context, on its objective and on the nature of the respective result as the basis to discuss substance. The Delegation believed that such clarity was fundamental and a precondition of subsequent discussions on libraries and archives to be meaningful and operational. It hoped that their efforts during that session of the SCCR would focus on achieving that clarity. An effective international copyright system in that area would not be defined by new normative effort; instead it could be achieved by recognition and effective implementation of the existing exceptions and limitations. The pursuit of clarity and common ground should be the focus of the session.

191. The Delegation of Mexico thanked the Chair and noted that libraries played a fundamental role for society at large. They had their main objective as guaranteeing access to reading material and to the different information, knowledge and media, supporting education and culture of the whole country, as well as the improvement of their daily lives. Libraries were important for human beings. They allowed them to satisfy whatever need for information or knowledge they might have and that is why some authors stated that libraries were, in fact, the memory of human kind. In the information society that they now lived in, knowledge and information had become a driving force for the economic and social development of all countries. Through reading they could improve the quality of lives and that was of all human beings and of all societies. Libraries and archives therefore played a vital role and one that was cross-cutting. Libraries had as their objective, the provision of printed books, digital books and other complimentary services, allowing all of their populations to acquire knowledge and to transmit it to grow and to preserve that knowledge in all branches of knowledge. That included library collections, photographic collections, sound collections and digital collections amongst others. That was why the Delegation reiterated its preparedness to constructively contribute to the debate and the work that was being undertaken in the Committee.

192. The Chair noted that they had had an intense day with an excellent presentation made by Professor Kenneth Crews which required time to digest and think about. The Secretariat had been requested to make an effort to enable that powerful tool to be something that was available for their efforts. The Deputy Director General had highlighted the participation of academics and technical experts at that high level, as a possible recourse. That day had set the bar very high and it would be a challenge for those coming after. The discussions were about the facts and that was what the studies brought to the SCCR. It enabled them to reflect on what was taking place. The SCCR's work in that area could be focused in a positive way. The following day they would continue with the work and the presentation of the documents that had been submitted. Given that they had another issue on the agenda, the Chair hoped they could deal with that agenda item as well.

193. The Delegation of Chile stated that as it had said previously, exceptions and limitations were an integral part of the IP system. They were an excellent tool for copyright, which together with the protection of the rights holders also protected culture. In developing countries such as its own, such access sometimes encountered difficulties, which were difficult to resolve. Museums, libraries and archives played important roles such as protecting education, freedom of expression and the historical heritage of mankind. For those reasons, copyright legislation must include the necessary norms to ensure that those important functions could be carried out. As they had seen from the interesting analysis from Professor Kenneth Crews, only some countries had legislation of that type but they needed to look at that from a global perspective in order to define possible minimum standards and rights such as cross-border lending. The Delegation supported and appreciated the contributions that Member States had made in order to enrich the debates, which should continue in the Committee according to the mandate governing their work. The various shared visions and the documents introduced enabled them to maintain a constructive dialogue representing all Member States.

194. The Delegation of Iran (Islamic Republic of) associated itself with the statement made by the Delegation of Bangladesh, speaking on behalf of the Asian Group. The digital environment had provided new opportunities to many areas, including access to knowledge and exchange of information in society. In the meantime, the copyright system posed new challenges for libraries and archives to take full advantage of those opportunities. The existing limitations and exceptions envisioned in the Treaty was not therefore enough to address emerging technological changes under its need to expand them to deal with new issues which were not forced in the era of hard copies. Moreover and from the Development Agenda perspective, it should be noted that the work of SCCR on limitations and exceptions provided a peculiar and important example of norm setting activities for the implementation of the Development Agenda. It hoped that the outcome of the international instrument or instruments would catch the creative minds of human beings in the digital era, taking into account the necessity to develop an international mechanism in order to overcome those challenges. In that context, it strongly supported legally binding instrument or instruments for limitations and exceptions for libraries and archives and research and educational institutions as well. In order to pave the way for the access of people to information and knowledge, it believed that such a legally binding instrument or instruments would facilitate addressing the needs of all countries in terms of digitization work and would develop an international mechanism to deal with those new challenges. In order to fulfil their mandate and come up with a concrete proposal to establish an international instrument for libraries and archives, as many delegations had reiterated in the previous sessions, the Committee should expedite the process and start text-based negotiations. To that end, it was important that the comments should be separated from the proposed text and put as an annex of the working document. The delegation supported the consolidation of the proposed text contained in Document SCCR/26/3, titled "Working Document Containing Comments on and Textual Suggestions Towards an Appropriate International Legal Instrument (in whatever form) on Exceptions and Limitations for Libraries and Archives", prepared by the African Group and the Delegations of Brazil, Ecuador and Uruguay. It was of the view that the consolidated text would be a good base for the

Committee's negotiations. It also supported the proposal made by the Delegation of Bangladesh, speaking on behalf of the Asian Group that the Committee should consider appointing facilitators or "Friends of the Chair", to develop working text for the exceptions and the limitations from the documents at hand. Finally, it echoed the statement made by the Delegation of Kenya, speaking on behalf of the African Group, on the SCCR's work on exceptions and limitations. Three important issues had been under consideration in the SCCR for a long period of time and there was a need to move forward in all of those areas. Unfortunately, in the twenty-seventh and twenty-eighth sessions of the Committee and previous General Assembly, they were not able to reach an agreement on the Committee's work program on three issues including broadcasting organizations. The relevant informal consultations agreed that the terms of the work program of the Committee would be based on the 2012 General Assembly mandate, according to which the SCCR should continue discussions towards an appropriate international legal instrument or instruments, whether treaties or other forms, with a recommendation to commit limitations and exceptions for libraries and archives to the General Assembly, by the twenty-eighth session of the SCCR. Therefore, the 2012 General Assembly mandate remained valid on all subjects under the agenda until getting a new mandate from the General Assembly. Therefore, and legally speaking there would be no way other than discussing all issues on an equal footing basis with no discrimination among them.

195. The Delegation of the United States of America was pleased to be continuing the SCCR's discussions on exceptions and limitations for libraries and archives. Exceptions and limitations to support the important work of those institutions in preserving and providing access to works were a key element of a balanced and vibrant copyright regime. As they had heard, many countries were engaged in updating their library exceptions and that was an evolving area, particularly in light of new technologies. That included the United States of America, where those exceptions had been the subject of legislative hearings and public roundtables examining whether any change was needed. In its view, individual countries should have flexibility to tailor exceptions and limitations to address their own needs within the constraints of international obligations, taking into consideration their particular legal, cultural and economic environments. That flexibility was important to the United States of America and it believed that it was important to others as well. For that reason, it did not support binding norm setting at an international level, or further work by the Committee or a facilitator on developing treaty text. It was clear that some countries had different views but there was no question that for all of them, the discussions were timely and important. There was much that they could accomplish at the SCCR to encourage and to promote the development of appropriate state of art exceptions and limitations for libraries and archives. The United States of America continued to be convinced that the best way forward was to focus on high level principles and objectives and to identify those on which all Member States could agree. That might be consistent with Professor Kenneth Crews' idea of harmonizing the concepts or subject matter of exceptions and limitations rather than the language of the statutes themselves. The Delegation had introduced a revised principles and objectives document for library exceptions for SCCR/26/8. Going forward it would like to engage in a substantive discussion within the Committee to develop a set of principles and objectives, in language they could all accept in order to recognize the varied public service roles of libraries and archives and to provide a framework for Member States to facilitate those institutions' ability to perform those roles. Once they had reached a shared understanding on such a set of principles and objectives, it would propose implementing them through further work on developing and updating national laws. That could involve regional workshops, conferences and the sharing of experiences as well as studies and technical assistance. It was confident that that approach would result in real progress and improvements for library and archive services worldwide. It looked forward to a meaningful discussion on principles and objectives as a valuable next step.

196. The Delegation for the Russian Federation thanked the Chair and noted the importance of exceptions and limitations in copyright law, which met the interests of the public for access to knowledge and cultural heritage. At that moment, the provisions on exceptions and limitations

were reflected both in international agreements and in national legislation in many Member States. That was shown by the research. Moreover, national legislation allowed them to take into account specificities of the people living in the country and their requirements and access to cultural heritage, information and knowledge. In order to preserve access and distribute such knowledge, legislation of countries provided for limitations, in particular, for libraries, archives and research institutions. The Delegation was working on an ongoing basis on identifying the specific needs of its people for access to knowledge and the result of that work was reflected in its national legislation. It noted the efforts of WIPO looking at the issue of exceptions and limitations in connection with copyright law. It particularly underlined the research, which had been undertaken by Professor Kenneth Crews with regard to libraries and archives. That research had been compiled based on factual information about the provisions in a number of countries on exceptions and limitations and was useful for the work of the Committee on the issue. It hoped that in the future that research would be fully accessible in the Russian Federation through the WIPO web site. The Delegation believed that it was important to extend the experiences and opinions on the issue, especially leading experience and through participation in meetings and through submitting information about national legislation.

197. The Secretariat referred to the reference for a translation into Russian and stated that the Delegation of the Russian Federation should request that by email to the Secretariat so that it had a written record and it could prepare the translation.

198. The Delegation of Kenya wished to make a few clarifications in regard to how they needed to proceed. It was very important for the Committee to respect the mandate they had before them. The Delegation had made very clear in its statement that the mandate was to discuss an issue, get a solution and finally get a record through which that solution could be addressed. Some Member States felt the Committee needed a legally binding instrument and others did not feel that there was a need for that. That did not prevent them from addressing very clear issues, which came from the discussion and the study undertaken by Professor Kenneth Crews. It was very clear that there were real issues and those issues needed solutions. Regardless of what finally would be the form and regardless of what form Member States felt that solution should take, the real discussion had to take place. They had to find the solutions to the real issues. Using an analogy it was like they had an exam and the exam had a choice of answers. A was a treaty, B was model law, C was a recommendation and three other forms. A student went into the classroom and said there was a choice for a treaty and he or she did not like that choice. They could not change the exam question so there was no more choice for a treaty or because other students were going to choose that choice. What it was talking about was first, they were within the mandate of the SCCR and second, they were within the mandate of the exceptions and limitations. There was no choice or no reference outside the scope of the Committee or outside the scope of the topic of exceptions and limitations. What the SCCR would finally choose to agree on as a Committee was upon all of them. The biggest and the most important step they had to take, was to first of all address the issue in a manner, which would clearly isolate the problems and the solutions, and from there, move forward. The Delegation heard Member States saying that because some of them preferred a treaty, it was a good discussion but that was not an effective or a viable way of moving forward. The Delegation urged all Member States to focus on the good spirit, which had prevailed during that week and the fruitful discussions which had taken place during the week following the excellent presentation by Professor Kenneth Crews. It urged them to be very pragmatic and see where those discussions would lead them. If they continued along the way things were moving they would be forced to go down a path that was not very constructive. They should try to restrain themselves so that they could continue moving WIPO forward.

199. The Delegation of Greece expressed its sincere hope for fruitful outcomes. It aligned itself with the statements of the Delegation of Japan, speaking on behalf of Group B, and the Delegation of the European Union and its Member States. It shared the view that the new sea of copyright required a compass, particularly when it was a collective, clear effort. It was looking

forward to seeing that the Committee could proceed under the agenda item on a shared understanding of where that compass led them. They had to bear in mind that no consensus existed in the area of exceptions and limitations and that the current international copyright framework offered the flexibility for Member States to adopt their own legislation. The work on the Broadcasting Treaty had advanced well so far. Perhaps it was time that they engaged in further substantive discussions for its successful completion.

200. The Delegation of Ecuador aligned itself with the statement of the Delegation of Paraguay, speaking on behalf of GRULAC. It supported the comments of many Member States who had recognized that libraries and archives provided access to knowledge and contributed to the socioeconomic development of countries. It also noted the importance of the study of Professor Kenneth Crews. The Delegation believed that there was a need to make progress through an international legal instrument. It hoped that under the Chair's able leadership they would be able to find that common denominator in order to make progress on that topic. In that regard and in a completely constructive spirit, there were delegations such as the Delegations of Brazil, Uruguay and India and the African Group, which had submitted a text as a working document, which might show areas that they could make progress on in the Committee. It expressed its hope that they could find a common denominator in order to make progress in the work of the Committee and make progress on a legal instrument.

201. The Chair thanked the Delegation of Ecuador and stated that there was a reference to Document SCCR/29/4. That document had been submitted and the Chair would invite the Delegation to present it, however, at the last session of the SCCR, the Delegation of the United States of America had presented Document SCCR/26/8. That presentation was initially carried out but in order to be completely certain that it had been concluded, the Chair invited the Delegation of the United States of America to briefly respond and tell the Committee whether or not it was going to conclude the presentation or whether or not it had finished it. If it was the former, then the Chair invited the Delegation of the United States of America to complete the presentation and then he would ask the delegates who were going to present Document SCCR/29/4 to be ready to make their presentation.

202. The Delegation of the United States of America thanked the Chair for the opportunity to conclude the presentation. It did not wish to repeat the introductory remarks it had made in past sessions of the SCCR, but appreciated the opportunity to take the floor again to complete and refocus the document in light of the discussion the Committee had already had and in light of Professor Kenneth Crews' excellent contribution to their understanding. It had listened carefully to the comments of delegates from many Member States and continued to hear common objectives for the work on exceptions and limitations. A brief reference to the term objectives, what they were trying to achieve, and principles, helped them to get there. While they had different legal systems and benefited from national flexibility, the Delegation believed that together they could develop some core objectives and principles to help facilitate the exceptions of libraries and archives throughout the world. As they knew from Professor Kenneth Crews' study, the majority of Member States had some legislation in place to encourage them to adopt limitations and exceptions in their national laws, consistent with their international obligations, including the three step test. It did not wish to go into too much detail on the second objective, to enable libraries and archives to carry out their public service role in preserving works, other than to say that it was an area where they had heard enormous support, which had been reflected in Professor Kenneth Crews' study. At least 100 Member States had developed exceptions for that purpose. Support for research and human development was a core function of libraries and archives around the world. That objective reflected the role of libraries and archives in providing access to works that comprised the cumulative knowledge and heritage of the world's nations and people. In order for libraries and archives to fulfil their role as a gateway of knowledge, they must be able to provide access to their materials in appropriate ways. In that regard, updated and tailored exceptions and limitations established a framework enabling libraries and archives to supply copies of certain materials to researchers and other users either

directly or through intermediary libraries, including through the collaborative process known as interlibrary loan. That reflected the topic of reproduction rights and safeguarding copies. It recognized the different Member States had different rules about legal deposit and were flexible on that objective, but it wanted to emphasize an important point that was reflected in the document. Libraries and archives served the public by maintaining essential government information. Copyright restrictions on government materials should not limit the ability of libraries and archives to receive, preserve and disseminate government works. They had heard a lot about the many challenges of preservation and access in the digital environment, which was why it had included a fifth objective, that exceptions and limitations should enable libraries and archives to carry out their public service mission in the digital environment. Libraries and archives had a particularly critical role in the development of the twenty-first century knowledge ecosystem. Accordingly, exceptions and limitations should help to ensure that those institutions could continue to carry out their public service mission in the digital environment, including preserving and providing access to information developed in digital forms and appropriately using network technologies. In the same vein, the Delegation acknowledged that libraries and archives possessed rich collections that were important for the research and the study of increasingly sophisticated disciplines of all kinds and tailored exceptions and limitations could be a powerful means of helping to build on existing knowledge. Those were the objectives. It had also reflected other principles that were very important to the provision of library and archival services. For example, it provided that Member States used both specific exceptions and general exceptions such as fair use and dealing to serve the public. It also suggested that in appropriate circumstances Member States should recognize limitations on the liability of certain types of monetary damages, applicable to libraries and archives when they had acted in good faith, and when they believed that they had acted in accordance with copyright law. It recognized that rights holders had a critical role in sustaining access to copyrighted works in both developed and developing countries. Rapidly changing technology required flexible solutions and Member States should encourage collaborative and innovative solutions among all stakeholders. It knew that there were many different legal systems and approaches and that others had identified additional topics. While there might be many possible topics, the document described those areas where there might be consensus and where it believed it would be fruitful to find agreement. It appreciated the Member States' attention and consideration of the objectives and principles of the Document. As soon as the timing was appropriate in the Committee's schedule, the Delegation would like to hear specific views on those the Member States could accept and those, which they might want to change.

203. The Delegation of Brazil stated that prior to speaking on behalf of the proponents of Document SCCR/29/4 it wished to say a few words on behalf of Brazil, in order to share with the Member States some information regarding recent developments in Brazil related to the ratification of the Marrakesh Treaty. Its commitment to the cause that led it to negotiate and successfully conclude the Marrakesh Treaty had been unrelenting, but unfortunately it had not been able to go through the internal legal procedures needed to ratify the Treaty in the expeditious manner it had expected and envisaged. Only naturally, the electoral process had increasingly dominated the political scene in Brazil during 2014. It had slowed the internal proceedings of several initiatives, including the Marrakesh Treaty. The good news was that the Treaty had now been submitted for Congressional scrutiny and approval. The Government was confident that the ratification would be accelerated as Congress examined that most important instrument. More importantly, it highlighted the fact that the Marrakesh Treaty had been submitted to the scrutiny of the Congress, based upon Constitutional Amendment 45, which allowed for international treaties and conventions on human rights to be incorporated into Brazilian law as equivalent to constitutional amendments. Under Constitutional Amendment 45, the legislative approval process could be undertaken in a more swift fashion than was otherwise the case for constitutional amendments. It was only the second time in history that Constitutional Amendment 45 had been used as a basis to submit a treaty to the Congress. In 2008, the Brazilian Congress examined the text of the United Nation's Convention on the Rights of Persons with Disabilities, established under Constitutional Amendment 45 and approved the



Convention as an equivalent to constitutional amendment under Brazilian law. The decision to incorporate the Marrakesh Treaty into Brazilian law through the means of Constitutional Amendment 45 should be seen as a clear indication of the high importance that the Brazilian Government attached to that instrument and of its continued commitment to its swift implementation. The Delegation referred to Document SCCR/29/4, which was the consolidation of proposed text contained in Document SCCR/26/3 and a document prepared jointly by the African Group and the Delegations of Brazil, India and Uruguay. Document SCCR/29/4 consolidated the proposed text by the African Group and the Delegations of Brazil, India and Uruguay. They had maintained the structure of the text, keeping the number of topics as well as the title of each topic as in the previous document. Given that the text proposed had similar underlying goals and converged on many points, the new document presented them with the same general ideas in a clearer fashion, with adjustments wherever they felt the need for improvement. In that sense, the new consolidated text provided clearer language, combining the previous proposals in a single document. Document SCCR/29/4 was reflective of the interests and the objectives of other delegations that had not taken part in the process of consolidation undertaken by the proponents. The proponents indicated that Document SCCR/29/4 was open for subscription by other interested delegations and they remained at their full disposal to further clarify specific elements and the general ideas that underlay the document. The proponents also made clear that they acknowledged the fact that several delegations had expressed that they did not share the views of the proponents and that they would prefer to discuss the issue of exceptions and limitations in different terms and perhaps with different goals in mind. Nevertheless, the proponents considered that Document SCCR/29/4 would prove to be useful, even for those that did not share their views, since it also helped to pin down the matters of concern that were being raised from the perspective of the proponents, as well as possible ways to address them. The document should therefore also be seen as a contribution to the conceptual discussions on exceptions and limitations for libraries and archives to be undertaken in the Committee. On Topic 1, preservation, the first and second paragraphs drew from the African Group's proposal and the Delegation of Ecuador's contribution, combining both texts while making adjustments in the language. The first paragraph was taken from the African Group's proposal. Paragraph 1 stated that the basic limitation on the right of reproduction, while the subsequent paragraph was limitation for works or materials that were preserved or replaced and for specific purposes such as education, research and preservation of cultural heritage or for other uses permitted by the document or uses in accordance with fair use. The final paragraph under that topic further stated that the limitation was only for non-profit uses and reiterated the three step test. On Topic 2, the right of reproduction and safeguarding of copies, the new text combined the previous proposals into two paragraphs with some language adjustments. That topic ensured that libraries might supply copies of works to their users or to other libraries for specific purposes, education, private study, research or interlibrary document supply. In accordance with fair use, Paragraph 2 also ensured that libraries and archives would benefit from other limitations provided in national legislation that would allow users to make a copy of a work. On Topic 3, the African Group's text had been captured in general terms with minor improvements in order to make explicit that works in any format were included in the provision. The text gave wide discretion to countries as to deciding whether and how to implement legal deposit policies in accordance with the Delegation of India's original proposal. Furthermore, it made clear that the purpose of legal deposit rules was to guarantee the preservation of culture while also ensuring that digital culture that was made available or communicated to the public should also be subject to legal deposit rules. On Topic 4, library lending, the text combined the African Group's proposal with the contributions by the Delegations of Brazil, Ecuador and Uruguay and kept the spirit of the Delegation of India's proposal in the sense that libraries should not need authorization to lend works in their collections to users or to other libraries. That provision stated that lending might occur by any means, including digital transmission, provided that it was compatible with fair practice as determined by national law. Paragraph 2 was designed to ensure that Member States that adopted in their legislation a public lending right might keep such rights. On Topic 5, parallel, importation, the new text consolidated in simplified language the previous proposals

providing that libraries and archives should be able to acquire and import legally published works, whenever a Member State did not provide for the international exhaustion of the distribution right after the first sale or other transfer of ownership of a work. On Topic 6, the general cross provision, that was the language agreed to in Article 5(1) of the Marrakesh Treaty, which also dealt with cross-border uses. The provision was of crucial importance to the document as it ensured that libraries and archives worldwide might lend, make available or distribute copies made under a limitation of exception to another library or archive in another Member State. It aimed to force the diffusion of knowledge across borders while ensuring that the uses permitted contained only copies made under a limitation or exception or in accordance with national law. On Topic 7, orphan works, retracted and withdrawn works and works out-of-commerce, the African Group's proposal had been combined with The Delegation of Ecuador's proposal, with some minor improvements into the text. Paragraph 1 dealt with the issue of offered works, defining such works as those for which the author or the rights holder could not be identified or located after reasonable inquiry. The second paragraph made it optional for Member States to decide whether commercial uses of authored works by libraries would be subject to remuneration. Paragraph 3 provided a safeguard for authors and rights holders, ensuring that should they identify themselves to the library or the archive, they would be entitled to claim remuneration for future uses or to require termination of such uses. Paragraph 4 dealt with the issue of withdrawn and retracted works, allowing libraries to reproduce and make them available where appropriate for reservation, research or other legal use. Finally, Paragraph 5 provided great flexibility for each Member State in applying the provision of orphan works allowing reservations to such a provision. In relation to Topic 8 on liability for libraries and archives, the text improved upon the proposals of the African Group and the Delegations of Brazil, Ecuador and Uruguay keeping in line with the Delegation of India's proposal in order to ensure that a library or archivist operating within his or her duties should not be liable for copyright infringement if acting on good faith, in their belief and where there was reasonable grounds for believing that a use was permitted by a limitation or exception, or was in the public domain, or was not restricted in other ways by copyright. Paragraph 2 then ensured that libraries and archives were exempt from secondary liability for the actions of their users. On Topic 9, technological protection measures, instead of combining the proposed texts they had opted to draw from the language agreed to in Article 7 of the Marrakesh Treaty, providing a clearer text which affirmed that Member States should take steps so that technological measures did not prevent libraries and archives from enjoying the limitations and exceptions provided for in the document. On Topic 10, contracts, the proposals of the Delegations of India and Ecuador and the African Group had been combined into a single text whose goal was to ensure that contractual provisions did not prohibit or restrict the exercise of the limitations and exceptions provided for in the document. It was inspired by the concern that contracts, especially, regarding digital works, might be used to limit or even to override exceptions and limitations provided for in national law or in international instruments. That provision follows some recent changes in national laws, such as in the United Kingdom, which ensured that contracts could not override some limitations and exceptions for libraries and archives. Finally on Topic 11, the right to translate works, the African Group's proposal was reformulated, incorporating a reference to works in any format, taken from the Delegation of India's original proposal stating that those works that were lawfully acquired or accessed and that were not available in a certain language, might be translated by libraries and archives to such a language for the purpose of teaching, scholarship or research. The proponents of document SCCR/29/4 were at the full disposal of delegations and other interested stakeholders to further clarify their views, ideas and the text that they had tabled.

204. The Delegation of India endorsed and supported the consolidated text, which had been explained by the Delegation of Brazil. It stressed that on the content relating to limitations and exceptions, it believed that there was no opposition from any Member States. It was a question of how did they put the content into a container and what type of container. That seemed to be the divergent view. It noted that the consolidation of the points of those different delegations, which was an effort that had been done in the last two SCCRs and had moved forward, needed

to be discussed and any merits to improve it needed to be taken up. As far as the form or the container in which it had to move, that was definitely a matter of exchange. They should take a global perspective in relation to digital works and the types of knowledge dissemination through libraries and the limitations and exceptions. Professor Kenneth Crews had provided a basic presentation on the factual part of the laws and substantive questions had been raised by delegates and civil society groups, which had brought a very rich diversity. One thing that was underlined was that there was definitely an urgent need for intergeneration equity in limitations and exceptions and a need to ensure that the SCCR and Member States contributed different perspectives. The Delegation hoped that there would be meaningful progress forward.

205. The Delegation of Kenya, speaking on behalf of the African Group, thanked the Delegation of Brazil for presenting the consolidated text on its behalf. The Delegation fully endorsed the text and stated that it would like to see the SCCR move the discussion forward. It had been very clear that the challenges presented by the digital era were not challenges that would go away. The Member States had a mandate to work on issues of concern to Member States and the SCCR was the right forum to undertake that work. It was very clear that regardless of what laws they had in their national legislations, they were based on other laws and on models. They were based on borrowing from other laws from other jurisdictions. It was good to have a shared understanding that WIPO could play a big role in creating a platform, whereby the Member States could begin to see the issues in a manner, which was beneficial in terms of how they could craft their exceptions and limitations to enable them to address the challenges. Corporate law and corporate systems were not designed to take care of new technologies, yet those technologies were now an important part of their lives and new realities. They made their lives better. New technologies were not geared towards making their lives difficult, but rather to make it more bearable and more useful. They had a real opportunity. They had tried to do their best in terms of framing the ideas as they saw them and they were open to discussions. They were open to dialogue with the other delegations based on how they saw those issues. At the end of the day they needed to discuss and find a common objective. The most important things were to present on the issues, to be as impartial as possible in terms of looking at the problems presented by the issues. Finally, how to resolve the issues was a matter of give and take. The Delegation urged other Member States to come forward to move the discussions forward.

206. The Chair thanked the Delegation of Kenya, speaking on behalf of the African Group, and proposed that they focused on a shared understanding of the different topics they had included in the discussions regarding exceptions and limitations for libraries and archives. That shared understanding gave them a methodology. The methodology was not to focus on the disagreements but to focus on where they were reaching consensus, where they understood that there was the need to foster exceptions and limitations, developed nationally in order to help libraries and archives and society get the benefits of that public service role. They could do that as they had in the different submissions, topic by topic. They could try to reach a goal of a common understanding or assured understanding of the specific topics. Considering the excellent presentation they had heard and the invitation not to consider the contentious issues, they could focus on an interesting discussion. Once they had an idea of the common understanding on specific topics, they could understand without reference to the outcome, as Professor Kenneth Crews had suggested, WIPO's public role to give guidelines to the world. It was a useful discussion to have a common understanding on each and every one of the topics that they were trying to deal with and find that shared understanding. The Chair suggested that the best way to proceed was to listen to each other, to ensure that all the different views were respected and to recognize that it was not the moment to impose particular and different views. If they tried to find a way that they had a common understanding on all of the specific topics, they would probably be in a better position later to have a discussion on how to proceed after that. As Professor Kenneth Crews had stated on the previous day, it was much better to have a deep understanding of the issues and then their proposals would be based on facts and not on presumptions. The proposals would be based on needs, not on ideas of what was needed or

required and that deserved a lot of substantial discussion. If they lost time in procedural discussion then they would not have the clarity to undertake the way to proceed with the topic. The Chair invited the Member States to have a substantial discussion, topic by topic, trying to find a shared understanding of those specific topics. That could then give them a roadmap, if they were going to make progress with the support of the Secretariat and Professor Kenneth Crews who had offered his help. A roadmap would help them to organize the material which had been submitted, but not in the clouds and not without an end. The goal would be to reach the common understanding. Methodologically, it was a good step. Understanding each other, topic by topic was a good step and trying to find the best way to do so and initiate their discussions on that approach was the best way to do so. The Chair had looked to what the Committee had done with other issues and had prepared a tool. A tool was not an official document; it was just a tool to help them to have an idea of how to initiate a structured discussion on the topic. The previous day they had had an interesting and rich discussion, but they needed a structured discussion, topic by topic to approach a common understanding. The tool was a chart and the Chair invited them to take the chart as a roadmap in order to commit themselves to substantial discussion on all of the topics. The chart took some of the topics that had been discussed and connected them to topics, adding content or a reference. The Committee was the source. The first four topic conclusions were those that the SCCR had managed to adopt in the twenty-sixth session, which were contained in document SCCR/26/rev/conclusions in Paragraphs 18, 19, 20 and 21. Regarding the other topics, they had added references as well, but as they had not reached conclusions regarding those topics the chart referenced the Chair's conclusions from the previous sessions of the Committee. They reflected the Chair's perception on how the topic was understood. If they initiated a thoughtful, evidence-based, substantial discussion on those references attached to the specific topics, they could create a shared understanding of each one of those specific topics. That would provide clues and then they would be in a better condition to continue their discussions on procedures or in other matters. The charts had been printed by the Secretariat and would be distributed. The Chair showed the delegations a graphic presentation of the tool. Some topics on the left side had a reference to conclusions adopted by the Committee. On three of them they had a common understanding and where there were different views it was expressed as was done in the conclusions regarding some specific topics. For example, regarding preservation, it said, "As to the topic of preservation, it was considered that in order to ensure that libraries and archives can carry out their public service responsibility for the preservation, including in digital form, of the cumulative knowledge and heritage of nations, limitations and exceptions for the making of the copies might be allowed so to preserve and replace works under certain circumstances." That was the SCCR conclusion regarding those topics. The SCCR could make that deeper by trying and understanding what was missing in order to reflect their common or shared understanding, which had been enriched after the presentation by Professor Kenneth Crews. The second issue referred to right of reproduction and safeguarding copies and said, "As to the topic of the right of reproduction safeguarding copies, concern was expressed regarding the scope of the concepts under consideration and the possible overlap with other topics. Suggestions were made to modify the title of the topic. The Committee considered that arrangements such as limitations and exceptions for libraries and archives, among others, play an important role in allowing the reproduction of works for certain purposes, including research. Further discussion took place concerning the supply and the distribution of those reproduced works." Regarding the topic of legal deposit, it said, "As to the topic of legal deposit, delegations expressed differing views on the need to address that topic within the framework of limitations and exceptions." While that did not give much, it at least reflected the different views expressed. Regarding the topic of library lending, it said, "As to the topic of library lending, the Committee recognizes the importance of addressing that issue and various delegations suggested different alternatives for providing that service, including the use of limitations and exceptions, the exhaustion of rights and/or the licensing schemes. The Committee expressed different views on digital distribution in the scope of library lending." Regarding the second part of the chart, there were the topics mentioned on the left and then conclusions by the Chair. Regarding the topic of parallel importations it said, "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 the delegations and observers.” Regarding the cross-border issues, the chart said, “As to Topic 6, on cross-border use, 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.” Regarding the orphaned works issue, it said, “As to Topic 7, on orphan works, retracted and withdrawn works, and works out-of-commerce, the importance of addressing that issue was discussed, as that subject matter was under development and consideration in many countries. Some delegations were of the view that these categories of works should be treated separately, bearing in mind their own particularities. A number of aspects were discussed by observers.” Regarding limitations on liability of libraries and archives, it said, “As to Topic 8, on liability of libraries and archives, several delegations stated that was a complex topic that needed further consideration. Some were of the view that a limitation on liability would empower libraries and archives to fulfil their mission. A number of aspects of the topic were explored by delegations and observers. Some delegations expressed their concerns about cross cutting measures of civic law and international obligations on that matter.” Regarding TPMs, the chart said, “As to Topic 9, 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.” The final topic said, “As to Topic 10, contracts, a number of delegations expressed views as to whether contractual practices should override the 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 technology and services were also discussed.” That did not have a reference because there was no Chair’s conclusion on that issue due to time constraints. The chart was a starting point, but a lot had happened since and they had to review the report, as plenty of the content would give them a clue on trying to focus on the common understanding of the topics. The chart might evolve in order to reflect the different views, trying to reach a common understanding.

207. The Delegation of Japan, speaking on behalf of Group B, thanked the Chair for finding a consensual basis for further work. In a situation where they did not have consensus on the way forward and there were some divergent approaches from the Member States, including the exchange of views and experiences and text based work on the consolidated text and the principles, it thanked the Chair for his efforts to find a solution. The Delegation stated that further consideration would be necessary to examine the meaning of the Chair’s approach in that complex situation. It wished to reserve its rights to make a comment at the next session on the Chair’s approach and at the same time, suggested that it would be good to hear further clarification on the approach as material for the group’s further consideration. Further comments might follow from the individual delegations. The Delegation referred to the fact that the chart included 11 items as topics which came from the SCCR/26/3 where there was no agreement. It questioned why the Chair had chosen those 11 topics and how were they characterized in his approach. Following the Chair’s response, the Delegation would respond to the idea at the next session. Finally, the Delegation gave a gentle and heavy reminder to the fact that they had another substantive agenda item to be tackled at the session and taking into account the current time, they had to move to the next topic and the Chair’s summary. The Delegation asked the Chair and the Secretariat to distribute the Chair’s summary as quickly as possible, especially regarding the broadcasting issues, which had been dealt with earlier during the week.

208. The Chair thanked the Delegation of Japan, speaking on behalf of Group B for its offer to reflect on his approach. As he had stated previously, it was a tool and the tool might take the shape in whatever form the Committee wanted or considered might be useful. Regarding the list or the selection of topics, they were not all there because as he had explained, one possible situation that might arise, as had happened in other charts was that after substantial discussion, the placement of one of the topics might not be necessary in the chart. The topics were not listed to force Member States to accept them. A good approach would be to emphasize those topics wherein different views were being expressed. For example, the first topic on the list had been mentioned repeatedly by different delegations. He would invite the delegations to include the definition of the topics in the exercise, but in case there were topics which had been agreed to already, those would be accepted. Regarding the source, the Chair had selected the sources corresponding to the SCCR's conclusions and the Chair's conclusions. The charts reflected a reference and were not to force discussions on fixed topics. They could receive different views and inputs but he invited the Committee to focus initially on the topics which were not contentious.

209. The Delegation of Paraguay, speaking on behalf of GRULAC thanked the Chair for the proposal he had introduced. At a preliminary view, it seemed quite interesting to the Group. The Delegation supported the statement of the Delegation of Japan, speaking on behalf of Group B that they had other agenda items and it would be a good idea to already have the Chair's summary to begin to assess it, in as much as they were concluding the morning session. There were other documents to be discussed including Professor Kenneth Crews' study. There were many comments made by delegates and by NGOs that required some time to digest and to see what the next steps on the topic should be. At the same time, the Group had received the Chair's chart, which as he had said was a tool, and could, indeed be very interesting for future work on exceptions and limitations. Those were preliminary comments and the GRULAC members would make national statements for the following session and perhaps in a smaller forum, which could be substantive and in depth on the question of what were the topics of common interest for all delegations. They should not forget that at the last session they had proposed to organize regional seminars in order to understand the challenges faced by libraries and archives around the world and the impact on copyright legislation for exceptions and limitations. All of those factors and ingredients needed to be taken into account in that discussion. It was important to keep in mind that document SCCR/26/3, which might be amended in the future, was the document adopted by the Committee and the Committee could continue to work on all tools that the Chair had mentioned which were on the table at that time.

210. The Chair noted that with respect to the request to circulate the proposed summary in good time, in relation to the topics discussed to date, he would try to ensure that the draft was circulated by the end of the morning session, for further consideration by Member States. On the question of taking note of the remaining time, the schedule included the introduction of a document under the current item, so they were very much aware of the next step to be taken. Thirdly, with respect to the chart, as he had said, it was a mere tool and the tool would help them to understand the degree of common understanding on the various topics. Finally, as always with the cooperation of delegates, he hoped to have a clear line of work that would enable the SCCR to move forward in a structured fashion on that important topic.

211. The Delegation of Kenya, speaking on behalf of the African Group considered the tool as one that would facilitate reaching an understanding, in terms of the various topics that had been under discussion. They all agreed that they had a working document with 11 topics, and therefore if they were to move forward they should begin with what they had. The Group agreed it was a good way to move forward in that format. The Chair had used that format before and it had brought a bit of clarity in terms of what they were trying to resolve. The Delegation also knew that after dealing with the tool, they would have to go back to what they had on the table, namely the working documents and all the proposals, which had been made by the Member States. Having a shared understanding was important and the tool was one

way of fostering that. They could not forget the excellent discussions on the study, which had been presented by Professor Kenneth Crews. The tool was a very useful way for them to work, to use the facts, discuss concerns that had been raised, and guide them in terms of how they understood and defined the topics moving forward. The Group noted that it was a pragmatic way to move forward and supported the proposal.

212. The Delegation of the European Union and its Member States referred to the intervention of the Delegation of Japan, speaking on behalf of Group B. The Delegation stated that the Chair had explained the structure of the chart and also the objectives that he was trying to pursue with the tool. It asked whether the Chair could further develop the working method that was underpinning the document. The Delegation asked the Secretariat whether the discussions that they had had around the study of Professor Kenneth Crews would be reflected in the report of the session as for all other discussions.

213. The Secretariat stated that it intended to reflect that entire discussion in the report of the meeting. It also stated that it thought it could expedite that portion of the report and perhaps make it available either through the regional coordinators or on the web site, even before the full report was prepared, because it had received a lot of requests for it.

214. The Chair thanked the Secretariat for its welcomed efforts. In relation to the Delegation of the European Union and its Member States' questions, he stated that if Member States saw a topic, which they considered they had reached consensus on, then they would focus on it. In that way, they would understand the role of exceptions and limitations regarding specific topics. Instead of adding endless lists of different options, they could undertake an effort to address the substance of the different views expressed on that matter, including using the resources that arose from the excellent work undertaken by Professor Kenneth Crews. If other delegations had given text proposals, which had not been discussed at that stage, the offer was to share the substance and the underlying principles of those proposals in order to have a common understanding. They had heard and appreciated that even other proposals might be helpful for other delegations that had different views on how to reach an outcome on the matter. Regarding preservation, for example, if they agreed that exception and limitations might play a role, then under what kind of modalities or constraints were they going to be considered, when they thought about such exceptions or a set of exceptions related to a preservation. The idea was that there was a connection between the topic and exceptions and limitations, which was not automatic. It had to be analyzed and if they recognized that connection between the topic and exceptions and limitations, then they could have a complete idea or reach a common understanding on that topic. Prior to the structured discussion, it would be individual thinking about how to enrich the discussion with different views or technical background or studies. That might give them a roadmap that they could express and share.

215. The Delegation of Chile, without prejudice to further analysis, expressed its appreciation for the document that had been introduced by the Delegations of Ecuador, Uruguay, Brazil and the African Group. That text was very clear and organized in a way that provided it with the proposals for each of the relevant topics for the agenda item. It also acknowledged the work of the Chair in giving the SCCR a new working tool that would enable them to work towards a common understanding. Those inputs would enable the SCCR to continue with the analysis and discussions on a topic that the Delegation considered to be very important.

216. The Delegation of Ecuador aligned itself with the statement made by the Delegation of Paraguay, speaking on behalf of GRULAC and with the proponents of the document, with the aim of making progress in the Committee. It wished to review the document that the Chair had submitted in table form. It was such an important topic that they were looking forward to devoting great attention to it.

217. The Delegation of Mexico thanked the Delegations of Brazil, Uruguay, Ecuador, India and the African Group for their proposal and the effort they had undertaken in compiling the document, which they had discussed in previous sessions. It welcomed the Chair's initiative in carrying out the exercise of conceptualizing the discussions, which they had already debated in previous sessions. It believed that those were the right steps to keep taking, to make progress on a topic, which was of interest for many delegations. It would like to express its stance on the issue and to begin the debates on the topic.

218. The Delegation of Brazil joined other delegations in expressing its appreciation for the Chair's work and efforts throughout the session, particularly with regard to the document and chart he had prepared and circulated. The Delegation needed to carefully review it, but it understood the motivations and the purpose of the approach proposed by the Chair. It tended to think that it was a positive approach and a positive way ahead for the discussions. Most importantly, its understanding of the proposal was that it did not prejudge anything. It did not prejudge the goals that the delegations might be pursuing or their motivations. It seemed to be an effective way to organize the discussions and to lead them into a more substantial interchange of opinions. In that sense it might indeed prove to be quite useful.

219. The Delegation of South Africa aligned itself with the statement made by the Delegation of Kenya, speaking on behalf of the African Group. The spirit that was permeating the Committee was that Professor Kenneth Crews' study had provided food for thought and highlighted issues in the exceptions and limitations enabling libraries to carry out their public service work. While they might not have consensus on pursuing one particular path, they were aware of the shortcomings in their national systems in addressing issues such as cross-border exchange. In that regard, the Delegation welcomed the Chair's proposal to use a tool to stimulate substantive discussion on the 11 topics and it looked forward to hearing more about the working methods.

220. The Chair thanked the Delegation of South Africa for the positive reaction to the tool he had submitted. The tool should be used in a way that would not accommodate individual approaches because that would be impossible, but it would accommodate those approaches when they had reached a consensus. The Chair suggested that they start with one topic where there was consensus and analyze the relationship between the need for exceptions and limitations in connection with that specific topic. They would see what kind of concerns might additionally need to be tackled. There was probably a common goal, reinforced through Professor Kenneth Crews' study, where there was a topic on which 180 countries were making efforts. Some guidance should be given to undertake efforts to consider how they could understand a common understanding related to those specific topics, after the evaluation. He urged the delegations to keep reflecting and not to start the next session trying to change the chart completely in a way to accommodate individual points of view. That would be rejected by others because it would not be a good exercise. The focus was consensus. Referring to the statement from the Delegation of Paraguay, speaking on behalf of GRULAC, the Chair suggested starting the discussion in a substantial way on specific topics.

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

221. The Chair asked the Secretariat to introduce the documents under consideration on that topic.

222. The Secretariat stated that they had two documents on the topic: Document SCCR/26/4/prov "Provisional Working Document Towards an Appropriate International Legal Instrument (in Whatever Form) on Limitations and Exceptions for Educational, Teaching and Research Institutions and Persons with other Disabilities Containing Comments and Textual Suggestions"; and document SCCR/27/8, "Objectives and Principles for Exceptions and



Limitations for Educational, Teaching, and Research Institutions” submitted by the Delegation of the United States of America.

223. The Chair thanked the Secretariat and opened the floor for Group Coordinators’ statements on the agenda item. As with the previous agenda item, the Chair stated that Observers would need to wait to make interventions on specific points later in the discussions, and they could also send statements in writing on specific topics for inclusion on the record to the Secretariat.

224. The Delegation of Japan, speaking on behalf of Group B stated that it recognized the importance of the exchange of ideas on limitations and exceptions for education and research institutions. Enough time had not been allocated to the discussion on the contribution by the Delegation of the United States of America which was titled, “Objectives and Principles for Limitations and Exceptions for Educational, Teaching and Research Institutions”, SCCR/27/8. To that end it suggested that it would be helpful for the Delegation of the United States of America to further elaborate on the document and hear comments and views. The proposal had been designed to support the exchange of experiences. The Committee should give further consideration to that contribution and the Group would continue to engage on the issue in a positive spirit.

225. The Delegation of the Czech Republic, speaking on behalf of CEBS stated that the activities of educational and teaching institutions built the ground for modern economies by providing a diversity of specialists to the labor market. The Group recognized that education courses were now provided in various modes, including regular daily studies as well as those offered in distance learning systems. The digitization of educational materials and many other opportunities provided by new technologies had led to the development of new teaching tools and methods. The Group recognized that research, educational and teaching institutions had to be supported by modern and balanced copyright policies. Copyright systems that existed in many Member States already provided a broad spectrum of limitations and exceptions crafted for educational and scientific research sectors. The Group was of the view that it should be up to every Member State to decide what kind of mechanism was more adapted to the traditions and the realities of their societies and best reflected the educational and research policy goals. The Group was convinced that modern copyright systems also had to provide for a variety of licensing schemes that were useful, flexible and supportive for educational research and teaching institutions in their everyday activities. As had been stated previously in relation to the exceptions and limitations for libraries and archives, it was crucial also in that field to preserve the flexibility of Member States to shape their services by different copyright mechanisms. The Group would continue to participate in the exchange of views and national experiences that related to the limitations and exceptions for educational research and teaching institutions and looked forward to other Member States’ contributions.

226. The Delegation of Kenya, speaking on behalf of the African Group expressed its deep concern about the inability of the Committee to advance discussions on the topic of limitations and exceptions for educational and research institutions and for persons with other disabilities . The discussions in the previous two sessions were on procedural matters just to contain the topic and for the sake of putting it into the report. The 2012 General Assembly had asked the SCCR to work towards an appropriate instrument, whether a treaty or other form, with the target of providing limitations and exceptions for education and research institutions and persons with disabilities to the General Assembly, by the thirtieth session of the SCCR. With a clear mandate and a target, adequate time should have been located to the topic to ensure that the Committee fulfilled its mandate. It was difficult to see how that mandate could not be achieved. In that regard, it would be important to review the current time allocation to ensure that all topics got equal consideration and the Committee fulfilled the mandate and targets set by the General Assembly. The current time allocation gave undue advantage to one topic and created room for unnecessary confusion and disruption on moving the work on the two topics on limitations and

exceptions. It therefore urged the SCCR to allocate time to the two topics during the next session and to focus on substance and not procedural matters. The Group also requested that a similar study to the one conducted on libraries and archives be undertaken. The study should also focus on the challenges faced by education and research institutions and persons with other disabilities within the digital environment and the possible solutions to address them.

227. The Chair thanked the Delegation of Kenya, speaking on behalf of the African Group for its views, which would be taken into consideration. He stated that the Committee was using the time to discuss the topics in a very interesting way, trying to overcome the difficulties contained in different agenda items. He assured the Group that there was no intention to set the time in order to put aside any specific topic. On the other hand, the Committee needed to distribute the time among the different topics and while doing it in a proportional way might sound more fair it was not necessarily more efficient. The Chair invited the Group and different proponents of the issues on the agenda to bear that in mind. The alternative was dealing with one topic at a time to get substantial progress on each issue in the agenda. After they were finished or removed then they could have more time for the remaining interesting topics. The solutions were very different and they were not to be seen as affecting the proportional distribution of time among different topics. The Chair understood and was very respectful of the Group's view but from his perspective it did not mean that the topic was not an important one. Probably if they managed to have some clarity on the first topic, the following one would get the benefits as well. There was an interconnection of topics. The Chair took the Group's invitation not to be stuck in procedural discussions but to work on substantial issues in a constructive way.

228. The Delegation of China thanked the Secretariat for its work on limitations and exceptions for educational and research institutions and for persons with other disabilities. It attached great importance to education, including to the access to educational material, distributed to people with other disabilities. According to its current copyright law and other rules and regulations, China respected the equitable access to persons with other disabilities, including visually impaired persons. The Delegation supported further discussing the topic in the SCCR, and would like to have an open and flexible attitude to participate in the discussion. The Delegation hoped the topic would attract great attention within the SCCR and substantial development.

229. The Delegation of India, speaking on behalf of the Asian Group stated that it would be a gross understatement if it simply said that the limitations and exceptions for educational research institutions and for persons with other disabilities were important. Rather, those limitations and exceptions should be considered necessary and it was of the view that it was their duty to ensure that those issues were dealt with. Due to the lack of resources to meet individual needs and the continuously widening digital divide, educational research institutions were important means for information for the people residing in Member States of the Group. Though the advancement of science and technology had quite transformed the mode and means of diffusion of information and knowledge, not all Member States were benefiting equally from those developments. Historical and other material reasons had been hindering some members of the Group, which represented the largest number of disabled persons in the world. To ensure access to educational and information materials and to guarantee sustainable access, the SCCR must develop a comprehensive and inclusive framework for research institutions and for persons with other disabilities. The Group reinforced the statement of the Delegation of the European Union and its Member States that troubles required direction. In the same vein, the Group stated that the discussions also required an aim or direction. It would like to move forward by sharing practical and substantial information, but the sharing of experiences only would not lead the SCCR anywhere unless it developed a text to work with. The Group reiterated its previous proposal for appointing a facilitator to develop a working text for exceptions and limitations for education and research institutions, beginning with the documents currently on the table. That would be without prejudice to the form of the new international instrument that would be developed in due course. It looked forward to the compassionate understanding of all Member States in that regard.

230. The Delegation of the European Union and its Member States stated that it was important that the copyright framework enabled educational, teaching and research institutions to fulfil their role, both in the analog and the digital world. It welcomed discussions on how the copyright framework could enable those institutions to fulfil their public interest mission and it was willing to engage constructively in the discussions. The Delegation was convinced that the legal space and flexibility provided for by the existing international copyright framework was sufficient for all Member States to draft, adopt and implement meaningful limitations and exceptions in that area. For that reason it was not considering it appropriate to work towards a legally binding instrument in that area. The sharing of best practices among Member States and when necessary and required, the assistance of WIPO was useful in that regard. The work undertaken by the Committee on the subject could have a meaningful outcome, if the Committee shared the same understanding of the starting point and objectives of the current exercise. Clarity on that point was important and in the same way as for other subjects discussed by the SCCR, should be achieved at that time. It believed that the Committee should work on facilitating the adoption and the implementation of relevant exceptions and limitations at the national level in agreement with the existing international framework, an objective which it hoped everybody would agree on. That approach was one where individual Member States took responsibility for their own legal framework, while relying on the mutual support that the exchange of best practices and pooled resources could offer.

231. The Chair thanked the Delegation of the European Union and its Member States for its approach to the topic. Following the general views, the Chair stated that they would commence the afternoon session by inviting the Delegation of the United States of America to the floor to present or initiate a presentation regarding its document.

232. The Secretariat stated that it would make available as soon as possible the copies of the Chair's conclusions up to that point of the meeting for review by the delegations. It would not include the agenda item they were still discussing, but it would include the other agenda items that they had discussed to that point. The Chair would determine if it was necessary to meet with the regional coordinators about the proposed summary, otherwise they would just discuss it in the Plenary, following further discussion of Agenda Item 7. The new list of participants was available. The Secretariat urged delegations to check it and let it know if they had any comments.

233. The Chair adjourned the session.

234. The Chair welcomed the delegations to the afternoon session. He asked the Secretariat to give a brief reference to the documents they were going to work on. The Committee had had the chance to listen to general statements coming from the different regional coordinators and after that, the Chair had asked NGOs to send the Secretariat their general statements concerning the agenda item, in order to consider those as part of the report. The Chair noted that they took special note of the general statements they had already made in the previous sessions of the Committee. That had been done without prejudice to get back to the delegations, for them to make specific contributions to the topics.

235. The Secretariat stated that it had received a number of questions about what studies were planned for the work of the SCCR. First, the study on museums, which was a standalone study, had been commissioned. There was a survey being done and two academics were working on it. It expected to have the study available and posted in plenty of time for the June/July meeting. In terms of education studies, the four regional studies that had started their work on the education limitations and exceptions subject were expected to be updated. That had not occurred due to budgetary reasons, as it did not have it in its budget when the proposal was made at the SCCR. The Secretariat expected to be able to identify the necessary funds in 2015 to do that. Those studies would probably be available for the meeting in the second week of December 2015. It had also talked about commissioning a scoping study on the intersection of

disabilities and copyright, to find what other areas they should think about in terms of looking at the implications of copyright and the possibilities for doing some work on limitations and exceptions in those areas. That was a study that it intended to commission early in 2015, with the idea of having it for one of the SCCR meetings in 2015. The Secretariat had also asked that Professor Kenneth Crews consolidate the two studies he had done, so that they had a single reference for all countries. He was planning to do that quite early in 2015 and have that available as soon as possible.

236. The Delegation of the United States of America referred to Document SCCR/27/8. The copyright system as a whole was an engine of scholarly research and publication and provided exceptions to copyright for certain educational uses that sustained the missions and activities of educational and research institutions. In its experience, appropriate and balanced exceptions that satisfied the three step test required careful study and consideration of all circumstances. They must recognize that such circumstances might differ from country to country. They must also be mindful that educational materials represented a significant percentage of the commercial publishing market around the world. In its Objectives and Principles document it had proposed some high level objectives paired with corollary principles that supported them. It was interested in other countries' experiences in drafting, implementing and living with laws that exempted certain kinds of activities in the educational sphere. It looked forward to any input or experience that they could share on that day, or later, on any of the objectives it had outlined. In particular, it would like to hear the delegations' views on whether they could agree with any or all of those objectives, and if not, what changes they would want to see. It had been encouraged by others' comments during the week that they would see value in finding some common ground. The Delegation reiterated, however, that in that area, too, it did not support binding, norm setting at an international level or further work by the Committee or a facilitator on developing treaty text. Looking briefly at the document itself, its first objective was to implement exceptions to encourage Member States to adopt the appropriate limitations and exceptions in that area. Professor Kenneth Crews' excellent study demonstrated that there were still several countries that did not have specific exceptions for certain uses with regard to libraries and archives and the same might be true in the education and research context. Copyright laws in the United States of America included several specific statutory exceptions relating to education, notably for face-to-face teaching and distance education. As educational materials represented a major component of the market, they must be tailored carefully, or they would diminish incentives to create high quality materials for the benefits of the public. The Delegation looked forward to others' comments on the first objective. The next objective addressed fostering a vibrant commercial market through licensing. A number of its stakeholders, among others, had highlighted the benefits of facilitating licensing schemes. Publishers and universities, for example, often had straightforward licensing arrangements by avoiding legal uncertainty. Licensing could also help to manage a number of the complex issues that arose due to the multi-jurisdictional nature of the Internet, allowing parties to remove doubt as to the range of application of their arrangements. Licensing models were certainly not a one size fits all. It was interested in learning more about new developments in that space, especially for emerging issues such as digital copies and micro-licensing. In short, that objective recognized that a vibrant commercial market was an essential component of a fully functional education system and it aimed to sustain that market. The next objective addressed technologically evolving learning environments including distance learning. The main point of the objective was to acknowledge that educational material was delivered and absorbed in a different way than it was two decades ago. In the late 1990s the United States of America had engaged in an extensive process to promote distance education and help ensure copyright exceptions reflected the realities of the digital age. It involved public debate and discussion which culminated in a formal report that made recommendations to Congress on legislative changes. As a result, in 2002 the United States of America enacted the Technology, Education and Copyright Harmonization Act, also known as the Teach Act and enacted Section 110 of the Copyright Law to allow for the inclusion of performance and displays of portions of copyright works and distant education under appropriate circumstances including technological

safeguards to protect against the unauthorized redistribution of works. The Teach Act was available to only accredited educational institutions or government bodies and transmissions could be sent only to students officially enrolled in an eligible course. Finally to preserve the market for incentives in creating distance education materials, the exception did not extend to use of copyrighted works developed specifically for online educational uses, textbook materials or other materials typically acquired by students for their independent use. It would continue to review its laws to check for any needed updates and Congress was including an education exception in its review of copyright law as a whole. Congress had held a hearing on the topic the previous month. The Delegation would like to hear more about other countries' experiences in both face-to-face teaching contention and in distance education. The last objective titled Other Principles included the primary principles and objectives that it believed should guide national laws in that area. In order to move the work of the Committee forward, it would be useful to hear other Member States' reactions to its document, including whether those principles and objectives should be accepted or modified in any way. It noted that both general and specific exceptions could be useful in enabling certain education and research institutions to carry out their public service missions. In the United States of America, in addition to specific exceptions, the doctrine of fair use might in certain circumstances allow third parties to make limited use of copyrighted works including for purposes of teaching scholarship or research. Under that doctrine as applied by the courts, a number of factors must be weighed together with socially beneficial uses, including educational uses, which were more likely to be considered fair in circumstances where the amount of the work taken was necessary to achieve the educational or research purpose and the use did not cause market harm to the rights holder. The consideration of a fair use claim however depended on the facts and circumstances of each individual case and did not necessarily provide clear or predictable guidelines that could routinely be applied across the board. It looked forward to hearing other Member States' experiences and thoughts on how their own legal regimes had enabled educational institutions to best fulfil their roles.

237. The Chair thanked the Delegation of the United States of America for the explanation of Document SCCR/27/8. Even though the presentation was very detailed there were a lot of issues contained in the presentation and in the topics mentioned. He suggested that they try to find a way to continue their discussions in a substantial way related to those issues. The Chair thanked the Delegation for its contribution and, as they were not entering into a discussion about that specific document, he gave the floor to NGOs for specific comments. He reiterated that general comments from NGOs should be sent in writing.

238. The Representative of the Canadian Copyright Institute (CCI) thanked the Chair for the opportunity to address the SCCR. It represented creators, publishers and distributors and wished to share some of the Canadian experience resulting from limitations and exceptions relating to education. In the fall of 2012, amendments to Canadian copyright laws were made, which included in one particular amendment, "fair dealing for the purposes of research, private study, education, parody or satire does not infringe copyright." The three exceptions for education, parody or satire were new. Creators and publishers had no issue with parody and satire being included in exceptions as long as it was fair. Education as a broad, undefined category of fair dealing was another matter. Canada's educators photocopied or digitally scanned hundreds of millions of pages of copyright-protected content every year. They used these copies to compile course packs, essentially, purpose-built anthologies of required reading, as part of their curriculum. Collectively licensed course pack anthologies, whether they were delivered as photocopies or as part of an online readings platform, were an established, valuable and vital market for Canada's creators and publishers. Revenue from the education sectors, schools, colleges and universities, made up a significant percentage of sales for many Canadian publishers. For Canadian writers, income from collective licensing was an irreplaceable part of the modest living they made from their professional work. The educational sector gave assurances to the Canadian Government that the addition of "education" to the fair dealing exception would not impact royalty and revenue streams for the publishing and writing

sector in Canada. Since the introduction of the exception, however, educational fair dealing was now being re-defined by universities, colleges and schools in Canada; both the Association of Universities and Colleges of Canada (AUCC) and the Council of Ministers of Education (CMEC) had posted guidelines, which had been adopted by many college and university administrations as new faculty policy. They said that the copying must be “fair” but they then tell teachers and instructors they might provide or communicate short excerpts to each student enrolled in a class or course. What were short excerpts in the view of AUCC and CMEC? Up to a full 10 percent of a copyright protected work, one complete chapter from a book, an entire single article from a periodical and an entire poem from a copyright protected work containing other poems? Since nothing in either the Copyright Act or case law had established such guidelines, they reflected what the educational community would like the law to be rather than what it was. In fact those guidelines mirrored some of the copying limits authorized by the licenses granted by Canada’s collective societies, under which almost all educational institutions in Canada were licensed for more than two decades. Clearly, those guidelines were not about access to materials. They were about cutting costs. The Representative provided some simple examples of how the new fair dealing policies could be used. Under the AUCC/CMEC guidelines, a teacher could design lesson plans that included the handing out of copies of a short story to her class every week throughout a semester, copied from several different short story anthologies although he or she might be careful not to copy substantially all of any one published anthology. Alice Munro, Canada’s Nobel prize-winning writer, had published fourteen collections of short stories. Under the AUCC/CMEC guidelines, a professor or instructor could copy one story from each collection, publish them anthology-style, distribute them as an Alice Munro reader and offer that reader to students without Ms. Munro or her publisher receiving compensation. Even that, drawing on the work of a single author was theoretically possible under the guidelines and they would not know for a very long time what the courts might eventually disallow as “unfair” as any litigation of such issues, if it was not too expensive for rights holders to undertake at all, would progress very slowly. Creators and publishers alike in Canada contended that the guidelines would allow excessive copying and were unfair. Furthermore, many teachers and professors had expressed doubt and concern about the guidelines indicating they did not want to teach from infringing content. Unfortunately, the publication of the guidelines had emboldened universities, colleges and schools to back away from their licenses with Access Copyright, the collective reproduction rights organization for Canada outside Quebec. Since January 2013, there had been a dramatic erosion of revenues flowing to creators and publishers in Canada from secondary uses. Since January 2013 payments to authors and publishers for copying of copyright material through Access Copyright for kindergarten to Grade 12 schools had declined by \$13.5 million per year. The projected losses from college and university payments through Access Copyright were \$17.1 million per year by 2016. The projected total losses from Access Copyright collective e-licensing income alone as a result of the educational sector’s interpretation of the new educational fair dealing exception was projected to be \$30.6 million per year starting in 2016. In relation to the loss in direct sales of original works, in the education (kindergarten to Grade 12) sector, the sales of educational publishers had declined by 11 percent. Sales of original materials to universities had declined as well, as schools choose to use assembled course packs rather than publisher-produced anthologies or textbooks. Previously, to a considerable extent, that decline had been offset by revenues received from Access Copyright course pack licenses. The current decline damaged small educational publishers as well as multinationals. Broadview Press, for example, one of Canada’s premier publishers for the university course market, had seen a decline of 70 percent in sales of their key poetry anthology. To ensure their compliance with what they interpreted as expanded fair dealing exceptions in the Canadian Copyright Act, many universities and colleges had set up copyright offices on campus for the stated purpose of seeking transactional licenses for the secondary use of copyright material which fell outside their fair dealing guidelines. Yet, when members of the Association of Canadian Publishers were asked to quantify their revenues from such transactional licenses or permissions, they noted that, on average their direct transactional revenue had declined from \$33,000 per year in 2010 to \$8,000 so far in 2014. The small

academic press had received not one request for a transactional license from the Canadian educational community in the two years since Bill C-11, amending Canada's Copyright Act, passed into law. They still received many requests from American universities for licenses but none from the universities in Canada. What was the cost to Canada of the loss of revenue to creators and publishers? 77 percent of publishers in its survey had said they would reduce the number of books they published for the educational market, 46 percent would reduce staff and 61 percent would have less to invest in the development of digital materials. Writers in Canada had very recently widely reported extreme reductions of licensing payments. Many of them had speculated that the long term effect would be even more damaging. Already one major educational publisher, Oxford University Press, had closed its school business in Canada, citing reduced royalties from Access Copyright as one of the reasons. Oxford University Press and other multinational publishers had long provided an essential service to the Canadian educational community by publishing materials with a strong Canadian focus. It doubted that that specialized publishing would continue for long, given the erosion of revenues caused, in part, by the fair dealing extension. According to the Writers' Union of Canada, the average income of a Canadian book author had fallen to around \$10,000 per year. A significant amount of that income came from secondary use of material in schools. In fact, many older Canadian writers had been counting on that income from continued educational use as part of their pension for retirement. How long would writers continue to develop Canadian stories for Canadian children in Canadian schools if they could not make a reasonable living from it? The attraction to governments of free content was obvious. It was, after all, free. The unintended consequence of too much free use of content created at great expense by creators and publishers would be the hollowing out of the writing and publishing sector in Canada. The full effect of that might take several years to be felt but there had already been an impact. For the time being there was lots of wonderful material which, under the fair dealing guidelines, was now purportedly free for the taking. There was also confusion in place of licensing supported by several new amendments in 2012 intended to facilitate collective licensing and at the same time to provide specific exceptions for educational institutions in the digital environment, changes to the Canadian Copyright Act that were currently being treated as irrelevant by educational institutions operating under self-proclaimed copying guidelines. The Representative offered the analysis and speculation as a cautionary tale to countries who might be tempted to follow the same path as Canada in extending educational exemptions.

239. The Representative of KEI reiterated its support of the Committee's continued work on the subject and in particular in relation to Document SCCR/26/4 and Paragraph 22 submitted by the African Group. It was a text proposal for in classroom use. The text referred to access to educational materials and the limitation on remedies for infringement and specifically said, "in addition to other copyright limitations and exceptions such as those included in Article 10 bis of the appendix of the Berne Convention and consistent with Article 44.2 of the TRIPS Agreement, Members agree to establish appropriate limitations and exceptions on the remedies for infringement of works in the following circumstances." It then went on to enumerate those circumstances. The Representative also reiterated its support for Paragraph 21 which was a proposal from the Delegation of the United States of America where it described Section 110 of its Copyright Act.

240. The Chair thanked all the NGOs who had sent contributions in writing and noted that there were no others that wished to take the floor. The Chair suggested that after the presentation of the document they might wish to consider which of the topics should be taken into account. It was undeniable that they could use as a reference the work they were undertaking on the previous agenda item for exceptions for libraries and archives. In order to foster their understanding, they should try to use some approaches that had been considered positive in relation to previous topics. For example, it had been suggested that they undertake a study regarding the specific agenda items. Considering the success of the presentation by Professor Kenneth Crews, it was something that they would encourage the Secretariat to do. Reference to the previous agenda item might guide them in their discussion and allow them to think about

which topics should be considered. At that stage they had a very big list of different topics. They were not in a situation where they could have clarity of those topics or even reach consensus on the opportunity of having a chart at that point. However they should think about how they could get to that point. The Chair encouraged the delegates to think about the invitation made by the Delegation of the United States of America in its presentation, to see if such a contribution and the topics mentioned might be taken in account and might be considered as topics that would be included in their future structured discussion on those items. At the same time it would be interesting to engage in the revision of the previous documents that had been part of the work of the Committee on the topic and see if they could find those topics, upon which there might be consensus in the initial discussion. He had heard strong requests from some regional groups to place importance on the topic. The Chair agreed with that view but it needed to be a collective view, meaning that the delegations needed to take an active part in the discussions and be engaged in making the further work specific through the concrete presentation of positions on that matter. He encouraged them to help him in achieving that goal by commenting on the importance of the topic, to give clarity to their task. After listening to NGOs and after the useful presentation of the Delegation of the United States of America, they needed some time to reflect. He suggested that the next step would be finding those topics on which there was a consensus. There were some propositions contained in the different documents. If they did that exercise they would have more clarity on the next steps in the discussion on the issue. He encouraged them not to focus on the differences but on substantial issues that were not procedural and on reaching consensus.

241. The Delegation of India stated that on that agenda item the Chair had suggested that they move forward on the topic of exceptions and limitations for educational and research institutions and for persons with other disabilities. They really needed some guidance from the Chair on what to do with the documents, which were already on the table including Document SCCR/26/4 and the proposal from the Delegation of the United States of America. It would be helpful if the Chair, with the help of the Secretariat or other resources could attempt to draft some table as they had on the 11 topics for exceptions and limitations for libraries and archives. There should be an attempt made by an expert or a facilitator appointed by the Chair, in order to try to have some synthesis of the topics so that they could have discussions in a structured manner.

242. The Chair thanked the Delegation of India and stated that they were keen to do so, in accordance with the previous agenda item, however, there was a difference in the level of maturity or understanding. Following a discussion and an exchange on their views they might be able to create a chart. The Chair invited them to consider and put forward their views at the next SCCR, for more clarity, to allow them to present a tool for a structured discussion. He took note of the comments of the Delegation of India by inviting it to concentrate on the substance and try to find consensus on those topics. He invited the delegations to think about that deeply and to bring the result of their reflection to the following session. The Chair was not imposing his personal views or the Secretariat's views. That was complementary to the suggestion of the Delegation of India because it would lead to a structured discussion.

243. The Delegation of the United States of America thanked the Chair for his comments and reiterated its invitation to all Member States, welcoming their comments and questions on the document. It was really looking forward to others to help it clarify and improve it. Whether at the present SCCR or at later sessions, it welcomed their thoughts.

244. The Representative of EIFL had a brief comment on the issue of limitations and exceptions for persons with other disabilities. The Marrakesh Treaty for persons with print disabilities was without prejudice to other exceptions for persons with disabilities provided in national articles. Article 12.2 of the Treaty confirmed the important point that the Treaty did not restrict the granting of rights to persons with other disabilities, who needed other formats in order to access information. In its new guide for the Marrakesh Treaty for libraries, it permitted



a Member State to retain and expand exceptions protecting persons with disabilities, other than those mandated by the Treaty and to add new ones as appropriate. That would ensure that equal treatment was granted to all persons regardless of their disability. Other recommendations in the guide included those relating to libraries as authorized entities, conditions for the application of exceptions in national law and conditions for the cross-border exchange of accessible formats. The guide was freely available online at its web site at [www.eifl.net](http://www.eifl.net) and also would be available in French and Russian in the following year.

245. The Chair thanked Representative of EIFL for the new source of information. The Chair stated that there was a need for further reflection. It was not easy because they had a very big topic with a lot of requests to be considered. An effort would be made to try to concretize the most relevant ones or those that could be initially discussed, because there was a consensus for them to be discussed. He recalled the invitation coming from the Delegation of the United States of America to consider the topics that were contained in their submission and to receive input on whether they would be a part of the topics to be discussed.

#### **ITEM 8: OTHER MATTERS**

246. He opened the floor to the delegations and given that no delegations wished to raise any matters on that point, closed the agenda item.

#### **ITEM 9: CLOSING OF THE SESSION**

247. The Chair moved to Agenda Item 9, which was the closing of the session, but noted that it did not mean that they were going to close it immediately. He had prepared a brief Chair's Summary, which was factual and tried to neutrally describe what had happened during the session. He suggested that he would open the floor to receive comments on that summary, regarding the first six agenda items that they had had a chance to review. Following that they would distribute the summary of the rest of the agenda items and give them time to consider those. If there was no consensus, since it was not a SCCR document, it would become the Chair's Summary. Since it was factual he did not envisage that they were going to engage in an endless discussion on controversial points. He opened the floor to receive comments on the first part of the Chair's Summary that had been distributed.

248. The Delegation of Kenya, speaking on behalf of the African Group thanked the Chair for the way in which he was leading them. It requested that instead of going straight to making comments on the Chair's Summary, perhaps they could have the whole summary emailed or in paper and then they could consult it briefly. It was not contentious, but it would allow them to deal with it all at the same time. They did not need to spend a lot of time on the Chair's Summary, but needed to ensure they were on the same page and had the full view of the summary. Then when they had gone through the document, they could take a position more easily. The Group thought that would be a very useful and more efficient way for their work.

249. The Delegation of Japan, speaking on behalf of Group B stated that there were some factual corrections, but it was up to the Chair as to whether they should explain it at that time or keep those corrections for a later stage as proposed by the African Group. It could also deliver factual corrections directly to the Chair.

250. The Chair thanked the Delegation of Japan, speaking on behalf of Group B for its approach, which was very respectful. He was flexible on the matter. He suggested that it was fair to consider all at the same time, however he reminded the Committee that it was not collective drafting, but the Chair's Summary. The Chair would have been pleased to be engaged in collective drafting of the Chair's Summary, if it became the agreed SCCR Conclusions. It had just to be seen as a factual description of what had happened. He was

ready to correct any factual mistakes or missing elements and bring it back in a timely way as the Chair's Conclusions, to be adopted.

251. The Delegation of the Czech Republic, speaking on behalf of CEBS stated that it was prepared to tackle that part of the Chair's summary, while the rest was being prepared. It noted the suggestion from the African Group that they could also tackle it as a whole. If they were to tackle it as a whole, the Group suggested that the Chair provide some set time frames to ensure they could finish up the exercise on time.

252. The Chair agreed with the suggestion by the African Group to see the Chair's summary as a whole.

253. The Delegation of the United Kingdom stated that it was always in favor of using time in an efficient way. They had two options at that time either they started addressing the document that was in front of them that they had already seen during the lunch break and discuss it or they went out and waited. It did not understand the request from the African Group, as they usually had the rule that nothing was agreed before everything was agreed. In any case, they were not seeking an agreement on the Chair's summary. It was not an effective use of time if they broke at that time and just waited. It was much more productive if they started discussing the paper while they waited for the conclusion on Agenda Item 7. The other option while they waited was to allow delegations that had factual changes to the paper to approach the Chair and discuss with him potential factual changes. It was not very productive to just dismiss the Committee and wait for one item.

254. The Chair thanked the Delegation of the United Kingdom for its ideas and stated that he would not enter into discussion on the issue. In the meantime, those delegations that had specific factual corrections or ideas were welcome to provide them.

255. The Chair reminded the delegations that they were not initiating a collective drafting exercise but just hearing comments. He would include the factual corrections, mistakes and fact clarifications in the Chair's Summary.

256. The Delegation of Kenya, speaking on behalf of the African Group thanked the Chair for the excellent manner in which he had led the session that week. It had been very efficient in terms of how they had used their time. It understood the spirit in which they had agreed to do the session was to have a Chair's Summary to avoid the complications, which had dogged them in the previous two sessions of the SCCR, where they had tried to come up with conclusions, but ended up failing miserably. In the previous two sessions they had not been able to do any substantive work on the last topic even if they had a mandate or target. They were reaching that target in the thirtieth session, without having to make any recommendations or having taken any discussion, which might be construed to be constructive or to lead to any direction. In that sense, it became a bit of a problem if they were to continue in that mode. They had been very flexible in the past sessions with two and a half days for broadcasting and two and a half days for the two topics on exceptions and limitations. If the Chair's Summary would become the basis of how they would proceed in terms of organizing the work in the next session, it had concerns on what would be the possible time allocation. For example, under Agenda Item 5, it had suggested, first of all, an update of two studies, Document SCCR/27/8 and the 2010 document on current market and broadcast trends. It had been suggested to organize a half day seminar of information from technical experts. Taking into account what had happened during the current session, its concern was that within a time period of two and a half days it was an impossible task to deal with exceptions and limitations and the presentation of the study by Professor Kenneth Crews. It wanted to be very efficient and to contribute constructively towards progress and using an evidence-based approach, in how they handled what was before them. It felt that to give due consideration to what was to be presented during the thirtieth session, they should take due consideration of the time allocation. It suggested that they do

one issue at a time. First of all, they could start with a presentation of the studies and then during the following session they could have the half day technical presentation with the experts, so they did not run the risk that with the invited experts there was a rich discussion taking place and they would have to stop the discussion because of the time allocation. Its suggestion was to do one thing at a time. It had no problem with whatever would be discussed or what had been proposed, but for the sake of ensuring that they had adequate time to deal with all the issues and to give them due consideration. When Member States had requested those studies and those sessions, they had requested them with a view of helping them to clarify some doubts, or some of the challenges that they had in understanding the concepts, or some of the technical issues, which were related to broadcasting. For them to move together the request was for them to have systematic presentations, which allowed room for discussions on exceptions and limitations. The Group had no drafting suggestions.

257. The Chair thanked the Delegation of Kenya, speaking on behalf of the African Group for its advice on how to best take advantage of the resources, either the studies or the technical presentations. If they triggered an interesting exchange of questions and answers in the discussion it was not recommendable to stop them. That would not be a waste of time, as they had seen during that week, with the rich discussion after the presentation from Professor Kenneth Crews. It should be taken into account that there were other topics on the agenda that would deserve attention. That required efficiency on his part in organizing the agenda to take them into account. The Chair understood the suggestion of the sequential presentation of the resources and assured the Group that the agenda of the Committee would keep reflecting the need for progress on all items.

258. The Delegation of Japan, speaking on behalf of Group B thanked the Chair and the Secretariat for their hard work in preparing the document in front of them. Before entering into factual corrections of the report, it agreed with the Chair's sentiment that time allocations and the items on the agenda should be kept for the coming session. WIPO had a tradition that the most mature things were dealt with first at the meeting and that tradition should also be kept for the coming session. With respect to the factual corrections, based on the understanding that it was a Chair's Summary to be taken into account by the Committee rather than a conclusion, it wished to raise factual corrections for consideration. The first comment was with respect to the first part of Agenda Item 5. The third document included in the paragraph had nothing to do with broadcasting. SCCR/27/8 was a document for the limitations and exceptions, so it should be deleted. That paragraph had an inconsistency between the document and the timing of the submission because the reference to the document and the reference to the timing or submission were located within one sentence. It was better to directly connect to the timing of the submission of the document. The discussion of the informal session went beyond the technical non-paper, so it would be more concise to say that the discussions were based on the technical non-paper rather than held on the technical non-paper. With those factual corrections its suggestion to the paragraph was as follows: "The document related to that agenda item, SCCR/27/2 Rev submitted to SCCR etc., SCCR/27/6 submitted at SCCR etc. and technical non-paper prepared by the Chair on concept" and the central part was stated, as it was with the deletion of the part were submitted at Twentieth, Twenty-eighth and Twenty-ninth sessions of the SCCR. The last sentence would refer to the fact that the discussions were based on the technical non-papers. The next comment went to the third paragraph of the same agenda item. The current language said that the Committee agreed to the presentations from technical experts with emphasis on experts from developing and least developed countries (LDCs). It stated that it had agreed that the technical experts coming to the information session would include experts from developing and LDCs. In order to make the sentence more objective it thought that it would be better to replace the word "with emphasis on" with "including". That was a factual correction. In relation to the second paragraph under Agenda Item 6, the summary referred to two things. One was about the combination of the two studies and the reflection of the further information on the national statutes from the Member States. The second component was the expeditious preparation by the Secretariat of the report including the

discussion on the study including the questions and answers by Member States and their observers. That part mixed two components because the first sentence said that the latter part of the second line reflected the additional information on national libraries and archives on exceptions and limitations provided by delegations and observers after the discussion. That was probably a reflection in the report and the additional information to be reflected in the combination of the study as fact could only be provided by the delegations because it was referring to national statutes. The last part of the first sentence should be: The second line under the word “and”, reflect the additional information on national libraries and archives on exceptions and limitations transmitted to the Secretariat by delegations during and after the presentation and discussion. The correction would make it clear that the paragraph included two components. The last comment referred to the second to last paragraph under the same agenda item, i.e. Agenda Item 6. That paragraph said that the Chair had introduced the non-paper prepared for libraries and archives and at the same time it would like to make further comments at the coming session on that paper. In order to reflect that fact, the following sentence could be added: “Delegations will consider that proposal at the next session.” They were all factual corrections, which it would like to make in preparing the revised version of the Chair’s Summary at the Chair’s discretion and to be taken note of by the Committee.

259. The Delegation of the Czech Republic, speaking on behalf of CEBS, stated that it respected that it was the Chair’s Summary and it was in that sense that it considered it from the point of factual suggestions. Under Agenda Item 9, which was the closing of the session it did not feel that it was necessary or helpful in any way to recreate the substantive or procedural discussions that they had had during the week. It had suggestions on three paragraphs. Two were comments and one was a factual change. The first one was a comment on Paragraph 5. The charts, or the technical non-papers, were mentioned by name in the Chair’s Summary which was correct. It also knew that the Chair informed the plenary in the formal session about the charts. It would be very hard to explain or read through those types of charts in the plenary or within the record so it would like to make sure that the three resulting charts or technical non-papers were a part of the report of the meeting. The second comment was in reference to Paragraph 6. It understood that the updates of the two studies were proposed by the Delegation of India and while it noted some concerns that those updates and their discussion might delay substantive negotiations, it was ready to accept to go forward with those updates. It was intentionally using a past tense. It was able and still was able to accept that, as they were discussing factually what had happened in the past. It was ready to go forward with the language the Committee had requested of the Secretariat. It had one small remark, which might have been a typo in the last sentence that referred to: “by traditional cablecasting and broadcasting and cablecasting organizations including in developing and LDCs. The “in” was missing. In Paragraph 7 there should be an added sentence to properly reflect the agreement about conducting the particular half day session as efficiently as possible and the consensus on that. A proposal had been made of having specific questions in advance and that was not contested. Therefore it suggested the addition of a sentence at the end of the paragraph: “The Committee agreed that specific questions to be addressed by the technical experts would be submitted by Member States through regional coordinators to the Secretariat.”

260. The Delegation of Paraguay, speaking on behalf of GRULAC, stated that it was in favor of a Chair’s Summary to avoid a drafting exercise, which often created more confusion on various subjects. The summary itself seemed to be factual. It referred to the statement of the Delegation of Kenya, speaking on behalf of the African Group and stated that there were several studies that would be conducted on broadcasting and in the space of two and a half days. It considered that that might be a little bit too much. As for broadcasting itself, it suggested that the Secretariat perhaps set up informal consultations and look at some of the studies that they could look at over the following sessions, with a view of considering new subjects. The most important thing in the summary was that all of the items on the agenda were in the summary.

261. The Chair thanked the Delegation of Paraguay, speaking on behalf of GRULAC and stated that it was important to give the task to the regional groups. The most important thing was to manage time wisely.

262. The Delegation of the European Union and its Member States requested that they move to closing comments given that there were only 25 minutes left of the meeting. It was happy to save its intervention until later if they needed to go back to the Chair's Summary.

263. The Delegation of India stated that its comments were in respects to those amendments proposed by some Groups. In Paragraph 7 on Agenda Item 5, the Delegation of the Czech Republic, speaking on behalf of CEBS suggested an additional sentence. It understood that the suggestion was that the Committee had agreed that specific questions would be submitted by Member States through the regional coordinators. It suggested that if they were to include that sentence it be modified to say that the Member States were encouraged to submit questions. In Paragraph 13 on Agenda Item 6 an addition had been proposed by the Delegation of Japan, speaking on behalf of Group B that the Delegation would consider the proposal at the following session. It had a slightly different understanding that the Chair's non-paper was commented upon during the session as well, even if by a few delegations and therefore they could not say that it would be considered at the following session as if it had not been considered during the current session.

264. The Delegation of China thanked the Chair for the work that had been carried out in a very short period of time. They were able to come up with a summary, a Chair's Summary, which left it with a very good impression. The Delegation did not have any proposals for amendment. As for the proposals made by other delegations, it would take note of them in a flexible manner.

265. The Delegation of Kenya, speaking on behalf of the African Group sought the Chair's clarification in terms of the concerns it had raised. It took note of the comments made by various delegations, but stated that when they were discussing the issue of studies it had said that it needed time to reflect and to have time to think through the proposals. It stated that it was not opposed and still was not opposed to those updates. The only thing that it requested was for the concerns that it had raised to be addressed. It had said that the current clarifications used had not been helpful in advancing the three topics equally. That would not have been a problem, if it had not created difficulties in terms of what Member States considered to be the scope of the mandate and therefore questions were being raised as to whether they needed to discuss those topics at all. In that respect, those were very fundamental questions in terms of what should be discussed by virtue of the fact that the target had been missed and they missed it because of the time allocation in the Committee. It did have concerns in terms of how the SCCR arranged time. Finally it was not the SCCR's mistake if it missed a target based on the realities of the discussions. They had three topics and there was only so much they could do within the period of time. The SCCR had been set on a time allocation and that time allocation was not amenable to advancing the three topics equally. Yet they had targets to meet and those targets had become a source of contention. In that sense, the issue of time allocation was a concern and advancing the topics was an issue that was fundamental in terms of how they moved forward. If the understanding was clear to everyone that they had a commitment to move forward equally and to be constructive on each and every topic that was a different matter. In that respect, Member States needed to be pragmatic. The main concern was that it did not want to be wasteful. That was number one. Number two, it also did not want to be in a position where they had to start making hard decisions in the middle of the discussions. Those were issues that needed to be clarified in the Committee. Member States needed to have pragmatism and do what would be fruitful in terms of advancing the SCCR's work using the resources. It was not a matter of filling the agenda. It was a matter of having an agenda, which would be useful in terms of advancing the discussions. It suggested that once they had agreed to undertake the studies, they made maximum use of them. They had to have a program, which did not put any Member State in a situation where they had to

make hard decisions or they had to start quarrelling on the procedures. The sequence, which it had suggested would be the most pragmatic way of moving forward. The Group requested clarification from the Chair in terms of how he intended to deal with that particular concern.

266. The Delegation of Brazil thanked the Chair and congratulated him and the Secretariat on the excellent summary that had been produced. From its perspective, the Chair's Summary did not need an adjustment or comments or anything except for in respect of factual mistakes that it might contain. In that regard it wanted to seek clarity because so many comments and suggestions had been made. It asked the Chair to confirm whether its understanding was correct, that there was a suggestion to delete the mention to Document SCCR/27/8 from Paragraph 5. That seemed to be a factual mistake and should not be a problem. Regarding Paragraph 10, several suggestions had been made and its impression was that the word "observers" would be deleted. If that was the case, then the Delegation did not think that would be advisable. All the information and all the comments made during the debate with Professor Kenneth Crews had been extremely important and useful and should be taken in to account. It concluded by stating that the Delegation fully supported what had been said by its regional coordinator, the Delegation of Paraguay. It reiterated that one of the reasons why the excellent summary did not need adjustments was because they had the right channels and mechanisms to deal with preparations for the next meetings and other issues that had been raised and that would be through consultations with the regional coordinators.

267. The Delegation of Iran (Islamic Republic of) thanked the Chair for the preparation of the Chair's Summary. First, it wanted clarification on Item 18; the Delegation's understanding was that the term meant it had not been approved by the Committee and it was the Chair's Summary and sole responsibility. Second, the Delegation stated its concern with the allocation of appropriate or insufficient time on the important issues on exceptions and limitations, especially Item 7 on limitations and exceptions for educational and research institutions in the meeting and also in previous sessions. The allocation of time must be on equal footing. Perhaps the order of agenda items needed to be changed in the following sessions to rectify the shortcomings.

268. The Delegation of Mexico aligned itself with the statement made by the Delegation of Paraguay, speaking on behalf of GRULAC. It had participated in the informal sessions with the regional coordinators and had said that it wished that the Chair's summary would not to be subject to negotiations. In that regard it addressed the other regional groups and delegations, stating that while it understood their concerns, it wished to emphasize that that was the agreement of all the regional groups and they had committed to that approach. In that regard it underlined that the Chair's Summary contained factual information and it was committed to supporting the summary. It invited other Delegations who had further comments to perhaps hold informal consultations as had been suggested by the regional coordinators.

269. The Delegation of Algeria thanked the Chair and Secretariat for preparing the summary. It had not meant to take the floor, but felt that there was some clarity that needed to be brought in to the debate. It completely and exceptionally supported what had been expressed by its regional coordinator and especially under Agenda Item 5 on broadcasting. Given that all the proposals for the study and the revisions for the information sessions were ideas that had been presented to the Plenary, at that time, the Chair's Summary was in a situation, where there was no objection to the content of those ideas but there was no agreement. That was just the summary that the Chair presented to the Plenary. Unfortunately the summary went a bit further as it said that the Committee basically agreed to have the study revised and to have the information session. The Delegation felt the need to clarify that it was still not in a position of agreeing to both elements of the work program without questioning the need for such activities. As the regional coordinator had said, it did agree with the usefulness of having the information session and the study, but it did not agree that they should take place at the same session and at the same time because that would undermine the balance it was trying to seek under broadcasting. That was why it was asking the Chair to clarify how he would handle the issue.

270. The Chair thanked all delegations for their contributions. Before passing to the final statements by regional groups, the Chair warned them that not all delegations' comments would be considered because it was not a common exercise. He would inform them of which of their factual corrections or factual positions would be included. He was not there to make all of them happy, but rather he was trying to reach a consensus, which usually did not make everyone happy at the same time. The first suggestion to improve the drafting was associated with the submission of the documents to specific sessions of the Committee, in which those documents were presented. Even though it might be considered a drafting improvement it was not accepted. The second suggestion related to the deletion of what were submitted on the Twenty-seventh, Twenty-eighth and Twenty-ninth sessions of the SCCR. Since they were facts and they had records of those meetings they knew exactly what was submitted, so he would not accept that deletion. With regard to the third suggestion, regarding the substitution of the term "held" with "based", even though he recognized that might be considered an alternative or an improvement on the drafting, he did not accept it at that point, because the discussions were held on the technical non-papers. They could then discuss whether it was based or not or some connections were made with other topics contained in the documents. The error including developing and less developed countries was a mistake that would be corrected. Regarding the suggestion to try to substitute "with emphasis on" by the term "including", since the paragraph he submitted to the delegations said the Committee agreed and since it had become contested, the change would be as follows: "Technical experts with emphasis on experts from the developing, and so forth". On Agenda Item 6, there was the very important concern raised by the African Group. The Chair clarified that the paragraph corresponding to technical experts expressly stated that technical experts would be invited for the information session at the thirtieth session of the SCCR. That is what it stated clearly. However, the previous paragraph regarding the update of the technical studies stated something different, i.e. that the Secretariat was requested by the Committee to update the information and that task should be made with the aim of presenting the result of the study and providing opportunities for technical discussion at the thirtieth session. It did not say that, as it did in the following paragraph, that they would set a part of the agenda for the presentation of the technical experts. It referred to the fact that the Secretariat would have made the updated study ready, in order to offer them the chance, if they wanted, to use such information. It was not in a position to include the presentation of the results of the studies. In that case, the Chair would take into account the good advice from the Delegation of Paraguay, speaking on behalf of GRULAC and the reasonable advice by the African Group that the Chair and the regional coordinators would find a way to avoid time constraints. The next suggestion for Agenda Item 6 was the concern regarding the participation of observers. The Chair clarified that the participation of observers was as crucial, important and rich as they all had recognized. In that regard, the Secretariat would expedite preparation of the portion of the meeting report that included the record of the presentation and discussion, including contributions from members and observers, which were very rich and which factually reproduced the contributions they submitted during that discussion. Also Paragraph 7 would be amended as follows: "the Committee agreed that Member States would be encouraged to submit specific questions to be addressed by the technical experts through regional coordinators to the Secretariat". Continuing with the Agenda Item 6, the final Paragraph 13 stated that the Chair introduced a paper he had prepared on exceptions and limitations for libraries and archives, therefore he would accept the fact that delegations would consider the proposal at the following session.

271. The Delegation of Paraguay, speaking on behalf of GRULAC congratulated the Chair on the way in which he had organized the work of the Committee. It valued his punctuality that showed in beginning and in finishing the respective sessions. They had had very constructive debates on all of the agenda items and it believed that they had enough raw materials to continue to make progress on broadcasting and exceptions and limitations. With regard to the substance of the debates, it hoped that the next session would dedicate more time to the basic text on each one of the topics. It recommended continuing with consultations organized by the Secretariat in order to adopt at least on a provisional basis, the agenda. It also believed they

should determine the order they were going to consider the different topics and wished to continue with the adoption of the Chair's Summary at the end of each session.

272. The Delegation of the Czech Republic, speaking on behalf of CEBS stated that it appreciated that they were able to agree on the procedural and logistical elements in advance of the session and those were upheld during the session. The Group felt that in the course of their work during the week on the area of broadcasting they had reached an increased understanding, however, it remained in favor of reflecting that work in official documents, namely the draft Treaty. It would like to avoid a situation that through repeating the same or similar questions and through repeating explanations and example sharing there would be backtracking. On exceptions and limitations, it could only repeat its appreciation of the substantive discussion that they had had, especially thanks to the updated study and its presentation and the following detailed and pertinent debate that ranged in views and perspectives. A number of delegations had mentioned that the discussion was one of those most filled with substance in the SCCR itself. They could and should learn from those particular observations for future sessions.

273. The Delegation of Japan, speaking on behalf of Group B thanked the Chair for his guidance during the session. One of the good things about the meeting was that they had been able to devote most of their time to the substantive discussion, not to procedural matters. On the broadcasting issue, they had made good progress on the substance in the informal setting toward the goal stipulated by the mandate. At the same time, they had had a very good discussion based on the study by Professor Kenneth Crews on exceptions and limitations for libraries and archives. The discussion on that study was one of the most exciting substantive discussions that it had seen during recent sessions of the SCCR. If they could retain that good atmosphere on the substantive discussion, they could find a basis for further work on those issues. The spirit of cooperation was tremendous and it had been impressed with the positive, cooperative and innovative spirit to find solutions, which could accommodate both everyone's interests and concerns from a number of individuals.

274. The Delegation of Kenya, speaking on behalf of the African Group thanked the Chair for the excellent manner in which he had led them during the week. It thanked all its colleagues for their cooperative spirit. It had been possible to overcome their differences and put the work of the Committee before their own interests and therefore to be able to achieve what they had come there to do. The Group hoped that during the following SCCR they would be able to continue with that spirit so that they would be able to advance on the substance.

275. The Delegation of China thanked the Chair and the Secretariat for the large amount of detailed work. Under the Chair's leadership, the meeting had been very effective and efficient. With regard to the improvement of the work, it was achieved in a balanced way, especially in the areas of protection of broadcasting organizations and exceptions. The two topics were very important and it hoped that they would continue to attach great importance to them. The Delegation thanked the other delegations for their active and flexible spirits in the way in which they participated in the discussion. They had also provided information, which was very important and conducive for the Committee's discussion work and improvement. The Delegation stood ready to support that work and would carry on with active and flexible attitudes in its discussion.

276. The Delegation of the European Union and its Member States thanked the Chair for his leadership during the week, which had taken them to a positive destination. It thanked the Secretariat for its diligent work and the interpreters for their polyglot contribution to the discussions. It thanked the Deputy Director General for injecting a renewed sense of enthusiasm in the discussions. It highlighted the positive atmosphere and the constructive spirit in which their activities had taken place during the week and hoped that was a good omen for the coming year in 2015.



277. The Deputy Director General noted that a lot of good debate had taken place and thought that they had made a lot of progress. There had been a real sense of a shared goal. They knew they wanted to protect IP and access to IP and the rights holders in the new digital world. The digital world was changing and there was a real risk to lose relevance. The excellent, eloquent and beautiful Chair's Summary would not change the world. They had to move beyond the Chair's Summary into action. The Delegation of Kenya, speaking on behalf of the African Group urged them to find a pragmatic way forward and she seconded that. The last thing she wanted to see was that nothing happened between the end of the session and the following session in June and they started all over again with the same issues and the same rounds. They needed real tangible decisions. Otherwise, the technical world was going to move and run away and they were going to be left behind with multilateral legal frameworks, which were out of date and did not accommodate the new world. She thanked them for their hard work and said that she looked forward to getting to know all of them in due time.

278. The Chair thanked the Deputy Director General for her words and for emphasizing the need to keep on working in a constructive fashion while the agenda was still complicated. The Chair thanked the Secretariat and its excellent team for their tremendous efforts in trying to be responsive and trying to be fast and efficient. The Chair thanked the interpreters for their support and contribution. He also thanked each and every delegation because he had learned a lot from them and it was an honor to work with them.

## **SUMMARY BY THE CHAIR**

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

1. The twenty-ninth session of the Standing Committee on Copyright and Related Rights (SCCR or Committee) was opened by Mr. Martin Moscoso, SCCR Chair and Ms. Anne Leer, Deputy Director General, Culture and Creative Industries Sector, who welcomed the participants. Ms. Michele Woods (WIPO) acted as Secretary.

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

2. The Committee adopted the draft agenda (document SCCR/29/1 PROV.)

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

3. The Committee approved the accreditation for the SCCR of the non-governmental organizations referred to in the Annexes of document SCCR/29/2, namely the Canadian Copyright Institute (CCI) and the Program on Information Justice and Intellectual Property, American University, Washington College of Law (PIJIP).

### **AGENDA ITEM 4: ADOPTION OF THE DRAFT REPORT OF THE TWENTY-EIGHTH SESSION**

4. The Committee approved the draft report of its twenty-eighth session (document SCCR/28/3) as proposed. Delegations and observers were invited to send any comments on their statements to the Secretariat.

### **AGENDA ITEM 5: PROTECTION OF BROADCASTING ORGANIZATIONS**

5. The documents related to this agenda item are documents SCCR/27/2 REV., SCCR/27/6 and technical non-papers prepared by the Chair on "*concepts*", "*object of protection*" and "*rights to be granted*", which addressed these issues and were submitted at the 27th, 28th and 29th sessions of the SCCR. Discussions were held on the technical non-papers.

6. The Committee requested the Secretariat to update the information contained in the technical background paper (document SCCR 7/8) and the 2010 study on "Current Market and Technology Trends in the Broadcasting Sector" (document SCCR 19/12), on current technological developments in broadcasting with special reference to the ways new digital technologies are used by traditional broadcasting and cablecasting organizations including in developing and least developed countries with the aim of presenting the results of the study and providing opportunities for technical discussion at the 30th session of the SCCR.

7. Technical experts, with emphasis on experts from developing and least-developed countries, will be invited for a half-day information session at SCCR/30 to address some of the technical issues considered in the discussions. The Committee agreed that Member States will be encouraged to submit specific questions to be addressed by the technical experts through Regional Coordinators to the Secretariat.

8. This item will be maintained on the agenda of the thirtieth session of the SCCR.

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

9. The Committee heard the presentation of Professor Kenneth Crews on the *Study on Copyright Limitations and Exceptions for Libraries and Archives*, contained in document SCCR/29/3, which updated a previous study of the same name contained in document SCCR/17/2, submitted in 2008. The Committee welcomed the presentation and delegations and observers participated in an extensive question-and-answer session with Professor Crews.

10. The Committee asked the Secretariat to arrange before the next session for the preparation of a document that combines both study documents and reflects the additional information on national library and archive limitations and exceptions provided by delegations. The Secretariat will expedite preparation of the portion of the meeting report that includes the record of the presentation and discussion, including contributions from Members and observers. The Secretariat will also consider alternative ways of presenting the material to allow searching and comparison, taking into account resource considerations.

11. The documents related to this agenda item are SCCR/26/3, SCCR/26/8, SCCR/29/3 and SCCR/29/4.

12. The Committee heard the further presentation of document SCCR/26/8 submitted by the United States of America, followed by the presentation of document SCCR/29/4 submitted by the African Group, Brazil, Ecuador, India and Uruguay.

13. The Chair introduced a non-paper he had prepared on "*exceptions and limitations for libraries and archives*". Delegations will consider this proposal at the next session.

14. This item will be maintained on the agenda of the thirtieth session of the SCCR.

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

15. The documents related to this agenda item are SCCR/26/4 PROV. and SCCR/27/8.

16. The Committee heard the further presentation of document SCCR/27/8 submitted by the United States of America.

17. This item will be maintained on the agenda of the thirtieth session of the SCCR.

## **AGENDA ITEM 8: OTHER MATTERS**

### **SUMMARY OF THE CHAIR**

18. The Committee took note of the content of this Summary by the Chair.

## **AGENDA ITEM 9: CLOSING OF THE SESSION**

19. The next session of the Committee will take place from June 29 to July 3, 2015.

[Annex follows]

**ANNEXE/ANNEX****LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS****I. MEMBRES/MEMBERS****AFGHANISTAN**

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TRINITÉ-ET-TOBAGO/TRINIDAD AND TOBAGO

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ZAMBIE/ZAMBIA

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II. OBSERVATEURS/OBSERVERS

III. DÉLÉGATIONS MEMBRES SPÉCIALES/SPECIAL MEMBER DELEGATIONS

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

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Giorgio MONGIAT, Policy Officer, Copyright Unit, Directorate General Connect, European Commission, Brussels

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INTERGOVERNMENTAL ORGANIZATIONS

CENTRE SUD (CS)/SOUTH CENTRE (SC)

Viviana MUNOZ TELLEZ (Mrs.), Manager, Innovation and Access to Knowledge Programme, Geneva

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

Daniela GUARAS (Ms.), Intern, Innovation and Access to Knowledge Programme, Geneva

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

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ORGANISATION AFRICAINE DE LA PROPRIÉTÉ INTELLECTUELLE (OAPI)/AFRICAN  
INTELLECTUAL PROPERTY ORGANIZATION (OAPI)

Solange DAO SANON (Mrs.), cadre juriste, chargée du droit d'auteur et du suivi des questions émergentes, Yaoundé

ORGANISATION DE COOPÉRATION ISLAMIQUE (OCI)/ORGANIZATION OF ISLAMIC  
COOPERATION (OIC)

\* 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.

Abdelaziz Seif EL NASR, conseiller auprès du secrétaire général, Djeddah

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

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

Hannu WAGER, Counselor, Intellectual Property Division, Geneva

UNION AFRICAINE (UA)/AFRICAN UNION (AU)

Georges Rémi NAMEKONG, Senior Economist, Permanent Mission, Geneva

V. ORGANISATIONS NON GOUVERNEMENTALES/  
NON-GOVERNMENTAL ORGANIZATIONS

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

Alliance panafricaine des auteurs et compositeurs de musique (PACSA)/Pan-African Composers and Songwriters Alliance (PACSA)  
Sam MBENDE, President, Bruxelles

Alianza de Radiodifusores Iberoamericanos para la Propiedad Intelectual (ARIP)  
José Manuel BRAVO, Miembro, Madrid  
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Association de gestion internationale collective des œuvres audiovisuelles (AGICOA)/Association for the International Collective Management of Audiovisual Works (AGICOA)  
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Association de l'industrie de l'informatique et de la communication (CCIA)/Computer & Communications Industry Association (CCIA)  
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Association des organisations européennes d'artistes interprètes (AEPO-ARTIS)/Association of European Performers' Organizations (AEPO-ARTIS)  
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Association européenne des étudiants en droit (ELSA international)/European Law Students' Association (ELSA International)  
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Asociación internacional de radiodifusión (AIR)/International Association of Broadcasting (IAB)

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Association internationale pour la protection de la propriété intellectuelle (AIPPI)/International Association for the Protection of Intellectual Property (AIPPI)

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Association internationale pour le développement de la propriété intellectuelle (ADALPI)/International Society for the Development of Intellectual Property (ADALPI)

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Association littéraire et artistique internationale (ALAI)/International Literary and Artistic Association (ALAI)

Victor NABHAN, President, Paris

Association mondiale des journaux (AMJ)/World Association of Newspapers (WAN)

Holger ROSENDAL, Head of Legal Department, Copenhagen

Canadian Copyright Institute (CCI)

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Centre d'études internationales de la propriété intellectuelle (CEIPI)/Centre for International Intellectual Property Studies (CEIPI)

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Centre de recherche et d'information sur le droit d'auteur (CRIC)/Copyright Research and Information Center (CRIC)

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Confédération internationale des sociétés d'auteurs et compositeurs (CISAC)/International Confederation of Societies of Authors and Composers (CISAC)  
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VI. BUREAU/OFFICERS

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