

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

**Thirtieth Session**  
**Geneva, June 29 to July 3, 2015**

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 thirtieth session in Geneva, from June 29 to July 3, 2015.
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, South Africa, Algeria, Germany, Saudi Arabia, Argentina, Armenia, Australia, Austria, Bahamas, Barbados, Belarus, Belgium, Bhutan, Botswana, Brazil, Burkina Faso, Cabo Verde, Cameroon, Canada, Chile, China, Colombia, Congo, Côte D'Ivoire, Cuba, Denmark, Ecuador, Spain, United States of America, Russian Federation, Finland, France, Gabon, Georgia, Ghana, Greece, Guatemala, Guinea, Honduras, Hungary, India, Indonesia, Islamic Republic of Iran, Ireland, Japan, Jordan, Kenya, Latvia, Libya, Lithuania, Malaysia, Malawi, Morocco, Mexico, Monaco, Nepal, Nigeria, Oman, Pakistan, Paraguay, Netherlands, Peru, Philippines, Poland, Portugal, Republic of Korea, Dominican Republic, Czech Republic, United Republic of Tanzania, Romania, United Kingdom, Rwanda, Holy See, Senegal, Serbia, Singapore, Slovakia, Sudan, Sri Lanka, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, Uruguay, Yemen and Zambia (90).
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 Union (AU), Organization of Islamic Cooperation (OIC), South Centre and the World Trade Organization (WTO) (4).
5. The following non-governmental organizations (NGOs) took part in the meeting in an observer capacity: African Intellectual Property Association (AIPA), *Agence pour la protection des programmes (APP)*, Alianza de Radiodifusores Iberoamericanos para la Propiedad Intelectual (ARIPPI), Asia-Pacific Broadcasting Union (ABU), *Asociación Argentina de Intérpretes (AADI)*, Association for the International Collective Management of Audiovisual Works (AGICOA), Association of Commercial Television in Europe (ACT), British Copyright Council (BCC) , Canadian Copyright Institute (CCI), Canadian Library Association (CLA), Center on Intellectual and Industrial Property Rights (FISAUM), Central and Eastern European Copyright Alliance (CEECA), Centre for International Intellectual Property Studies (CEIPI), Chamber of Commerce and Industry of the Russian Federation (CCIRF), Chartered Institute of Library and Information Professionals (CILIP), Civil Society Coalition (CSC), Club for People with Special Needs Region of Preveza (CPSNRP), Communia, Copyright Research and Information Center (CRIC), DAISY Consortium (DAISY), Electronic Information for Libraries (eIFL.net), European Broadcasting Union (EBU), European Bureau of Library (EBL), Information and Documentation Associations (EBLIDA), European Law Students' Association (ELSA International), European Visual Artists (EVA), *Fédération européenne des sociétés de gestion collective de producteurs pour la copie privée audiovisuelle (EUROCOPYA)*, Finnish Copyright Society, Free Software Foundation Europe (FSF Europe), German Library Association, Ibero-Latin-American Federation of Performers (FILAIIE), 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 Authors of Graphic, Plastic and Photographic Arts (CIAGP), International Council on Archives (ICA), International Federation of Journalists (IFJ), International Federation of Library Associations and Institutions (IFLA), International Federation of Film Producers Associations (FIAPF), 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), Knowledge Ecology International, Inc. (KEI), Max-Planck Institute for Intellectual Property, Competition and Tax Law (MPI), Motion Picture Association (MPA), Non-Commercial Foundation for Development of the Center for Elaboration and Commercialization of New Technologies (Skolkovo Foundation), North American Broadcasters Association (NABA), *Organización de Asociaciones y Empresas de Telecomunicaciones para América Latina* (TEPAL), Program on Information Justice and Intellectual Property (PIJIP), Scottish Council on Archives (SCA), *Société portugaise d'auteurs* (SPA), Society of American Archivists (SAA), Software and Information Industry Association (SIIA), Japan Commercial Broadcasters Association (JBA), Union Network International - Media and Entertainment (UNI-MEI), World Association of Newspapers (WAN) and Writers and Directors Worldwide (W&DW) (63).

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

6. The Director General welcomed the delegates to the thirtieth session of the SCCR and provided a brief update on the status of the ratifications on previous work. He observed that the work of the Committee had been progressing slowly, but by international standards, it was perhaps developing rather quickly. In relation to the Beijing Treaty on Audiovisual Performance, he informed the Member States that the seventh ratification had come from Chile. In relation to the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled, he noted that there had been eight Member States that had ratified or acceded to the Treaty and a ninth was expected to do the same during that week. He stated that the report of the SCCR would form the basis of any further action on the two main sets of issues on the table for discussion during that week. The first was the long-standing item on broadcasting organizations, which was an area of economic and cultural importance evermore present on a daily basis. That was the last element of the overall copyright framework that had not been updated for the digital environment. He noted that many important conceptual understandings had been advanced during the previous discussions, particularly in recent SCCR sessions; The overall scope of the proposed Treaty, its limitation to signal piracy was clear and technology was a key consideration. Reference had been made to the General Assembly mandate, however seven years had since elapsed and that should be taken into account. There was a shared objective, although Member States had differing approaches to the shared objective. The Director General wished the Member States success in their discussions to take the issue forward. In relation to exceptions and limitations, two studies had been prepared for the SCCR. The first was the study by Professor Kenneth Crews, which had been revised and updated so that it gathered and analyzed laws related to copyright limitations and exceptions for libraries and archives from all 188 Member States. The second study was the Study on Copyright Limitations and Exceptions for Museums, authored by Canat and Guibault.

#### **AGENDA ITEM 2: ELECTION OF THE CHAIR AND TWO VICE CHAIRS**

7. The Director General referred to the second item on the Agenda, the election of a Chair and a Vice Chair. He invited the Delegation of Argentina, speaking on behalf of the Latin American and Caribbean Group (GRULAC) to the floor.

8. The Delegation of Argentina, speaking on behalf of GRULAC nominated Mr. Martin Moscoso of Peru and Mr. Santiago Cevallos of the Delegation of Ecuador to be the Chair and Vice Chair of the SCCR respectively, to contribute to the smooth running of the session and to help to make it possible for the debates to focus on substantive issues.

9. The Director-General invited the Delegation of Romania, speaking on behalf of the Central European and Baltic States Group (CEBS) to the floor.

10. The Delegation of Romania, speaking on behalf of CEBS seconded the proposal put forward by the Delegation of Argentina, speaking on behalf of GRULAC.

11. The Director-General noted that there were no other Delegations that wished to take the floor and declared that the Chair of the SCCR was Mr. Martin Moscoso of the Delegation of Peru and Mr. Santiago Cevallos of the Delegation of Ecuador was the Vice Chair. He invited the Chair to preside over the SCCR.

12. The Chair welcomed the Delegations and thanked them for the trust that they had put in him with regard to the complex issues that the SCCR was facing. The regional coordinators and Group representatives had agreed that the Member States would continue to work on all subjects on the draft agenda of the thirtieth session of the SCCR. Discussions would be based on the working documents, which constituted the basis of discussions undertaken by the SCCR in the previous session and documents and proposals submitted for the thirtieth session. As previously requested, the Secretariat had set up an information session, inviting technical experts from developing and least developed countries. The objective of the information session was to address some of the technical issues and to clarify specific questions raised by Member States.

### **AGENDA ITEM 3: ADOPTION OF THE AGENDA OF THE 30<sup>TH</sup> SESSION**

13. The Chair moved to Agenda Item 3, the adoption of the Agenda of the thirtieth session of the SCCR as included in Document SCCR/30/1 prov. As there were no comments on the proposed Agenda, the Chair approved the Agenda.

### **AGENDA ITEM 4: ACCREDITATION OF NEW NON-GOVERNMENTAL ORGANIZATIONS**

14. The Chair moved to Agenda Item 4, the accreditation of non-governmental organizations (NGOs). They had received a new application for accreditation, which was contained in SCCR/30/4 and was a request by the Finnish Copyright Society. As there were no objections, the Chair welcomed the Finnish Copyright Society to the SCCR.

### **AGENDA ITEM 5: ADOPTION OF THE REPORT OF THE 29<sup>TH</sup> SESSION OF THE STANDING SCCR ON COPYRIGHT AND RELATED RIGHTS**

15. The Chair moved to Agenda Item 5, the adoption of the report of the 29th session of the SCCR. As there were no comments, the Chair adopted the report.

### **OPENING STATEMENTS**

16. The Chair opened the floor for the statements by Group coordinators.

17. The Delegation of Japan, speaking on behalf of Group B congratulated the Chair and Vice Chair on their election. The Group continued to attach importance to the negotiation of the Treaty for the protection of broadcasting organizations. WIPO as a specialized agency of intellectual property had a responsibility to continue to be relevant within the evolving environment of the real world, due to the advancement of technology. In order to maintain such relevance, WIPO had to continue to hear the voices of the real world and respond to developing demands in various fields, including norm-setting activities, in a timely and appropriate manner. No one questioned the significant economic value of broadcasting. The value was one of the demands to which WIPO was required to respond. In that regard, the Member States had to find a solution, which fit with the current environment through the consideration on its own merit without letting their solutions become outdated before they had effect. It was only Member States who could ultimately agree on practical and meaningful solutions and maintain the relevancy of the SCCR and WIPO. The Delegation looked forward to the presentation of the

updated study and the information session by experts on the technical aspects of subject matters under discussion. It believed that those exercises could further deepen their understanding of some technical issues, which had emerged at the informal discussions through the use of technical working non-papers in the recent SCCR and through which they could contribute to forming the basis for further legal work for the treaty. It should be kept in mind that the critical phase was the technical understanding of the subject matters and the legal understanding of the language, which consisted of the treaty text. Therefore, due consideration should be paid to that fact in any kind of exercises at the SCCR, in order to take maximum advantage of those technical exercises for the facilitation of the negotiation process of the Treaty. In relation to exceptions and limitations, the Group expected that they could find a consensual basis for their further work at the SCCR. The presentation by Professor Kenneth Crews and the intensive discussion at the previous session gave clues to a way forward. It showed that Member States needed informative references in order to adopt exceptions and limitations respecting the issues. Exceptions and Limitations could be processed in a manner that could be an informative reference for policymakers in a more accessible and user-friendly manner. Further exchanges of national experiences including the processes and the behind-the-scenes of collective final provisions on limitations and exception for libraries and archives would enrich the understanding of the SCCR and help achieve tangible outcomes. Finally, the Delegation underlined that the SCCR should give further consideration to the objectives and the principles on exceptions and limitations as proposed by the Delegation of the United States of America, with a view towards finding common ground. It offered its constructive engagement.

18. The Delegation of Romania, speaking on behalf of CEBS, congratulated the Chair and the Vice Chair and thanked the Secretariat for its important preparatory work. The Delegation stated that the session looked promising and challenging at the same time. They would have time to hear new informative presentations on digital broadcasting and updated studies on broadcasting organizations and limitations and exceptions, which would help them move forward. That was a high priority for the Group. Discussions had progressed due to the non-papers that were committed. New media platforms had become a common mechanism of signal delivery for broadcasting organizations in the twenty-first century and it would be a missed opportunity not to include modern and adequate protection provisions. The Delegation looked forward to support an approach that would take into account the technical progress achieved regarding the broadcasting systems so far. In relation to limitations and exceptions, it indicated the Group's readiness to be constructive and make the best of the time in the SCCR. It appreciated the updated study by Professor Kenneth Crews on limitations and exceptions for libraries and archives and expected a discussion on that basis. It would facilitate progress on those issues if the SCCR could agree on common objectives. The Group would like to exchange best practices, given that engaging in normative work would not enjoy the support of a significant number of the Member States. The same approach should be applied to the topic of limitations and exceptions for educational and research institutions and for persons with disabilities.

19. The Delegation of Nigeria, speaking on behalf of the African Group, welcomed the Chair and expressed appreciation to the Secretariat for its hard work and preparation of the SCCR. It was not news that WIPO's normative work was in crisis as evidenced by the failure to reach an agreement on the way forward at the twenty-ninth session of the SCCR. WIPO was a Member States driven organization, which placed on the Member States the confidence and the responsibility to act in the interest of all stakeholders who looked to the work undertaken in the SCCR for direction. Irrespective of the competing injuries, the Group did not believe that it was possible to find common ground to forge through the paths and provisions within the SCCR. It looked forward to a SCCR that produced clear directions and discussions on a diplomatic conference on the protection of broadcasting organization that was in conformity with the 2007 General Assembly mandate. It looked forward to exceptions and limitations for libraries and archives and exceptions and limitations for educational and research institutions and persons with other disabilities. The Delegation looked forward to the establishment of legal instruments

on those three subjects. It knew that while work had progressed on further aspects, the equally critical work on exceptions and limitations continued to be vulnerable to indecisiveness and clear commitments towards an effective outcome. It requested that equal time be given to all three agenda items. The Group welcomed Professor Kenneth Crews' study, which contained information on the copyright trends on all Member States and hoped that the updated study could have an impact on their work and provide important insight on the needs, gaps and the limitations of the current situation. It also looked forward to the discussion and the presentation of the study on copyright exceptions for museums, for the value it could add to the SCCR's work. It looked forward to the presentations and panel discussions on technological trends in the field of broadcasting. It hoped that the knowledge gained from that exercise could assist or inform discussions on broadcasting organizations. Finally, the Delegation was mindful that SCCR/30 was the only meeting before the General Assembly and it was important to articulate the way forward for the SCCR in the form of recommendations to the General Assembly.

20. The Chair thanked the Delegation of Nigeria, speaking on behalf of the African Group for its important words. He informed the Member States that they were going to start the information sessions due to the time constraints of the speakers and suspended the general statements.

## **AGENDA ITEM 6: PROTECTION OF BROADCASTING ORGANIZATIONS**

21. The Chair opened Agenda Item 6: Protection of broadcasting organizations. He summarized the discussions in the twenty-ninth session of the SCCR on the basis of working documents and technical notes on non-papers. During those discussions, Member States had requested an update to the study on current market and technology trends in the broadcasting section. The Chair invited Mrs. Anne Leer, Deputy Director General, to introduce the distinguished moderator and invite the panelists to join the information session.

22. The Deputy Director General stated that she would be brief due to the full panel session ahead. She welcomed all delegations and particularly those that were new because the discussions could be overwhelming. She asked the Chair to explain the reasons why they had chosen to have the information session and introduce the first speaker of the day.

23. The Chair introduced Mr. Daniel Knapp who then presented the IHS broadcasting trends study.

24. The Deputy Director General introduced Mr. John Simpson who moderated an information session with the participation of Mrs. Shida Bolai, the Chief Executive Officer of the Caribbean Communications Network Limited, Mr. George Twumasi, Deputy Chairman and the Chief Executive Officer of the African Broadcast Network Holdings (ABN) in London and Ghana, Mrs. Anelise Rebello de Sa, the Legal Manager of International Business and Contact and Compliance of TV Globo in Brazil and Mr. Avnindra Mohan, the President of Zee Network.

25. The Deputy Director General thanked the panel and noted there were unanimous messages coming from the panel about the threat of piracy eroding the broadcasting industry, the reality of living in a digital environment and the need to be technology neutral and platform neutral.

## **OPENING STATEMENTS**

26. The Chair stated that they would return to the Opening Statements and invited the Delegation of Argentina, speaking on behalf of GRULAC to the floor.

27. The Delegation of Argentina, speaking on behalf of the GRULAC congratulated the Chair and Vice Chair on their election and confirmed that the Group was willing to work constructively.

The Agenda included items, which were of interest to the Group including the protection of broadcasting organizations and limitations and exceptions for libraries and archives and limitations and exceptions for educational and research institutions and for people with disabilities. The Group hoped to be able to deal with the issues in a balanced way, taking into account the interests and priorities of all Member States involved. On the issue of limitations and exceptions for libraries and archives, it attached importance to the work that had been done so far and expressed thanks for the report created by Professor Kenneth Crews, which updated the previous studies in 2008 and 2014 and built on the information contained in the two studies. It highlighted the important role for exceptions for libraries and archives when it came to providing library services and supplying information, which would be useful for the work of the SCCR. It would support an open and frank discussion on limitations and exceptions for libraries and archives in order to help them find effective solutions to the problems affecting libraries and archives worldwide. The Group was particularly interested in discussions of the proposal submitted by the Delegations of Brazil, Ecuador, Uruguay, the African Group and India on those particular questions. The Group reiterated the need to continue the discussions on broadcasting organizations and to update their protection. It hoped that would be done on the basis of the viewpoints outlined and awaited with interest the expert debate. It had been two years since the signing of the Marrakesh Treaty and Paraguay and Argentina had deposited their ratification instruments during the year to the Marrakesh Treaty, bringing them in line with El Salvador and Uruguay that had done so in 2014. Recently Mexico had concluded its internal procedures for approval of the Treaty and it hoped that it would submit its ratification instrument over the following days. That would mean that more than half the total number of successions would have come from GRULAC Member States. They would continue to work to reach the 20 ratifications required before the Treaty could enter into force.

28. The Delegation of China congratulated the Chair and the Vice Chair on their election and thanked the Secretariat. The Delegation confirmed it would continue to engage actively and support the constructive sessions. It hoped that all Delegations could have a flexible and constructive spirit to conduct discussions so that they could achieve consensus on important agenda items for a fruitful session.

29. The Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group stated that it was happy to see the Chair chairing the SCCR and it appreciated the Chair's experience, hard work and diligence to reach a mutual understanding, which had greatly benefited their work. It commended the Secretariat for the hard work in the preparation of documents and other relevant arrangements for the smooth functioning of the SCCR. The SCCR was important in dealing with three issues of critical importance to Member States namely the protection of broadcasting organizations, limitations and exceptions for libraries and archives and limitations and exceptions for educational and research institutions and for persons with other disabilities. It was therefore a disappointing reality that while all three issues were extremely important for the role of copyright, unfortunately they had not displayed the same level of commitment and understanding commensurate with the importance based on the socioeconomic realities of the different Member States. Inclusiveness in mutual understanding of each of the priorities was essential for progress. In that spirit the Group was committed to engaging constructively in negotiating a mutually acceptable outcome for all three issues. With regard to broadcasting, it supported the finalization of a balanced treaty on the protection of broadcasting organizations based on the mandate of the 2007 General Assembly, to provide protection on the signal-based approach for cablecasting organizations in the traditional sense. Regarding limitations and exceptions, the Group believed they were of critical importance, both for the individual and collective development of societies. However, there were some divergent thoughts on how exceptions and limitations should be approached. They had an important role to play in obtaining the right to education, actualization of which in many developing countries was hampered due to lack of access to relevant education and research material. While it was informative and useful to share national experiences regarding exceptions and limitations it was unfortunate that that had resulted in the SCCR going in circles on all three issues and an

absence of a decision at the General Assembly in 2014. Continued sharing of best practices and national experiences contributed to the SCCR's work and all Member States could engage on those two issues based on previous discussions and new inputs, so that in the future they would have a text to discuss and to work on. Based on the SCCR's previous success with treaties, the Group believed that it could achieve progress on all those issues soon. It looked forward to productive results and tangible progress in the session.

30. The Delegation of Romania, speaking on behalf of CEBS congratulated the Chair and Vice Chair on their election. The Group was committed to constructive cooperation and stood ready to participate actively in searches for compromise on topical issues relating to the protection of copyright. It was particularly important to establish international standards for the protection of broadcasting organizations and the Group underscored the need to step up the work that was being done within the SCCR on the draft Treaty. They needed to do that so that in the near future they were in a position to take a decision on the convening of a Diplomatic Conference for the conclusion of the Treaty. As the Director-General had stated earlier in the session, broadcasting was the last element that had to be built into the international protection of copyright, in order to allow them to have a system in line with the current needs. They had a difficult task before them and they had to find the best possible way forward to allow them to meet the needs of broadcasting organizations, while ensuring that they could be in line with requirements of the modern world. They had to therefore recognize the technological transformation taking place in the dawn of the twenty-first century and ensure that they had a contemporary and effective mechanism that could allow them to ensure the protection was afforded in the era of cablecasting and simulcasting. The Group believed that in the very near future they would find themselves in a situation that they could do that but only if they made that a priority for future meetings of the SCCR.

31. The Delegation of the European Union and its Member States congratulated the Chair and the Vice Chair on their election. It was very confident that their commitment and expertise would continue to lead the SCCR in constructive discussions and towards successful outcomes for the benefit of the global intellectual property system. It thanked the Secretariat for the smooth preparations for the thirtieth session of the SCCR. The SCCR should strive to make the best possible use of time and resources, which demanded clarity as to the goals and expected deliverables under each Agenda Item. It had been actively involved in the discussions on the Treaty for the protection of broadcasting organizations. Those discussions were of great importance and it was ready to continue to work constructively to advance work on the matter that undeniably was complex and technical at times. A broad consensus was needed to the extent of the protection to be granted, so the Treaty could provide broadcasting organizations with adequate and effective protection. While trying to build such consensus, their goal needed to remain on the conclusion of a treaty, which was meaningful in view of the technological realities and the needs of broadcasting organizations in the twenty-first century. On the Agenda Item related to exceptions and limitations, it believed that a meaningful way forward could be based on clarity of the direction and objective of the discussions they should have. It believed a sure understanding of what the outcome of the discussion could and should be was the precondition to avoid the risk that the SCCR used precious time and resources to no avail. The 2014 General Assembly did not provide the SCCR with a new mandate on libraries and archives. They needed to understand the way forward on education and research institutions and people with other disabilities in a way that was acceptable to all Member States. It believed that there should be a meaningful way forward in those areas despite existing differences with a fruitful discussion that was clearly defined and agreeable to all. In its view, that space was to be found in the broad and flexible boundaries of the current international copyright legal framework and not within the realm of further legally binding instruments which were a direction that it did not support. It was willing to participate constructively and concretely in the discussions. It proposed to do so on the basis of an exchange of best practices. As shown by the captivating discussions on the updated study on the study of library and archives around the world by the Professor Kenneth Crews, it was an approach that it hoped that the SCCR would support. An



exchange of best practices was helpful in clarifying solutions across the Member States in those areas fostering mutual learning and identifying where under the current international framework international cooperation may be of assistance. With respect to future work, it would support work on implementation and enforcement of the existing treaties.

32. The Delegation of Mexico congratulated the Chair and the Vice Chair on their election. It endorsed the statement made by the Delegation of Argentina, speaking on behalf of GRULAC. It confirmed that on April 13 the Mexican Senate had approved the Marrakech Treaty, which should make it easier for people with visual impairment and other print difficulties to access printed text. The Mexican Government would move them further towards developing a fully inclusive society and facilitating access to education, information and culture for the over a million people who were visually impaired in Mexico. It repeated its commitment to the principles, which were enshrined in the United Nations Convention on the Rights of Persons with Disabilities. In a nutshell, the Mexican Government would be filing its instrument of ratification with WIPO, which was another step forward by the region and the international community towards ensuring the rapid enforcement of the Marrakech Treaty. The Delegation reinforced the importance it attached to the work of the SCCR, because it was in the SCCR where they embarked first of all upon the negotiations for a treaty, which managed to achieve a balance between the protection of copyright and Human Rights principles, which would bring a tangible benefit to a specific group within their societies. It was fully committed to that goal.

33. The Chair stated that as there were no further requests from the floor he would ask the regional coordinators to start discussing the way they would conclude the SCCR's discussions during the week considering that it was the last session before the next General Assembly and in order to be ready, to send a specific, express message to the General Assembly reflecting the situation they were facing in the topics that they had in front of them. He invited the regional coordinators to start those discussions.

34. The Secretariat outlined a number of side events for that evening and confirmed that the following day they would be starting on Agenda Item 6 regarding the protection of broadcasting organizations.

35. The Chair closed the session.

#### **AGENDA ITEM 6: PROTECTION OF BROADCASTING ORGANIZATIONS (CONT.)**

36. The Chair re-opened Agenda Item 6: Protection of broadcasting organizations. He stated that they would commence with Group statements regarding the topic followed by an individual Delegation's statements regarding the topic. It would be interesting if those statements could reflect the impressions that they had regarding the studies and the information session. After that time he intended to discuss their initial reactions regarding the review of the study as a consequence of what they had heard from the different regions represented the previous day by the broadcasters. The purpose of the exchange was to allow them to summarize where they stood with respect to the SCCR's previous considerations regarding general principles and the key objectives of proposed international instrument on the topic.

37. The Delegation of Japan, speaking on behalf of Group B, reiterated the importance of updating the international framework for the effective protection for broadcasting organizations in the digital era, in particular in a timely manner, which fit the day-to-day evolving environment. With that in mind, the Delegation thanked the technical experts who had contributed to the update of the study and information session. The exercises were very useful for them to raise their level of technical understanding of the trend of the environment where they stood presently and what they needed to take care of. It would be the task of the SCCR to further elevate their understanding on aspects of what they had heard from the session. For that purpose, the continued discussion regarding technical working non-papers would be a pragmatic and

effective way forward. At the same time, an informal discussion would also be useful. The Group stated that it should be recognized that they had reached the stage where they should seriously consider the ideas put on the table of the informal discussions as possible compromises which would bring them to future consensus. Turning to the possible recommendation to the General Assembly, the Delegation hoped that they could agree at on a positive way forward. That would then be a driving force of further negotiations in line with the 2007 mandate given by the General Assembly toward being able to convene the Diplomatic Conference at the earliest time possible, setting up the firm basis which they had already established. The Group committed itself to continue to engage in any exercises, which contributed to reaching the meaningful and timely outcome to realize effective protection of broadcasting organizations in the digital era.

38. The Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group, welcomed the contributions on the table including the previous day's informative technical panel, which contributed to a better understanding of the positions. The Delegation supported developing an international treaty for the protection of broadcasting organizations as per the mandate, which was agreed near the twenty-second session of the SCCR and later reiterated in 2012. The Delegation supported the agreement based on the approach for broadcasting and cablecasting organizations in the traditional sense. It was committed to working to achieve a balanced text, cognizant of the many interests and priorities of all stakeholders. The original mandate, without the introduction of any new layers of protection, would facilitate the desired balance between the rights and responsibilities of the broadcasting organizations. The Delegation would continue to participate in all consultations with a view of achieving consensus on outstanding issues.

39. The Delegation of Nigeria, speaking on behalf of the African Group, stated that its position on the protection of broadcasting organizations had been reflected previously including in its opening statement. It reiterated that it wanted a pragmatic and effective outcome that was in conformity with the 2007 mandate. It hoped that the SCCR could agree to move forward to a treaty on protection of broadcasting organizations.

40. The Delegation of Romania, speaking on behalf of the Group of Central European and Baltic States (CEBS) stated that the SCCR should do its utmost best to finalize work, so as to allow the adoption of a treaty on the protection of broadcasting organizations in the near future. Bearing in mind the advanced stage of discussions, reaching a consensus on that matter was a priority for the Group. It followed with great interest the debates with technical experts and the presentation of the updated study on current market and technology trends in the broadcasting sector. There was clear evidence that significant developments had occurred since 2007 and therefore it believed it was imperative that broadcasting organizations received adequate and modern protection, with the technologic requirements of the twenty-first century. There was a broad consensus on the treaty having its roots in the signal-based approach. The technical informal papers that were put forward by the Chair and Member States during the last sessions had helped the SCCR to make progress in defining the areas of agreement. At that moment it felt that they could take stock of the previous achievements and move again to a text-based debate. It looked forward to engaging in discussion and expressed its hope that the SCCR would be able to recommend to the General Assembly the convening of a Diplomatic Conference to be organized at the next venue.

41. The Delegation of the European Union and its Member States stated that the treaty on broadcasting organizations was a high priority. Its commitment to addressing the work on the various technical issues discussed at previous SCCR meetings remained strong. It was going to follow an open constructive and flexible approach but focus the discussions on those of the rights in which there seemed to be more convergence among the Delegations. Even though they were attaching great importance to other aspects such as protection of digital transmissions beyond simulcasting, they were going to deepen the discussion and extend to other elements of the working document. In that regard, the Delegation was grateful for the

useful information session with technical experts and for the presentation of the study on technical trends in the broadcasting sector. It expected that issues raised in those discussions especially on the use of new technologies used by broadcasting organizations would be reflected in the SCCR's work on the text. The Delegation was convinced a broad consensus needed to be built for the main elements of the Treaty, if an outcome for adequate and effective protection was to be achieved. While trying to build consensus, the SCCR's ultimate goal must be a treaty, which was meaningful in view of the technological realities and to the needs of broadcasting organizations in the twenty-first century. That was why the Delegation strongly believed that both transmissions made by traditional means and Internet means warranted international protection from acts of piracy wherever the acts of piracy occurred simultaneously with the transmissions or after the transmissions had taken place.

42. The Delegation of Iran (Islamic Republic of) associated itself with the statement of the Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group. Referring to its previous statements on the protection of broadcasting organizations it highlighted a number of issues. Firstly, the Delegation attached great importance to the continuation of the work on the subject of signal-based protection of broadcasting organizations in the traditional sense, consistent with the 2007 General Assembly mandate for the legal framework for protecting broadcasting organizations against signal piracy. Secondly, it believed that the SCCR should not establish a second layer of protection for broadcasters through the proposed legal framework and that it should not restrict society's access to free knowledge and information in order to balance the treaty for the benefit of rights holders, broadcasters and society at large. Thirdly, with regard to expanding the protection to the content of the signal and transmission of computer and Internet, its main concern was that granting the rights of copyright, related rights or additional rights may increase costs and affect access to broadcasts in developing countries. The new possible ways to deliver content by computer network and mobile devices held great promise to bridge the knowledge and digital divide. Therefore, it was important to determine whether and how intellectual property rights (IPRs) should apply with respect to broadcasting. In that context, there was a need to assist the impact of the various elements of the proposed treaty on the public domain, access to knowledge and freedom of expression. It was also necessary to look at the impact of proposed articles on users, performers and authors. Positive progress had been made in the negotiations on preparing a text during previous sessions and based on technical working non-papers. Discussions were mainly focused on the scope of protection of the proposed treaty and the rights to be granted to broadcasting organizations and on technical issues, namely the type of transmissions to be protected including pre-broadcasting signal, broadcasting and transmission of the Internet, rights to be granted according to the type of transmissions and definitions and concepts. They should continue their discussions to resolve the remaining issues. Fifth, there was a general understanding that a treaty was a necessity and general consensus that the treaty should be first and foremost a signal-based treaty. The SCCR should collectively work to find a way forward and to resolve the divergent approaches. Finally, the Delegation believed that at that stage there was a need to reach a common agreement on the objectives, specific scope and object of protection of the proposed broadcasting Treaty so as to proceed accordingly.

43. The Delegation of the Democratic People's Republic of Korea congratulated the Chair and Vice Chair and thanked the Secretariat for organizing the important meeting. The Delegation believed it was high time to not only continue but also to accelerate the SCCR's discussions on the protection of broadcasting organizations in a tradition sense with a signal-based approach as a priority. Since the Rome Convention adopted in 1961, the protection for broadcasting organizations had not been updated to reflect the environment related to the rights. It had not adapted to the digital age. New technology had pervaded and changed everyday life, especially broadcasting on the Internet. IPTV services had gained immense popularity, boasting a great number of subscribers and representing over a fifth of its country's population. The Delegation reaffirmed its willingness to work and collaborate with the Member States in regard to adequate protection of broadcasting organizations. Based on the Member States' commitments, the

SCCR would offer sound ground to effectively extend the common understanding on the protection of the broadcasting organizations.

44. The Delegation of Nigeria aligned itself with the opening statement of the African Group and congratulated the Chair and Vice Chair on their election. It thanked the Secretariat for its hard work and support of the SCCR. It noted the efforts made at the twenty-ninth Session of the SCCR to advance discussions on the agenda item on protection of broadcasting organizations. Discussions of the organizations allowed delegates greater flexibility to engage with each other on the substantive issues under consideration. It also welcomed the decision of the SCCR to update the earlier studies to provide current information and developments in the field of broadcasting and especially through the expert presentations of the panel. The importance of the information sessions could not be over-emphasized. It hoped that with better insights and more factual perspectives the session would progress to consolidate on those areas where significant understanding had been reached in the informal sessions and also in streamlining the views on the outstanding issues. Finally, it reiterated the delegation's continued commitment to constructive development on the Agenda Item bearing in mind a need for a practical and pragmatic approach for forging protection for broadcasting organizations within the scope of the 2007 General Assembly mandate.

45. The Delegation of Japan congratulated the Chair and Vice Chair on their election. Regarding the protection of broadcasting organizations, it believed that deepening their mutual understanding on substantial issues was a prerequisite for convening a Diplomatic Conference to adopt the Treaty. Since the Delegation would like to adopt the treaty at the earliest opportunity it hoped that through the discussion of the session the Member States could take steps towards the adoption of the important treaty. The discussions at the last sessions had enabled them to have a common understanding on some issues, such as the object of protection and rights to be granted. In addition, no Member State seemed to object to the exclusion of the Internet originated transmission from the object of protection. In such circumstances, they should carry out more elaborate discussions to expand the scope of that common understanding. In that sense, the information session from the previous day was useful to understand some of the major issues in the operation of the broadcasting organizations and also reaffirm the importance of a necessity of the protection of broadcasting organizations with so many instances of piracy. On that basis, the Delegation believed that they could move to the textual work for more details in the near distant future. The Delegation was ready to engage in the work of the session in a constructive manner.

46. The Delegation of the United States of America congratulated the Chair and Vice Chair on their election and stated how much it looked forward to continuing to work under their leadership. It thanked the Secretariat for organizing the informative session on the previous day and for arranging for the updated report on the activities of the broadcasting industry. It was particularly illuminating to hear about the different uses of digital technology in different regions of the world. The presentations of the actual activities and experiences of a wide range of broadcasters would help shed light on the factual context for the Member States' discussions. The Delegation believed that meaningful progress had been made at the last meeting in December 2014 in clarifying and deepening their mutual understanding of critical concepts relating to the proposed broadcasting Treaty and in narrowing the appropriate scope of protection. It was committed to continuing down that path and finding an outcome that could attract general consensus on a text that was both meaningful and targeted. The Delegation continued to believe that the best opportunity to do so was to focus on a single right that protected broadcasters against signal piracy over any platform without creating an extra layer of protection in the extra layer that was broadcast.

47. The Delegation of the Russian Federation stressed the importance and need to adopt a new instrument on the protection of broadcasting organizations. For over 16 years the SCCR had been discussing it, looking at the issue and achieving good results. The most important

thing was that they had an image of a treaty that they may bring to a diplomatic conference and it hoped that the diplomatic conference would be convened. It thanked the Secretariat for preparing the documents and for the discussions that had taken place the previous day. Since 16 years ago when the SCCR had started work on the protection of broadcasting organizations there had been a colossal leap forward and TV had changed. It understood that they had an opportunity to seize that and to consider how to design protection on a new basis. It had heard comments about the mandate they were given in 2006 and that it was out of date. Bearing in mind the importance of the subject and the importance of what they decided to the broadcasting organizations, the Delegation believed they could take decisive action and could confine themselves to traditional broadcasting and continue to discuss given the achievements they had made in the protection of the signal and everything connected with it. At the same time in view of new challenges, new forms of broadcasting could also be included through definitions and some directions for future protection. It emphasized that the main thing was to achieve results and they could achieve results together and compromises together only on the basis of the work that they had already done together, on the basis of those things that they had achieved together. At the same time, the Delegation had a flexible approach to all issues and it was prepared to support for the sake of results, any decisions that they reached together. It was in favor of the speedy adoption of a treaty and for the formation of common approaches. They were in a position to get down to the actual discussion of the text of the future treaty. That conviction promised good prospects and the possibility of convening a diplomatic conference in the very near future.

48. The Delegation of Chile stated that it was committed, flexible and prepared to continue to making progress in the discussions during the session. It believed that the valuable work already done in the SCCR should continue to achieve real results. On that particular item of the Agenda, at previous sessions, they had been confronted with difficulties on basic points in the discussion such as definitions, concepts and the scope of protection. It welcomed the presence of experts during the session. It hoped that they would help them to reach certain understandings so that they could find common solutions acceptable to all Member States. On that understanding, it noted that there was a need to discuss certain aspects of the treaty that went beyond the issue of copyright applicable to broadcasting organizations and to go into other areas of protection such as signals. That was found in other instruments, both national and international, but was beyond the protection of WIPO. Finally, the Delegation believed that an instrument on the subject should follow the lines of the other treaties administered by WIPO, in other words, there should be necessary flexibility so that all Member States could adapt to the new technological revolution.

49. The Delegation of Belarus aligned itself with the statement of the Delegation of Romania, speaking on behalf of CEBS expressing determination to make every effort to achieve an international instrument on the protection of broadcasting organizations. It was something that could reach the stage of readiness for a Diplomatic Conference and the SCCR could then concentrate on other not-less important subjects. It expressed appreciation for the information session, which reinforced that the new treaty should reflect the specificities of regions and also the possibilities of adaptation to the constant changes in that area.

50. The Delegation of Indonesia congratulated the Chair and thanked the Secretariat. The Delegation associated itself with the statement delivered by the Delegation of Pakistan, speaking on the behalf of Asia-Pacific Group. The Delegation stated that there was significant value of having a signal-based treaty on protection of broadcasting organizations and therefore supported the effort to develop an international treaty for the protection of broadcasting organizations as per the 2007 General Assembly mandate which was agreed to in the twenty-second session of the SCCR and later reiterated in the forty-first General Assembly in 2012. The Delegation was ready to actively engage in the attempt to reach an agreement based on the signal-based approach for broadcasting and cablecasting organizations in a traditional sense. The work on preparing the text of the treaty should be consistent with the initial mandate

without introducing any new layers of protection. Striking the balance between the rights and responsibilities of the broadcasting organizations was very essential. Finally the Delegation reiterated its active participation in the process of discussion with the view of achieving a consensus.

51. The Delegation of India congratulated the Chair and Vice Chair and noted that the information session had been a good exercise, where different broadcasters of a different nature had come and presented. What came out very significantly was concern that piracy occurred pre-broadcast and post-broadcast. In that context, the Delegation believed that a treaty on the protection of broadcasting organizations should reiterate its commitment to comply with the signal-based approach and that would be consistent with the 2007 General Assembly mandate. It was flexible in supporting the prevention of unauthorized live transmissions of a signal over computer networks provided by the broadcasting organizations as the rights or content broadcast by it. The Delegation's final proposals had been made and it reinforced its position on not expanding the mandate for the inclusion of any element of webcasting and simulcasting under the framework of the proposed broadcasting treaty. It also opposed any attempt for the mandate for retransmission or computer networks or retransmission over other platforms because those activities were not broadcasting in the traditional sense. The provision of the treaty had to provide protection to broadcasting organizations for the broadcast and traditional broadcasting and cablecasting media to enable them to enjoy the rights to the extent owned and acquired by them from the owner of copyright and related rights. The scope of the treaty should include protection against unauthorized retransmission of live signals over computer networks or retransmission over any other digital or online digital platforms. In order to implement that, the content should be owned by the broadcaster, either the content creator themselves or as an assignee. However, no extra layer of rights could be awarded to broadcasters on the content on which they had a license to broadcast only. They should not be given the rights in other platforms without a contract from the rights holder, as any such step would go against the basic copyright of the authors or rights owners. In terms of simultaneous broadcast of content on other formats, the broadcaster should be able to get the cause of action to protect the rights from the rights holders they could not be given a blanket right for cause of action in case of any unauthorized use of the content in those platforms where the licenses were different. In a situation where the broadcaster only got satellite rights, the transmission of a signal in a traditional sense where no other party had been given online streaming rights, the broadcaster could get the right to prohibit the unauthorized retransmission. The delegation was of the view that no post fixation rights should be allowed under the proposed Treaty and the scope of the protection should cover only signal protection, however fixation could be allowed for that. The Treaty should provide exceptions for private use, use of experts in connection with the reporting of current events used solely for purpose of education and research and the fixation of broadcasting by means of its own facilities and for its own broadcast. In conclusion, it was home to various broadband and strong broadcasting organizations, which were more diverse than in any part of the world, so the delegation had major stakeholders. At the same time, it reiterated that equally important was the content of the copyright owners. They needed to strike a balance so the right had to be a restricted right based on the contract and it could not lead to a situation of a possible right, which would create an immense legal tangle in terms of domestic and international restrictions.

52. The Chair stated that with respect to the Non-Governmental Organizations (NGOs), there would not be the time to reiterate the clear positions, which had been stated firmly during the previous sessions of the SCCR. The Chair was happy to see a sort of consensus coming from that stage of their discussion on the topic. He noted the very positive contributions from the different regions and individual countries stated in a very open way to discuss, to understand and to take into account not only the new developments but also the technical presentations. The General Assembly had instructed the SCCR to clarify the scope of protection, the objectives of a treaty and the object of protection and that had previously been considered with the help of charts in the previous session. That had been added to by the professional

assistance from the study and the information session. The SCCR was at a point where they could summarize the concluded remarks regarding the three topics. He noted that the charts were tools, they were not goals, nor an achievement. They were useful to trigger discussion, but it was time to come to consensus. The Chair invited the delegations to provide their views regarding the consensus that they had reached on the scope of the object of protection, the scope of protection and the objectives of the Treaty. The focus was to try and understand the common position of the SCCR on those matters.

53. The Delegation of the European Union and its Member States agreed that it was time to move forward and to come to a conclusion on the discussion on the charts and move to working on the text. In that regard, it found the discussions of the previous day and the study also very interesting and very helpful. Broadcasting organizations used a number of new technologies, not only traditional broadcasting but other new technologies like IPTV and online transmissions and that was happening in all areas of the world and even if it was not happening in some at that moment, it was expected to occur soon. They were willing and ready to move into that area of transmissions and therefore the SCCR had to respond to the needs and plans of broadcasting organizations. There appeared to be two kinds of piracy, one that was related to hardware and one that was occurring online. The latter coexisted in simultaneous transmissions. Piracy could also be organized, for example on infringing web sites with links to the programs with the broadcast by a broadcasting organization. Mr. Daniel Knapp emphasized that with access to technology everybody could be a broadcaster. That needed to be taken into account when they worked on the definition of broadcasting organization so it was clear what they actually wanted to cover and who the beneficiary of the treaty was. In conclusion, they needed to protect broadcasting organizations. Given new technologies, the SCCR could not provide a treaty that was outdated and that would not bring anything new to the protection of broadcasting organizations. Protection for the simultaneous transmission online of broadcasting programs and catch-up services of broadcasting organizations was therefore a necessary protection. The Delegation referred to the proposal from the Delegation of the United States of America and stated that many delegations appeared to support it. It suggested that in the first stage of the discussions the SCCR should concentrate on the retransmission of the broadcasting retransmission right that involved simultaneous transmissions and also transmissions that were done in a deferred way on the basis of fixation. To move forward they needed to start trying to work on those parts of the text where they could find consensus. In that regard it would help in the discussions if they could move from discussions on charts to discussion on the text.

54. The Chair noted that they had received from the Delegation of India very specific points of discussion regarding what it considered to be the scope of protection and what could be a way to understand the signal-based approach to protect the signal through any platform. That could trigger a discussion on what was the objective of the Treaty, the object of protection and the scope of protection. They had heard some options on those matters. The Chair outlined some of the options of the Treaty and suggested it would be interesting to know the position of the Delegations on those issues, towards trying to reach a consensus.

55. The Delegation of the United States of America outlined the most striking things that it had taken from the presentations, relevant to the ongoing discussion. First of all, they had all heard about the increased use of digital technology all around the world and the use of digital technology both over the air and also through the Internet, including simulcasting and a number of different models. The SCCR had heard that there was considerable variation from country to country and region to region, but clearly the enhanced use of digital technology in various ways was coming from everywhere, even if the exact nature of it and exact timing of it differed. The Delegation agreed there was a need to explore those questions further and to address them in some way, so that they could ensure that were not talking about a treaty that would be out of date before it was adopted. The SCCR had also heard some issues that raised questions about how to define a broadcasting organization, which may also be a concept that was evolving. The

other major point was the description of piracy concerns. Piracy appeared to be taking place using Internet transmissions by broadcasters, in addition to their over-the-air broadcasts and that again raised the question of how they could ensure that any language agreed upon would not leave open loopholes for would-be pirates to exploit the fact that the over-the-air broadcast was protected but the stream from an Internet transmission of the same broadcast was not. The other parts of the discussion about piracy were more closely related to the protection of content. For example, discussions about sales of pirated DVDs. Those concerns were very real but were not necessarily the appropriate object of that particular treaty. A great part of the broadcasters' piracy concerns could be addressed through an approach based on pure signal protection.

56. The Delegation of Romania, speaking on behalf of CEBS, stated that its reflection of the previous day was that they could not turn a blind eye to current technologies. They were surrounded by new technologies and the laws needed to protect broadcasters no matter what the platforms were. It was clear that cablecasting should be protected as well as traditional broadcasting and piracy should be combated on whatever means and whatever technology that was used. The Delegation could support the protection of simulcasting, near simultaneous transmission and unchanged transmission of a broadcasting signal and the on-demand transmission of a broadcasting signal. It could support a broad retransmission right in terms of the object of protection and as a way forward it supported a consolidated text being produced that they could work on.

57. The Delegation of Japan, speaking on behalf of Group B, stated that in order to avoid confusion they should separate the traditional broadcasting or cablecasting, the transmission by wire or wireless means and Internet originated initial transmissions. All of the broadcasting organizations were conducting traditional broadcasting and that should be the basis of further discussion. On the other hand, broadcasting organizations in the twenty-first century used various kinds of transmissions through the Internet and the main point of discussion should be to work out how to deal with such kinds of a transmissions.

58. The Delegation of the Republic of South Africa stated that the presentations had clearly indicated that the concept of broadcasting had evolved overtime and that the term broadcasting in the twenty-first century was no longer limited to transmission over the air but included wire, cablecasting and transmissions over the Internet. A problem in the past in dealing with definitions was that Member States in their domestic laws had dealt with the regulations of broadcasting and cablecasting in different ways. Some were focused on the method of delivery and defined broadcasting as being over-the-air and cable broadcasting being wired transmissions. Others such as South Africa had in the past decade attempted to define broadcasting in a more technologically neutral fashion based on the activity of broadcasting rather than the platform used, which led to definitions of broadcasting, which were inclusive of cablecasting and networks using the Internet protocol, such as IPTV. The Delegation supported a technologically neutral definition of broadcasting in the Treaty, which included cablecasting and others as a platform used by the traditional broadcasters. When asked what they would want to see in a global treaty, the broadcast panelists had gone far broader than the intended scope of the Treaty and talked about fixation and reproduction, which were related rights for broadcasters that were not recognized by all Member States. When addressing the scope it was useful to go back to the purpose, what problem was the proposed Treaty intended to remedy? That problem was the unlawful interception and hijacking of illegal or licensed broadcasting organizations signal for simultaneous or near simultaneous transmission of the intended audience for a direct or indirect commercial gain. The remedy was to prohibit that hijacking or piracy of the signal subject to some limitations, such as the use of short excerpts for the reporting of current events, for the purpose of education or scientific research and so forth. The Delegation continued to support the mandate of the 2007 General Assembly for a signal-based approach, with broadcasters given a narrow scope of rights, which were related to the broadcast signal and not to the content carried on that signal. Fixation and reproduction were



broader than a signal-based approach but were related content rights, the scope of other treaties and domestic laws of some Member States. The Delegation stated that it was confident the Chair's expertise and previous experience in the area would help them make progress during the week, towards a common understanding of the protection of broadcasting organizations and treaty provisions and that would lead them to recommendations to the General Assembly to schedule a Diplomatic Conference in 2016.

59. The Delegation of Argentina, speaking on behalf of GRULAC, congratulated the Chair and Vice Chair on their election. It attached great importance to the discussions in the SCCR on updating the protection of broadcasting organizations. From that point of view, the future Treaty should provide protection to traditional broadcasters and cable operators and should exclude Internet originated transmissions. However it recognized that the Internet should receive some protection in the near simultaneous context, when that was done for technical needs or because of time differences within the same country.

60. The Chair noted that they had received comments about the inclusion of the traditional broadcasters and the cablecasters from the Delegation of South Africa, noting that a different treatment in regulation previously reinforced the need to enact a technologically neutral definition of broadcasting. The Chair invited the delegations' views on that issue. He outlined some of the different options open to the SCCR and the different suggestions that had been put forward in terms of which rights were to be granted and how to tackle the main concern coming from broadcasters to avoid unauthorized access.

61. The Delegation of Kenya congratulated the Chair on his re-election and reiterated the statement from the Delegation of the Republic of South Africa regarding broadcasting. Kenya was going through digital migration and it was looking at a technologically neutral approach. It was taking into account the different ways in which broadcast organizations disseminated their work. The Delegation reiterated the need to stick to the signal-based approach and it looked forward to a Diplomatic Conference in 2016.

62. The Delegation of Chile stated that broadcasting should be understood in the traditional sense and they were not in a position to provide protection for cablecasters or any other types of non-traditional broadcasting organizations.

63. The Delegation of the European Union and its Member States referred to the various contributions of the Delegations of India, Romania, speaking on behalf of CEBS, the Republic of South Africa, Argentina, speaking on behalf of GRULAC and Kenya. The idea of the protection of the live signal of broadcasting organizations transmitted over any platforms whether it was transmitted over traditional means or via the Internet seemed to be the common ground. On the issue of cablecasting it agreed that cablecasting should be protected and was a different technique for the transmission of programs. From the discussions there was an emerging consensus around protection for the live signal by traditional means or over Internet and that the rights to be granted protected the interception and simultaneous transmission of the signal of any medium. The Delegation asked whether that was the correct understanding.

64. The Chair confirmed that the understanding expressed by the Delegation of the European Union and its Member States was accurate.

65. The Delegation of Italy endorsed the statement of the Delegation of the European Union and its Member States. It referred to Article 14 of the TRIPS Agreement, which referred to broadcasting organizations having the right to prohibit a number of activities if they were undertaken without their authorization. It referred to fixation, reproduction of a fixation and retransmission of such fixations as well as communication to the public. Therefore the possibility of protecting broadcasting over the Internet was already foreseen within that article by the definition of communication to the public. Communication to the public was supposed to

encompass a notion of making available to the public. Article 14 of the TRIPS Agreement already provided for the possibility of protecting broadcasting over the Internet. Regarding the issue of the exclusive authorization of prohibitions, it could find the solution to the problems they were dealing with in existing treaties. Article 14 of the TRIPS Agreement stated that broadcasting organizations would have the right to prohibit a number of activities if they were undertaken without their authorization as set out in the Article. The right to prohibit, as the consequence of the failure to authorize, was already foreseen and that meant it was not exclusive rights. The Rome Convention stated that an organization should enjoy the right to authorize or prohibit. Those two words were used interchangeably but were talking about the same thing, exclusive rights. Regarding reproduction rights, if they were envisaging protecting broadcasting over Internet, then when the material or content was on the Internet reproduction was a necessary part of the process. Therefore, the process required protection either of the fixation or of reproduction. Those two rights had to be recognized when it came to broadcasting.

66. The Delegation of China thanked the Secretariat for its efforts to promote the agenda item on the protection of broadcasting organizations as well as the efforts made by other Delegations. It welcomed the information session of the previous day and understood that the Committee should take into full account the technological changes and commercial changes. It supported the Treaty applying to traditional broadcasting including cablecasting. It also believed that the inclusion of simulcasting in the Treaty was necessary and reasonable. On-demand broadcasting should not be included in the treaty. With regard to a near-simulcasting it wished to listen to the position of the other delegations in order to seek a solution that could be acceptable to all parties to promote substantive progress of the Agenda Item under discussion.

67. The Delegation of India referred to the statement of the Delegation of the European Union and its Member States. To clarify, its position was that the treaty for broadcasting and cablecasting organizations should be based on traditional broadcasting not content and should prevent unauthorized retransmissions and transmissions over computer networks. However there should not be a positive right of transmission and retransmission for broadcasts over a computer network. There should not be a forced fixation right as part of the treaty. There should be exceptions for public purposes. The Delegation referred to the statement of the Delegation of Italy regarding the fact that right to prohibit and right to authorize were interchangeable. That was not clear. A security officer had a right to prohibit someone without identification, but he was not the person to authorize someone. Authorization would mean that the broadcasting organization was the content provider. There had to be clarity as taking action on piracy was of great importance for broadcasting organizations in a traditional sense. When it came to a right to authorize it that did not fall to the broadcaster but to the contract. In the contract if there was authorization, then they had permission to do it. The Delegation gave the example of cricket in India where there were two public contracts, one to a broadcasting organization and the other to an Internet company. They provided for two different rights and if the signal given to the broadcasting organization was hacked without authorization then the broadcaster could protect it. That was not the case for the transmission over the Internet. There were two important stakeholders, the broadcasting organization and the content owner, and sometimes they were the same.

68. The Chair noted that one of the questions raised was whether there could be a positive right for transmission and retransmission over computer networks.

69. The Delegation of India responded that when they were talking about the mandate to broadcasting organizations they were talking about the signal-based approach. When they were talking about the Internet, it could be a separate mandate, which was not over the signal. Separate contracts were often given for the Internet transmission. Therefore they were talking about the rubric of the broadcasting organization within those parameters. The question was not one of technology or its complexity or future, it was about rights. The original and major

stakeholder for the rights was the content creator. That needed to be balanced with the legitimate business of the broadcasters.

70. The Delegation of Brazil congratulated the Chair on his election. To answer some of the questions regarding the consensus it, together with the Delegations of the United States of America, the Republic of South Africa and many others understood that the narrow scope of protection would be the best way forward. It also understood that they should take into account the concerns of content owners in other platforms as had also been voiced by a number of the delegations. It supported the assessment that Member States should aim for a technologically neutral definition of broadcasting and that may be the key to solving the regulatory concerns of a number of Member States as voiced by it, the Delegation of Chile and many others.

71. The Delegation of the European Union and its Member States thanked the Delegation of India for its clarification on its position. It agreed with the Delegations of India and Brazil that the Treaty was not about content. The treaty was about signals. It was not a treaty dealing with the content. They were there to find a treaty that protected the broadcasting organizations' signal. It understood that the Delegation of India agreed to the protection of the live signal. That did not mean that the Treaty would decide that broadcasting organizations did not have to have contract with rights holders to have the ability to use content, for example, over Internet. It agreed with that approach. The question was if a broadcasting organization was transmitting by traditional means and at the same time simultaneously transmitting the same content, the same program, the same signal by Internet then that was live signal. It was a live signal over the Internet but as it was simultaneously transmitted to the one that was transmitted by traditional means, then it should not also be protected. That did not mean that if they granted the protection to broadcasting organizations that they had the right to use the content of rights holders and put it over Internet. That was a completely separate matter that was regulated by the contract. The question was when they have the right, should the simultaneous transmission over the Internet be protected? The Delegation considered that it should be protected. It understood that many Delegations had stated that there should be a protection of the live signal and that protection should be given regardless of which platform was being used. It asked the Delegation of India whether that approach could be considered common ground. The Delegation asked for clarification on its position regarding positive and negative rights as to unauthorized retransmission over computer networks.

72. The Delegation of India reiterated that with respect to piracy, one type of piracy could be transmission and retransmission over the Internet by another party and that could be stopped as part of the Treaty. In preventing that piracy if the Treaty however talked about a right to transmit over the Internet then that went beyond the scope of signal-based traditional sense approach. What happened in the market or in real situations was beyond the scope of the Treaty. The Treaty should use a signal-based approach.

73. The Chair invited delegations to think about the proposition put forward by the Delegation of India as it could be a way to sort out the discussion on the platforms. It was proposing they consider specific ways to restrict the unauthorized transmission and retransmission over computer networks. That may have had the form of right to prohibit, but that could be a way to overcome that impediment. If that proposition was considered useful, then the principle could say that the live signal transmitted over any platform should be protected. If they could support that statement they could build upon it and see if they had reached a consensus regarding that matter. The Chair referred to the statements made by the Delegations of the Republic of South Africa and Brazil regarding a technologically neutral definition of broadcasting. There were two positive things that they could work on them to obtain a consensus coming from the exchange.

74. The Delegation of Iran (Islamic Republic of) stated that it wished to clarify the positions, particularly the statement made by the Delegation of the European Union and its Member States. The Delegation had always supported the signal-based protection as mandated by the

General Assembly. It also supported traditional broadcasting and did not have problems with cablecasting. However it did have some issues on the granting of exclusive rights to broadcasters in the Treaty. It referred to the statement of the Delegation of Brazil that to have a treaty in the near future they needed to narrow the scope of the Treaty. The Delegation supported the Treaty covering live signals on the Internet. On other platforms it supported those signals provided that those signals belonged to the traditional broadcaster. It also supported live signal transmissions.

75. The Chair noted that the delegations were being flexible and he was more optimistic about a common understanding about the issues. If the live signal was protected over any platform that did not concede that it extended to rights to authorize for any platform. That may hold the clue to the technologically neutral definition to solve the problems of cablecasting. They could achieve the goal of broadcasters tackling different pirate activities without just giving them protection for part of the chain. However giving them the chance to protect the whole chain did not imply rights to authorization. The main concern expressed by the delegations was that they had to be very cautious in the way they expressed that in order to tackle those legitimate concerns.

76. The Delegation of Chile stated it was grateful for the opinions expressed by all the Delegations, particularly those making inclusive presentations. It considered that the protection of broadcasting organizations should be granted only if the broadcast was open to the public. It needed to draw a distinction as to the platform if the signal was not available and could be received without decryption, without a cable, then it would not consider its protection through the treaty.

77. The Chair encouraged the Delegations to consider the right to prohibit unauthorized interference.

78. The Delegation of the European Union and its Member States referred to the Chair's comment on the technologically neutral definition of broadcasting organization or the beneficiary. It agreed with the definition, that it should include broadcasting and cablecasting and that there should be some way of finding a formulation that included both that which was acceptable for the Delegation of Brazil and also the Delegation of the Republic of South Africa. At the same time they had to be careful in the sense that they knew that although they wanted the beneficiaries of the Treaty to be traditional broadcasters and cablecasters, it was not open to all beneficiaries given how easy it was to engage in broadcasting. It suggested that they stay focused on protecting the right beneficiaries and not extend the scope of protection to those organizations or persons that they did not want to cover in the first place.

79. The Chair summarized that the question was whether consensus had arisen around the level of protection for the live signal transmitted over any platform at that point.

80. The Delegation of the European Commission and its Member States pointed out that the phrase "live signal" needing some explanation. To provide clarification, when they were talking about live signal they meant a signal that was being transmitted through traditional means. For example, over terrestrial networks and at the same time there was simultaneous transmission over the Internet, for example. There was a signal being transmitted by traditional means and at the same time simultaneously the same program was being shown over computer networks via the Internet. That was something that should be protected under the treaty. When the broadcasting organization used these two different techniques of making the same transmission it was just two different techniques of the same transmission and in both cases they were talking about protection of a signal. It was signal-based protection. That both those transmissions, which were simultaneous and identical should be protected meant that there would be no gaps in the protection of the signal, so that when a third party intercepted the signal it was not free from liability just because it intercepted the signal that was transmitted over the computer

network. That was what was meant by live signal. The Delegation confirmed that it would like to see in the Treaty protection of the signal that was transmitted by traditional means and simultaneously over any other medium including Internet.

81. The Chair suggested that based on the further interventions by the Delegation of India they should consider whether there was consensus that a signal should be protected even when it was transmitted over any platforms. That gave the chance to the broadcaster to prevent unauthorized interference or access to that transmission. The Chair noted that there were some concerns including cablecasters as broadcasters. There were some interesting propositions regarding the technologically neutral definition that may help fuse that endeavor. He referred to the contributions from a number of different delegations to evaluate the implications of the inclusion of cablecasting. He referred to the statements made by the Delegation of Romania, speaking on behalf of CEBS, regarding the nature of the treaty and the need to have it. The Delegation of Japan, speaking on behalf of the Group B, had reinforced the need to address piracy. He summarized the levels of consensus regarding the fact that a signal should be protected in its transmission over any platform to provide traditional broadcasting organizations with the opportunity to prevent or to prohibit unauthorized interference or access to that transmission. He confirmed that there was a level of consensus on that point.

82. The Delegation of Chile stated that it agreed that some kind of protection should be given to the signal. It was very emphatic about the level of protection which the signal should be given. It supported the consensus on the protection of the broadcast signal but not for all the platforms.

83. The Chair thanked the Delegation of Chile for its statement and noted its previous statement that it may not be its fixed and final position taking into account further discussions.

84. The Delegation of Chile confirmed that it was prepared to think about its position taking into account the opinions that it heard.

85. The Chair opened the floor to statements by NGOs.

86. The Representative of the Copyright Research and Information Center (CRIC) stated that broadcasters might prejudice the right of the stakeholders and/or contracts. Internationally the neighboring rights system started from the Rome Convention. Article 1 of the Rome Convention provided that "Protection granted under this Convention shall leave intact and no way affect the protection of Copyright in literally and artistic works". If a movie was broadcast and a third party wished to use part of that movie on their home page by using broadcast signals, even if they got permission from the broadcaster to use the signal they could not use it without an authorization from the copyright rights holder in the movie. That a certain movie was protected by copyright was an independent right and it was irrelevant to neighboring rights. The broadcasters' rights could never prejudice any rights of the rights holders regardless of the contract between the broadcasters and that rights holder. In contrast, broadcasters could assist the fight of the rights holders against piracy by aligning themselves with the rights holders through their own rights. The Guide to the Rome Convention published by WIPO stated, "without power to control the use to which their broadcasts were put the organization could not grant to the performers or authors, would not reach a wider audience than was envisaged when permission to broadcast was given." That was the essential nature of broadcasters' rights as neighboring rights. Yet all broadcast content was not protected by copyright. For example, a live replay of a sports event was not protected by copyright in most countries. FIFA could only stop a pirated relay of the World Cup game legally through the broadcasters' rights. If broadcasters were not given the rights in the fixed broadcast, then broadcasters and FIFA would not be armed with the means to stop third parties from engaging in the unauthorized use of some of the scenes of relay of the football game after fixation of its broadcast. Without the right of the fixed broadcast even if they

had agreed with each other in their contract to prevent its unauthorized secondary use by third parties they would have no legal rights to guard against piracy.

87. The Representative of Knowledge Ecology International (KEI) referred to the panel discussion and stated that it was only one side of the story. There were also authors and performers who had an interest in the outcome of the conversation. There were Internet companies which had been demonized by one of the experts at WIPO, people that the broadcasters had to collude against, social networking services and others. There were also consumers and none of those voices were presented in the panel session. It was an unfortunate way to manage the area because what the broadcasters were asking for was to make the treaty about the Internet. They did not care about traditional broadcasting to the public as described by the Delegation of Chile, where there were radio and TV stations that made it available to everyone. They were describing things like video-on-demand and things originated or delivered on the Internet. None of the people affected by the new regime of the Internet had an opportunity to address the SCCR. If they were going to continue to have for the next 16 years the Treaty on the Agenda, the SCCR should give more opportunities to stakeholders in the process other than just the wealthy concerns that owned TV channels and cable broadcasting.

88. The Representative of European Law Students' Association (ELSA International) congratulated the Chair and thanked the Secretariat. It requested clarification regarding the wording on whether it only included transmissions via the Internet of signals that were also on traditional broadcasts or whether transmissions from broadcasting corporations via only the Internet were also included. It asked whether the BBC's live stream via only the Internet would be protected.

89. The Chair responded that there were different text proposals that had been submitted by different Delegations and that they had different solutions and answers for that question. They were trying specifically to build a consensus on which would be the object of protection to be covered by the treaty. They would probably have more concrete answers to that question from the different delegations during the afternoon.

90. The Representative of the Transatlantic Consumer Dialogue (TACD) stated that it represented the millions of consumers in Europe and in the United States of America and expressed its concerns that the very broad scope of the proposal and its real impact on Internet and digital use were quite worrisome for many consumers and citizens. There needed to be a greater balance in the proposal and a democratic debate. There was a lot of democratic debate in the room however for example, in the European Union and its Member States, which was in the midst of a copyright reform process with debates going on, public consultations and reports in the European Parliament. However on the issue of the treaty that the Delegation of the European Union and its Member States was pushing so energetically there had been no public consultation open to citizens. There had been no debate among the democratically elected representatives of the European Parliament. That was really lacking on an issue with such a broad scope. The intention to include webcasting and simulcasting with reuse over a long period of time on the Internet could affect negatively digital rights and the right to access to information and culture.

91. The Representative of the International Federation of Film Producers Associations (FIAPF) stated that it promoted the industry and the production of films and audiovisuals throughout the world and therefore understood the importance of the discussions in the SCCR and the impact on production units when they tried to meet creative challenges. Its members tried to maintain cooperative relations with broadcasters based on their common interest of offering the public quality material. In some countries broadcasters participated in their own original productions. They had certain exclusive distribution rights and they financially contributed to the production and shared the risks of the production. The relationship between

those two poles of the audiovisual economy was sometimes interdependent and they both suffered from the effects of piracy. It was right to include the broadcasting signal as well. It added three comments. First, in light of the discussions that had taken place, the Treaty may well become outdated straight away if the SCCR did not extend the scope of protection to all technological means used to broadcast signals. Second, it was not necessary in order to provide effective protection to signals to look at the exclusive rights which would apply to the content itself. That would lead to confusion between the rights of the producers and the rights of the broadcasters. On the other hand, that confusion would mostly be to the detriment of the content producers because most of them were disadvantaged in their relationships with broadcasters. Third, there could not be double standards. If the broadcasters had the legal means of ensuring the integrity of their signals and protecting their economic value it was essential that the Treaty provide full respect to the rights of producers throughout the world. It pointed out that its members in some regions were treated in a cavalier fashion by certain broadcasters and that they neither respected the contracts nor their rights, which increased the costs unacceptably for producers.

92. The Representative of the Argentinean Association of Performers (AADI) congratulated the Chair on his election. It stated that it worked together with Member States on the issue of broadcast signals and believed there was a need for the core debate to reflect exhaustively the issues. There had been progress at the SCCR and they were trying to concentrate on rights. It had been 16 years of discussing the subject and there was no longer just one expression. Many changes had taken place in the intervening years and the experts in the area needed to help them to better understand and overcome the difficulties involved in the protection of signals. They should find balance and the treaty should be based on the protection provided by an international treaty which would benefit copyright and related rights. It was time for conclusions. They should try to meet all the problems with technical solutions. That indicated that they needed a treaty in the same way as they normally needed laws that protected them against alienation. There were different intentions. There were people, who would accept or reject a treaty, but each of them should be convinced of the need for a treaty that would determine what was possible and what was not possible. The matter was between the signal and the content. Those were two key words, the signal and the content. Whether the rights were positive or negative, they should be stated. Any type of piracy or transmission of signals should be covered by the treaty in the form that they determined. They should have a clear definition so as to devise some way to achieve a statement of principles and agreement.

93. The Representative of the Ibero-Latin American Federation of Performers (FILAIIE) stated that it covered 23 Latin American countries plus Spain and Portugal. The mandate of the General Assembly was to combat piracy, but what about the content of the signal? That was the heart of the problem. They needed a perfect definition of the broadcaster because the broadcaster was going to be the holder of the rights. They had to have a proper definition of a broadcaster and then the form of communication could vary a great deal. A responsible definition of the broadcaster was needed because it was the one to manage the contracts and unfortunately most of the contracts involving performers were not respected in many cases as they were not given their royalties due for communications to the public. Under the Rome Convention both the broadcasters and the performers had obtained rights. Rather, the performers only had a right to be opposed so the evil was done and it was difficult to correct afterwards. It was very cautious and needed to reinforce the needs for a proper definition of broadcaster. There was also the danger that the viral community may lead to a situation where all of the works became part of the public domain. If they strengthened the status of the broadcaster then that would avoid that problem.

94. The Representative of Alianza de Radiodifusores Iberoamericanos para la Propiedad Intelectual (ARIP) congratulated the Chair on his election. It stated that it represented the broadcasting organizations of Latin America, Spain and Portugal and was set up in the previous year. The panel session had been very satisfying because they were not simply carriers of

content. There was a lot of investment to ensure that the programs were assembled and subsequently transmitted to the public. There was a whole value chain involved in broadcasting and that whole value chain had to be considered as had been emphasized by a number of delegations. It welcomed the consensus that had emerged among delegates representing Member States that had for many years opposed the treaty. It appeared that the Delegations of India and Brazil had adopted a much more flexible position, which led it to believe that after 15 years they might finally achieve good results. It understood that over that period of time there was likely to be confusion on some of the details.

95. The Representative of the Asia-Pacific Broadcasting Union (ABU) stated that there had been a lot of discussion in some countries and it emphasized the importance of simulcasting and webcasting in the Asia Pacific region. Most of them used simulcasting as part of their mandate to reach out to the maximum audiences in their countries. It was not a choice but had become a mandatory service that the public demanded from the broadcaster. It was critical to include simulcasting under the protection of the treaty.

96. The Representative of the Japan Commercial Broadcasters Association (JBA) congratulated the Chair and Vice-Chair on their appointment. It appreciated the update on the study and the panel discussion as they had helped it understand the technical realities and the impact of piracy in each region. It supported the proposal from the Delegation of Japan, speaking on behalf of Group B, of Article 6bis in Document SCCR/27/2. Under that Article each Member State could decide whether or not it would provide protection of broadcast signals over computer networks and if it did, to what extent. Furthermore, the protection was granted by national treatment based on reciprocity. That would provide a flexible and balanced solution which would give room for compromise which every Member State would be able to accept. Already they had one single text in Document SCCR/27/2, the Revised Working Document for the Treaty on the Protection of Broadcasting Organizations. The SCCR had developed the discussion based on that working document and the informal discussion papers and given the discussion had become mature they should move to the next stage to establish the Treaty through the Diplomatic Conference as soon as possible.

97. The Chair thanked the NGOs for their contributions to the specific topic. They had not agreed to a specific text proposal and they were still listening to different views. There had been discussion of the importance of clarifying definitions. The Chair outlined some of the discussion regarding that point including through the use of the charts. He suggested that they tried and reflected the signal-based approach through the definition of the broadcasting organization because it would clarify the common understanding. He also referred to other international treaties, where broadcasting organizations were not defined but the activity of broadcast transmission or broadcasting was defined. The Chair opened the floor for contributions to the definitions of a broadcasting organization or the beneficiary of the proposed treaty. He asked the Secretariat to read out some of the contributions that had been submitted regarding the definition of broadcasting organization in order to trigger the discussion.

98. The Secretariat referred to page 2 of the informal paper entitled Concepts which provided three different definitions of a broadcasting organization from Document SCCR/27/2 Rev, Alternative A for Article 5, Document 27/2 Rev, Alternative B and from Document 27/6 Article 2. Based on those definitions they had identified on the first page a number of concepts, which were important in providing the definition of what was a broadcasting organization, which delegations may consider when elaborating and deciding on the appropriate definition. Those criteria included who had the initiative and the activities, which were involved or done by the broadcasting organization. The criteria had been identified as the packaging, the assembling, the scheduling or maybe a combination of all of those elements. The third element of the criteria which had been identified as playing a critical role in the definition of the broadcasting organization was the scope of responsibility involved, for example the legal editorial responsibility of a broadcasting organization whether it was initiating, had responsibility for the



transmission, the communication of the signal, the first broadcasting and possibly the cablecasting or a combination of all of those elements which defined the level and scope of responsibility of a broadcasting organization. The last element, which was taken into consideration was whether it should be a joint or separate definition for broadcasting and cablecasting organization and if joint or separate definitions should be provided in that respect.

99. The Delegation of the European Union and its Member States stated that its initial thoughts were that finding a proper definition of a broadcasting organization was probably the most difficult part of the drafting of the Treaty. So much had changed since the Rome Convention and other treaties, where it was much clearer who was being talked about when it referred to broadcasting organizations. They still knew who were traditional broadcasting organizations but defining that due to the various possibilities of broadcasting now by other legal entities and by other persons was a very difficult task. It did not have the answer on how to define broadcasting organizations properly. The elements of the definition mentioned like initiatives for packaging, assembling, scheduling program, legal and editorial responsibility were very important elements and they should be part of the definition. However they were not sufficient to define a broadcasting organization. Webcasting organizations would be able to comply with the definition because they also had initiatives for packaging, assembling, scheduling program and legal/editorial responsibility yet they had all agreed that webcasting organizations should not be covered by the Treaty. They had to find something more. If they agreed they wanted to cover traditional broadcasting organizations and cablecasting organizations then it required a reference to the technique of broadcasting to be narrowed down to the organization. That was a very difficult task. Maybe they needed to make reference also to the organization being subject to regulations as an idea. Times had changed so much that it had become a much more difficult task than it would have been 15 years ago when the negotiations began.

100. The Chair agreed that the task was difficult but that they needed to put in the effort and the time. He referred to the chart and the various proposals that had been made. He stated that they understood that they needed clarity and it was not the intention that the definition would include individual webcasters.

101. The Delegation of Brazil seconded the Chair's views that they should take into account the role of the regulatory agencies. The text referred to activities including the activities of packaging, assembling, scheduling and combining the legal and editorial responsibility for the transmission. All those activities were a part of cablecasting and/or broadcasting organizations. Its question was whether in all countries those activities were performed by the same company. If those activities were performed by different companies then who would be the beneficiary of the treaty since they were using an "and", not an "or" kind of text.

102. The Chair confirmed that they were trying to exchange views regarding a definition and that they should take into account who was the beneficiary of the treaty. They could not just build a definition without regard to who would be the beneficiary of the Treaty. That was an open question and the Chair invited the Delegations and NGOs to think about it. It was possible through the specialized or core business that some of the activities could be split among different companies and what would be the impact on the definition and the consequences if they were considered beneficiaries of the Treaty. The Chair also requested technical contributions from Mr. Daniel Knapp on that point.

103. The Delegation of Italy aligned itself with the statement of the Delegation of the European Union and its Member States in that the distinction of a broadcaster probably should be looked for in its activity. In the table, the first part of the definition was descriptive of the organization and the second part dealt with the activity, the broadcasting or the transmission. The real problem was to find a distinction between broadcasters, cablecasters and webcasters. That was the main distinction that they had to find. It suggested as an idea that a possible solution

could be found in the combination of the definitions of broadcasting organization, broadcast and signal, in the working document from the previous December. That meant the definition of broadcasting organization would read, “The legal entity that takes the initiative for packaging, scheduling, assembling, programming content that has been necessitated by rights holders and takes the legal and editorial responsibility” for example, from the third definition of broadcasting, “for the first broadcasting of images or sound or of images and sound or of the representation thereof that is included in the broadcast signal”. In that way, it was clear that broadcasting meant the transmission of a broadcast signal. The second definition read, “Broadcast means the transmission of a set of electronically generated signal by wireless and carrying a specific program by exception by the general public. Broadcast shall not be understood as included transmission of such set of signal over computer networks.” It was clear that the broadcasting signal and broadcast were something different from the transmission over computer networks. Finally to conclude, if they took the definition of signal on the last page of the document, signal meant, “an electronically generated carrier capable of transmitting a broadcast or a cablecast.” In that way they had a very clear definition because it linked three definitions to make it clear that the broadcasting organization transmitted a broadcast signal, that the broadcast signal included only broadcasts or cablecasts and the broadcast did not include the transmission over computer networks. The combination of those three elements probably made it possible to underline the distinction between broadcasts and webcasts.

104. The Chair thanked the Delegation of Italy for a proposal, which took into account not only the proposed definitions of broadcasting organization but the definitions proposed for broadcasts and the definition proposed for signal. That was intended to clarify what was a broadcasting organization in the same vein as the efforts being made by others suggesting they referred to the regulatory environment. That deserved additional comments including the implications on the object of protection, which they had to differentiate because they were talking about beneficiaries, not the subject and not the object of protection. The consensus previously described included transmission regardless of the different platforms that might be used. That was a very remarkable suggestion, but it needed to be highlighted that it was related to the definition of a broadcasting organization and they needed to take into account the other definitions and then analyze the proposal’s implications on the object of protection, which may be treated separately.

105. The Delegation of Japan, speaking on behalf of Group B, stated that in relation to the definition of broadcasting organizations, they all understood that the beneficiary of the treaty was the broadcasting organization in the traditional sense. Although technological developments had led traditional broadcasting organizations to new platforms like simulcasting, it believed that the definition of broadcasting organization itself had not changed in the long history of broadcasting. Conceptually, it was the entities, which were conducting traditional broadcasting that were the broadcasting organizations in the traditional sense. Therefore, it was important to be technologically neutral, but if they discussed all the technologies together then it may cause confusion. They should divide the technologies into two categories, one was traditional broadcasting and the other was transmission other than traditional broadcasting. That was a more efficient way to move forward. It may be better to start with the definition of broadcasting which was already provided in the existing treaties, namely the WIPO Performances and Phonograms Treaty.

106. The Delegation of Nigeria, speaking on behalf of the African Group, stated that its views were not much different from the last part of the submission of the Delegation of Japan, speaking on behalf of Group B. It had looked at the metrics and thought that they should be careful not to create confusion by defining the broadcasting organization separately from the broadcast. They could not be treated as mutually exclusive as the activities defined those who were engaged in the activities. The broadcasting organization had to be defined with reference to the activity itself, broadcasting. Looking at the definitions from previous instruments there seemed to have been a deliberate omission of the definition of broadcasting organizations in the

earlier treaties which gave an indication that the more important definition was the definition of broadcasting itself and cablecasting. It would probably be helpful to look into trying to define the activity itself before they could determine who was involved in that activity. That was not to say that the elements they had identified to create a minimum threshold for identifying those who were broadcasting organizations should not be taken into account, but first and foremost they must define in clear terms what broadcasting was in the context of the Treaty. That would help them to ensure that they did not unwittingly expand the scope of the definitions to render the provisions in earlier treaties inoperable. In summary the Delegation was proposing that they should look in the direction of defining broadcasting as an activity before linking it to those who were involved in undertaking that activity to the activity itself.

107. The Chair thanked the Delegation of Nigeria, speaking on behalf of the African Group and suggested that they consider why previous international instruments had not defined broadcasting organizations and instead defined broadcasting.

108. The Delegation of the Russian Federation stated that the concept of broadcasting in the Russian Federation was covered by two pieces of legislation, the civil code and the other related to public information. There were broadcasters that distributed information to the mass market including products created by production companies, talk shows, serials, soap operas or other programs, but the broadcasters had not taken the initiative for the distribution of such products. There was a distinction between the operator of the communication means and the broadcaster. The person who was the operator of the communication of the link was someone who was involved in the technical side of production distribution. In radio or TV they were involved in a very complex technical area, including the distribution of the signal. However when referring to broadcasters as a whole then that was not only the technical side, it was also the content side that related to copyright. There were a number of judicial decisions relating to the protection of the objects of broadcasting. The term broadcasting when related to radio and TV programs had to be used when considering what was protected by copyright and related rights. They were talking simply about broadcasting. Breaking that down and fragmenting that concept into different components complicated the situation. The more it was broken down the more complicated it was. The Delegation suggested that they focus on one concept, broadcasting and did not try to determine what was a broadcaster for each particular area, but rather as a subject of related rights. Looking at broadcasting as a whole in that context and then technical means used to broadcast was something different. The Delegation suggested that the approach would simplify the matter.

109. The Delegation of the United States of America stated as a threshold matter, any definition needed to be matched to the specific purpose of the treaty and to the extent that the treaty was forward looking, the definition would also be forward looking. If there was a backward looking element then any definition should be consistent with the definitions that had informed treaties at WIPO in the past. That point was made by the Delegation of Nigeria, speaking on behalf of the African Group. There were already definitions in the WIPO Phonograms and Performances Treaty Article 2(f), the Rome Treaty Article 3(f) and the Beijing Treaty Article 2(c), and they could also build on definitions in the Brussels Satellite Convention. All of those had to be taken into consideration. The Delegation wanted to focus on the legal entity. The entity had to take the initiative and have the responsibility in particular for two broad areas, first for transmitting the broadcast signal to the public. Reception by the public had been built into the prior definitions and should be retained. By wireless means that would take into account both the terrestrial over-the-air broadcasters but also satellite broadcasters to the extent that they transmitted signals for the direct reception by the public. Regarding the definition of cablecasting organizations, at that stage it agreed with the Delegation of Japan, speaking on behalf of Group B, that it would be useful to start with a definition of broadcasting organizations and see how that conversation continued. It referred to statements about the different regulatory regimes for broadcasting organizations and cablecasting organizations at the national level. That was true for the United States of America and it suggested they

consider them in a separate baskets until they found a reason to merge them at a later stage. The definition should probably cover satellite carriers to the extent that they transmitted signals directly to the public for reception by the public. In terms of the scope of the particular activities that bound the definition of broadcasting organizations, the Delegation found particularly important the function of assembling the program and scheduling the program. It questioned whether the separate concept of packaging added any additional value, although it tended not to think so. When the chart was broken down into packaging, assembling, scheduling and separate element combination it became confusing. The distinction between program and signal that went all the way back to the Brussels Satellite Convention was certainly one that was important and should be taken into account in any definition of broadcasting organizations.

110. The Chair thanked the Delegation of the United States of America and suggested that they not change the chart at that stage as they were not working on it to reach a final result.

111. The Delegation of Kenya referred to the statements by the Delegation of Nigeria, speaking on behalf of the African Group and the Delegation of the Russian Federation in terms of dealing with one definition. When it was unpackaged it created confusion. It had looked at a number of national copyright laws and many did not define a broadcasting organization. It was easier to work in relation to what broadcasting was all about and take into account the concept of the signal also. The Delegation referred to its issue of digital migration as an example of why they needed to look at things in a technologically neutral manner as things actually changed.

112. The Secretariat referred the non-papers entitled “concepts” and “definitions” stating that they had one proposal of a definition of broadcasting which was contained in page 3 of the “concepts” non-paper, from Document SCCR/27/6 Article 2(h) and (i). Another proposal was in working Document SCCR/27/2 Rev under Alternative B which defined cablecasting. The other way of approaching broadcasting was through definitions of broadcasts which were provided in two proposals, Document SCCR/27/2 Rev Alternative A, Article 5 and Document SCCR/27/2 Rev Alternative B for Article 5. On the other page there was also a set of existing definitions as contained in existing international treaties such as the Article 2(c) of the Beijing Treaty, Article 2(f) of the WIPO Phonograms and Performances Treaty and Article 3(f) of the Rome Convention.

113. The Chair opened the floor for comments on the definition of broadcasting in the context of the object of protection.

114. The Delegation of Japan pointed out that there was no definition of broadcasting in Document SCCR/27/2 Rev Alternative B but actually there was a definition of broadcasting in the Alternative B for Article 5. It suggested the chart be amended.

115. The Delegation of the European Union and its Member States noted that the definition of broadcasting referred to in Document SCCR/27/2 Rev Alternative B for Article 5 was linked to the definition of cablecasting. It started with the transmission by wireless means and that broadcasting should not be understood as including transmissions over computer networks. Both definitions in the working document operated side by side basically to define one of them, broadcasting and one of them, cablecasting. Those definitions were actually very good definitions and should be looked. The Delegation supported the statements by the Delegation of Japan, speaking on behalf of Group B and the Delegation of Nigeria, speaking on behalf of the African Group in that it was probably easier to refer to the technique of broadcasting to understanding of broadcasting and cablecasting. It also supported the Delegation of the United States of America that they should use definitions of broadcasting that were consistent with definitions of broadcasting existing in other treaties. It referred to the definition of broadcasting in Document 27/2 Rev Alternative B Article 5.

116. The Chair requested that the Secretariat read that definition included in the Alternative B for Article 5 in the document.

117. The Secretariat stated that broadcasting meant, "The transmission by wireless means for the reception by the public of sounds or of images or of images and sounds or of the representations thereof. Such transmission by satellite is also broadcasting. Wireless transmission of encrypted signals is broadcasting where the means for decrypting are provided to the public by the broadcasting organization or with its consent. Broadcasting shall not be understood as including transmissions over computer networks."

118. The Chair stated that there were some differences in the definitions including regarding the inclusion of transmissions over computer networks and three other minor differences. He stated that one thing was the definition and the other thing was the scope of protection. There was a building of consensus on the protection that should be granted regardless of the means of transmission but in a specific way, through the right to prevent unauthorized access or interference with that transmission. There were previous definitions used in international treaties, which were related to traditional broadcasting. It was necessary to define broadcasting organization and broadcasting, the activity. They should bear in mind that in the definition they could agree on both that the activity or the beneficiary was different to the object of protection which could include transmission over other platforms when protection was required. They should also consider whether they needed a definition that was different to previous international treaties. He suggested delegations to consider the questions and then exchange their views to reach consensus.

119. The Deputy Director General stated that she had listened to the discussion of definitions regarding the object of protection and the definition of what a broadcaster was and what broadcasting was. She was concerned that they had excluded transmissions over computer networks. She asked whether that meant the Internet and noted that if it did then they should recall the panel discussion, in which participants viewed the Internet as the main platform for distribution of their broadcast in the near future. Many of them had already migrated over to streaming and downloading over the Internet. A useful definition previously discussed was that broadcasters were different from pipe owners and those who owned the distribution channels. Broadcasters invested in original content. A broadcaster was somebody who invested in original content and/or a copyright holder, a rights holder of copyright content. She noted that she had not been a party to the entire discussion but stated that it was a very important time for the Treaty as it had been on the agenda for 17 years. She hoped they were moving forward to what was a fruitful and meaningful conclusion for all.

120. The Chair continued Agenda Item 6 regarding the protection of broadcasting organizations. He thanked the delegations for the interesting exchange and discussions of the previous day, during which there had been a consensus toward giving protection to a signal over any platform such that the broadcasting organization could have the chance to prevent, restrict or to prohibit unauthorized access interference. That was regardless of the platform over which the signal was transmitted. The Chair summarized the discussions of the previous day regarding definitions. He asked whether delegations still believed that they needed a definition of the broadcasting organization or whether it would be better to just have the definition of the activity, the broadcasting. He referred to the previous international treaties that defined broadcasting and queried whether they needed to be updated.

121. The Delegation of the European Union and its Member States stated that it had already contributed to the discussion on the topic the previous day and it believed that they should build on a definition of broadcasting coming from the existing treaties. Those definitions had certain clear elements, like wireless transmission, but satellite was also included. Definitions that built on those definitions, for example, the definitions that were presented in the Document 27/2 Rev

and especially Alternative B for Article 5, the definitions of broadcasting and cablecasting were the ones that they could build onto to have the definition of broadcasting and cablecasting. Those definitions of broadcasting and cablecasting helped in finding the proper definition of broadcasting and cablecasting organizations. They were the elements of the definition of broadcasting and cablecasting organizations. It would be difficult to have the Treaty without actually defining the beneficiaries. Since they had a specific approach to who the beneficiaries would be, they needed the reference to the activity, in the sense of broadcasting and cablecasting, but that did not mean that they did not need a definition of broadcasting organization and cablecasting organization and probably the definition of the signal as was mentioned by the Delegation of Italy. It stated that the definitions in the table marked as Alternative B for Article 5 were closest to where it wished to end up.

122. The Chair confirmed that the definition of the activity would be helpful to understand who would be the beneficiary of the Treaty. Even if they achieved clarity on the definition of broadcasting that did not mean that they did not need a definition of a broadcasting organization. He referred to the definition of signal which was also in the chart.

123. The Delegation of Australia congratulated the Chair on his reelection. It did not believe that there was a need for a definition of broadcasting organization. The Rome Convention had operated perfectly without one. It preferred to base the definition of broadcasting on those that already existed in the Beijing Treaty and WIPO Phonograms and Performances Treaty. It suggested that in relation to the issue of computer networks that could be dealt with elsewhere in the treaty.

124. The Delegation of Serbia congratulated the Chair and Vice Chair on their election. With respect to the definition of broadcasting organization, if they wanted to follow one legal regime and connect the definition of the broadcasting organization with the activities that it was under, it was enough to say that the broadcasting organization was the entity that rendered the services of broadcasting. There was no need to add any other explanation or definition. However, the current circumstances demanded the need for additional clarification on what was broadcasting in terms of the responsibilities of the broadcasting organization in respect of collecting information, sending information and so on. The second definition that included the responsibilities of the broadcasting organization was a solution.

125. The Chair highlighted that the position put forward was that if they were good enough to define the activity of broadcasting when they referred to a broadcasting organization, such as it being the entity who provided the service of broadcasting would that be enough in order to clarify the definition. The starting point might be the definition that came from the existing international treaties and if they had additional elements that could be included in such definitions then they could try to reach consensus with their inclusion.

126. The Delegation of the Russian Federation stated that it would be correct not to define a broadcaster because in many countries the concept of a broadcaster was very different from that in another country. In the Russian Federation, various laws interpreted in different ways the concept of broadcaster and that led to confusion. It suggested that the treaty should not define broadcaster. The Delegation agreed with the Delegation of Australia who reminded them that the Rome Convention did not mention or define the broadcaster at all. In terms of the broadcasting, the transmission of the signal, that was important from the point of view of combatting piracy so a definition should be the key definition in the Treaty. It was important not to get involved in pointless discussions about the definition of the broadcaster or the broadcasting organizations themselves.

127. The Chair stated that they had to bear in mind that it was one thing to have a definition of a broadcasting organization and another thing to have clarity on who would be the beneficiaries of the treaty. The point made by the Delegation of the European Union and its Member States

was the need to have clarity regarding who was the beneficiary of the treaty. That was key. To achieve that, the question was whether they needed a definition of a broadcasting organization.

128. The Delegation of Brazil confirmed that it supported the general statement regarding the need for clarity on the beneficiaries of the treaty. When they went back to the WIPO Treaties that also mentioned broadcasting organizations, they were mentioning broadcasting organizations in a context of having those organizations as users of the system. The discussions at the SCCR were about the possibility of having them as beneficiaries of the Treaty and that would require a much higher degree of clarity on who would be the beneficiaries when compared to the other WIPO Treaties.

129. The Chair asked the Delegation of Brazil whether a more accurate definition of broadcasting referred to the activity of broadcasting or the definition of a broadcasting organization.

130. The Delegation of Brazil stated that it believed that the treaty should provide a technologically neutral definition of broadcasting, in order to encompass all countries with very different regulatory regimes. When it came to the necessity to define broadcasting organizations, it continued to discuss that internally. It reiterated that its concern was bringing from another treaty a definition of a user and using it as a beneficiary in another treaty.

131. The Delegation of Kenya stated that it was imperative that they came up with a very clear definition of what broadcasting was. In terms of its national laws, the Copyright Act dealt with the issue of what broadcasting and cablecasting entailed and the definition of broadcasting in the law was quite technical. For the purposes of moving forward, they needed a very clear definition as to what broadcasting entailed in order to make it easier to know who the beneficiaries of the treaty were.

132. The Chair requested that the Delegation of the Republic of South Africa provide more information on the technologically neutral definition it had provided the previous day.

133. The Delegation of the Republic of South Africa stated that the problem in arriving at definitions was that in domestic legislation many defined broadcasting in different ways. In some Member States, the definition included cable, others were defined in terms of the wireless and the wired. In some a narrow definition of broadcasting was followed where it was only wireless. In some other international jurisdictions the approach to wire in terms of cablecasting was dealt with by totally different regulatory regimes. The Delegation outlined the definition in the Republic of South Africa. Technology in Member States was also approached differently so it may be better to have a definition that looked at broadcasting and cablecasting and could accommodate Member States like Brazil and Chile, which had different regulatory approaches to cablecasting.

134. The Chair stated that a way to sort out the differences in national treatment could be to refer to what had been agreed to in previous international treaties and require additions for the purposes of the Treaty. There had also been suggestions to have a separate definition of broadcasting and cablecasting to tackle other concerns.

135. The Delegation of Canada congratulated the election of the Chair and Vice Chair and thanked the Secretariat. It considered the national definitions between broadcasting and cablecasting organization in its domestic legislation and the definitions that already existed in other treaties. They needed to look at the link between provisions on the definition and the establishment of beneficiaries which they would have to determine at a stage where they had more information. They had mentioned the provision of national treatment but they needed to look at the link between the first two provisions. That was due to the importance that it attached to ensuring that their different legislative frameworks often referred to the power that was

granted to them by the laws of their country, in order to provide services to the audience, especially when granting public broadcasting licenses.

136. The Chair stated that what they appeared to need was a basic definition of the activity of broadcasting, with a chance to accommodate that either through a technologically neutral approach or through a separate definition of cablecasting. There were some advantages in sorting out the differences in national legislation regarding the definitions by having as a starting point the definitions already drafted for existing international treaties including the Beijing Treaty. Then it would be easier to have clarity regarding the beneficiaries of the Treaty. The beneficiaries of the Treaty could be clear either through a definition of the broadcasting organization or a provision stating who the beneficiaries of the treaty were. Whatever the definition of broadcasting, there was a difference in the scope of protection that could be decided for the proposed treaty because if they took the definition of the activity coming from an international treaty which, for example, was related to the wireless transmission then they had to be very clear that it did not mean that the object of protection was limited to the wireless transmission.

137. The Delegation of the United States of America reflected briefly on the discussion regarding the importance of consistency with the existing international treaty definitions, the Rome Treaty, the WIPO Phonograms and Performances Treaty and the Beijing Treaty. A number of delegations had noted the need to keep a number of definitions open until the discussions proceeded to gain greater clarity. It agreed with those statements and had a preference for keeping the definitions of both broadcasting organization and broadcasting in their working deliberations. Keeping the definition of broadcasting on the table might provide an opportunity as the discussions became clearer to find an opening for distinguishing particular activities that were highlighted in the treaty.

138. The Chair stated that there had been good discussion on the issues of the definition of broadcasting as an activity, how to tackle the issue of cablecasting and the definition of broadcasting organization. What was pending from the concept chart was a definition of signal. He asked the Secretariat to read the definition of signal.

139. The Secretariat drew the SCCR's attention to the two definitions from the non-papers contained in page 2 of "Concepts." First, a definition taken from Document SCCR/27/2 Rev Alternative A for Article 5 provided, "Signal means an electronically generated carrier consisting of sounds or images or sounds and images or representations thereof whether encrypted or not." The second definition was also contained in Document SCCR/27/2 Rev Alternative (a) for Article 5 which provided, "Signal means an electronically generated carrier capable of transmitting a broadcast or cablecast." Based on those two definitions, at page 1 at the right in the column relating to signal there were a number of elements which had been identified when finalizing the definition of what was to be considered as a signal. The two definitions agreed on the nature of the signal which had to be an electronically generated carrier. With regards to the signal's meaning there were different elements, which could be taken into consideration. First, the capability of transmitting a broadcast or a cablecast. Second, the object of the carriage, whether consisting of sounds or images or sounds and images over presentations thereof. There was a possibility of merging those two criteria capable of transmitting sounds or images or sounds and images over presentations thereof. Finally, in the definition of the signal the criteria of encryption or not encryption could be taken into consideration. The Secretariat also noted that there was a definition of "signal" contained in the Brussels Convention, Article 1(i) which provided, "Signal is an electronically generated carrier capable of transmitting programs."

140. The Chair opened comments on the definition of signal. He noted that as they were concentrating on the definition of broadcasting it was worthwhile to consider how to proceed on the topic. It did not make sense to continue discussion on other provisions or other areas as these were the basics in order to reach a common understanding. The Secretariat was



preparing a summary of the Chair topic by topic. The Chair stated that it would be interesting to listen to the views of the regional coordinators on the state of the work and their vision for how to proceed on the matter and what kind of decision could be taken at the General Assembly on that important topic.

141. The European Union and its Member States stated that on the issue of the definition of the signal, certain elements of the definition of signal, if needed, were also already included in the definition of broadcasting in the existing treaties. In the definition of the Beijing Treaty there was a reference to public reception of sounds or images or images and sounds or representation thereof. That part of the definition of broadcasting should be included in the definition of signal if they needed a definition of a signal. That was reflected, for example, in Alternative A in Article 5. There were some technical issues which should be consisting of or capable of transmitting subject to discussion. Finally, they should not try to produce too many definitions for example of a cablecast. It was sufficient to have broadcasting, cablecasting, broadcasting organization and signal. They probably did not need to have definitions for broadcasting, cablecast, program and signal.

142. The Chair stated that there was also the issues of beneficiaries, the term of protection and the need to include limitations and exceptions. There were also topics related to the use of Technological Protection Measures (TPMs) and the use of rights management information (RMIs). The Chair outlined the discussions on the need to clarify the beneficiaries of the treaty with reference to new technologies. There had been suggestions on referring to the regulatory environment. However there were still open questions as to the activities of broadcasting.

143. The Delegation of Romania, speaking on behalf of CEBS, aligned itself with the statement made by the Delegation of the European Union and its Member States. Since the precise draft dealt with broadcasting organizations it believed that it was important to have a definition of the beneficiary. In relation to the definition of broadcasting organizations they could build on the definitions they already had in previous treaties. However it was still important work on the definition of the beneficiaries.

144. The Chair stated that they had discussed the idea that they did not need a definition of a broadcasting organization because it was possible to just have the definition of the activity of the broadcasting. Even in that case, if they did not have a definition of broadcasting organization they needed to have clarity on the beneficiary of the Treaty.

145. The Delegation of the European Union and its Member States stated that its remarks regarding the definition of activities of broadcasting and cablecasting and through those definitions, arriving at a definition of broadcasting organizations and cablecasting organizations was the way to define beneficiaries. That was all that was necessary for the Treaty. It agreed with all the delegations that suggested they should start from the definition of broadcasting but that definition to a large extent was a stable definition on the basis of the existing Treaties and from that definition they should move to the definition of broadcasting organizations. Then it was a discussion on the beneficiaries.

146. The Chair suggested that there was a need to summarize the work under the common understanding of starting with the definition of broadcasting, meaning the activity dealt with under the topic of cablecasting, through an independent or separate definition or through a technologically neutral option if possible. Then they would define a broadcasting organization if they agreed that they needed to have clarity on who were the beneficiaries of the treaty. That was the roadmap to follow. The Chair confirmed that they had undertaken a set of exchanges of views regarding the definitions. He highlighted that clarity on the beneficiaries of the Treaty was key for the future work on the topic. He outlined the number of options that had been provided and suggested that they move to the next stage where they were narrowing the options to try to

reach a consensus. He invited delegations to exchange complimentary thoughts regarding the topics that they had discussed or their views regarding how to proceed.

147. The Delegation of Romania, speaking on behalf of CEBS agreed that they had had positive and useful discussions, which were encouraging. In order to be able to continue making progress the Group believed that it was essential at that stage to move to a text-based discussion. In its view such a text should be a streamlined, consolidated one that would capture the conclusions reached and their work to support a clear roadmap towards the convening of a Diplomatic Conference in the next biennium. The Delegation affirmed that it was high time to update the international legal framework by granting adequate, modern protection to broadcasting organizations.

148. The Delegation of the Russian Federation supported the statement by the Delegation of Romania, speaking on behalf of CEBS. It had previously put forward a proposal about the need to work directly on the text of the treaty. Five years ago they did have a text of the treaty. It had now acquired new provisions and much work had been done on it. In order to draw closer to a Diplomatic Conference it was important to have a stage-by-stage examination of the ideas contained in the text. It was on the basis of such a consolidated text that they would be able to find a solution to the problems that had been raised at the SCCR about particular definitions. The text would help them best to overcome the problems and any other route would significantly complicate the SCCR's work. The Delegation was in favor of working on a consolidated text that the Secretariat could prepare for the next session on the basis of the discussions.

149. The Delegation of Japan, speaking on behalf of Group B referred to its opening statement in which it had expressed hope that they would be able to achieve a positive and forward looking momentum. In that regard, technical progress at the SCCR had to be transformed into such momentum, which brought them to their goal. The Chair had led the technical discussion in a very wise and professional manner and the Group sought his wise guidance to agree on a way forward with the positive momentum at the session.

150. The Delegation of Serbia aligned itself the statement delivered by the Delegation of Romania, speaking on behalf of CEBS. On the issue of who should be the beneficiaries of the treaty, the definition of broadcasting organizations in the proposal was obscure. In Serbia, a broadcasting organization had to get its license from the state and it had to fulfill some legal requirements. From the perspective of the definition, it was the legal entity that fulfilled legal requirements and then could render the activities of broadcasting in accordance with the law. In order to clarify who were the beneficiaries of the treaty they could follow a logic that said who were not the beneficiaries of the treaty. Webcasters, for example, who are every physical person using Microsoft Media Player and could be broadcasters just by using technology, were not the intended beneficiaries. They needed to precisely say that it was only the legal entities that rendered the services of broadcasting, which were the beneficiaries of the treaty.

151. The Delegation of Iran (Islamic Republic of) aligned itself with the statement of the Delegation of Romania, speaking on behalf of CEBS who said that text-based negotiations had not taken place on the draft treaty. There was no consensus on some key concepts such as the objectives, specific scope and the object of protection of the proposed treaty. The Delegation supported the idea that they needed a roadmap to expedite the exercise. Convening a Diplomatic Conference in the next biennium before resolving the remaining divergent views and before arriving at a consensus on the key concepts was premature. Its position was that they would agree to a roadmap but believed that it was premature to talk about and decide the timing of a Diplomatic Conference on the Treaty.

152. The Delegation of the United States of America stated that it was pleased that progress had been made and it thought that they had achieved greater clarity on the topics they were discussing. They had seen some greater convergence on a number of topics, including an

increased interest in the approach that had been proposed by it. Moving to text-based work would be useful to reflect upon what they had achieved. It would be happy for the Chair to take the lead in the drafting of a text as it would provide the basis for further concrete work, with an important caveat that it only apply to the topics that they had been discussing substantively at that point in time. That would be the subject matter or object of protection, the rights to be granted and some of the definitions. At the same time, while there may be some convergence beginning to appear in a number of Member States' positions, no one had committed to anything. There would need to be options left open in any text so that there was still room for negotiation. As to the other topics that they had not yet had a substantive discussion on within the last few sessions, they needed to be put on the agenda for the upcoming meetings. If over the next two meetings they found acceptable text, not final text because there would still be brackets, but acceptable text, then at that point they would be in a position to decide whether the text was sufficiently ripe for a Diplomatic conference in the next biennium that could be successful where they could actually achieve an outcome.

153. The Delegation of the European Union and its Member States joined the delegations, which had expressed satisfaction with the discussions during the session. Clear progress had been made, especially on the understanding of various positions. The most important thing to understand was where various delegations stood and what they meant when they referred to traditional broadcasting, simulcasting and other areas. It needed to take the discussion back to discuss with its Member States and carefully review what had been discussed. It would be useful to have the discussions reviewed in the text and as suggested by the Delegation of the United States of America, that should be limited to the provisions that they had discussed at the session. There were a number of provisions of the Treaty that they had not been tackled for example, the term of protection and the obligations concerning technological measures. It supported the statement by the Delegation of Romania, speaking on behalf of CEBS that they needed a clear roadmap to continue their work towards the objective of holding a Diplomatic Conference in the next biennium.

154. The Delegation of India congratulated the Chair on his appointment. It stated that prior to moving towards text-based negotiations suggested by the Delegations of Iran (Islamic Republic of) and the United States of America they needed greater clarification.

155. The Delegation of the Republic of South Africa thanked the Delegation of Romania, speaking on behalf of CEBS for its proposal and stated that it was a proposal that was worthy of merit. A clear roadmap would provide the opportunity to both clarify as well as consolidate views on the various substantive issues and discussion. Text-based discussions were useful and brought them one step closer to their goal.

156. The Delegation of Japan, speaking on behalf of Group B confirmed that it agreed to move forward with text-based negotiations.

157. The Delegation of Nigeria, speaking on behalf of the African Group supported the position of the Delegation of Romania, speaking on behalf of CEBS in its call for a text-based discussion and a clear work plan. It stressed the need to give a concrete time frame and attach specific importance to specific areas to be achieved, specific targets to be achieved within that time frame. For those areas that they were yet to make any appreciable movement they needed to identify those areas and begin to strategically position them for common means of discussions so that in the near future they could begin to see a prospect of making concrete recommendations for a diplomatic conference.

158. The Delegation of Kenya supported the previous delegations who had spoken. It added to the statement of the Delegation of Nigeria, speaking on behalf of the African Group, that there were areas of convergence and the draft text could be led by the Chair, as suggested by the Delegation of the United States of America.

159. The Delegation of Senegal supported the position as expressed by the Delegations of Nigeria, speaking on behalf of the African Group and Kenya.

160. The Chair stated that they had reached a point where on the basic issues that had been mentioned such as the scope of protection, the object of protection, the rights to be granted and the definitions, they had shared some views and received good ideas. Some of those were expressed in a way to try to allow them to try to accommodate other Member States' concerns regarding the issues. That had been a useful exercise. They could continue in that effort, but it could be premature to do so because they needed some clarification on the basics of the Treaty. They now needed to reflect the discussion in a text-based way covering only what had been discussed during the exchange in that session rather than the remaining topics. The Chair was willing to undertake the effort to create a text-based document if there was consensus on that. There was a need for a clear roadmap. That would start with a discussion on how they could properly reflect what they had discussed including the basics of the treaty, the meaning of the scope of the treaty, the rights and the definitions. They could then add the remaining topics. In order to have a roadmap, those discussions should lead them to a result and that result, as stated by the Delegation of Nigeria, speaking on behalf of the African Group was to have some concrete deadlines so that they were not going to be talking on the topic for ten years more. They needed specific deadlines working towards the convening of a Diplomatic Conference in the biennium. The Chair clarified that those were his initial thoughts trying to accommodate the different views and did not mean that all issues had been solved. He referred to a number of outstanding issues that could be reflected in the text-based document, which was open to further comments and suggestions. The Chair invited the regional coordinators and the Groups to further discuss the proposal.

161. The Chair adjourned the session.

#### **AGENDA ITEM 7: LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES**

162. The Chair welcomed delegations to the discussion on Agenda Item 7, limitations and exceptions for libraries and archives. He noted that it had been a very interesting issue, which had triggered some exchange of views and had been discussed over the previous sessions of the SCCR. He asked delegations to use their precious time in a way that they could try to understand each other's positions in order to find some ways to accommodate the legitimate expectations and concerns that the different parties had regarding the issue. This included collaborating to achieve the compliance of the public service mission which libraries and archives had for the benefit of all of the Member States. The public service mission required some great advances of the SCCR discussions in order to analyze which would be the best way to collaborate with the Member States so that all of their citizens were beneficiaries. He suggested that a good way to proceed would be to continue in a discussion based on good faith and objective evidence in a constructive manner and adding technical views regarding the different elements that were involved in the discussion. The conclusions reached should be based on consensus and that meant tackling all of the parties' concerns. There was a need to discuss the topic in a very proper manner in order to see and to find common understandings without implying anything more than it being a starting point to guide the discussions. In the last session they had the updated study of Professor Kenneth Crews who had provided a high-level view of the situation around the world. The Chair looked forward to hearing their views and opened the floor to the Groups.

163. The Delegation of Brazil, speaking on behalf of GRULAC, commended the work carried on up until that time and thanked Professor Kenneth Crews for the work he had submitted which updated the previous studies in 2008 and 2014 and consolidated the information contained in those studies. That document, which contained the important role played by libraries and archives and also the library lending services, provided great usefulness to the SCCR. The

Delegation supported an open and frank discussion on the limitations and exceptions of libraries and archives, which did not prejudge the outcome of the discussions to reach effective solutions for the problems, which affected libraries and archives around the world. It was very interested in the discussions regarding the proposal submitted by it, together with the Delegations of Ecuador, Uruguay, the African Group and India in regards to the way the topic was handled. As it had stated in its previous initial intervention, the Delegation underscored the importance of the ratification and the discussions of the discussion of limitations exceptions and also the ratification process of the Marrakesh Treaty. It thought that the ratification process of the Marrakesh Treaty was highly important and noted that four out of the eight members that had ratified the Treaty were from its region. It requested that WIPO replicate the interregional workshops that were carried out in Cape Verde for the countries of the Spanish-speaking region.

164. The Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group, believed that limitations and exceptions were essential requisites for all norm setting exercises in national and international fora. This position was vital for achieving the desired balance between interests of the rights holders and the public welfare in scientific, cultural and social process especially in developing and least developed countries (LDCs). Interest was reflected in Article 7 of TRIPS Agreement, which stressed the need to maintain balance between authors and public interest particularly education, research and access to information. Libraries and archives were two vital institutions of society, mostly operating on a non-commercial basis. In most developing and LDCs, they were often the predominant if not the only source of material for students and academics. In fact, peoples in all countries irrespective of the level of development had benefits from exceptions and limitations for libraries and archives and agreement on exceptions and limitations for libraries and archives would allow those benefits to be extrapolated for the good of all mankind instead of restricting them to individual countries. Such an agreement would require uniformity and balance at the national level including the harmonization of domestic laws and policies which would contribute to safeguarding and providing legitimate interest of all stakeholders. Sharing the national experiences of Member States was also beneficial in that regard. The Special Rapporteur in the field of cultural rights in a report to the twenty-eighth session of the Human Rights Council also supported the harmonization of exceptions and limitations in copyright for libraries in education. The Delegation wished to reiterate the previous proposal of promoting a facilitator as a “friend of the Chair” as in other WIPO SCCRs.

165. The Delegation of Nigeria, speaking on behalf of the African Group, underscored the fundamental role of libraries and archives and educational research institutions in facilitating access to knowledge for human and societal development. The principle of exceptions and limitations to meet specific objectives was an essential part of international instruments. More importantly it had been integral to information and communications technology from its inception. The 1883 Paris Convention for the Protection of Industrial Property, the 1886 Berne Convention for the Protection of Literary and Artistic Works, indeed even the first Copyright Statute of Anne of 1710 contained specific limitations protecting educational institutions and facilitating access to learning opportunities for users. Those foundational instruments did not disregard rights holders, even as they provided a historical context to the quid-pro-quo nature of the intellectual property system which was protection for rights holders in serving the public good. The Delegation requested that they progress to text-based work on exceptions and limitations. Information from national experiences could inform the thinking of delegations, but could not justify or delay work on the substantive text on exceptions and limitations for libraries and archives and educational research institutions. It was mindful that the session had a chance to determine what message went to the 2015 General Assembly, the Delegation called for a recommendation that took into account the strong desire of a greater number of the Member States to hold text-based discussions. That would enable them to refine and streamline the text and identify realistic steps towards fulfilling the steps of the 2012 mandate. They should not develop the challenge and isometric reality which was the digital environment and how it had fostered that cause. That should add impetus to their work and assist in

reversing the exclusion of a percentage of the world's population, particularly the youth, from the knowledge and information space. It welcomed the updated study on exceptions and limitations for libraries and archives. The study covered all 188 Member States and amplified the vast gaps that a multilateral treaty would fill. It hoped that careful consideration had been given to the study and that the insight gained thereof would positively impact their discussions. The Delegation looked forward to further discussion regarding the text prepared by the Africa Group and the Delegations of Brazil, Ecuador, India and Uruguay in document SCCR/29/4. The Chair's informal document streamlining the various proposals also provided a good basis for further discussion. It reiterated its request that future sessions of the SCCR should allocate equal time to the three issues on the Agenda.

166. The Delegation of Romania, speaking on behalf of CEBS, stated that it welcomed the updated version of the excellent study on copyright exceptions for libraries and archives prepared by Professor Kenneth Crews. The exceptions were fundamental to the structure of copyright law throughout the world and played an important role in facilitating library services and serving the social objectives of copyright law. It was convinced that the substantive debate that took place during the previous session was beneficial to all Member States so it saw merit in continuing that process. The three-step test provided for by international copyright treaties offered a wide framework for establishing exceptions and Member States may need more guidance about how to best craft specific exceptions especially in the digital era. The clear link that existed between exceptions to copyright and historical realities as well as traditions in every country would make any normative approach inappropriate in its view. It strongly preferred the exchange of best practices in order to learn about existing examples to be considered by each Member State individually. That approach was an adequate way forward. It recalled that many questions addressed to Professor Kenneth Crews dealt with the specific role that WIPO could play in that field. The Delegation believes that it was worthwhile engaging in a discussion facilitating progress on the topic. As to the method of work, it would very much depend on the objectives that they were deciding. The work should be based on the understanding that establishing a fair balance between the author's rights and the interest of the society was essential for a viable copyright system.

167. The Delegation of Japan, speaking on behalf of Group B, agreed that libraries and archives played an important role in cultural and social development. It also recognized wider interests, but not simple, stakes on the subject matter of the Agenda Item. Such wider stakes might come from the fact that as the study by Professor Kenneth Crews witnessed, so many countries had established their own exceptions and limitations for libraries and archives in accordance with their respective domestic legal systems and that meant the work of the SCCR should be shaped in a manner reflecting that reality and taking full account of flexibility of the existing international legal frameworks. Last session it had reserved its comments on the concrete proposal on working methodology suggested by the Chair. The Delegation thanked the Chair for his continuing efforts and dedication to find common ground. It appreciated his intention to structure the discussion from the perspective of effective and efficient work. Concerns had been raised in the Delegation in the way it had been structured and the meaning such structure might have with respect to the direction they were taking even with the Chair's explanation at the last session that the aim of the exercise was just to structure discussion to find a shared understanding. The Delegation believed that the presentation by Professor Kenneth Crews and the following intensive discussion at the last session gave them direction for a way forward. It reiterated that they should build upon their work which was a great achievement in a manner which made the most of it. The discussion at the objective and principle level as proposed by the Delegation of the United States of America could compliment that work. Those approaches could also fit with the structured discussion which the Chair held at the end of the last section and help clarify the shared direction of the discussion. The Delegation could not turn its eyes away from the reality that no consensus existed in the SCCR for the normative work and that reality should be duly taken into account in the consideration of how best to find a consensual basis upon which all Member States could work together. The

Delegation would continue to engage on the discussions on the limitations and exceptions for the libraries and archives in a constructive manner.

168. The Delegation of China thanked the Chair and Secretariat who had done a great deal of work on exceptions and limitations for libraries and archives. Libraries played an important role to preserve the cultural environment. The Chinese legislation in the area of copyright and museums and libraries included limitations and exceptions. With reference to orphan works, it also had special provisions. The Delegation believed that there should be a balance between the interests of the authors and the interests of the public at large. It hoped that the problem would be tackled by the SCCR to achieve results.

169. The Delegation of the European Union and its Member States strongly believed that the function of libraries and archives was essential for cultural, social and economic progress. In accordance with that conviction, it supported that function with a variety of tools. As illustrated by the study on exceptions and limitations by Professor Kenneth Crews, those tools included exceptions and limitations in its copyright legal systems along with other instruments that were foreseen to support them in fulfilling the public intermissions in accordance with local circumstances and traditions. The way in which different legal systems had implemented exceptions and limitations for libraries and archives within the large flexibility offered by international treaties represented a wealth of information that should not be underestimated. Such information could and should be the basis for a better understanding of what were effective ways to implement exceptions and limitations within different legal systems particularly in the digital age. The role of WIPO and the SCCR should be to foster such exchange of best practices and mutual learning. The rich and concrete discussions that followed the presentation of the study by Professor Kenneth Crews at the 29th session of the SCCR were proof that an approach based on the exchange of best practices stimulates substantive discussions that delegations had been calling for. In the absence of a mandate to the SCCR from the General Assembly in 2014, work on the subject required first of all clarity as to the expected outcome. They could not afford to continue traveling without a shared understanding of the destination. To succeed, they must set a common and shared objective. It was clear that the consideration of introducing a legally binding instrument in the field was not a consensual objective. It believed that it was not required and could not be supported. Proposals containing language geared towards that goal were not helpful for constructive discussion. On the contrary, a consensual basis for the discussions could be agreed to focus their work towards a more structured way to exchange best practices taking the excellent work by Professor Kenneth Crews as a basis. That approach would help in identifying problems and solutions as they were used in different Member States, provide practical information to Member States that considered introducing or updating national exceptions and limitations and also give an indication of where international cooperation could be of use under the international framework. It hoped that the SCCR could agree to that approach as a useful and concrete target in order to have a clear objective for the future.

170. The Delegation of Brazil aligned itself with the statements delivered by itself, speaking on behalf of GRULAC, the Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group, and the Delegation of Nigeria, speaking on behalf of the African Group. It considered the discussions on exceptions and limitations to copyright law as a subject of utmost importance to the development of a strong and sustainable national copyright system. Exceptions and limitations were provisions that allowed persons to carry out an exclusive act in relation to copyright work without having the authorization of the owner. In the realm of libraries and archives one of the activities causally linked to a copyright exception was the activity of preservation. In order to safeguard the history of their societies, archives were allowed to make preservation copies of historical works. Another set of exceptions, limitations or provisions allowed a person to do an exclusive act in return for payment or remuneration of some kind. An example of that limitation of rights was the possibility of making available for the public some sort of orphan works. According to national law, orphan works could either be made available

through an exception or a limitation. In the case of limitations present in national law, remuneration established by national legislation was required to make use of certain work. Beyond the roles of national systems, it was important that they considered the benefits of exceptions and limitations to the international copyright system. In some cases, international cooperation and specifically cross border activities from libraries and archives could have the potential to multiply flow of information between countries. They should also take into account the changing environment in which libraries and archives operated. The digital environment presented new challenges and they should consider how copyright and copyright limitations and exceptions could play a role to facilitate information. They should consider the relationship between contracts and exceptions and limitations in the digital environment. Finally, it stressed its firm commitment to the discussions on those important elements. The Delegation thanked the Chair for his efforts in drafting the document that was discussed during the previous session. The document was a good basis for their discussion since it encompassed all proposals and allowed for broad exchange of views.

171. The Delegation of Mexico supported the statement by the Delegation of Brazil, speaking on behalf of GRULAC. It also thanked the Secretariat for the updating of the study produced by Professor Kenneth Crews, which provided more elements for discussion. It attached great importance to exceptions and limitations for libraries and archives. It realized that limitations and exceptions that were established for libraries and archives were aimed at facilitating the work of copying, preservation, archiving and dissemination of the works that they possessed and also to encourage the spread of knowledge and information among members of society in general for the common good. Its federal copyright law had provisions on limitations and exceptions for libraries and archives for reasons of security and preservation and the three-step test provided for in the Berne Convention. The Delegation repeated that it was prepared to continue to play a constructive and active role in the discussions so as to achieve the objectives they had set for themselves.

172. The Delegation of India stated that the deliberations on the exceptions and limitations for libraries and archives were of crucial importance to it. Knowledge creation was at an unprecedented phase and yet access to the knowledge was far behind in many jurisdictions. In addition, there was an ever increasing trend of digitization of information, which brought its own challenges such as to the need for a bigger infrastructure to store and disseminate information. In that context, libraries and archives acted as a balancing force for increased access. It was imperative to consolidate and strengthen such balance between ownership and access, which had been reiterated in Article 7 of TRIPS Agreement, which stated that "The protection and enforcement of IPRs should contribute to the promotion of technological innovation and to 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 study and the SCCR's deliberations brought forward the diverse approaches in national legislations including that of the absence of limitations and exceptions in many jurisdictions. Added to that was the complexity of digital form of information with cross border implications. That brought the urgent necessity of an international instrument with more vibrant limitations and exceptions. The work of the Delegations of Brazil, Ecuador, Uruguay and India and the African Group in the past meetings was to get more aligned document on those 11 issues for an equitable balance relating to limitations and exceptions. That needed to be built upon for a consensus among the Member States. There were suggestions to stop with the exchanges of good practices short of a legal instrument. It emphasized that if the purpose was that of equitable and affordable access, the best way was through a legal instrument and the exchange of good practices did not bring the necessary urgency to the subject. It was the duty of Member States of the developed world to come forward to actualize the issue, as had been done with a universal spirit for the Marrakesh Treaty. It hoped that Member States would move forward to a positive road for a text-based approach keeping the reservations to be deliberated for resolving them.



173. The Delegation of Iran (Islamic Republic of) associated itself with the statement made by the Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group, and the statement made by the Delegation of Nigeria, speaking on behalf of the African Group. The right to science, library and culture was in basic human rights instruments such as international covenants on economic, social and cultural rights. The Special Rapporteur of the United Nations Human Rights Council in the field of cultural rights had submitted a report to the twenty-eighth session of the Council on December, 14, 2014. The Special Rapporteur examined copyright law and policy from the perspective of the right to science and culture emphasizing both the need for protection of authorship and expanding opportunities for participating in cultural life. She had proposed to expand copyright exceptions and limitations to empower new creativity, enhance rewards to authors, increase educational opportunities, preserve space for non-commercial culture, and promote inclusion and access to cultural works. There was a need for protection of authorship and expanding opportunities for participation in cultural life. In that context, the limitations and exceptions were a key part of copyright law and played an essential role in creating a balance in international copyright system with a view to empowering new creativity increasing educational opportunities and promoting inclusion and access to cultural works. The digital environment had provided new opportunities to fulfill that right including access to knowledge and exchange of information. The copyright system had also posed new challenges in enjoying fully the right to science and culture. The existing limitations and exceptions envisioned in international copyright treaties did not sufficiently address emerging technological changes. That should be rectified. The Marrakesh Treaty was a good example upon which they could build on and expand to encompass other areas. The Delegation called for pragmatic norm setting solutions in moving towards a balanced international copyright law for the benefit of rights holders and public policy issues. Given the importance of copyright exceptions and limitations for the right to science, knowledge, information and culture, the Special Rapporteur of the United Nations Human Rights Council had recommended that Member States settle on the adoption of copyright exceptions and limitations for libraries and education and recommended the possibility of establishing a core list of minimum required exceptions and limitations incorporating those currently recognized by most Member States and or international provisions. Therefore, the Delegation strongly supported the establishment of a legally binding international instrument for limitations and exceptions for libraries and archives and also research and educational institutions, as those institutions were important in giving people access to information, knowledge and culture. Such a legally binding instrument would make it possible to meet the needs of all Member States in terms of digitization work and would pave the way for people to access information and knowledge, realizing the important aims of human rights. In order to fulfill the mandate of the General Assembly and come up with a concrete proposal to establish an international instrument for limitations and exceptions for libraries and archives as many delegations had reiterated in the previous and present session, the SCCR should expedite the process and start text-based negotiations and article discussions on each identified topic contained in the working documents. It believed that the proposal made by the Delegation of Nigeria, speaking on behalf of the African Group, and the Delegations of India, Brazil and Ecuador could be a good base for text-based discussion and for preparing a consolidated text. It supported the proposal made by the Delegation of Pakistan, speaking on behalf of Asia-Pacific Group, that the SCCR should consider appointing facilitators or “friends of the Chair” to develop a working text for the exceptions and limitations from the documents. Finally, the Delegation noted that there were three subjects on the Agenda, namely the protection of broadcasting organizations, limitations and exceptions for libraries and archives and limitations and exceptions for educational and research institutions and for persons with other disabilities. To balance the ongoing debates, the Delegation proposed the allocation of equal time for discussions in the next session of the SCCR.

174. The Delegation of Indonesia aligned itself with the statement made by the Delegation of Pakistan, speaking on behalf of Asia-Pacific Group. It reiterated that exceptions and limitations were a very substantial instrument for ensuring rights of education. It shared the concern that achieving such rights had been hampered due to access to relevant research materials. In that

regard it emphasized the importance of providing a legal framework enabling libraries and archives to carry out appropriate reproduction and distribution of library materials without the authorization of the copyright owners for the purposes of education, research and interlibrary loans. Consistent with Article 7 of the TRIPS Agreement, that approach would contribute to the promotion of knowledge dissemination in a manner conducive to social and economic welfare and to balanced rights and obligations. It hoped that all Member States would engage constructively on the issues and utilize the previous work and discussion in order to embark on a more substantive discussion and text-based negotiation.

175. The Delegation of the Russian Federation stated that it was devoted to the Agenda, which had been drawn up and to the issues that they were discussing. It was prepared to undertake further constructive work on exceptions and limitations to copyright. It was one of the key problems that existed in the area of copyright and especially given the development of the Internet, there was a serious task before them in defining the limits of exceptions and limitations. Its legislation had partially solved the problems in the 2014 Civil Code which included exceptions and limitations for libraries and archives and introduced exceptions and limitations for persons with physical disabilities and the visually impaired. That work was continuing in the Russian Federation. There was another area, which was also as important, namely limitations and exceptions for universities and educational institutions. While working on one area they should be very accurate in the definitions. They also needed to understand the new challenges and the difficulties involved in access to knowledge, but should not forget the main person they were concerned with, the creator, the author of the works. The task was to find the proper balance between authors and society. It expressed its thanks for the studies that had been provided. The Delegation was prepared to do constructive work and was prepared to make its own contribution to the great task they were involved in.

176. The Delegation of Ecuador endorsed the statement by the Delegation of Argentina, speaking on behalf of GRULAC. The issue of limitations and exceptions were of the utmost importance since they were issues in which it had been working on at a national level so as to develop a wide ranging new norm of copyright, intellectual property, creativity, innovation and research. A Bill was in the National Assembly of Ecuador, which envisaged the detailed development of a great range of limitations and exceptions of copyright for people with disabilities, libraries and archives and research institutions teaching institutions. It had a special interest in balanced rules between rights holders and users of protected content. Within the SCCR, the documents reflected the need to have a treaty and therefore it was firmly committed to making headway in the process to adopt an instrument of that nature. Irrespective of the flexibility, which it hoped that all of the delegations would demonstrate in the discussions of the topics, it supported the document submitted by the Chair in the last session as it was a tool which could contribute in a positive manner to make headway in the work of the SCCR.

177. The Delegation of the Republic of South Africa confirmed its commitment to work on exceptions and limitations, both for libraries and archives and educational and research institutions for persons with other disabilities. It thanked the Secretariat for the documents prepared and looked forward to constructive discussions. It aligned itself with the statement delivered by the Delegation of Nigeria, speaking on behalf of the African Group, as well as the statements by the Delegation of Argentina, speaking on behalf of GRULAC and the Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group. As a developing country it acknowledged the critical role of educational institutions, libraries and archives in the dissemination and preservation of cultural heritage. That message was emphasized clearly by the United Nations' Special Rapporteur in the field of cultural rights during her address in 28th session of the Human Rights Council in Geneva. The Rapporteur had stated that "Creativity is not a privilege of an elite segment of society of professional artists but a universal right. Copyright law and policy must be designed with sensitivity to populations that have special needs or may be overlooked by the market." To that end, exceptions and limitations occupied an important place. Various studies conducted had also confirmed the importance of

maintaining a balance in copyright. It supported the Delegation of Nigeria's statement, speaking on behalf of the African Group, which called for progress with regard to text-based work and sending a clear message to the General Assembly and the international community that it was a critical issue for all Member States. It looked forward to constructive engagement on the consolidated textual proposal contained in document SCCR/29/4 with the hope that it would help to streamline the text and put them on a clear roadmap. It also welcomed the updated study by Professor Kenneth Crews and hoped it would positively influence their discussions to reach common understanding on the importance of exceptions and limitations with specific reference to cross-border transfers. In conclusion, the Delegation attributed equal importance to all issues under consideration in the SCCR and it wished to see progress on all three items taking into account their common acknowledgment of the impact of the digital revolution and the challenges arising thereof.

178. The Delegation of the United States of America stated that it continued to believe that the development of high level non-binding principles and objectives relating to national copyright exceptions and limitations for libraries and archives and for educational institutions would be a very positive contribution to international understanding and progress in the areas. Toward that end, it had tabled and briefly introduced statements of such principles and objectives in prior sessions of the SCCR. It appreciated the positive reception that those proposals had received, and at that session of the SCCR, it believed that it was important to move to discussion of those documents. It was eager to hear from other delegations about their views on its proposed language and generally on how to articulate appropriate principles and objectives that could guide the development of national laws. The Delegation also supported further work through symposia or seminars to examine different approaches to national implementation of such principles. The discussions within the SCCR on libraries and archives were central to the knowledge system by preserving and providing access to works that comprised cumulative knowledge, cultural heritage and collective memories of the world's nations and peoples. They helped ensure meaningful participation in the knowledge society and information economy. While libraries and archives themselves relied on a variety of exceptions and limitations to carry out their functions, it was important to recognize that the beneficiaries of exceptions were library and archive users and society at large. Appropriate exceptions and limitations for libraries and archives were an integral part of a balanced copyright system. It thanked Professor Kenneth Crews for updating his excellent study on exceptions and limitations for libraries and archives throughout the world. The comprehensive resource not only informed the discussions at the SCCR, but provided an important resource for Member States who were developing policies in the area. With respect to the deliberations within the SCCR, it had put forward document SCCR26/8 for discussion, which identified a variety of topics organized into overarching themes of particular importance to policy makers to enable libraries and archives to carry out their essential functions. The objectives and principles document recognized the many and varied public service roles of those institutions including preservation and support for research and human development ensuring that people could participate meaningfully in public life. The document focused first on formulating goals that Member States could hope to achieve when providing limitations and exceptions for libraries and archives and then elaborated by providing key considerations to keep in mind in accomplishing those objectives. That approach would provide Member States with flexibility to tailor exceptions to address their own needs within the constraints of international obligations taking into consideration their particular legal, cultural and economic environments. It encouraged contributions to the discussion document by Member States and believed that they could make meaningful progress to better support library and archival services throughout the world.

179. The Delegation of Pakistan aligned itself with the statements of the Asia-Pacific Group, the Delegation of Nigeria, speaking on behalf of the African Group and the Delegation of Argentina, speaking on behalf of GRULAC. It attached great importance to exception and limitations for libraries and archives and for educational and research institutes, which it believed were essential for a balanced intellectual property system. It welcomed the updated

study by Professor Kenneth Crews which provided valuable information but it was concerned at the lack of uniformity or complete absence of exceptions and limitations, which were restricting a large number of people for accessing material both from libraries and archives and also educational institutes. Recent trends also indicated more stringent restrictions rather than otherwise. Digital copying was prohibited in more than half the world except for copying for preservation purpose in countries which had updated their laws. Reform and harmonization of the current system was essential to meet the demands of the global digital information age as had also been recommended by the United Nations' Special Rapporteur in the field of cultural rights in a report to the twenty-eighth session of the Human Rights Council. The Delegation believed that the sharing of national experiences and best practices were informative but they needed to build on that knowledge. Incorporating exceptions and limitations in national laws was critical but insufficient in isolation. There was a need to seriously engage in text-based negotiations and work towards an appropriate international legal instrument. It supported the Asia-Pacific Group's request for appointment of a facilitator to develop the text to ensure concrete progress.

180. The Delegation of Cameroon supported the statements of the Delegation of Nigeria, speaking on behalf of the African Group, the Delegation of Argentina, speaking on behalf of GRULAC and the Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group. It appreciated the quality of the study carried out by Professor Kenneth Crews specifically given that it clarified the concept of exceptions in favor of libraries and archives and indicated that they provide exceptions to those institutions so that they did not have to obtain authorization from the author, rights holder or any other stakeholder and that there was no requirement for remuneration or financial contribution. The Delegation stated that in view of their essential role in the dissemination of knowledge and their capacity to make works accessible to the public at large, libraries and archives should be authorized to appropriately reproduce and distribute documents that were in their possession, with the condition that it be done for non-commercial purposes, for teaching purposes and for research. The number of copies and the quality of the copies should be the subject of an in-depth discussion. It was also important to find a fair balance between the legitimate concerns of having access to knowledge and the interests of the rights holders. Cameroon had started reviewing its legislation on copyright with the support of WIPO.

181. The Delegation of Armenia stated that exceptions and limitations for libraries and archives were extremely important. Libraries and archives played an essential role in the information society. Those institutions guaranteed access to the different information resources, knowledge and media supporting education and culture of the whole country. Currently it was drafting a new law on copyright which broadened the scope of the exception. The draft legislation had been prepared with very close and intensive cooperation with representatives of all relevant stakeholders including libraries, archives and publishers. Armenian law would bring in exceptions and allow libraries and archives in Armenia to digitize effectively, enabling the use of all frameworks. They lived in a globally interconnected world where the cross-border transfer of information was necessary. Realizing those objectives would not be possible without an international standard, which would lay out minimum international standards for countries to adopt and implement in their national legislation, especially regarding cross-border transfers. The Delegation strongly supported legally binding instruments for limitations and exceptions for libraries and archives and research and institutions. It believed that such a legally binding instrument would overcome the challenges faced by libraries and archives in carrying out their work.

182. The Delegation of Sudan supported document SCCR/29/4 submitted by the African Group, the Delegation of Brazil and others, which delved into the rights and necessary balances and provided the opportunity to disseminate knowledge and take advantage of it. The case study carried out by Professor Kenneth Crews shed light on the situation of national legislation and the tendency where a number of limitations and exceptions should be applied in favor of the

establishment of education, libraries and archives as well as research establishments and people having other disabilities. The digital era in which they were living allowed the recording of all memory and knowledge, put it in an easily accessible format, which should be an important source for all researchers and teaching establishments. They should be able to take advantage of those new means of knowledge. It was very important, therefore, to make equal efforts on the part of all of the Member States so that they could enable new generations of students and researchers to have access to all of those sources of knowledge and for the wellbeing of all of their societies. That was supported by the Member States belonging to the south and for the south/south exchanges. If they went through the background of the SCCR's negotiations, Member States from Latin America, Caribbean, Asia Pacific and Africa were involved and the European Union and its Member States had also made efforts. The Directive of the European Union of 2001/29/EU had enabled some of its Members States to introduce the Directive into their national legislation and laws. The European Directive of 2012/26/EU was a positive step. That was a very positive development particularly with regards orphan works. The United States of America likewise had national legislation. From the perspective of the efforts undertaken by the developed countries, all of that strengthened and consolidated the idea of the importance of working together hand in hand so as to be able to achieve a kind of agreement, whatever its form might be, which could help them find balance. The human capital, the intellectual capital, which had sprung from the TRIPS Agreement, could be very positive if they took into consideration the relevant articles. There was development which was supported by several United Nations' organizations, particularly UNESCO regarding open sources and that did not just entail access, but went further to the efforts of those institutions to provide support as a reality for Member States where it was very difficult to access to knowledge. They needed an international instrument so that they could achieve that and take advantage of all of those rights. Sudan had amended its national legislation two years ago to introduce a set of exceptions and limitations in favor of archives, libraries and people who had special needs as well for the research and educational institutions. Even reproduction was allowed. The Delegation was open to take part in any effort whatsoever, whether it was at the level of the studies or the group work to be able to end up with an appropriate form of an instrument. It would be proud to achieve such a treaty like that concluded in Marrakesh.

183. The Delegation of Nigeria aligned itself with the statement of the African Group. Limitations and exceptions remained a priority especially in the context of achieving greater access to knowledge and information for overall societal development. In the context of the digital environment it was no longer debatable that the system of sharing and accessing information transcended national boundaries. It logically followed that the challenges of that environment could not be effectively made within the context of national solutions. Insofar as efforts had been spent in the national systems in upgrading works to address the vagaries of the new environment, there was similarly a need to maintain the balance between the rights of creators and the larger public interest for access to information to enhance learning and research. It thanked the Secretariat for the remarkable updated study on limitations and exceptions for libraries and archives by Professor Kenneth Crews. The information provided by the study had highlighted the existing framework for limitations and exceptions and for libraries and archives and the glaring gaps. It welcomed the Chair's initiative of introducing a tool to stimulate substantive discussions on the Agenda Item. That document along with existing text-based proposal of the African Group and the Delegations of Brazil, Ecuador, India and Uruguay provided the basis for discussions at the SCCR taking into consideration the need to proffer an intellectually harmonized framework for limitations and exceptions for libraries and archives. Finally, it remained committed to constructive engagement on the Agenda Item and hoped that in the spirit of the positive developments it had earlier witnessed in the discussions on the Agenda Item on protection of broadcasting organizations they would be able to achieve significant understanding on the issues listed for consideration.

184. The Delegation of Japan associated itself with the statement made by Group B. The fruits of creative or innovative activities of human beings, cultural materials such as historical, artistic

or scientific were precious assets because they helped learn the past and served as a basis for future development in various meanings. In that regard, libraries and archives played a pivotal role in collecting and preserving such materials and in providing those to the public and were essential of society and should be facilitated. In order to facilitate the operation of libraries and archives many Member States had statutes that provided limitations and exceptions. The limitations and exceptions applied were quite different from country to country. For example, there seemed to be divergent views among Member States on fundamental issues such as who could enjoy such limitations and exceptions or what kinds of works each organization could deal with. Such divergent views were more likely to be observed on the limitations and the exceptions in a digital environment because digital technology had made reproduction or the dissemination of works much easier than before and had a strong impact on the balance between the rights of authors and the large public interest in each Member State. It was of the view that when discussing the issue of limitations and exceptions internationally, it should give due consideration to the social or cultural diversity among the Member States. Therefore, while sharing national experiences and practices, they should focus on how to cultivate a shared understanding regarding the principle to be applied when providing limitations and exceptions. Such principles could serve as guidelines for establishing the legal framework for libraries and archives for each Member State. Sharing national experiences and extracting the common concept from them was the best way to formulate principles. The objectives and principles put forward by the Delegation of the United States of America were a good basis for the discussion. It was willing to engage in work in a constructive manner.

185. The Delegation of Malawi believed that libraries and archives played a vital role in preservation of their various countries, not only for research and educational institutions. At the same time, the importance of protecting the rights of creators could not be over emphasized. There was a need to balance the issues of both the authors and the public at large to access the materials that were generated by the authors. The updated study by Professor Kenneth Crews provided useful information on the extent of limitations and exceptions in most Member States. Therefore, the SCCR's discussions should be guided by the study.

186. The Delegation of Uruguay echoed the statement made by the Delegation of Argentina, speaking on behalf of GRULAC. It endorsed the statement by the Delegation of Nigeria, speaking on behalf of the African Group, the Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group and the Delegation of India. It reaffirmed its commitment to the Agenda Item on limitations and exceptions for copyright libraries and archives and supported document SCCR 29/4, which had been submitted by the Delegations of Brazil, Ecuador, India and the African Group. There was a real role played by libraries and archives in the culture and leisure activities of populations, fundamentally for the disadvantaged sectors of their populations. That had been recognized in that and other fora of the United Nations. Libraries and archives were facing a new reality. They could not conceive of libraries in the same way they had in the past century. They had to make their function more appropriate. They had to adapt to an interconnected global digital library, otherwise libraries would become "news museums". There were archivists and librarians who had come to the SCCR and told them about their vicissitudes and the difficulties that they were facing on a daily basis and were asking for an international solution. Several Groups representing an important number of Member States were receptive to those complaints and were trying to find a solution. It urged the SCCR to continue with the frank discussions, which did not prejudge the result or its nature, but in which the substantive issues were highlighted. They must not forget that some were opposed to the topic and also at the time, to the topic of exceptions and limitations for visually impaired persons although today they could fortunately say that they were close to celebrating entry into force of a treaty which would really improve the lives of millions of people.

187. The Delegation of Malaysia stated that, on limitations and exceptions for libraries and archives, the Delegation aligned itself with statement of the Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group. It thanked Professor Kenneth Crews for his efforts in updating

the study on limitations and exceptions for libraries and archives. The Delegation attached great importance to education and access to knowledge. Towards that end, it believed that limitations and exceptions that contributed to the high attainment of education for all were, therefore, to be highly supported. It supported the proposal for appointing a facilitator or a “friend of the Chair” to facilitate a more concrete based discussion on the issues at hand.

188. The Delegation of Algeria valued the study of Professor Kenneth Crews with regard to exceptions and limitations to copyright which compared the practices in most Member States. Copyright exceptions and limitations for the benefit of libraries and archives would truly enable the realization of culture, the spread of cultural awareness and sciences, especially with regard to the current digital revolution. It supported the statement of the Delegation of Nigeria, speaking on behalf of the African Group.

189. The Delegation of the Democratic Republic of Congo was convinced of the inherent rights of libraries and archival services in the sharing of access to knowledge and education as a factor for development linkages which should enrich cultural diversity which was essential to break the digital divide between the North and the South. Experience and the study of Professor Kenneth Crews had demonstrated properly that changes in national legislation did not settle the problem substantially. They needed an international instrument so that true cultural diversity, which was so desired by the Member States, could be achieved and would always be nourished for humankind.

190. The Delegation of Zambia associated itself with the statement made by the Delegation of Nigeria, speaking on behalf of the African Group. It attached great importance to the issue of limitations and exceptions, an area which was very important to the development of copyright. The issue of libraries and archives were also very important as they provided a pool of historical knowledge upon which the future was built. Libraries and archives played an essential role in information. Particular attention should be placed on balancing the rights of rights holders and the public. Finally, it commended the presentation made by Professor Kenneth Crews as a basis for the SCCR’s discussion.

191. The Delegation of Nepal aligned itself with the statement of the Pakistan, speaking on behalf of the Asia-Pacific Group. It thanked Professor Kenneth Crews for the study on limitations and exceptions with respect to libraries and archives. They were all aware of the important role libraries and archives played in educating the public. They were the only resource of materials for students and academics especially in countries like Nepal. Limitations and exceptions were necessary to maintain an appropriate balance between the interest of the rights holders and users of the protected works. An international legal instrument on exceptions and limitations would play an important role in maintaining such an important balance between the rights holders and the users. It supported the appointment of facilitator or a “friend of the Chair” on exceptions and limitations as it would help in developing a working text on limitations and exceptions.

192. The Delegation of Kenya reiterated the importance of limitations and exceptions for libraries and archives as they provided access to information including educational material. It had an established a national library service that had spearheaded various initiatives to ensure that books were accessible to all, especially those in the far flung areas of its country. The digital environment had brought opportunities and challenges as well. The opportunities included the creation of e-learning material and other published works in collaboration with the rights holders, namely the book publishers. The public libraries provided material in both hard copy and soft copies online. Challenges included access to works from other libraries from other countries. The National Archive in Kenya had recently embarked on a digitization process for the purposes of preservation of the works. That was done in collaboration with the ICT authority and in the process; they had to get authority from the rights holders. The ICT authority engaged consultants to see the process through. Notably, the law was currently being

amended to provide wider exceptions and limitations and that was done in consultation with all the stakeholders. The proposed amendments worked well within the national framework but it also acknowledged that the Internet had enabled the use of works across the borders. The exceptions and limitations, however, varied from one jurisdiction to another. The discussions on exceptions and limitations for libraries and archives were important for Kenya as a country to ensure the balance between the exclusive rights granted and facilitation of access to books and other published works.

193. The Chair invited NGOs to take the floor noting that as they had heard their general views and remarks in previous sessions of the SCCR, they should not repeat those. He then invited the Secretariat to the floor.

194. The Secretariat noted the documents that had been made available were the study by Professor Kenneth Crews and document SCCR/30/2, which referred to the study on limitations and exceptions for museums prepared by Professor Jean-François Canat and Professor Lucie Guibault. There were also three proposals and documents adopted by the SCCR. Document SCCR/26/3 adopted in 2013, which was a working document that compiled references to 11 topics identified as priority topics on the issue of limitations and exceptions for libraries and archives. There were two proposals from Member States: namely document SCCR/26/8, which referred to the objectives and principles on the topic, presented by the Delegation of the United States of America in 2013 and document SCCR/29/4, which was presented by the African Group and the Delegations of Brazil, Ecuador, India and Uruguay. It was a consolidation of the proposed text adopted by the SCCR in 2013. Finally, there was a chart or non-paper submitted to the SCCR by the Chair in December 2014.

195. The Chair summarized the importance of the topic and stated that there was no disagreement regarding the importance of the topic, which was related to the important public service mission carried out by libraries and archives and possibly museums all over the world. There were differences on how to deal with the topic. Despite those differences they were looking at a common goal, through different means, to try to enhance the possibility of collaborating with the public service mission of libraries and archives. However, differences remained regarding the approaches that should be taken in order to see what could be considered as the best way to achieve that common goal. While there were different views on that matter, the starting point was the common goal. One way forward was to exchange national experiences with the common goal of allowing the libraries and archives and possibly museums to comply effectively with their public service mission. Other views suggested the use of principles and designing objectives, which would allow them to clarify how, through either general principles or through specific principles for some topics related to limitations and exceptions for libraries and archives, to tackle their needs. Another view expressed by Member States who had proposed documents, was to have a text-based discussion. The chart was a tool designed for the discussion on the previous topic, Agenda Item 6 and was helpful to get to reach understanding identifying misunderstandings and identifying concepts overlapping and so forth. The chart was a tool that allowed discussion without pushing a desired outcome. The chart was not designed to give the impression that it pushed any particular documents. The chart gave them an opportunity to provide and discuss different views. The Chair suggested that the chart could be a good option to work on as a tool. He invited delegations to consider this approach as starting from a neutral point of view.

196. The Delegation of Australia stated that it was happy to work with the Chair's proposal. It suggested that there were three steps in the process. The first was what were the principles and objectives that they were trying to give effect to? They could start with the clusters that were in the chart but there was also the proposal by the Delegation of the United States of America that gave a very useful basis to work upon those principles and objectives. Secondly, asking the question were they giving effect to those principles and objectives, and if the answer was no, then why not? Why were they not already giving effect to those principles and



objectives? The study by Professor Kenneth Crews challenged them to ask that question in a very direct way. The third point was that if they were not giving effect to those principles and objectives then what could they do to close that gap between the principles and objectives and the reality. When they approached that question it was important to stress that they needed to emphasize simple and immediate solutions over those that were more complex and would take longer. If they came up with concrete outcomes early that were workable within existing frameworks, then that was probably preferable, over longer term work that may not help libraries and archives immediately.

197. The Chair replied that instead of three steps he would describe them as three stages. He agreed that they were logical stages to follow.

198. The Delegation of Brazil stated that it was ready to contribute to the non-paper that the Chair had submitted, but sought further clarification from the Delegation of Australia. It understood that the document that was presented on principles and objectives could also be brought to the discussion and could be part of every topic discussed. The first option of the Delegation, as well as many others, was to discuss the document that was approved in the 26th session of the SCCR. However as that agreement had not been possible, it would support the way forward as proposed by the Chair.

199. The Delegation of Japan, speaking on behalf of the Group B, thanked the Chair for the further explanation on the intention behind the proposed chart. It noted that it would need to consult with the Group. However it understood that the topics in the chart were not decisive to be tackled in the future and some of them might be deleted as a result of a discussion in the future. At the same time, in addition to relevant topics, there was a different structure in the proposal from the Delegation of the United States of America. It requested that the Chair further elaborate the meaning of the structure that the chart had and the reason why it had been drafted that way.

200. The Chair observed that the tool, as in previous charts used for other topics, could be improved. The topics on the chart were not fixed and could be removed through discussion. He stated that the structure of the document from the Delegation of the United States of America was different, but there were common topics. He noted that the study from Professor Kenneth Crews also had a different list of topics which were part of his long study based on the previous study. The chart simply reflected the topics they had discussed in previous sessions. He was ready to adapt the tool. The chart was not an outcome itself.

201. The Delegation of the United States of America thanked the Chair for the thoughtful proposal. Clearly he had taken a lot of time thinking of possible ways forward. It agreed with the points that were made by the Delegation of Australia. It was very important to develop principles and objectives in terms of how different Member States had explored exceptions and limitations with respect to libraries and how there may be gaps in their particular laws that they might want to see if they could find some consensus in terms of how they had approached those. It had a number of questions that would facilitate the conversation based on the principles and objectives documents and suggested that it would be encouraged by hearing how many Member States had approached some of the issues that it had raised. It looked forward to having that as part of the discussion.

202. The Delegation of the European Union and its Member States thanked the Chair for his efforts and commended the chart as an aid to the discussion. It asked the Chair about the differences between the chart and document SCCR 26/3. If the chart was a list of subjects that were supposed to help the discussion while leaving it open-ended and the list of subjects was the same as the initial working document, apart from the initial status of either, how did the Chair see the differences between the two? Its second question was how did the Chair envisage the discussion on a given subject, for example would it be on the basis of principle?

203. The Chair stated that he foresaw that they would start with the topic as it was and see if they could set a principle. They would discuss if the topic had consensus or a common view regarding its necessity to be part of the discussion. If there was a common or majority view then they could try and set out the principle and refer to the document put forward by the Delegation of the United States of America. If they managed to set a principle it would not be automatic. They would exchange views and if they tried to set a principle connected with it then they would follow the approach suggested by the Delegation of Australia and contrast that principle with the study findings of Professor Kenneth Crews. If there was a principle and a gap then they could discuss actions to be taken. If they agreed that there was a need to tackle it then they would discuss what would be the most efficient way to do so. They could do that through the national exchange of experiences which could trigger further action by the Secretariat. At the end, they could have a principle, the reality and a technical discussion on what were the different ways they could tackle each specific point. They may have different options to tackle the gap among the different topics. At that time, they may have removed some of the topics and have a smaller list of topics that were closely related to the exceptions and limitations for libraries. There was a principle related to that and then there was a gap to work and they would have some alternatives in order to achieve the common goal identified. They would probably have more professional answers for exchanging views regarding which was the best way to tackle a specific issue. They would see the reality, analyze the differences in the different topics and have more precise and technical debates or evidence-based findings to discuss properly the options with their pros and cons. In all of that process, no undesired outcome would be pushed in order to accommodate the different views. Responding to the first question, the Chair noted that although there was a document adopted by the SCCR, which contained comments and textual suggestions and different opinions structured in different ways to consider information that might be useful for the list of topics, it was good not to refer to the document but rather to use the chart or non-paper as an informal tool.

204. The Delegation of Brazil, speaking on behalf of GRULAC, stated that it supported the Chair's approach to discuss the non-paper. It was a good basis for the discussion. It was open for the discussion of text of an international legal instrument in whatever form and it suggested that they discuss how the topics applied, how they were effectively implemented in regard to national experiences and how general principles could also be reflected in two or three topics at the same time. That was the flexible approach that had been suggested by the Chair.

205. The Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group, stated that it appreciated the proposal for the Chair's non-paper. It was a constructive approach and a flexible manner of dealing with an issue on which they had a diversity of opinions. Most of the Member States of the Group supported the proposal that had been put forward.

206. The Delegation of Japan, speaking on behalf of Group B, thanked the Chair for his effort in finding a consensual basis for further work. The Group had discussed the proposal and needed further clarifications due to some concerns. The Delegation reiterated that the discussion on the guiding principles and objective level as proposed by the Delegation of the United States of America should be done regardless of the working methodology that would be adopted.

207. The Chair responded stating that he would provide any clarifications to ensure that it could be a useful tool. It was not negative that Member States in Group B required more clarification, because it was fair to be very clear on the tools that they were going to use. It was very important to have structural roadmap on the topic in order to give them time and flexibility in what they were going to prepare or the materials that they were going to use and that they collected, selected and analyzed them in order to have everything based on information-based discussion.

208. The Delegation of Nigeria, speaking on behalf of the African Group, supported the Chair's proposal as a constructive approach that would be productive. For Member States who had concerns about some of the topics, when they started discussions, the concerns could be expressed at that point in time to enrich the discussions.

209. The Delegation of Iran (Islamic Republic of) thanked the Chair for preparing the non-paper. It supported the statement made by the Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group and seconded the interventions made by the Delegation of Brazil, speaking on behalf of GRULAC, and the Delegation of Nigeria, speaking on behalf of the African Group. It fully supported the efforts and believed that the non-paper was a way forward to further discussions on the text for a legally binding instrument. It was both a constructive and flexible approach.

210. The Delegation of Brazil, speaking on behalf of GRULAC, stated that it was astonished that they were not able to discuss the substance of exceptions and limitations because of procedural matters. It asked the Member States that had concerns that their positions would be hindered by the non-paper to respond. Such Member States should clarify on what were the constraints that the very flexible non-paper posed.

211. The Chair responding saying that they would listen to the different statements coming from the different delegations in order to see their reactions to the proposed tool and then respond to the question.

212. The Delegation of Uruguay supported the non-paper and stated that it was a good tool to begin the discussions because it was unfortunate that they were back to procedural matters and were not dedicating time to substantive issues for libraries and archives. There were many people coming to the SCCR who had much to say. They knew about the topic and could teach the Member States on how to improve their situations. It regretted the fact that there were a few delegations that were questioning issues, which went back three sessions. All topics had been discussed in different meetings and yet it seemed like they were starting from the beginning. The Delegation supported the Chair's document and the topics and would like to move on the substantive issues. It also reminded delegations that all the topics were discussed naturally without any problems at least until April 2014.

213. The Delegation of the European Union and its Member States thanked the Chair for his efforts and cautiously welcomed the non-paper. Its views on the process did not appear to be reflected in the non-paper. In particular the clarity outcome was not reflected although they needed that if they wanted to avoid a repetitive discussion on outcome issues under every heading. It asked that the Chair reflected how opposition would be brought into focus in the non-paper. Finally, the non-paper could include a short introduction explaining its intentions.

214. The Delegation of South Africa thanked the Chair for the non-paper. It supported the use of the non-paper as a basis to move forward. It referred to the statement of the Delegation of Uruguay that there were a lot of experts that had come from far and wide, and who had valuable contributions to make to the problems that had been identified in the SCCR.

215. The Delegation of Brazil, speaking on behalf of GRULAC, stated that in the end the SCCR had a mandate from 2012 and in the program budget of the biennium that spoke of the discussion on international legal instruments in whatever form. That was a very flexible approach that all Member States decided to take together in order to discuss that very important issue. The Delegation always had that in the back of their minds when they came to the SCCR and requested clarity on whether that understanding was shared by all Member States.

216. The Delegation of the European Union and its Member States responded by stating that they could read out the mandate that they had in document WO/GA/41/14. It was not clear that

the previous intervention from the Delegation of Brazil, speaking on behalf of GRULAC was attempting to move forward in the discussion. They had held back deliberately from talking about mandate issues because they knew that it was a sensitive issue and was interpreted differently by different Groups. It was surprised that the Delegation of Brazil, speaking on behalf of GRULAC, took the floor to discuss the mandate issue. It requested that either the Chair or Secretariat could respond on the issue of the mandate.

217. The Delegation of Malaysia thanked the Chair for the proposal and agreed with the statement made by the Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group that it was constructive. It looked forward to learning more about the issues and moving forward in a very positive manner.

218. The Delegation of Venezuela (Bolivarian Republic of) supported the roadmap. It stated that it was very unfortunate to those who had spent two and a half days listening to a topic, which was not as important to them, broadcasting. They were there and had listened. They thought it was valuable. When a topic came up that was very important for the developing countries, they once again started talking about issues which were not substantive. It suggested that the next SCCR should begin with exceptions and limitations so that when the issue of broadcasting came up some delegations could withdraw and go with others as a matter of respect. It was important that there was a good atmosphere around the topic of exceptions and limitations both for the developing countries and developed countries, as there were many people with those needs and those requirements. It referred to the proposal made by the Delegation of Brazil, speaking on behalf of GRULAC to reviewing the mandate and stated that it agreed with the mandate and it was clear as to how they should make headway and where they could arrive at.

219. The Delegation of Nigeria expressed its support for statements of the African Group, the Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group and the Delegation of Brazil, speaking on behalf of GRULAC. A diversity of modalities and procedures should not cloud the substantive discussions. The Chair's non-paper was a very good basis for discussion and did not force a rigid approach. It supported proceeding with the substantive discussions on the basis of the non-paper and the modalities outlined.

220. The Delegation of Switzerland thanked the Chair for trying to take into account of all the different views and concerns expressed. The Delegation supported the Chair's proposal and thought that it was useful, fair and would enable them to continue the discussions on the substance without anticipating the results.

221. The Delegation of Australia joined other delegation in thanking the Chair and supported the proposal as a way forward. As had been stated on the previous day, it was important to have a structured conversation around each of the items and that might allay some of the concerns that had been raised.

222. The Chair confirmed that the points made on the previous day had been taken into account. He suggested that the proposals made by the Delegation of the United States of America could be included in the discussion, together with Professor Kenneth Crews' study on limitations and exceptions for libraries and archives.

223. The Delegation of Senegal thanked the Chair for his efforts and stated that it supported the position of the Delegation of Nigeria, speaking on behalf of the African Group.

224. The Delegation of Mexico joined other delegations in supporting the Chair's work that he had carried out with the chart, stating that it was a good way to initiate discussions without judging the results or outcome.

225. The Delegation of Canada joined the delegations in supporting the Chair's efforts and aligned itself with the Delegations of Switzerland and Australia.

226. The Delegation of the United States of America stated that it would not repeat what it had stated earlier with respect to proceeding. It reiterated that it had submitted a principles and objectives document which provided a very helpful basis to discuss some of the topics that they were considering. The approach that the Chair had suggested with the topics in the chart would be helpful to Member States to hear about national experiences regarding some of the topics in the chart and it did not presuppose an outcome in terms of a final resolution. It would be helpful to discuss the chart on that basis also.

227. The Chair confirmed that as the Delegation of Australia had suggested, the chart would provide an immediate tool to provide clarity through identifying a principle as a starting point. The approach would allow them to reach consensus and the tool that the Delegation of the United States of America had submitted could also be used.

228. The Delegation of Ecuador stated that the Chair's tool was very important and enabled them to make progress with the topics, particularly exceptions and limitations for libraries and archives. The tool could be a starting point, which could open up possibilities to continue dealing with some issues which made a reference to other issues that had been submitted in other documents such as the one submitted by the Delegation of the United States of America. At a certain point they would discuss those documents.

229. The Delegation of United Republic of Tanzania supported the way that the tool had been prepared. It commended the work done by the Secretariat preparing all of the documents for the SCCR as stated by the Delegation of Nigeria, speaking on behalf of the African Group. It also supported the modality as the tool would help them to reach a common understanding, taking into account the status of the different Member States.

230. The Delegation of Japan stated that it supported the statements of the Delegations of Switzerland, Canada, Australia and the United States of America.

231. The Chair stated that he was pleased with the continued support for the tool even though it did not mean that they were going to remove the different views or even opposing views related to the different topics. As had been stated by the delegations that supported the tool, it did not have any implication regarding the outcome.

232. The Delegation of Guatemala commended the Chair's tool. It was an excellent tool to kick off the discussions in a fruitful way.

233. The Delegation of Singapore aligned itself with the Asia-Pacific Group's position and supported the Chair's proposal which would be helpful in guiding the substantive discussions going forward.

234. The Delegation of Zimbabwe aligned itself with the statement made by the Delegation of Nigeria, speaking on behalf of the African Group. It expressed its appreciation for the proposal on the roadmap and supported the approach for constructive engagement without prejudice.

235. The Chair stated that he did not wish to invite NGOs to give their views because they would receive views about the process and they wanted to move to the substance as soon as possible. NGOs' contributions would be taken but not for the procedural discussion, only for the substantial discussion. He thanked the delegations for their views regarding the usefulness of the tool, especially those who had considered it useful and a good way to properly discuss the issues. The Chair thanked the delegations who had expressed the need to clarify some of the intentions, confirming that it was not prejudging that they were going to have any undesired

outcome because they worked on a consensual based approach. All the different views were welcome. The Chair would add the introductory paragraph of the chart. However he could not decide the outcomes of the discussion. He foresaw that the discussion of some of the topics would be removed because they were far from treatment related to national exceptions for libraries and archives. After a rich exchange of views, they would have some evidence-based and information-based remarks in order to have clarity regarding the outcomes. The topic deserved a structured discussion on the issues without implying any undesired outcome. He stated that it was not a time to think about procedures because they had a lot of expertise regarding the important topics. He proposed that while he wrote the introductory paragraph, they start discussing the first topic on the list, which was preservation. He suggested that the methodology would be to first exchange the evidence, the situation, the nature of preservation in order to then have the chance to contrast that reality with what had been collected in the report and then have an exchange of some ways different ways to tackle the issues. That could be national experiences in tackling it while having respect for different views in the international forum. He commented on the approach that could be taken. The outcome would be a mature understanding of each one of the topics in an evidence-based way.

236. The Delegation of the European Union and its Member States clarified that the Chair wished them to discuss the first subject while he was working an introductory text on the proposed chart. It requested that the Chair confirm that they were trying to attempt to find consensus on the principle and then the discussion would flow from that.

237. The Chair confirmed the first question and stated that a good way to proceed was to express a common understanding in a principle and they had tools for that including those put forward by the Delegation of the United States of America. That did not have implications for a specific outcome. It was a methodological approach which gave them a chance to discuss things properly.

238. The Delegation of China supported the proposal that had been made as a very useful one.

239. The Chair asked if there were any delegations that opposed the approach.

240. The Delegation of the European Union and its Member States confirmed that they would be starting to discuss the first item on the chart, according to the methodology that the chart was in principle underpinning.

241. The Chair confirmed that was the constructive way to proceed.

242. The Delegation of the European Union and its Member States stated that it was not sure that they had complete agreement. It requested a bilateral conversation with the Chair during the coffee break.

243. The Chair replied that he was ready to tackle any good faith concern that might arise. They were almost ready in the majority to start the discussion. He requested that NGOs be ready if they continued with that approach to give them thoughts about preservation and the results of the Professor Kenneth Crews' report. The Chair confirmed he would use the coffee break to talk bilaterally with certain delegations. The Chair stated that they would start with a substantial discussion on the issues of preservation by receiving the contributions from NGOs on the matter and starting an exchange of views considering the resources they had in front of them. The introduction to the chart had not been finished and would be distributed later. The Chair invited the specialists to start giving their impressions, observations, findings and analysis of the topic, considering the different studies that had been submitted. He opened the floor to NGOs on the topic of preservation.

244. The Representative of the International Federation of Library Associations and Institutions (IFLA) supported the normative text contained in the consolidated document prepared by the African Group and the Delegations of Brazil, Ecuador, India and Uruguay in document SCCR/29/4 and thanked those Member States for their efforts and support. Preservation was one of the most critical, frequently-exercised and widely approved activities of libraries and archives. Other NGOs would give specific examples of preservation challenges facing their institutions and constituencies. He made a few general points. First, not all preservation activities required copying, for example, the de-acidification of printed books, but many preservation activities did require copying. The critical point within the framework of the discussion was that copying for preservation was not for the purpose of creating additional copies for use, but solely for preservation. Second, preservation standards and practices varied according to the medium being preserved. For example, preserving paper-based documents was different from preserving film, which in turn was different from preserving digital files. The need for preservation existed in a variety of media and formats and may include the migration of content from obsolete storage formats to different formats. That was why the phrase in the consolidated text, “regardless of their format” was essential. Finally, and perhaps most importantly, libraries and archives must collaborate across borders to preserve the complete cultural heritage of peoples who had migrated and whose recorded history existed in libraries and archives in multiple countries. Its colleagues from the British Library and the University of Illinois Archives gave some excellent, specific examples of that issue at the side event and the SCCR would hear additional examples at the session. Those cross-border needs clearly required normative action at the international level as they could not be resolved at the national level. It therefore remained mystified that some Member States continued to assert either that those challenges did not require a cross-border solution or that they were not important enough for SCCR to address.

245. The Representative of the International Federation of Reproduction Rights Organizations (IFRRO) congratulated the Chair on his reelection. He stated that it was the representative of collective management organizations and authors and publishers organizations in the text and image sector with 145 member organizations in some 80 countries worldwide. The collective management organizations in the text and the image sector, which were referred to as reproduction rights organizations (RROs), existed on all continents in small and countries, in developed countries as those under development. It understood preservation as reproduction, including digitization and other forms of electronic reproduction for the sole purpose of preserving and archiving the copyright work. That implied the further use of the reproduced work. It acknowledged that there were countries where appropriate exceptions may be required to enable institutions to reserve preservation duties in accordance with the public services and supported such exceptions in national legislation. A number of Member States included such exceptions in their laws. Rights of reproduction for assigned libraries and archives under an exception may compromise the making of a copy to replace a work that was already included in its collection, where the original was fragile, damaged or needed to be completed or required conversion from an obsolete format. Format shifting may be required for continued preservation due to technical obsolescence of recording media and the resulting need for recovering immigration from one format to the next. Such exceptions should be made subject to the work not being commercially available. Preservation copies other than those preserved through national libraries deposit schemes which were allowed through an exception should be limited to works which were no longer commercially available. A work, which was available in the market and had been preserved through a national deposit scheme, had no need for further preservation. The use of a commercial or library under an exception must be qualified and restricted to the original work in the procession of the collection or when appropriate the replacement copy. A preservation copy may be used instead of the original copy, rather than in addition to it. Also, in accordance with the three-step test of the Berne Convention, the use must not pursue any direct or indirect commercial purpose. It recognized, however, the important role of libraries in preserving and providing access to cumulative knowledge and cultural heritage. Appropriate licensing arrangements should ensure that they could perform

that role adequately. Most specifically, online access and other forms of making works available to the users and further distribution should be made only under licensing agreements with rights holders or their representatives such as RROs.

246. The Chair thanked the Representative of IFRRO for its very detailed comments on preservation. The intervention was an example of the richness of the exchange that they were undertaking, as was the previous one. They had received information regarding the importance of the activity or the topic to be included in the copyright system or in the national systems and they had received input regarding some concerns that had to be tackled when they undertook such efforts. For example, regarding what happened to the preservation copy when there was commercial availability in the market. That was an interesting and substantial debate that they should focus on because it was giving them the chance to see the importance of the topic and the boundaries of the topic in order to have clarity and a common understanding. He urged them to listen carefully to the contributions made by NGOs.

247. The Representative of the International Council on Archives (ICA) referred to the fact that Mr. George Twumasi on the panel had mentioned the preservation of archives when he had stated that South Africa was alone in Africa having adequate broadcasting archives. The point was that other African countries were suffering and he was right. A country without archives was losing its past and depriving its citizens of any understanding of their cultural roots. Preservation might be thought of as a purely national activity and countries that did not have it certainly needed encouragement and assistance to introduce legislation that met minimum standards for the preservation of their archives. There were however important international dimensions to the question of preservation. Diplomats sent reports home about their observations of affairs and those reports could provide important evidence about the subject country. The history of the first Queen Elizabeth would be very much the poorer without the insights of Spanish and French ambassadors at her court preserved in Spain and France. They were essential sources for British historians. That was even truer when one country had been ruled by another. The archives of the former colony could not be complete without copies of documents kept elsewhere. There were records of individuals, companies and governments in Britain, France, the Netherlands, Portugal, Germany and Italy to mention only some countries. Those countries now wished to reclaim knowledge of their past. In 1879, the British and the Republic of South Africa had sought and after some major reverses eventually succeeded in subduing the Zulu Nation. The Zulu people may not have been interested in creating written records. The British, on the other hand, had been doing so for centuries. As a result, the people of the Zulu Nation needed to travel to London if they could not secure copies of their records. That meant two flights to get to London, taking nearly 30 hours. The preservation of modern materials involved the use of technology that was not available in all places or even in all countries. The electronic materials must be frequently migrated and copied to be preserved and the service to store them could be situated anywhere in the world. The Representative suggested that they consider the meetings of the SCCR. There were records about them in the archives of every Member State and every NGO that attended, as well as by the Secretariat itself. Preservation of those records was an international issue.

248. The Representative of the International Federation of Journalists (IFJ) had a keen interest in promoting conditions in which independent authorship could thrive. As an author and freelance journalist, the Representative wrote and edited reports on science and technology. The Representative's ability to make a living as an independent professional author depended on the strength of authors' rights laws, the future of which they were gathered to discuss. It was committed to excellent libraries worldwide. It depended on having educated readers and viewers. He strongly supported its member's work being archived, while being aware of legal accidents that had turned archiving into parallel publication. The Representative believed that the worthy goal of building excellent education worldwide and the libraries that supported it must be met by adequate funding for all their supplies, for buildings, sanitation, words, sounds and images. The Representative stated that he was also an unpaid director of the Copyright Hub



based in the United Kingdom which sought to devise bases to make it much easier to obtain licenses for use, particularly small uses of creative works. The Hub was developing technology that may eventually reduce the need for exceptions and limitations and authors' rights. That was one example of authors, publishers and users working together constructively. In the interim, wherever there were exceptions they must be with fair remuneration and with capacity building to ensure that remuneration was fairly contributed to authors and performers in all countries. For publishers it was tempting to use new exceptions that allowed uses of work for free. That must be especially tempting where a Member States was less wealthy and much of its education and research budget was going to very wealthy corporations in the global north. However that was not the answer. Unless authors, including authors in less wealthy countries, could make an independent living, the world would be deprived the works reflecting cultural diversity. In those Member States that did not, the infrastructure for collective management of payments for authors, whether used in education or when archive copies were made available to the public, made all the difference. It was heartened by the Delegation of Brazil for responding to fair remuneration. Money from a collecting society largely for work in education made the difference between solvency and the opposite. Regularly authors were presented with contracts that demanded they sign over their rights in their work, including the rights to any money from educational or library use. They were in much the same position that the Representative of the International Federation of Musicians had described previously. In order to fulfill the part of WIPO's mission that was to, "promote through international cooperation the creation of works of the human spirit" they needed to address the issue of such contracts. Given the imbalance of negotiating power they needed eventually international instruments to address that question. In the Anglo Saxon world in particular, they were told that "freedom of contract" was sacrosanct and prevented that. In practice, that fine sounding slogan meant the freedom of a more powerful party to impose terms. The Representative invited the delegations to contact it about possible initiatives at WIPO on the vital matter of unfair contracts that defeated the purpose of authors' rights.

249. The Representative of the International Authors Forum (IAF) stated that Sappho, the great Greek poet of the sixth century, had said that they shall be remembered in their songs. Alas there was no preservation or digitalization in cell phones at that time and so they only had fragments of her incredible poetic output. She generally supported preservation and digitization. Like Sappho, IAF wanted works to be preserved. The Representative gave a personal example of her own archive which included 34 published works and over 16 plays, which were deposited with her university, Kings College London. Many authors would sell their archives in order to leave some legacy to their families. The Representative had decided to donate his archive to his university in the hope that they would preserve and digitize it in time. There were other more distinguished donors including the Archbishop Desmond Tutu. The Representative supported the more technical comments made by the Representatives of IFRRO and IFJ. Authors worldwide were suffering from falling income, but above all, they wanted their work to be preserved, to be read, to be available to their audience to the public wherever that may be.

250. The Representative of the International Group of Scientific, Technical and Medical Publishers (STM) recognized that some exceptions and limitations remained relevant if such exceptions were carefully crafted so as to comply with the three step test and one, accurately described the uses that should not require permission, two, identified the person who may carry out those uses without permission and three, circumscribed the extent to which they may use the works in question without permission. He believed that carefully drafted exceptions and limitations would not erode or interfere with the market for STM materials. Any exception or limitation newly introduced would also fully need to take into account the amplified risks of the digital environment, where a digital reproduction of a digital work could be identical to the original work. In that sense, digital was different from print. It must also be recognized that different circumstances would apply in different countries, consistent with local legal traditions and experience and that the Berne Convention as well as the WIPO Copyright Treaty and

TRIPS Agreement enshrined Member States' ability to legislate their own exceptions, notwithstanding the principle of national treatment contained in those treaties, so long as those exceptions met the three step test. Publishers recognized the importance of the long-term preservation of their works. In many sectors, such as scholarly journal publishing, publishers had acknowledged the shared responsibility that new publishing technologies brought and had developed practical solutions both within and outside of licensing relationships. Publishers therefore supported copyright exceptions that ensured that copies were preserved and maintained for general access after copyright had expired. Publishers opposed copyright exceptions that provided access to such copies during the term of copyright, in particular where it would compete with commercial offerings. Copying for preservation and copying for current access must be strictly separated. Libraries for non-commercial research or educational institutions should be able to create and use a digitized archival copy to replace lost or damaged originals in the public or "circulating" collection of the institution (or in restricted collections for scholarly use), if new originals or authorized copies were not available commercially or if the library could not obtain access to an archival copy through the mechanisms identified in their license or subscription access agreements. Those uses should be limited to replacement and not allow the creation of further copies or generally for access outside the institutions' user community. Many STM publishers provided for archiving in their license or subscription access agreements. Libraries should also be able to "refresh" the archive by creating new digital copies from time to time to accommodate technological changes in areas such as formatting or digital storage requirements. More than one copy at a time could be made as may be necessary to ensure that replacement archival copies could be made in the future.

251. The Representative of the Civil Society Coalition (CSC) stated that his position was inspired by the recommendation of Communia International Association on the Public Domain that read, "We are calling for harmonized and broad and compulsory exceptions to the rights of reproduction in order to allow libraries to fulfill their traditional function in the aligned environments. And in order to be able to provide access to knowledge and culture, they must benefit from compulsory and harmonized exceptions which will allow them to make their collections available online for noncommercial purposes." As an academic, the Representative was concerned to see proposals to introduce restrictions to any possible exception. It called the attention of the delegations to the specific nature of digital, native works and the risk of a complete memory hole for the twenty-first century, at least for the first half of the decade. Most of the Internet of the 1990s, the digital native works, was going to be permanently lost if they did not act fast. They carried a collective responsibility of preserving the knowledge and in avoiding a memory hole for the twenty-first century of the digital native works.

252. The Representative of the Knowledge Ecology International (KEI) stated that preservation was obviously important for everyone, and archiving in general was both of local benefit and to some degree a global public good. It wanted works preserved and copyright and trade negotiators to sort out the issues regarding access, which would often be context specific. Everyone should have as a minimum an exception for preservation. Preservation was part of a package of exceptions relating to archive and preservation. That should move forward as one possible early deliverable on a broader work program on minimum copyright exceptions, even if not all issues regarding exceptions were appropriate for harmonization on minimum standards there may be more common ground on preservation than on any other issue. Preservation also involved such issues as exceptions to technical protection measures and the importance of exceptions not only to copyright but also for related rights. Knowledge about one country may reside in documents from other countries, as was illustrated in WikiLeaks. The paper could go further in its conclusions, rather than saying such exceptions may be allowed, the conclusion should say that Member States should have such exceptions and there would be value in an international instrument which stated that exceptions "shall" be a national law.

253. The Representative of the International Publishers Association (IPA) noted that preservation was the first topic on the proposed list of topics in the Chair's table. The Representative did have views on which of the topics were specific to libraries and archives and which were overarching and therefore not related to the Agenda Item, but preservation was clearly one where it would like to further the substantive debate. First of all, publishers wanted their publications, including their digital works to be part of a nation's heritage. They shared the objective that national libraries and other institutions, which were authorized to engage in preservation, should be technically, financially and legally enabled to do so. Most importantly, preservation had to work in practice. In the debate about preservation they must differentiate between works that were out of copyright, works that were unpublished, out-of-commerce works and commercially available works. There were different interests involved in each of those categories and there were different levels of consensus between different stakeholders for each of those categories. Digital preservation of non-digital works and the preservation of born-digital works created unique challenges, challenges which were not yet fully resolved but that many were working on and gaining valuable experience on. The preservation of digital works was not a single act, but was an ongoing process. Preservation of born-digital works essentially required close collaboration between rights holders and libraries. That was necessary for several reasons. Firstly, agreeing on what to preserve, publishers may publish a work in many different formats. They may also hold such works in different formats in their own databases, sometimes in master copies which were more structured and richer in information. It asked which of those formats should be preserved for posterity? It was surely the one with the most information that would be the most valuable. How should they preserve online databases which were constantly being updated, where there was no single published edition and where a copy once made would be out of date the moment it had been locked in for preservation? Another reason why they must collaborate was to agree on how to provide digital files to preserving libraries. The most efficient mechanisms was either to automate delivery to libraries in a push format or allowing libraries into the systems of publishers to harvest files as and they saw fit so they could select and choose which files to preserve and take onto their own databases. There were also some publishers who allowed certain national libraries to host backup copies of their publication databases based open a memorandum of understanding. A truly win/win situation could be achieved. Most important and challenging in achieving understanding was how the preserved copies could be accessed. That was not an issue that could be set in stone in time once, because libraries changed the way readers wanted to access content changed and the way the publishers were offering their works changed. Therefore, close collaboration would achieve the best result. They could not have a meaningful discussion about preservation without bearing that in mind. The Representative offered to provide more detailed examples, ideally together with the organizations representing libraries and other stakeholders. They did not agree among the stakeholders on what WIPO's normative role should be, but there was very much common ground and that common ground was a very fertile ground on many aspects of preservation. Member States who were considering their national preservation policy would benefit from such information and the Representative expressed sadness that an expression of interest for more information on how that worked in practice had somehow become a political position in the SCCR's debate. Libraries and publishers disagreed on what WIPO's normative role should be, but they did agree that better knowledge and understanding of what the practical issues were would be good for all.

254. The Chair commented that the Representative of the IPA had invited a practical approach based on what was happening in reality, looking at experiences and using that as part of the discussions. There was much to listen to and deepen the discussions because there were a lot of contributions to be taken into account. They may consider when preservation work was undertaken. It would depend on the type of work, because there may be implications if it was a work in the public domain or from commercially available work. The treatment of the digital-born works or non-native works would have implications. It was not just a stage for receiving the high legal and philosophical position regarding the importance of topic. He encouraged delegations to consider the very specific contributions for the debates and to review the contributions. The

discussion was getting into the work coming from the specific needs and the reality, the experiences, the mistakes committed and how best to tackle the issues related to the topic and how they could consider the best way to achieve an improvement. The exercise was becoming very useful.

255. The Delegation of Cape Verde requested a presentation of a short video on the WIPO workshop at Cape Verde on the presentation of the Marrakesh Treaty.

256. The Delegation of Brazil stated that as a participant at the Cape Verde event, it seconded the request noting that the good spirit of Marrakesh could benefit the SCCR's discussion.

257. The Chair stated that, due to technical difficulties, the video would be played later.

258. The Representative of the Scottish Council on Archives (SCA) used the example of digitization work taking place at the Glasgow School of Art to comment on the need for an international treaty to include a preservation exception for archives. In May 2014, a fire severely damaged part of the Glasgow School of Art, Charles Rennie Mackintosh's architectural masterpiece. The Mack library was lost and parts of the archive collections were also damaged. That experience highlighted the importance of preservation exceptions in copyright law for archives and libraries. Since the fire, the archive collections held at the School had been inaccessible, while essential conservation treatment had been carried out. Limited access to physical collections would be available while renovation of the Mackintosh building was completed. There were now plans to digitize most of their collections during the conservation process, by relying on the preservation exception in United Kingdom law. To compensate for lack of access during conservation treatment, the archivists had made some material available from their collections through their online catalogue. That material had been digitized on an ad-hoc basis over the years and took place before the fire broke out. Archivists at the Glasgow School of Art had undertaken a comprehensive rights clearance exercise for the material they had made available online since the fire. They contacted relevant collecting societies in the United Kingdom to assist in the project. The societies involved could only provide a few contact details, despite being provided with a list of 195 rights holders. That illustrates that licensing could not fill the gap when exceptions to copyright law were unavailable for archivists because collective management organizations did not always hold a mandate for the types of rights holders most commonly represented in archive collections. From the study by Professor Kenneth Crews, they knew that 89 out of 188 Member States did not provide a preservation exception for archives, or approximately 45 per cent. Seeking individual permissions in the absence of specific preservation exceptions was beyond their resources. Exceptions were essential for safeguarding continued access to archive collections and they could not be replaced by licensing agreements where no mandate existed. An international treaty would provide a basis for introducing exceptions where they were needed and would support preservation of archival heritage regardless of location, especially where collaborative, cross-border, digital preservation initiatives were beginning to come to fruition.

259. The Representative of the Trans-Atlantic Consumer Dialogue (TACD) asked whether their cultural and historical heritage was better dead than read and was the preservation of their common past a public good that was much better read than dead? If they did not take urgent action, much of that legacy would either be lost forever through deterioration or just being lost, or it would remain effectively dead because it would not be accessible to most of the people to enjoy, study or research. Despite living in a digital age, it asked whether some in the room were trying to defend an information and innovation strategy of scarcity in stark contrast to building socially useful, online abundance. The vast majority of delegations considered preservation a moral and public service responsibility. Nevertheless, the complex and incomprehensible jungle of often irrational current copyright laws made it almost impossible for librarians and archivists, most of whom were not IPR lawyers, to fulfill that responsibility internationally in cross-border operations with any degree of legal certainty. That legal uncertainty created something called

preservation chill. They were inhibited from the right to preserve, which was their job, because they were afraid of taking the risk of being sued. Commonsensical social practice conflicted with archaic, chaotic copyright laws that were causing the preservation chill. Why was an international solution from WIPO needed to allow the legal cross-border shipment of archive works of cultural value? Millions of consumers in Europe and the United States of America supported an international exception to copyright to submit the supply by one library or archive of a copy of a work to replace a copy of that work that had been preserved in the receiving library or archive but had been lost, deteriorated or destroyed. International copyright flexibility was needed for academic and journalistic research to easily access libraries and archives around the world for the good of advancing, restoring cultural justice between the countries of the north and the south. Consumers were overwhelmingly in favor of international cooperation and legal changes in favor of cultural preservation and in favor of sharing all of that knowledge which belonged to all of them.

260. The Representative of the Society of American Archivists (SAA) stated that it was North America's largest professional archival organization and because its members managed billions of primary source works from throughout the world, it had been coming to WIPO to encourage uniform standards. However, it had been discouraged by the constant drone that all WIPO should do is "share national experiences." Many of its colleagues had concluded that that archives' only choice was to consider copyright irrelevant. Fortunately, the examination of Professor Kenneth Crews' data at the last session of the SCCR suggested a way forward because it showed that nation-specific measures were failing. Society's dependence on and use of archives had grown tremendously in the networked world, but they could not fulfill their mission to preserve the world's heritage and serve their global users without consistent and predictable laws. Professor Kenneth Crews' 2015 updated study showed that 45 per cent of Member States did not permit archives preservation copying and those that did provided a dizzying array of variations. Did not WIPO exist to resolve those national discrepancies and allow a fair environment so that everyone knew where they stood no matter what country they dealt with? The reality was that archivists throughout the world were facing huge preservation challenges both individually and collectively. Archivists knew that preservation of certain resources could only be conducted via international collaborative projects such as the example provided at the side event, that of Chinese scholars needing to find a way to capture and preserve the many records about their country now found around the world in the personal papers of missionaries who served in China in the nineteenth and early twentieth century. What did archives preservation mean? At its most basic level it required three core steps. One, making a copy, whether on paper, film or digitally. Two, making regular backups and security copies. Three, making available to users the replacement copy when the original had become damaged, obsolete, lost or severely at risk. Accordingly, what archivists needed for a preservation exception was the ability to make copies of any kind of unpublished work that was held in the archives, the ability to make and or migrate as many copies as were required to meet the preservation purpose and to make those copies made for preservation purposes available to the public only in the same manner as they could have made the original available. Twenty-first century archivists could not respond to their global audience without clear exceptions. Professor Kenneth Crews' 2015 study clearly showed that costly confusion remained. That may be difficult work but it was WIPO's job to find a twenty-first century solution for the interconnected world.

261. The Representative of the International Society for the Development of Intellectual Property (ADALPI) congratulated the Chair on his election. It stated that its fundamental tenet was that the protection of intellectual property strengthened creativity and innovation and contributed to the building of a strong knowledge economy provided that it was adequately implemented and applied by striking a fair balance between the protection of intellectual property and public interest. He referred to the right to culture contained in the United Nations' human rights instruments, which had been mentioned previously and played an important role in the area of long-term preservation of cultural productions. By uniting access to culture,

protection of authors, freedom of creative thought and long-term preservation in a broad right to culture, Article 27 of the Universal Declaration of Human Rights and Article 15 of the International Covenant of Economic Social and Cultural Rights contained a particularly promising framework for reconciling the interests of authors with those of the general public. Key to the successful realization of that objective was striking an adequate balance between the different components of a right. That could happen in a variety of ways, through limitations and exceptions, through restrictions on the exercise of rights, or simply through practical solutions. As both components of a right to culture should complement each other and not be pursued at the expense of the other, practical solutions were likely to produce more promising results especially as they would be able to accommodate the particularities of the sector and of local infrastructure.

262. The Representative of the Canadian Library Association (CLA) stated that it had represented individuals and libraries of all types of Canada since 1946, including specialized, government, school and academic libraries. Libraries and archives recorded the heritage and knowledge of the people of the world. The preservation of those works was one of the fundamental missions of libraries and archives. It understood that to include reproduction meant both digital and physical reproduction for the purpose of preserving and archiving a copyrighted work. Preservation ensured that the valuable copyrighted work that was available at that time would continue to be available for use in the future. It saw no role for licensing in ensuring the preservation of works. Professor Kenneth Crews had identified that 99 Member States authorized libraries to make copies for preservation, leaving 89 Member States without that exception. Libraries used those exceptions to ensure preservation of rare works, fragile works or works at risk of vandalism where replacement would be difficult or impossible and where the work had national or cultural significance. In some situations, the library may preserve the original work in storage and offer the copy for regular use. The library may create multiple copies, complying with preservation standards that changed over time. For fragile physical works, libraries may need to format shift to ensure long-term availability of the material. For example, a library that held a collection of historical photographs on plates that were degrading may create copies in print or in digital format to allow users to view the photographs without causing further damage or speeding the degradation of the original. Format shifting also applied to digital works. A DVD was easily scratched or damaged and rendered unusable as a result. A library may create a backup DVD to ensure preservation of the content. Those works were not offered to the library patrons unless the original was not used. Some libraries offered backups on disk to ensure that libraries continued access to content that they had purchased recognizing the platforms for accessing digitized or digital works could become obsolete, sometimes within five years. Library vendors were not eternal. An international exception was needed to permit the supply by one library or archive of a copy of a work to replace the copy of the work that had been preserved in the receiving library or archive, but that had been lost or destroyed. The two institutions could be in different countries, so the libraries of both countries would need to make receipt of the copies. The UNESCO Charter on the Preservation of Digital Heritage of 2003 and the Vancouver Declaration of 2012 recognized the important role legal frameworks played in international digital preservation efforts.

263. The Representative of the German Library Association (GLA) stated that it represented 200,500 libraries within Germany. Digital long-term preservation required technical instruments and efforts like the Representatives of the IPA and the SAA had mentioned. The storing of the archives on CD was not enough because the archive would vanish or not be usable after a short period of ten years or so. The Representative stated that while not a technical expert on archiving, it was aware that it required multiple copies in new formats to guarantee their usability in new operating systems. There was urgent demand for services to help to copy and store those resources. The Berlin State Library used an international service in Michigan in the United States of America to store resources, but only with the permission of publishers. They did not provide any access in that framework. Many publishers had given permission to Port Cohort in Michigan but that was an international issue, as licensing was needed but not given in

many cases. A harmonized exception, which allowed service providers to store digital resources in foreign countries without licensing would help to solve the urgent problems.

264. The Representative of the European Bureau of Library, Information and Documentation Associations (EBLIDA) stated libraries played an important role in the network of cultural institutions in charge of preserving the nation's history and archives. The mission was done on behalf of the general public, education and research. It emphasized that while conditions under which print and other materials entered permanently into the library collection were different, most content provided online was offered as temporary services, based upon the expiry of the subscription. In many cases even when licenses provided for perpetual rights of access in favor of library and its users, libraries could not obtain backup files for preservation but only had access from the producer's web site who did not give guarantees for long-term preservation. The European Commission's recommendation of 27 October 2011 highlighted that in spite of progress made across the European Union on the preservation of digital material, in several of its Member States no clear and comprehensive policies were in place on the preservation of digital content. The absence of such policies posed a threat to the survival of digitized material and may result in the loss of material produced in digital format. The Representative stated that an international solution providing a minimum level of international standards in preservation exceptions regardless of the format of publication would support the development of comprehensive policies for the preservation not only of physical materials but also of digital content for the future.

265. The Representative of the Canadian Copyright Institute (CCI) stated that it was an umbrella group representing creators, publishers and distributors. At the twenty-ninth session of the SCCR it had shared the experience of Canadian writers and publishers relating to exceptions and limitations relating to education and wished to update those comments in the spirit of moving towards evidence-based comments. To summarize briefly, in the fall of 2012 Canadian national copyright law was changed to allow fair dealing for the purpose of education, parody or satire. Publishers and writers were pleased to see parody and satire included, but 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 those copies to compile course packs and other teaching tools as part of their curriculum. Under the collective licensing regime, creators and publishers were compensated for the use of the work. Unfortunately in its opinion, universities, colleges and schools had used the ill-defined fair dealing exception to radically reduce the compensation they paid to writers, publishers and other creators. Specifically, the Canadian courts had suggested that "short excerpts" could be used under fair dealing for education and educators had defined short excerpts as, 10 per cent, of a copyright protected work, one complete chapter from a book, a single article from a periodical and an entire poem. Those guidelines were not part of Canadian law. They represented what educators would like the law to be. Emboldened by the publication of their own guidelines, educators had stopped paying for collective licenses through Access Copyright, the collective rights agency. Recently, the audit firm PriceWaterhouseCoopers (PWC) had analyzed the impact of the guidelines on the educational publishing market in Canada, including the effect on teachers, professors, students, writers and publishers. The study would be released in Canada in the near future. In addition to quantifying the damage to writing and publishing from educators' aggressive interpretation of the changes to the fair dealing exception in Canada, the PWC study concluded that the production of home-grown educational materials would inevitably decline. The intended consequence, which was wider access to quality educational materials, would be trumped by the unintended consequence, the withdrawal of creators from the educational marketplace. As the PWC study pointed out, creators must be compensated or the business model was broken. It hoped that an understanding of the Canadian experience could be useful to the SCCR as the discussion of educational exemptions moved forward.

266. The Chair stated that as there were no additional requests from the floor from NGOs they would listen to requests from the delegations on the topic of preservation.

267. The Delegation of Brazil stated that of all of the 11 topics, the first one, preservation, was the one that clearly had the most convergent field. The role of preserving literary works was one of the most critical attributes of limitations and exceptions. It was at the heart of the mission of archives and one of the main activities undertaken by public libraries. It was undeniable that the public service rendered by those institutions was fundamental for the perpetuation of knowledge in all its possible formats. Limitations related to preservation were already provided by many national laws and should be extended and adapted, taking into account digital technologies. The Delegation proposed the use of concepts that were technology and format neutral so that there was no need to revisit the international legal dispositions when new developments occurred.

268. The Delegation of Nigeria, speaking on behalf of the African Group, stated that its perception was that there was overwhelming consensus on the need to have an international instrument protecting limitations and exceptions from carrying out the necessary work they needed to do to disseminate knowledge and preserve works. They had highlighted the many reasons and the various instances where they had faced challenges because there was no universal instrument allowing them to preserve works, where they needed to keep the copies for works, works at the risk of vandalism and works that had deteriorated. Many reasons had been provided. They had also highlighted the fact that contracts and licensing agreements could not suffice where there was a gap in an international instrument on limitations and exceptions. It hoped that there was credible evidence, including the study by Professor Kenneth Crews that an international legal instrument was a necessary step that the SCCR needed to take to ensure the protection of knowledge, cultural knowledge and to preserve it for the generations ahead.

269. The Delegation of the United States of America stated that it was pleased to participate in the discussion on preservation, which was a very important topic for libraries and archives. In document SCCR/26/8, which it had put forward, it had identified a number of objectives and principles in the area, including the overall objective which was to enable libraries and archives to carry out their public service role of preserving works and supporting limitations and exceptions in the area. It had identified specific principles such that limitations and exceptions could and should enable libraries and archives to carry out their public service role of preserving works that comprised the cumulative knowledge and heritage of the world's nations and peoples. To that end limitations and exceptions could and should enable libraries and archives to make copies of published and unpublished works for the purposes of preservation and replacement under appropriate circumstances. The need for such preservation existed in a variety of media and formats and may include the migration of content from obsolete storage formats. It had also identified that it was important to enable libraries and archives to carry out their public service role mission of preservation in a digital environment. Given that digital technologies were changing how libraries and archives preserved access and preserved digital content, limitations and exceptions should appropriately ensure that libraries and archives could preserve the works in a variety of formats. It appreciated all of the work that had been done by Professor Kenneth Crews in his review of various legislative approaches in his recent report. It would like to go even deeper. It would like to also understand the rationale for different policy decisions and how various Member States may be currently considering ways to update and improve their laws in that area. It posed the questions: What works were currently not being preserved that should be? What works should preservation exceptions cover? How had other Member States dealt with distinctions between published and unpublished works in the variety of media? It would also like to know, for example, how preservation in digital forms and dissemination of works in digital forms were affected by TPMs attached and how different Member States had dealt with preservation and dissemination in that regard. While it could ask a number of other questions, it recognized the very important nature of the topic and hoped that it could continue to explore the issues.



270. The Delegation Brazil requested that that delegations share national experiences on the topic of preservation to enable a deeper understanding of how limitations and exceptions contributed in specific cases to the work of libraries and archives.

271. The Delegation of Canada thanked the NGOs for having provided their views. It requested that the Delegation of the United States of America repeated the questions that it had raised as they were particularly helpful to dive into the substance.

272. The Delegation of the United States of America stated that while it recognized the impressive work of Professor Kenneth Crews, there were many different topics that really intrigued it. It would like to understand the rationale for different policy decisions that Member States had made in the area and how Member States may be considering additional ways to update and improve their laws. It was also concerned about what works were not being preserved that should be. What works should a preservation exception cover? How had other Member States dealt with distinctions between published and unpublished works? They had heard about the preservation exception through the presentations from the NGOs. It also recognized that users of libraries and archives had increasingly received information through digital means and delivery. It had discussed specifically allowing preservation in digital forms and dissemination of works in digital forms that had TPMs attached. How did they craft an exception to encourage users to participate meaningfully in the digital information economy without compromising security? They could probably go on with many more but it hoped that it could engage actively in discussing those types of issues.

273. The Chair thanked the Delegation of the United States of America for repeating the questions. He noted the issue of the variation of media and the possible problems that might be caused by TPMs in regard to the preservation activities. The general objective was described through the term "under some conditions" and it was time to know what the conditions were.

274. The Delegation of Algeria stated that, on the subject of preservation, it had provided for an exception and limitation in its copyright law. The exception allowed libraries and archives services to preserve one copy of the work under limitations and exceptions. Given the importance of the subject in the context of an international legal instrument, they needed to harmonize the laws of all countries so that all the countries in the world would provide an exception or a limitation to preserve works to avoid them becoming obsolete or in order to ensure their migration to a digitalized form and to preserve digital works. That was a very appropriate provision for an international instrument. As Professor Kenneth Crews' study had shown, some Member States did not provide exceptions for preservation and others provided fairly detailed exceptions. The subject should be harmonized throughout the world in order to preserve works that were important for the whole world.

275. The Delegation of the United Kingdom explained that its copyright laws had been changed in June 2014 to make it easier for libraries, archives and museums to make copies of any type of copyright work held within the institution's permanent collection. The aim was to ensure that their cultural heritage was not lost for future generations. The current international framework and the three-step test were acceptable to provide for that exception. It was surprised that Professor Kenneth Crews' study had found that 45 per cent of Member States did not provide for an exception for preservation. It was interested in knowing the reasons for that.

276. The Chair stated that they could summarize that there had been two levels of discussion. The first one was a general objective, for example, that the SCCR had stated that on the topic of preservation it considered that in order to ensure that libraries and archives carried out their public service responsibility for preservation, including in digital form of the cumulative knowledge and heritage of nations, limitations and exceptions for the making of copies of works may be allowed to preserve and replace works under certain circumstances. They had then

entered a discussion getting deeper into the topic, for example if preservation was going to be pursued through reproduction, they should take into account some of the conditions in doing so. He referred to the questions from the Delegation of the United States of America in considering the conditions. Professor Kenneth Crews had asked who could copy, what could be copied, the purpose of the copy, the medium of the copy and other provisions. For example on the issue of who could copy perhaps it would be only a librarian, archivist or curator of the library, archive or museum. In relation to what could be copied, it may be an item in the institution's permanent collection. The Chair posed additional examples of what could be copied and the purpose of that copying. He referred to the question posed by the Delegation of the United States of America where the nature of the works may be unpublished or published work. If they had consensus that could include a variety of media. He referred to the interventions of the NGOs and gave the example of understanding preservation for reproduction including digitization and other forms of electronic reproduction for the full purpose of preserving and archiving the copyright work. He invited delegations to provide general comments on the general objectives and more specific areas and confirmed that there was some common approach when they had talked about reproduction for preservation to include reproduction in digital form and that could be applied to published or unpublished works. It was still early to see if that was the common understanding as they were still listening to approaches. He suggested that they should also respond to the four questions posed by the Delegation of the United States of America to provide some clarity on the boundaries of an exception for preservation.

277. The Delegation of Chile stated that its legislation recognized preservation and in the case of libraries and archives for non-profit purposes, its law authorized reproductions of works which were not available on the market when necessary, for the purposes of preserving the copy or replacing it if it had been lost or deteriorated, up to a maximum of two copies. When the legislation was being drafted there were opinions expressed that the exception should not be to the detriment of the legitimate acquisition of material by libraries. That was why there was a requirement that it had to be unavailable on the market. It was recent legislation so they had to see how it worked in practice but would be very grateful for any views or questions. It was grateful for the questions asked by the Delegation of the United States of America which helped them to better understand how the provisions were implemented in different Member States.

278. The Chair thanked the Delegation of Chile who had discussed the conditions and that there should not be a commercial purpose. First, the availability of the copy on the market should be taken into account. The conditions should apply where the copy or the original was lost or damaged and the number of copies was limited. From one national contribution, they could take several elements for the discussion that could help with the implementation of review of the laws in Chile and also could determine a common set of conditions. He suggested that they work through the questions posed by the Delegation of the United States of America.

279. The Delegation of Mexico thanked the Delegation of the United States of America for launching the discussion. Its federal copyright law had exceptions and limitations specifically for libraries and archives, particularly in cases when the copy had been taken out of the catalog, had disappeared, or was in bad condition. The exception would apply for one copy only. As for the question on published and unpublished works, it could not provide additional information.

280. The Chair asked that the Cape Verde video be played. He thanked the Delegations that had brought the inspiring video. They were lucky to have some of the main actors, known faces there with them and that was a good starting point to continue the discussion on preservation. He noted that it was a message to keep up the strong efforts to ratify the Marrakesh Treaty and the pending certification treaties that had been approved in 2012 and 2013.

281. The Delegation of Ecuador thanked the delegations for their contributions and the presentations of their national experiences through legislation. On the subject of preservation, there were a number of elements, which it considered to be common under the topic. They

were: the subject being libraries and archivists, the number of reproductions, one or two, the medium, whether digital or analog and the circumstances under which the reproductions may take place for the purposes of preservation. For example, if the work was out of print or had gotten lost, among other reasons. It raised those issues as they could frequently come up in legislation. It was important to hear about some of the national experiences for regions other than the GRULAC's region such as the European Union and its Member States.

282. The Delegation of India stated that as they were discussing the important topic of preservation it would like to take the opportunity to share that India was celebrating Digital India Week. Digital India Week, which was one of the most trending hashtags on Twitter, provided nine public Internet access programs and rested on the massive task of preservation. The topic was crucial for economic development and a connected ecosystem of not only India, but of all the Member States. Preservation was the foundation for intergenerational equity and therefore such exceptions should be maximal in nature. Public interest should be the overriding factor.

283. The Delegation of Canada stressed its interest in the Chair's suggestion to approach the discussion in a targeted way. That was, using the questions, for what purpose, how many copies and so on. Were there any other elements? It thought that they could build on the excellent exchange of views following the presentation of the updated version of Professor Kenneth Crews' work and could start a very informative comparative analysis. At the same time, they could go into more details of related issues such as those put on the table by the Delegation of the United States of America. Thus, they would improve their understanding of all those matters.

284. The Delegation of Belgium stated that its laws contained an international legislative provision which transferred the European Union provisions. Referring to the statement made by the Delegation of Canada, it stated that it allowed reproductions for the purpose of safeguarding material but in limited copies. The purpose was to preserve cultural and scientific heritage and it could only be done by museums or archives accessible to the public that had a non-commercial purpose. Finally, preservation should not upset the normal exploitation of a work or undermine the legitimate interests of the author. That was the three-step test. The material remained the property of the institutions and they could ban any commercial use. The author could have access to the preservation copies provided there was remuneration for the work of the institutions. There were no details on the medium. It was a fairly neutral approach and fairly well balanced as it tried to balance the interests of both parties. To respond to the question from the Delegation of the United States of America about works, it stated it had no details. It seemed to be acceptable to make copies to replace those that had been lost or to restore ones that had been damaged or fragile. Regarding the status of exhausted or out-of-commerce works, it was considering those categories because they could have an impact and it may be easier to access to them. They had not reached the end of work being done on libraries and archives in Belgium.

285. The Chair thanked the Delegation of Belgium for expressing its national experience in a way that contributing to the ongoing discussion of the elements to be considered in light of the questions posed by the Delegation of the United States of America. He noted that they had structured a list of elements that had come from the issue of preservation and deserved clarification. He thanked the delegations and the NGOs for their input. He referred to the chart and stated that he had added an introductory statement which was distributed. He stated that after the reference to limitations and exceptions for libraries and archives it stated, "The chart is designed to serve as a useful tool to provide structure to discuss the substance of each topic drawing on the many resources before the SCCR. This will allow the SCCR to have an evidence-based discussion respecting differing views and understanding that the goal is not to guide the discussion toward any particular or desired outcome, but instead to lead to a better understanding of the topics and of their actual relevance to the discussions and the intended outcome." He explained that first, the chart was a tool and it was not a negotiating paper in

which they would start a drafting exercise. Second, the chart provided a structure to discuss and instead of wasting time initially discussing non-substantial issues, the discussion would be concentrated on the substance of each topic. For that discussion they would use the many resources before the SCCR, for example, were symbolized by the well documented study by Professor Kenneth Crews. The benefit of the discussions was that it would be evidence-based in order to avoid prejudgment based discussions or non-technical affirmations or statements. They would also respect the different views. The goal was not to guide the discussion towards any particular or desired outcome but rather to lead to a better understanding of the topics and of the actual relevance to the discussions because they had differing views. Probably after the discussion some of the topics could be considered as not necessary to the list because they were irrelevant to the topics of limitations and exceptions for libraries and archives. The Chair invited the delegations to discuss it further and consider any clarifications. He suggested that they continue the discussion on the first topic, preservation.

286. The Delegation of the European Union and its Member States stated that it previously had some concerns about the chart and its purpose. It thanked the Chair for his efforts and attempts to incorporate the delegation's point of view. Its proposed approach was to have agreement and an understanding on what the expected outcome was before engaging in discussions. However it accepted having the chart as a discussion aid on the understanding that by doing so it would not engage, nor wanted the SCCR to engage in any normative work. It wanted that on the record. It stressed that point because it had heard from some delegations that there could be or there was broad consensus on an international instrument on given topics and it did not agree. It stressed also the exchange of best practices. The Chair had emphasized the need to understand better the realities on the ground and it thought that an exchange of best practices was the key type of work to be done in the context of the Agenda Item. It referred to the intervention of the Delegation of the United States of America that it was useful to understand the rationale behind certain policy decisions and behind a pure reading of provisions in different statutes. It underlined in the same spirit that having the focus of the first discussion the elaboration of the first principle, or of a principle, was not necessarily a good way ahead. That did not mean that it did not want to discuss principles nor did it want to demean the important contribution of the Delegation of the United States of America. It meant that an exchange of the best practices was a much more useful starting point for the discussion and that, therefore, they should not have as a standard practice, the idea that the first thing for each of the items should be to have the elaboration of a principle. It stated that it was confident that with the useful additions made to the chart those concerns had been responded to. Finally it confirmed that it understood that by the Chair saying that his approach would not lead to one or the other outcome, but was mainly intended to aid the discussion, the second column of the chart was uniquely intended to record the conclusions reached by the SCCR in the past and had no other function.

287. The Chair confirmed that, from its statement, the Delegation of the European Union and its Member States were ready to engage in the discussion of the chart. He appreciated that it considered the preliminary paragraph in the chart as enabling them to engage in such a good faith effort and confirmed the chart was not meant to guide the discussion towards any particular or desired outcome as there was equal treatment for all of them. They were trying to understand the "rationale", which may include describing the national law, the national experience or the objectives that they pursued with one or more norms containing their national systems. Building upon what had been said, they would be going from general principles or statements of importance to something that went to the rationale and then some of the elements to consider when they discussed one topic, as they had on the preservation topic. That would trigger them to consider tools such as the study by Professor Kenneth Crews. He referred to the excellent contributions of NGOs. Finally, with the structured approach they would consider the rationale behind the topic and what were the elements to consider. That would ensure the goal of having a better understanding of the topics, their actual relevance to the discussions and of the intended outcome.

288. The Delegation of the European Union and its Member States thanked the Chair for mentioning the study from Professor Kenneth Crews as it considered it an important tool for the work they were doing. It supported the idea of rearranging the information that was present in the chart and in the study in a way that could be more easily used, for example, regrouping the descriptions of the national studies by topic. It reiterated an idea that it put forward at the last meeting of the SCCR and asked the Secretariat if it could consider feasible the functionalities in the WIPOLex search database and search engine so that they could not only select national studies depending on subjects like copyright and related rights, trademarks and others, but also to select within the studies the relevant provisions as to more specific topics like, for example, library exceptions.

289. The Secretariat replied that it had been discussing the request with various colleagues at WIPO as to whether it would be best done through WIPOLex or perhaps through some other mechanisms, for example working specifically with the data generated for the SCCR. It had been worked on with respect to some topics. It needed to have further discussions to see what would be possible and what the resource implications would be. It suggested that it be noted as something the Secretariat could come back to the SCCR on at the next meeting or even with those Member States who were interested before that time as some of the discussions during, for instance, its budget process. It recognized it would be very useful and it was something that it would like to find ways to give to Member States in a more convenient form. It confirmed it would follow up on the suggestions.

290. The Chair noted that at the last session of the SCCR several delegations had asked what efforts they could undertake to further collaborate in the undertaking of the discussion.

291. The Secretariat referred to the suggestion to organize some kind of regional seminars with the ability of providing technical assistance in the area for those who either did not have exceptions yet or perhaps wanted to update or upgrade their exceptions. That was certainly the type of activity the Secretariat could undertake. It would have the capability to do a certain amount of that in the relatively near future, the next biennium. It was always a question of resources. It would look specifically into what resources were available, but was fairly confident that if it were the recommendation of the SCCR that it undertake some seminars of that nature, it would be able to come up with the resources to do that to some extent and would have to come back with specific information on resources at a later point. There were also suggestions that they should have a program of presenting case studies, for instance librarians, archivists and potential beneficiaries of exceptions as to the specific situations they were in and whether existing program and services were within the scope of exceptions. It would present a clearer definition of what was being requested, to make sure it could deliver, but that would certainly be something that the Secretariat could put together for the SCCR.

292. The Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group, stated that its initial understanding, the Chair's proposal was that equal treatment meant open, frank discussions, taking into account all possibilities and then deciding the outcome in that light. They were not confined to any conditionality. However, the recent statement made about restricting any eventuality made it question its initial understanding. It sought clarification from the Chair.

293. The Chair thanked the Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group, who was referring to a statement from another delegation. He replied that there were different views that the delegates had regarding the outcomes and whether there should be conditions. The delegations were able to express their particular views on that matter. If they opened the floor to listen to the views, they would have different views. The Chair's statement was that they had differing views and that they should have an evidence-based discussion, a

structured discussion to discuss the substance of each topic without any particular or desired outcome.

294. The Delegation of Nigeria, speaking on behalf of the African Group, thanked the Chair for the clarification because it would have been concerned if the chart was not understood as the basis of discussion to help refine their streamlined thinking on the topics that were itemized. To reiterate, the chart was to aid discussions. It was not to prejudice any outcome. The information that was gleaned from national experiences was just to enhance the discussion and not the basis as they were complementary aspects of the discussion based on the chart. Additionally, it hoped that the complementary activities that the Secretariat had outlined could be undertaken.

295. The Chair confirmed that the work of the Secretariat was to bring the tools to the SCCR, like the study of Professor Kenneth Crews to have a better discussion on the topic in an evidence-based way.

296. The Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group, thanked the Chair for the clarification and stated that it was referring to all statements, including the Chair's statements. It reiterated the view of the majority of the Group was that while the goal was not to guide the discussion towards any particular or undesired outcome, at the same time it was also not meant to restrict any outcome. They planned to indulge in frank discussions taking into account all the factual experiences, which were put before them in a result-oriented manner and without prejudging the outcome.

297. The Chair confirmed that the third line of the introductory paragraph of the chart stated that the goal was not to guide the discussions towards any particular or desired outcome.

298. The Delegation of South Africa reiterated the statement of the Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group, as it had the same understanding.

299. The Delegation of Nigeria aligned itself with the statement made by the Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group, emphasizing the last intervention of the Secretariat that it was not to delay, but to advance the work.

300. The Chair confirmed that the view of the Plenary was that it required the Secretariat to be useful for its work. Whatever comments came from the Secretariat, they were not contrary to the SCCR's consensual requests, nor from the objectives that they were deciding, nor to delay any part of the work. That was not the intention.

301. The Delegation of the European Union and its Member States clarified its position. The sentence tended to guide towards any particular desired outcome. It did not mean that by its acceptance of the chart as a useful aid and tool for discussion that it accepted that any outcome was acceptable or possible. That was its position.

302. The Chair added that it was an exercise for freedom of expression and of opinion because they would apply the same exercise and have differing views regarding that. That is why they had neutrality around the desired outcome. The Chair was offering tools and evidence-based material to engage in the discussion and with that evidence they would try to reach consensus on the positions they had depending on the topic.

303. The Delegation of Iran (Islamic Republic of) supported the statements of the Delegations of Nigeria, the Republic of South Africa and Pakistan, speaking on behalf of the Asia-Pacific Group.

304. The Chair suggested that they digested the approach. Support for the chart had been received in trying to accommodate the different views and not to be sided to one view or

another. They had used that process in the case of preservation and had seen the benefits of doing so. Any suggestion to enrich the process would be considered. There was now a common view to engage in the discussion triggered by the chart, which was a very positive step. He thanked the delegations who had had legitimate positions on the different views already described. They were very respectful and the intention behind the chart was not to stop the delegations working because of different views, but just to give them the chance to work respecting the different views. The chart was a tool and if it was useful then it would be used.

#### **AGENDA ITEM 8: LIMITATIONS AND EXCEPTIONS FOR EDUCATIONAL AND RESEARCH INSTITUTIONS AND FOR PERSONS WITH OTHER DISABILITIES**

305. The Chair welcomed the delegations to the session and announced that they would commence Agenda Item 8 on exceptions and limitations for educational and research institutions and persons with other disabilities. It was also an important topic but time had been required for the previous topic. The Chair opened the floor to the regional coordinators.

306. The Delegation of Nigeria, speaking on behalf of the African Group, restated its sentiments that they should advance the SCCR's work on exceptions and limitations for educational and research institutions and persons with other disabilities. The view of the Group was expressed in its statement on exemptions and limitations in general covering both and while they had a short time it hoped that they could progress the Agenda Item. It reiterated for future sessions of the SCCR that it would like time on all three issues, not broadcasting on the one hand and not limitations and exceptions on the other hand.

307. The Delegation of Japan, speaking on behalf of Group B, stated that it continued to recognize the exchange of their experiences on limitations and exceptions for educational and research institutions. It believed that the discussion on objectives and at a principle level as proposed by other Member States could compliment such work. It would continue to engage in the discussion on the limitations and exceptions for educational and research institutions in a positive spirit.

308. The Delegation of Romania, speaking on behalf of CEBS, restated its interest in the sharing of experiences and best practices with regard to copyright limitations and exceptions for educational and research institutions and for persons with other disabilities. The flexibility provided by the existing international system created ample possibilities that it was willing to discuss in depth, so that Member States would be better equipped in their crafting of the limitations and exceptions. As it had stated in its opening statement it also believed that it would facilitate progress on those issues if the SCCR could agree on common objectives. It supported any endeavor in that respect.

309. The Delegation of Brazil, speaking on behalf of GRULAC, welcomed the discussion on limitations and exceptions for education and research institutions, and for persons with other disabilities. It supported the discussion of the proposals that had been placed on the table from members of the Group as well as the discussion of other proposals and other ideas that had been issued during the previous discussions and previous sessions of the SCCR. It acknowledged that new documents had been issued in previous months by the United Nations. It noted that there had not been a study on persons with other disabilities and their relationship with limitations and exceptions and their rights to culture.

310. The Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group, expressed its view based on its earlier opening statements and attached importance to the topic hoping to see further progress.

311. The Delegation of the European Union and its Member States welcomed discussions on how the copyright framework could properly support educational and research institutions and

people with other disabilities in the analogue world. It believed that the sharing of the best practices among the Member States and when necessary, with the assistance of WIPO, could be useful and should be pursued as the best approach for the SCCR in that area. It believed that the laws and flexibility provided for by the existing international copyright framework was sufficient for all Member States to draft, adopt and implement limitations and exceptions in the areas. It did not think that a legally binding instrument was appropriate and it was not willing to consider that approach. The work undertaken by the SCCR on the subject could have a meaningful outcome if the SCCR shared the same understanding of the point and objectives of the exercise. Clarity on that point was important, and in the same way as for other subjects discussed by the SCCR, should be pursued in the first instance. The SCCR should work on facilitating the adoption and implementation of relevant exceptions and limitations of national level in agreement with the existing international framework, an objective it hoped everybody would agree on. Member States should take responsibility for their own legal frameworks and rely on mutual support that the exchange of best practices and pooled resources could offer.

312. The Delegation of China attached a great deal of importance to equality in education and also fairness in its regulations. It had provisions regarding limitations and exceptions in favor of the teaching and research establishments. At the same time, it also had provisions concerning persons with other disabilities. The discussion of Agenda Item was very welcome and it was open to any new information proposed by the different Member States so as to have the work progress.

313. The Delegation of Georgia thanked the Secretariat for the work invested in the preparation and the update of the documents for the SCCR. It placed great importance on striking the balance between the interest of copyright holders and society as a whole. It believed that the benefits of the limitations and exceptions would further pave the way to establish a strong and sustainable copyright system. It welcomed the discussion on limitations and exceptions for educational and research institutions and related issues.

314. The Delegation of the United States of America referred to its previous statements, that exceptions and limitations to copyright for educational uses were an integral part of any balanced copyright system. Exceptions and limitations for educational uses that were consistent with international obligations could do much to facilitate access to knowledge, learning, research and scholarship. At the same time, it recognized that exceptions and limitations should be carefully collaborated to permit the healthy operation of the markets for educational materials, which represented an important part of the United States of America's copyright industries and played a role in facilitating learning and knowledge in the United States of America. The Delegation believed that an appropriate way forward for the SCCR was through continued discussion on the topics laid out and its objectives and principle document SCCR/27/8, with a particular focus on Member States' experiences with respect to educational activities in the digital environment. The objectives and principle document set out several high level principles that it believed were central to any exceptions and limitations framework in the area. First, it believed that Member States should be encouraged to adopt exceptions and limitations in national laws consistent with international obligations that allowed certain uses of copyrighted works for non-profit educational purposes, while maintaining the balance between the rights of authors and the public interest. Second, it believed that Member States should promote access to educational and research materials by fostering a vibrant commercial market in the use of innovative licensing models. Third, Member States should support exceptions and limitations for use in technologically evolving learning environments, such as for example, online and blended learning. Finally, the document noted other general principles including the importance of non-educational specific exceptions and limitations, the need for appropriate limitations on monetary relief for non-profit educational, teaching and research institutions, the role of rights holders in ensuring sustainable access to copyrighted works in developed and developing countries and the need for adequate safeguards to ensure the lawful exercise of limitations and exceptions in the digital age. Those principles likely reflected many issues that



other Member States had also considered as they had worked to facilitate access to learning and knowledge in their own countries. The Delegation believed that the SCCR's dialogue on the matters to date had been beneficial. Going forward it hoped to hear more from other Member States about how they may have reflected the principles and objectives in their own national law. To that end, similar to its approach on the previous day, in order to understand the rationale for different policy decisions it had questions on various aspects of the issues to which it invited Member States to respond as a way to have a constructive dialogue. It was pleased to respond to any questions concerning its own experience and perspective. Finally, it noted the many positive views expressed during the previous day's session regarding the study on the copyright limitations and exceptions for libraries and archives. It had been several years since a similar study had been prepared on exceptions and limitations for educational, teaching and research institutions, and in the interim the education environment had changed rapidly, including through the significant expansion of online learning and other technological advancements. It was pleased that WIPO planned to update the study on education and to complete a study on other disabilities in order to provide helpful information for further consideration by the SCCR.

315. The Chair suggested that the statement of the Delegation of the United States of America would trigger discussion including its suggestion to update the study on the topic.

316. The Delegation of Mexico expressed the great importance that the topic had for its government regarding the topic of limitations and exceptions. The great importance of extending limitations and exceptions to copyright for educational purposes was to have enough material for information for traditional education and remote areas. It considered it as a way to support education and encourage scientific research of high quality through the improvement of the access to the works and protected works, protected by copyright and related rights in national and international legislation. It was aware of that situation and had provided in its federal laws on copyright, provisions on limitations and exceptions for educational and research institutions. Likewise, within strategies of the national development plan, its government had planned a whole set of activities amongst which it highlighted the promotion of the enterprise and development of graduates of studies and research centers so as to encourage technological innovation, employment and research. The Delegation supported the statement of the Delegation of the United States of America that it would like to have an update of the study and considered that more studies in the area would be highly appropriate and relevant.

317. The Chair thanked the Delegation of Mexico for commenting on the Mexican experience and its new important developments. He had taken note of the need to encourage innovation, promotion and research in the educational framework. He also took note of the support for the proposal for the update of the study.

318. The Delegation of Trinidad and Tobago aligned itself with the statement made by the Delegation of Brazil, speaking on behalf of GRULAC. In previous sessions, it had strongly advocated for a balanced approach between broadcasting organizations and limitations and exceptions for library and archives and educational and research institutions. It had advocated that they be on equal footing because one was not greater than the next, all issues were equally comparable. With respect to the latter issue of limitations and exceptions for library and archives and educational and research institutions, it believed that they were mutually supportive of one another, the issues were intertwined and they ran in tandem with each other. For those reasons it looked forward to exploring and continuing the work on limitations and exceptions for libraries and archives and for educational research institutions and felt that they could be dealt with as a whole, complete issue. It wished to work on that and explore an understanding between the issues between Member States on both those issues.

319. The Delegation of Brazil supported the proposal made by the Delegation of Nigeria, speaking on behalf of the African Group, on the discussion on the effective allocation of time for

the discussion of such important issues as in the research institutes, educational and people with other disabilities. It also supported the proposal by the Delegation of the United States of America regarding the necessity or usefulness of having studies on the relationship between exceptions, limitations and people with other disabilities. As had been stated by GRULAC, they did not have a study on that relationship.

320. The Delegation of the Russian Federation stated that they should examine the topics which they were discussing. It supported the idea put forward by several delegations about merging the two areas as it had supported that principle in the past. Exceptions and limitations were one single topic and it was not advisable to divide them into two different topics. It was one single approach and one single concept and they could proceed significantly more quickly towards a final document by the SCCR if they used a single platform. They had a unique opportunity to find the golden key they had been speaking about, namely how to respect the interests of authors and rights holders on one hand and on the other, to provide access to encourage possibilities for the development of science, culture and provide opportunities to the citizens of their countries, particularly through the Internet to achieve access to those works which existed in every Member State. Therefore it was prepared to actively work on that basis and to try to find a compromise.

321. The Delegation of Algeria supported the statement of the Delegation of Nigeria, speaking on behalf of the African Group. The Berne Convention had established the concept of exceptions and limitations for research and education. It was time to discuss that more substantively as they knew the world that they were moving to was based on knowledge, creativity and know-how. To say that the current international system was sufficient was a bit of a ploy and they should try to adapt the international conventions to exceptions and limitations to really fulfill the needs, not just of the developing countries but of all the stakeholders who were active in the field of creativity. Exceptions and limitations in favor of research and teaching institutions was a topic which the SCCR should not fear to discuss. They should not be reluctant to move forward. It wished to discuss the topic, see what they could all do together hand-in-hand to improve and to do something about the gaps which existed in the international system. That was why the African Group and other delegations were demanding an international instrument. It understood that certain delegations would first rather have studies carried out as the Delegation of the United States of America had indicated. An update of the studies would be a good way to proceed and the African Group thought they should allow more time for that to research how the limitations and exceptions in most countries did serve a public requirement and they could be useful. Perhaps they could begin with small steps without ranging too far as it understood that there were some delegations that were particularly reticent. The time was ripe to make small steps and it hoped it could encourage the SCCR to move towards a review of an issue which was very important and crucial, in fact, for it and at that time.

322. The Delegation of South Africa aligned itself with the statements made by the Delegation of Nigeria, speaking on behalf of the African Group, the Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group and the Delegation of Brazil, speaking on behalf of GRULAC. It supported the call for a study on the challenges faced by education and research institutions and people with other disabilities, especially the digital environment. It recalled that the African Group had made a similar proposal in the previous session of the SCCR.

323. The Delegation of Sudan supported the statements made by the Delegation of Nigeria, speaking on behalf of the African Group, the Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group and the Delegation of Brazil, speaking on behalf of GRULAC. There should be clear-cut efforts made so that all the issues were dealt with in a balanced manner or an agenda so that they could make headway through taking small steps to reach a consensus. A consensus would prove to them how important the role of WIPO was in order to play a part in development. It stressed development because the most important thing was to have research. In order to have an outcome, scientific research should be supported. On the other hand, within

the framework of the Marrakech Treaty it was quite clear that there were requirements, very important requirements for a large part of the population and that proved that now they had to study exceptions and limitations for persons with other disabilities. That was the first element. Some delegations felt they should update the studies. The studies were carried out by WIPO so the conclusions which would be submitted on the work which had been done in other organizations or in other previous sessions so they could fully understand the issues. It was also important that they take care of the digital environment, which was an important instrument to be able to remove the barriers and eliminate the distances, which could prevent the acceleration of the sharing of information as the Royal Glasgow Institute of the Fine Arts does. That had enabled them to deal with certain cases, for example certain archives, which had deteriorated. It was quite clear that from that point of view, archives and museums should also benefit from limitations and exceptions and should enable everyone to share the works and be able to share the contributions from all of these authors that had worked on the subject at length. It was ready and willing to participate in any future study which would help them to carry out their duties to remove the barriers and establish global relations, not just bilateral or regional relations.

324. The Delegation of Pakistan aligned itself with the statements made by the Delegation of Nigeria, speaking on behalf of the African Group, by itself, speaking on behalf of the Asia-Pacific Group and the Delegation of Brazil, speaking on behalf of GRULAC, regarding the great importance of the topic. It strongly supported allocation of time in future sessions of the SCCR to be equitable on the three topics, which it believed were relatively lagging in progress. It also supported the request for the study which had been proposed by the African Group and would be very beneficial.

325. The Delegation of Ecuador supported the statement of the Delegation of Brazil, speaking on behalf of GRULAC, that the treatment of exceptions and limitations for educational, teaching and research institutions and persons with other disabilities was important and they should therefore dedicate the necessary time to it in the SCCR to enrich the discussion. It was also important that they have the necessary information so that delegations could be clear about the issues involved. Elements from existing studies or even new studies on persons with other disabilities could shed light on their work and help.

326. The Delegation of Japan, speaking on behalf of Group B, recognized that it was time to discuss specifically the time allocation on limitations and exceptions for research institutions, educational and persons with other disabilities. The Delegation thought that the SCCR had dealt with copyright related rights regarding two important aspects. One aspect was the protection of the right and the other was exceptions and limitations to the right. As a matter of principle, the SCCR should deal with those two aspects in a balanced manner which was not occurring through the present allocation. At the next session they would have a large amount of work on the protection of broadcasting organizations because they had started text-based work on specific items. The Delegation completely agreed with the necessity to use the allocated time in an efficient, effective manner.

327. The Delegation of Nigeria aligned itself with the statements made by itself, speaking on behalf of the African Group, the Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group and the Delegation of Brazil, speaking on behalf of GRULAC. It attached much importance to the Agenda Item on exceptions and limitations for education, and teaching institutions and persons with other disabilities and it understood the rule for advancing and facilitating knowledge. It also recognized that the advent of the digital environment had profoundly altered how they accessed, used and enjoyed creative content. An international instrument that reflected a careful adjustment of the flexibilities that were in the international copyright systems would be helpful to ensure that the larger populace enjoyed the creative content and copyright protected rights. On behalf of the Africa Group, it reiterated its concern about the equal time that was given to the three topics of the SCCR. It understood that they

were dealing with broadcasting organizations and on the other hand exceptions and limitations, but in exceptions and limitations they had two broad topics which were interrelated. It was concerned that treating them as one had delayed the process and it reiterated its request to have equal time in the next session.

328. The Delegation of Guatemala associated itself with the statement made by the Delegation of Brazil, speaking on behalf of GRULAC. Limitations and exceptions were very important because access was a human right. It had tried to draft legislation to cover those types of limitations and exceptions and it believed it was extremely important that there should be a legal instrument covering these limitations and exceptions in the digital area, taking into account the three-step test. It supported the idea of having a study on the subject because it would help them to make good progress and would contribute to their work on the subject.

329. The Delegation of India aligned itself with the statements made by the Delegation of Nigeria, speaking on behalf of the African Group, the Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group and the Delegation of Brazil, speaking on behalf of GRULAC. In the context of eLearning as a way of scaling up the education and access, the opportunities dealt with in the digital age in the first two and a half days of the SCCR needed to be matched with the challenges and the limitations and exceptions that they dealt with on the other side of the coin of the digital happening. It reiterated that in such knowledge creation, copyright works, educational institutions and infrastructure played a very big role. It was crucial that education institutions could continue in knowledge creation and have equitable limitations and exceptions. The Agenda needed to focus on that.

330. The Delegation of Romania stated that it had thought that they were discussing the specific issue of limitations and exceptions for educational and research institutions, but given that there was a call from the Chair to provide views also on the allocation of time for the forthcoming session it wished to provide its viewpoint on that specific issue. Copyright and related rights was a broad and complex field of intellectual property which included topics such as rights, limitations and exceptions, management of such rights, enforcement and transfer of rights. Limitation and exceptions were a single area, no matter what and how many beneficiaries there may be. From that perspective it was only natural that the time of the session be divided equally between the two topics that they were currently discussing, namely broadcasting organizations and limitations and exceptions.

331. The Delegation of Kenya stated that there was a need for commitment from all the delegations to have a harmonized standard. Many times they had seemed to blame the Internet and other technological advances for the gaps in law and practice. It was imperative that they started addressing the underlying issues and ensured that the law provided the necessary framework to facilitate development and exchange of knowledge, especially within developing countries. The generation of knowledge and information exchange was important for development of any economy.

332. The Chair stated that he wished to clarify that they were on Agenda Item 8, regarding the protection for educational and research institutions and for persons with other disabilities. Listening to the general introductory remarks about the topics, some delegations had mentioned the importance of the topic should be reflected in the allocation of time. In that context, that proposal had been made. However, instead of turning that into a discussion on procedural matters, which crossed over the different topics they were dealing with, he suggested that they would try to continue listening to views regarding Agenda Item 8, which was the substantial topic. They could hear some points of view regarding what had been said related to its importance and the need to treat it and to give it adequate time. That was in the context of the substantial item which they were discussing. Given that there were no other requests for the floor, the Chair invited the Secretariat to respond to the issue of the need to have updated studies or new studies on the topics that were covered by the Agenda Items 7 and 8.

333. The Secretariat reminded the SCCR that at the 26th session of the SCCR it had been asked to identify whether resources could be found to update the existing studies on exceptions and limitations for educational and research institutions. It had five regional studies that were done in 2009 on the topic. It had reported to the SCCR that it would identify the resources and would start that work during year, but it also had funds in the work plan assuming it was approved by the Member States to work on that in the next biennium. That was updating the prior studies. That was not a discussion of what they may have been hearing about, namely commissioning new or additional studies in the area. That would be something else that the SCCR would need to decide on or recommend. With respect to persons with other disabilities, it had also been asked to look if there were resources to do a scoping study on the intersection of persons with other disabilities and the copyright system to figure out which areas the SCCR should address. They had held a side event some sessions ago about the topic of hearing impairment and captioning and how that intersected with the topic. That was also a study that it had committed in the SCCR to doing and that it would be funding over the course of its work in the next year and a half. There had clearly been discussion about going beyond that for some additional studies and that was something that could be discussed by the SCCR and would be a question of resources.

334. The Chair thanked the Secretariat. The Chair noted that it was good news that they would probably have resources and would need to clarify what kind of studies would be covered or updated. He suggested that rather than having an exchange of general remarks about the importance and the impact on society, which was very important to do, they needed to go to specific needs and the potential effects undertaken. A good way to do that was professionally taking in account available resources or triggering some studies with professionals as they had done in the other topic, with very good results. The Chair invited the Member States to give their views on the matter.

335. The European Union and its Member States requested that the Secretariat provide a reminder of the references of the five regional studies that the Secretariat had mentioned so that they could look at them.

336. The Secretariat replied that they were all listed as documents under the 19th session of SCCR which could be searched for. It was also happy to provide regional coordinators a complete list of those studies with the link if that would be helpful for the Member States.

337. The Chair invited other comments from the floor. He then invited the NGOs to consider their general remarks on the topic presented in previous sessions of the SCCR were on the record in the reports. They were still taking them in account as information that was very useful to consider and to highlight the importance they gave to the matter. Given that, he requested that they not to repeat those general statements but invited their views on specific matters.

338. The Delegation of Sudan stated that, regarding persons with other disabilities and needs, as the Secretariat had informed them, several sessions and special events had tackled the subject. However, it was very important that those same organizations should be brought to the study. Those organizations with long experience and a specialized area should be involved in the study and participate in it so that the SCCR would profit from their experience in the area of limitations and exceptions. If that was not possible, maybe seminars could be organized so they could listen to the specialists directly.

339. The Chair thanked the Delegation of Sudan for the suggestion regarding the organizations of seminars, which was an additional suggestion to be considered to complement the studies. It was an exercise they had done as well for other topics with good impact and an exercise that had been welcomed. He invited the delegations' views regarding that approach. He noted that

the Representative of KEI was requesting the floor and reminded it that it should not provide general remarks.

340. The Representative of Knowledge Ecology International (KEI) commented on the proposals submitted by the African Group in relation to limitation on remedies for infringement contained in Paragraph 22 on page 18 of document. SCCR/26/4 Prov. Access to Educational Materials: Limitation on remedies for infringement. That was an exception that was, "In addition to other copyright limitations and exceptions, such as those included in Article 10, 10bis, the Appendix and other Articles in the Berne Convention." What was proposed in the Article was an approach that would give educators the broad right to use works, in four specific areas of education, subject to the "reasonable and fair compensation" to the "owner of the exclusive right." Basically, the proposal by the African Group would complement other exceptions available in education, including those under Article 10 of the Berne Convention, for "Certain Free Uses of Works." The advantage of having the option of remunerative exceptions was both to expand access to more works than could be justified under a "free use" exception, and to provide, in some cases, authors with compensation for the use. It made three observations about the provision put forward by the Africa Group. First, the proposal to provide compensation for non-voluntary use of some uses of some works was consistent with the practices and recommendations put forward by many Member States, including the submissions from the Delegation of the European Union and its Member States and it invited views on the specific proposal. Second, the proposal for limiting remedies for education was quite similar to a recent proposal by the U.S. Library of Congress, in the context of orphan copyrighted works and it invited the views of the Delegation of the United States of America on that specific proposal. Third, the proposal by the African Group proposed that "this Article shall only apply to Members who are regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations." In that regard, it could be considered as an alternative or complement to the appendix the Berne Convention's Special Provisions Regarding Developing Countries. It seemed to offer an opportunity to address the very same access to knowledge issues that the Appendix in the Berne Convention sought but failed to remedy.

341. The Chair stated that in order to have a structured discussion they would take note of the Representative of KEI's comments. They had heard for example previously that the initiative to post general questions on the issue, how to respond to that, and they had previously had some specific suggestions, for example from the Delegation of the United States of America. In consequence, rather than jumping from one topic to another in a structured way, they had to stick to the structure. At that time they were listening to general remarks and the need to have useful information with some specific proposals to be considered in order to bring them a chance to have a broader view on what were the topics to be covered. He confirmed that they would take specific note of the Representative of KEI's opinions and questions and invited it to find the time in a discussion for a response. At that point they had a situation where the initial exchange on the topic had occurred and there were some specific proposals. They needed to try to get consensus on the updated studies.

342. The Delegation of Nigeria, speaking on behalf of the Africa Group, wished to clarify the Chair's invitation to intervene. It asked whether it was strictly on the topics the Secretariat had outlined marking and scoping for persons with impaired hearing or captioning and also for exceptions and limitations for education and research institutions. It stated that the topic that had been endorsed by the Representative of KEI should form part of the pot of ideas that they should consider for the further studies.

343. The Chair stated that it was good to know that some of the topics that had been mentioned would also be a source to be taken into account when they encompassed the study. He suggested that there would not be an endless study but rather related only to the main topics contributed.

344. The Delegation of South Africa stated that it valued the contribution from the Representative of KEI and supported the intervention made by the Delegation of Nigeria, speaking on behalf of the Africa Group.

345. The Delegation of the European Union and its Member States requested that the Chair or the Secretariat summarize what was on the table. There had been a number of suggestions and references to previous studies and a quick summary prior to the coffee break would be helpful.

346. The Secretariat confirmed what had already been agreed to was the update of the five regional studies on education limitations and exceptions or at least the material in them. That was something that had been previously decided that the Secretariat had committed to and had budgeted for. In addition, a scoping study on the intersection of copyright and disabilities other than visual impairments was contemplated from the previous work and was in the work stream that the Secretariat had been planning for. Additional items that could be discussed, clarified and adopted by the SCCR could be for instance, if the SCCR wanted other types of studies or broader studies than updating the previous work. It could also be specifying presentations during the SCCR on the topics that were on the Agenda and that were the subject of the studies or could be requests for seminars, workshops and other activities surrounding the topics. There were a broad range of topics that could be on the Agenda Item for further discussion.

347. The Chair summarized that the Secretariat had confirmed to update the studies on education limitations and exceptions and the scoping study with regard to copyright and the persons with other disabilities. Regarding the schedule they were in Agenda Item 8 and would continue after the coffee break. There were some initial conclusions regarding what had been requested and needed clarification. There were coordination meetings with the Groups to receive views regarding the Chair's summary for the second topic. After finishing the third topic, they would have the Chair's summary for that topic and three recommendations for each of the topics to be considered. The Secretariat stated that Agenda Item 9, other matters, also remained to be discussed.

348. The Delegation of the European Union and its Member States stated that generally speaking it was open to consider studies and other ideas to discuss the topic. The study by Professor Kenneth Crews for Agenda Item 7 was useful and welcomed, so that type of approach was welcome. It understood that there were two processes already ongoing, agreed and in the timeline, which was the update of the five regional studies and the scope study on the interrelation between disabilities other than visual and copyright which were in preparation. It looked forward to seeing the results of those. As to additional ideas, it was open but did not have a position on anything as it could need to consult with its Member States.

349. The Chair stated that it was true that they needed some clarity with studies for the undertaking. He requested that the Secretariat inform them of the parameters of the study given to Professor Kenneth Crews on the topic of digital libraries and archives as it could be a starting point with organizing other views if it reached consensus.

350. The Secretariat stated that, with respect to the study by Professor Kenneth Crews, the fundamental direction was to survey the copyright laws of the Member States and find the limitations and exceptions related to libraries and archives. As was often the case, that was not the neatest division everywhere, so it had stated that to the extent it was possible to identify elsewhere in either the copyright law or other parts of the law references to ways in which the topic was handled elsewhere, that could also be encompassed by the study. The main task was to gather information about all the existing copyright limitations and exceptions related to libraries and archives and where there were questions on the margins of that or for instance the museums were included or references in other parts of the law to provide some limited

information on that, but not to give a full treatment of that. The organization of the study was very much a summary where materials could be summarized in terms of broad, general trends which was relatively short and then a page or two on each national law exception on the subject of libraries and archives or if there was no exception then what the situation was with respect to that law or if for instance the Member State did not have its own law but was a member of a regional agreement that would be identified. The focus was finding out what was the state across the Member States. With respect to the studies on education that were already done, the direction was similar, the results were not cleanly set out country-by-country with all the neat charts that Professor Kenneth Crews had. Part of the issue was what the availability in terms of the translations of the laws into languages that the experts could use. There were more resources available to it now than previously and it should be able to increase the scope of coverage in those studies. Some of the education studies were a bit of a broader survey approach describing the situation regionally, nevertheless, the basic exercise was the same which was to survey the current situation with regard to limitations and exceptions that apply to educational and research institutions in national laws. With respect to the scoping study, that was a bit different because it had the broad topic of limitations and exceptions for persons with disabilities and early on the Member States had chosen to move ahead at the suggestion of a number of Member States on the topic of exceptions and limitations for those with visual impairments and print disabilities and the rest of the topic had not really been treated to any great extent, nor had there even been any real discussion about what was encompassed in it. There it had requested a more general scoping study which would also basically use as its material current existing national laws, but would have to be a little more open because it would be looking both at general provisions related to disabilities that were within the copyright law or could be seen to be related to it and also potentially particular provisions on particular disabilities. It would be looking for trends to see whether there were any particular subtopics or particular disabilities where it ought to have further work or further discussion or further programming that the Member States would like. That was called a scoping study in that it was scoping out the situation really with respect to limitations and exceptions on the subject in national laws.

351. The Delegation of Brazil referred to the proposal of updating the regional studies on exceptions and limitations for research institutions, education and persons with other disabilities. It sought further information from the Secretariat on whether it would be possible or even more efficient to have a compilation and a consolidation of the studies in one global study on the situation of exceptions and limitations under Agenda Item 8 rather than a series of regional studies.

352. The Chair replied that it was a good and reasonable suggestion and would allow them to look at a worldwide basis, rather than a regional basis.

353. The Delegation of Nigeria, speaking on behalf of the African Group, aligned itself with the proposal made by the Delegation of Brazil. It would provide a more holistic document for the SCCR to understand and to better appreciate the exceptions and limitations for education, research institutions and people with other disabilities because the five different studies may be a problem in one document. That would also provide the opportunity to add topics referred to in its proposal that had been restated by the Representative of KEI.

354. The Chair responded that it sounded reasonable to collect all of the topics and regional findings in one worldwide document.

355. The Secretariat responded that it understood that the suggestion was preparing a study akin to Professor Crews' study covering all countries of the world to gather information in a single study with similar themes and organization on topics of educational and research institutions. While that was possible, it was not the current organization of the studies as they were being updated. It suggested that they could use a two-step process, where they updated



regionally and then asked one person to consolidate or it could stop and try to move to a model where it asked one person to take on all the work. It was not confident, particularly given the new deadlines where it must get the materials posted ten weeks before the SCCR or two months before the next meeting, to get the entire consolidation done by December. If that was the direction that the SCCR wanted it to go, it could undertake that through two stages or start immediately with a single study model and have more time for it. With respect to the other topic that was raised and endorsed, the current study did not drill down to that level of detail on that particular topic. They would need a separate study to do that and that would probably require commissioning some additional work.

356. The Chair summarized that the SCCR had consensus to get to a goal, particularly stated by the Delegation of Brazil. He requested the Delegation of Nigeria to speak on the other issue.

357. The Delegation of Nigeria stated that its intervention was based on Article 22, which reflected part of the proposals, which were contained in the Africa Group's proposal on exceptions and limitations for an international instrument on making exceptions to copyright for education and research institutions to address. It could not provide a detailed, substantive discussion as its expert was not there. It confirmed the Representative of KEI had adequately articulated its concerns.

358. The Chair stated that they should focus on the scope of the existing work on exceptions and limitations related to the topics of education that were collected on a regional basis. It did not appear that there was something that required them to look at one specific type of exceptions among the general types of exceptions. However another way would be to highlight among the rest of exceptions related to education, the specific types of exceptions related to remedies for infringement in relation to education.

359. The Delegation of Brazil thanked the Secretariat for providing information regarding the studies and the possible roadmap for the discussion. It sought additional information to be shared with the Member States about when the studies would be distributed and when they would be discussed. It asked whether they should try to go to a consolidated text or take a two-step approach, the first step being having updated studies for every region and the second step having the consolidated study. It suggested that the proposal from the Delegation of Nigeria, speaking on behalf of the African Group, could be accommodated in a consolidated text. There was consensus of all Member States that the study by Professor Kenneth Crews was extremely useful for the discussions in the SCCR and that they should try to use the same approach for the discussion on Agenda Item 8. It was in favor of extending the study to the other topics, as mentioned by the African Group.

360. The Delegation of the European Union and its Member States asked the Secretariat whether the work that had been commissioned already was to take the studies as they were and update the information that was in them. It asked whether the work had started already.

361. The Secretariat replied that it had understood, from the discussion at the prior session of SCCR, that the task was updating the existing regional studies in the form that they were. Preliminary work had been done but not too substantial. In terms of consolidation, it would need to look at the people it had been working with it to try to figure out the best way to prepare a consolidation. It would need more time also to consult with potential experts in order to provide a plan. It would not be able to say that it would commission a person to do that until it understood that was the ultimate direction the SCCR wanted to go in.

362. The Chair stated that they would continue the work on the consolidation of the regional studies. Regarding the proposal of topics to be covered, he foresaw that a good way to proceed was to make sure that the limitations or exceptions on infringement were applicable to those in libraries and archives and with persons with other disabilities.

363. The Secretariat stated that it would transmit information on the timelines once it was able to look at the whole matter again with the regional coordinators, then it would pass that along to the Groups for consideration and any comments that they had. The regional coordinators would be kept informed on the proposed progress and timelines.

364. The Chair stated that delegations could give other views regarding the Agenda Item 8. As there were no more requests from the floor for the topic, they would take note of the suggestions and opinions. The Chair thanked the NGOs for their patience, considering that their remarks posted in previous sessions were already on the records and for accepting that approach. Their contribution on specific issues would be very crucial.

365. The Delegation of the European Union and its Member States referred to the question of the Delegation of Nigeria, speaking on behalf of the African Group, that the five regional studies would be considered looking into the possibility of consolidating into one single study as suggested by the Delegation of Brazil.

366. The Chair confirmed that was the case.

#### **AGENDA ITEM 9: OTHER MATTERS**

367. The Vice Chair opened Agenda Item 9 and opened the floor for any submissions or suggestions regarding the Agenda Item.

368. The Delegation of Congo (the Democratic Republic of) stated that the resale right was considered an acute problem of great concern by artists of Congo working in the visual arts. That right in many countries was not effective, but if the opposite was true it would allow artists to continue their works. If it was clearly recognized in a treaty, the beneficiaries would be grateful. Many in that category of professionals only became famous when they had been deceased. A certain number of countries had still not provided for that right in their national legislation. It wished to share the call for help within the SCCR. It suggested that even if the SCCR used ten minutes to talk about the issue it would be welcomed and they could make progress. It understood that the inclusion of the topic on the Agenda should be a consensus decision. If they found that kind of consensus they could find a satisfactory solution to the problem, satisfactory to all of the visual artists around the world who expected so much from the SCCR.

369. The Vice Chair thanked the Delegation of Congo (the Democratic Republic of) for the comment and proposal to include a new topic on the Agenda. He suggested that they use the lunchtime to think about the request.

370. The Vice Chair welcomed the delegations back to the session.

371. The Delegation of Senegal supported the position of the Delegation of Congo (the Democratic Republic of) on the resale rights. The market had grown exponentially. In 2014, according to the figures provided by Art Press, USD 52 billion was registered for the sale of art works and that was probably only the visible part of the market because personal sales and gunnery sales were excluded. In one decade, they had seen an increase of 300 per cent. Those were the figures given by Art Press. On December 10, 2014 Sotheby's in Europe sold one billion Euros in one session for African art. In view of the explosion of the market for works of art, it would be a pity if the authors and the creators of those works should be excluded. It would be sad if the African authors would not be able to take advantage of that situation. It would be a pity if in the SCCR, where Member States spoke about copyright, they should not be able to talk about that simple issue. They needed to make progress in that area. If they did, it would allow them to give credibility to the whole principle of copyright at a time when it was

coming under attack from all sides. It was aware of the fact that problems that had been raised on broadcasting rights and on limitations and exceptions required time and it did not want to push things too fast. As it did the previous year, it simply asked, which was backed by a number of Member States, that during a future session of the SCCR it would be given 60 minutes or if that was too much, 30 minutes, for them to have an exchange of information and ideas on the subject.

372. The Delegation of Sudan (the Republic of) supported the request put forth by the Delegation of Congo (the Republic of) with regard to resale rights. It believed they were unique to paintings and the right should also apply to music and manuscripts. The rights had been recognized, however they needed to make sure that special treatment was given to it because there was a trans-border problem and at a previous session of the SCCR, the Delegation of Senegal had spoken about new technologies and stated that new technologies were opening up new possibilities. There was now a much bigger market and it was not just a single original work of art or a single manuscript. They needed to encompass other types of art, for example, textiles or other publications and things that could be used for other purposes. There were also two-dimensional, or three dimensional art or works and also cultural works. They needed to take into account the TRIPS Agreement. Industries working in the cultural field should also be included not just fine arts. The other aspects of cultural productions also needed to be included. That needed to be put on the agenda of future meetings and they needed to work with other organizations. UNESCO had recognized the importance of cultural activities and it had updated its report. They needed to take advantage of that report and work together with other United Nations' agencies in order to try to achieve its objectives.

373. The Delegation of the European Union and its Member States supported the proposal by the Delegation of Congo as future work in the SCCR. It was contemplating its own resale right with the dedicated directive. It referred to its proposal made in its opening statements for consideration of work on the implementation and the enforcement of existing treaties also as part of future work.

374. The Delegation of Kenya supported the proposal put forward by the Delegation of Congo (the Republic of) and the sentiments expressed by the Delegations of Senegal (the Republic of) and the European Union and its Member States. It was in the process of dealing with resale rights at the national level and had engaged in consultations and discussions with the various rights holders. It also welcomed international legislation and hoped to have that as a future agenda item.

375. The Delegation of Brazil referred to the previous delegations and stated that it understood that they had a very difficult agenda in front of the SCCR with three themes. They could show flexibility by having a one hour discussion on resale rights before the start of the discussion of the Agenda Items already on the agenda and therefore accommodate the requests made by the Delegations of Congo (the Republic of) and Senegal (the Republic of).

376. The Delegation of the United Republic of Tanzania aligned itself with the request made by the Delegation of Congo (the Republic of) and stated that it was very important to have attention on the issue of resale rights. It supported the discussion of the topic at a forthcoming session of the SCCR. It also wanted to include the resale right in amendments to its legislation. In African countries there were many good works created by artists, for example Tinga Tinga Arts, however their successors were not getting what they were entitled to.

377. The Delegation of Iran (Islamic Republic of) thanked the Delegations of Senegal (the Republic of) and Sudan (the Republic of) for their interesting and useful proposal. It was a beneficial proposal but in the twenty-fourth session of the SCCR, they had decided to finish the current Agenda before putting a new item on the Agenda. The current Agenda was heavy. Therefore it supported the proposal put forward by the Delegation of Brazil.

378. The Delegation of the Cote d'Ivoire stated that the whole question of resale rights was of great importance to it, as it had introduced the right into national legislation. It fully supported the position of the Delegation of Congo (the Republic of) as well as all the delegations who had previously spoken on the subject.

379. The Delegation of Japan stated that with regard to artist resale rights, a related provision existed in the Berne Convention, however they had to give due consideration to the flexibility provided by the Berne Convention, which meant that the protection of resale rights was left to the discretion of the national laws of each Member State. Unfortunately some Member States, including itself did not have resale rights in its national legislation. It was of the opinion that the SCCR should stick with the Agenda. Otherwise it would delay the work of the SCCR. In that sense, it was not in support of the proposal to include artists' resale rights as a new Agenda Item of the SCCR.

380. The Delegation of Switzerland stated that it took due notice of the proposal made by the Delegations of Senegal (the Republic of) and Congo (the Republic of) to introduce the new subject on the Agenda of the SCCR. On that subject, and other subjects, which were already on the Agenda, it was open to discussion. Having listened to the detailed proposal, it was confident that they would be able to have useful discussions on the subject without standing in the way of progress on other subjects.

381. The Delegation of Canada called on Member States to allow some time to address the question of adding an Agenda Item irrespective of the proposal being resale rights or another one, permanently or not, and for a given amount of time in the SCCR, in a meaningful fashion, meaning one that would ensure that they raised what that would mean for the SCCR's sound management of time to add a topic. The objective of adding a topic, normative or not, for instance and the identification of the many topics it defined, to ensure that determination and interest for the SCCR would be made, comparatively and on their own merit.

382. The Delegation of the United States of America stated that it had listened carefully to all of the useful interventions and certainly saw merit as it had said in the past in enriching the Agenda of the SCCR. That said, it fully supported the views expressed by the Delegation of Canada, that in enriching the Agenda they did need time to reflect and it would encourage all delegations to come prepared to engage in a thoughtful discussion of how to enrich the Agenda at the next session.

383. The Vice Chair summarized the situation that was raised by the Delegation of Congo (the Republic of) and stated that they needed to take into account the fact that some delegations had suggested that it was a subject that should be included on the Agenda. As a result, it should be reflected in the conclusions of the session and therefore, should be part of the final report. It was also important that all delegations remembered that there was a concern, expressed by some Member States, related to the time that could be granted to the new topic if they decided to include it on the Agenda. To be able to put it onto the Agenda of the next or future sessions depended on the decisions that would be taken by the General Assembly. They also needed to take into account some concerns that had been expressed. They had heard the Delegation of Japan expressing concern about the subject being included on the Agenda based on the principles that were set in the Berne Convention. The Vice Chair invited delegations to think about the idea of including the new topic on the Agenda, to think about the amount of time that they should devote to it and also the possibility of adding the new topic on the Agenda.

384. The Chair reminded the SCCR that the Chair's Conclusions were being prepared, which was a factual rendition of everything that had occurred in the course of the meeting. The proposal, which had been tabled by the Delegation of Congo (the Republic of), would be included in that final document. They needed to analyze all of the issues mentioned, the

possibility of putting the item on the Agenda, the time that that would require and the relevance on artists' resale rights. They needed to look at all the issues in the document, which was being prepared and then the delegations would have a full picture of what had happened at that meeting, including the possible future inclusion of the new item on the Agenda. Delegations would then be able to take a decision on the situation. The Chair referred to the Chair's Conclusions document and started with Agenda Item 1.

385. The Secretariat referred to Agenda Item 1, the opening of the session. Paragraph 1; The 30th session of the SCCR had been opened by the Director General, who welcomed the participants and opened Agenda Item 2. Ms. Michelle Woods (WIPO) had acted as the Secretary. Agenda Item 2 had been the election of the Chair and two Vice Chairs. The SCCR elected Mr. Martin Moscoso Villacorta as Chair and Mr. Santiago Cevallos Mena as Vice Chair for the period from the opening of SCCR/30 up until the opening of SCCR/34. One position as Vice Chair remained vacant. Agenda Item 3 had been the adoption of the Agenda. The SCCR adopted the draft Agenda, document SCCR/30/1 PROV CORR. Agenda Item 4 had been the accreditation of new NGOs. The SCCR had approved the accreditation as a SCCR observer of the NGO referred to in the annex to document SCCR/30/4, namely the Finnish Copyright Society. Agenda Item 5 had been the adoption of the draft report of the 29th session of the SCCR. Paragraph 5; The SCCR had approved the draft report of the 29th session of the SCCR, document SCCR/29/5 as proposed. Delegations and observers had been invited to send any comments on their statements to the Secretariat at [copyright.mail@wipo.int](mailto:copyright.mail@wipo.int) by July 31st, 2015. Agenda Item 6 had been the protection of broadcasting organizations. Paragraph 6; The documents related to the Agenda Item were SCCR/27/6, SCCR/27/2 Rev and SCCR/30/5. Paragraph 7; The SCCR had welcomed the presentation of the report on current market and technological trends in the broadcasting sector prepared by IHS. It had also heard the information session on broadcasting as well as the presentations from and discussions with broadcasting experts, invited to address some of the technical issues considered in previous discussions of the SCCR.

386. The Chair thanked the Secretariat for the contributions of those paragraphs. Referring to Paragraph 8, explaining that they had had qualified experts, who were broadcasting experts and given that they had different views whether to include the reference for developing countries and some suggestions to include the reference from the developed countries, they had removed that qualification and simply referred to "broadcasting experts".

387. The Secretariat stated that the SCCR had pursued discussions on the protection of broadcasting and cablecasting organizations in the traditional sense, following a signal based approach and taking into account documents, informal charts or non-papers discussed at the three previous sessions of the SCCR. Paragraph 9; In relation to the scope and object of protection, with the exception of one Delegation that needed further time to consider the possibility of providing protection under any platform, the SCCR was of the view that effective legal international protection be granted to broadcasting organizations to prohibit the unauthorized use of broadcast signals in the course of a transmission over any technological platform. Issues related to national regulations applying to the broadcasting sector were also raised.

388. The Chair noted that they had received some contributions and comments regarding that paragraph of the Chair's Conclusions. He suggested that at that point they could consider there was a consensus that a signal should be protected, even when it was transmitted over any platforms, to give the chance to broadcasters to prevent unauthorized interference or access. He asked them to let him know if he was wrong in that reading. He opened the floor to delegations that needed clarification. He interpreted the silence to mean that he had not read the consensus incorrectly.

389. Referring to Paragraph 10, the Secretariat stated that the SCCR had also further considered definitions related to broadcasting and broadcasting organizations. These definitions should be drafted taking into account similar definitions in existing Treaties. Discussions were also opened on the definition of signal.

390. Referring to Paragraph 11, the Chair thanked the delegations for their contributions to that paragraph. It would make a difference in the consideration of the definitions of broadcasting and broadcasting organizations. They had started to open the discussion on the definition of signal and the action initiated in relation to the two previous definitions was to consider those definitions.

391. Referring to Paragraph 11, the Secretariat stated that the SCCR had requested the Chair to prepare for its next session, a consolidated text with respect to definitions, object of protection and rights to be granted. At that session, the SCCR would also exchange views on and further clarify other issues, in order to reach a common understanding. Paragraph 12; That Item would be maintained on the Agenda of the 31st session of the SCCR. Agenda Item 7: limitations and exceptions for libraries and archives. Paragraph 13; The documents related to that Agenda Item were SCCR/26/3, SCCR/26/8. SCCR/29/3, SCCR 29/4, SCCR 30/2 and SCCR/30/3. Paragraph 14, the SCCR had welcomed the study on Copyright Limitations and Exceptions for Libraries and Archives: Updated and Revised, prepared by Professor Kenneth Crews, Document SCCR/30/3. Paragraph 15; The SCCR had been informed of the completion of the study on Copyright Limitations and Exceptions for Museums prepared by Mr. Jean Francois Canat and Professor Lucie Guibault, Document SCCR/30/2, which was made available for that session and would be presented at the next session of the SCCR.

392. The Chair noted that regarding that last paragraph, a contribution had been made to differentiate the reference to the studies. However, both studies that had been mentioned had been taken into account.

393. Referring to Paragraph 16, the Secretariat stated that the SCCR had discussed and accepted the use of the non-paper introduced by the Chair on exceptions and limitations of libraries and archives, during the 29th session of the SCCR. That non-paper consisted of a chart, which was designed to serve as a useful tool to provide structure to discuss the substance of each topic, drawing on the many resources before the SCCR. That would allow the SCCR to have an evidence-based discussion, respecting differing views and understanding that the goal was not to guide the discussion towards any particular or undesired outcome but instead to lead to a better understanding of the topics and of their actual relevance to the discussions and the intended outcome.

394. The Chair thanked the Member States for the different contributions that had been posted regarding that paragraph. The majority of the comments had been to ensure that the paragraph or summary showed neutrality. He reiterated that the paragraph was drafted as an introductory paragraph for the chart and he read it in that view, highlighting the neutrality that it represented and the intention that was not citing a specific position of any of the delegations who had not reached consensus. That corresponded to the initial part of the chart. Some of the Chair's Conclusions on the paragraph reflected exactly the initial support of the chart, which was introduced, reproduced and then distributed to delegations. That was a fact. He had received some requests saying that in any case that meant that they were prejudicing any of the different positions or views on the outcomes, or were trying to impose any restriction on the different views that they were trying to express in some specific drafted suggestions that he had received.

395. Referring to Paragraph 17, in relation to the topic of preservation, the Secretariat stated that the SCCR had expressed its importance and views. National laws and practices had been

exchanged in relation to the objectives, principles, conditions and other factors to consider when adopting an exception for preservation.

396. The Chair stated that in relation to that paragraph, they had received some very interesting suggestions, which he had considered very carefully. One of them was the need to refer or highlight a document which contained, for example, a set of principles, where the document reference was made at the beginning of the section that corresponded to the topic. Views were not only exchanged, but they had heard national laws described and shared practices. He stressed that the meaning of the paragraph was a neutral approach, without prejudicing any outcomes.

397. Referring to Paragraph 18, the Secretariat stated that the SCCR had decided to continue discussions on the issue of limitations and exceptions for libraries and archives, in the framework of the Chair's non-paper, complemented with additional information coming from sources such as user friendly tools, based on the contents of the study on Copyright Limitations and Exceptions for Libraries and Archives: Updated and Revised prepared by Professor Kenneth Crews, technical presentations by NGOs, searchable databases, regional seminars, among others.

398. The Chair stated that they had received some suggestions that they not give the impression that the discussions of the chart were started before the SCCR on the content of the chart. That had been clarified. Additionally they had received the request to add regional seminars, which was reflected.

399. Referring to Paragraph 19, the Secretariat stated that a number of delegations had suggested that the discussion on the topic would benefit from equal allocation of time among the three substantive topics on the agenda. Paragraph 20; The item would be maintained on the Agenda of the 31st session of the SCCR. Agenda Item 8: limitations and exceptions for educational and research institutions and for persons with other disabilities. Paragraph 21; The documents related to the Agenda Item were SCCR/26/4 PROV and SCCR/27/8. Paragraph 22; The SCCR had stressed the importance of limitations and exceptions for educational, teaching and research institutions due to the fundamental role of education in society. The SCCR had held discussions on the topic, with due consideration of the existing documents.

400. The Chair noted that comments had highlighted the connection with the fundamental role of education.

401. Referring to Paragraph 23, the Secretariat stated that the SCCR had asked the Secretariat to proceed with updating the various studies on limitations and exceptions for educational, teaching and research institutions, published for the 19th session of the SCCR in 2009 and to aim to cover all Member States. The Secretariat was requested to consolidate all the information from those studies in to one single study. Some delegations requested that the studies include information on limitations on remedies for infringement applicable to educational, teaching and research institutions without prejudice to the introduction of other topics related to this agenda item. The SCCR also asked the Secretariat to proceed with commissioning a scoping study on limitations and exceptions for persons with other disabilities.

402. The Chair stated that several contributions were part of that paragraph and they had confirmed in the records that those requests had been made.

403. Referring to Paragraph 24, the Secretariat stated that the item would be maintained on the Agenda of the 31st session of the SCCR. Paragraph 25; A number of delegations had suggested that the discussion on that topic would benefit from equal allocation of time among the three substantive topics on the Agenda. Paragraph 26; The item would be maintained on the Agenda of the 31st session of the SCCR. Agenda Item 9: Other matters. Paragraph 27;

One Member State had highlighted the need to ensure adequate compensation to visual artists and suggested that the SCCR add the topic of the resale royalty right to its Agenda and undertake further discussion on the issue. Many Member States expressed support for adding the item to the Agenda of the meeting, while a few Member States expressed some concerns. It was suggested to analyze the issues further at the following meeting.

404. The Chair concluded that they had made a big effort to accommodate the different views and take into account the contributions. The Chair's Conclusions were a summary that reflected his view of what had happened during the discussions. It did not exactly represent the differences or minor differences that they might have regarding their views. Substantial issues had been reflected and the approach was to be neutral.

405. The Delegation of Brazil requested clarification on the process of discussion as to whether they should approve every item or the Chair's Conclusion as a whole.

406. The Chair confirmed it was the Chair's Conclusion and would not be the object of discussion because they were not going to do it collectively. Therefore it did not need to be approved. He expected that the Chair's Conclusion would be read to the SCCR, with some explanation of the reasoning behind how he had collected the different contributions but not all of them. There was also another document to be submitted to the SCCR and then distributed as a matter of decision for the SCCR to take proposed recommendations.

407. The Delegation of Brazil stated that since there was no time to consult with the Group it spoke in its national capacity regarding Agenda Items 6, 7 and 8. Regarding Paragraph 10, the reference to the definitions being drafted taking into account similar definitions in existing Treaties, it stated that the records of the meeting should contain the points that it had raised, not only that the exercise was not as easy as having the definitions in existing treaties when they were talking about beneficiaries, but also that the Treaty's beneficiaries would be broadcasting organizations. Regarding Paragraph 9, the language used to depict the discussion that they had on the scope and object of protection, the view of one delegation was shared by others. Regarding libraries and archives, it requested the chance to read and reflect upon it. It understood that it was the Chair's Conclusions but it wished to consult with the Group to have a view of the document as a whole.

408. The Chair reminded the delegations that the process had been that they had started drafting the Chair's Conclusions for each section of the Agenda Items, when the substantive topics in Agenda Items 6, 7 and 8 had been discussed. They had drafted them and sent the draft Chair's Conclusions to the regional coordinators in order to receive their input through the coordination of the Groups. They had already received contributions from GRULAC regarding the Agenda Items of the Chair's Conclusions. The Chair had carefully analyzed the input with each one of the views. Some of them were contradictory because they represented different views. The exercise occurred in order to improve the draft version the Chair's Conclusions. The same procedure had occurred with Agenda Items 7 and 8. The result would not totally accommodate different views, which were opposing. The Chair had selected which of the contributions represented the more accurate versions and accommodated contributions from different regions of the world. They were free to present and reflect upon the Chair's Conclusions, but since it was the Chair's Conclusions and the Chair had already undertaken that exercise, they would not enter into approval procedures for it. It was again a tool. The Chair's Conclusions were not adopted by the SCCR. It reflected his personal view on the matter in order to give the SCCR information taking into consideration the delegations' inputs. However, it was impossible to consider all of the inputs because some of them were expressed in different ways and some were opposing the views of other delegations. The exercise had been done in good faith. He was not entering into an exercise of approval for the Chair's Conclusions. They would do a set of recommendations for the SCCR to discuss and decide because it was the last session of the SCCR before the next General Assembly and



suggestions had been made regarding the topics. That would be distributed immediately after the presentation of the Chair's Conclusions. He invited them to start discussions regarding their recommendations. He noted that it was a task that they could undertake when they prepared the SCCR's conclusions and noted with regret that it had not been successful in previous sessions of the SCCR. It could save time to reflect on the Chair's views on the matter as had been suggested by different delegations.

409. The Delegation of Japan, speaking on behalf of Group B thanked the Chair for his efforts to prepare the Chair's Conclusions. The approach taken was very obvious by comparing the original version and the revised version, which did not contain many differences even after hearing from the Group. It asked for clarification in Paragraph 9, the first line regarding prohibiting the unauthorized use. It appreciated the Chair's explanation about the record under discussion and understood that was a first level of consensus or agreement. It understood that the reference to the right to prohibit did not mean that further kind of protection had been excluded at that point for further discussion. Regarding Paragraph 18, it noted that there was a factual issue. It had already indicated that they would use the Chair's non-paper but not to continue discussions in the framework of the paper. They did not have such discussion at the last SCCR session. To reflect that fact in a precise manner, the appropriate language was that the SCCR had decided to use the Chair's non-paper rather than the proposed language. With respect to Paragraphs 19 and 25, for the record it wished to reiterate that the opposite view had been presented in the course of discussion.

410. The Delegation of Iran (Islamic Republic of) requested clarification because from a legal point of view, the clarification of the status of the Chair's Conclusion was very important. There were two practices in WIPO. One practice was that the Chair's Conclusions were discussed and negotiated by the SCCR and then approved by the SCCR. The recent practice was that the Chair's Conclusions were not discussed, negotiated or approved by the SCCR. There was a practice in international organizations that the Chair's Conclusions were the sole responsibility of the Chair. It was concerned that they may not be able to distinguish whether the Chair's Conclusions had been approved by the SCCR or were the responsibility of the Chair. Regarding Paragraph 9, it understood it to mean that all delegations had supported providing protection under any platforms. If that was correct then the Paragraph was not precise because it did not support that. It protected live signals, which were transmitted by air and simultaneously on the Internet.

411. The Chair thanked the Delegation of Iran (Islamic Republic of) and stated that its suggestion would be transmitted to the Secretariat for clarification. He noted that the Chair's Conclusions did not state that they were approved by the SCCR or subject to approval of the SCCR.

412. The Delegation of Nigeria, speaking on behalf of the African Group expressed its appreciation to the Chair and the Secretariat for the time they had taken to prepare the Chair's Conclusions and the consultative process they had employed to reach the final document. The Delegation noted that there were some concerns or interests that it had expressed that were not reflected in the Chair's Conclusions. However, with the explanation the Chair had given, it was happy to accept the document in principle while reserving its rights, if the Chair's Conclusions were open for further changes or modifications. At that point it accepted the document as it was and it hoped that it could enable them to move forward.

413. The Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group thanked the Chair for the hard work. It highlighted that the reservations of the Group on different Agenda Items, including items 6 and 7 had been conveyed during the course of the SCCR as well as during consultations with Regional Coordinators. Members of the SCCR had already started taking the floor in their national capacities on various issues. The Chair had already clarified that the Chair's Conclusions were his and his personal responsibility. It referred to the

statement of the Delegation of Iran (Islamic Republic of) suggesting that it could be clarified once and for all whether through the WIPO Legal Counsel or otherwise. That question had been raised in a few sessions of the SCCR.

414. The Delegation of the European Union and its Member States thanked the Chair and the Secretariat for the hard work that had gone into the Chair's Conclusions. It had no desire to extend the length of the session into the evening. It respected the prerogative of the Chair to provide the Chair's Conclusions and it accepted the explanation that the Chair had given to help frame the document. However, it reserved the right to make comments on points of substance and those related to paragraphs that mentioned that the SCCR had decided or paragraphs that mentioned individual positions taken by Groups. A descriptive explanation of what was done by the SCCR from the Chair was something that should remain untouched in a Chair's Conclusions. However, where the paragraph started with the SCCR had decided it was right and proper that Member States had a right of scrutiny on the points that have been made in the Chair's Conclusions. It agreed with everything that had been said by the Delegation of Japan, speaking on behalf of Group B and it was in favor of the general point raised by the Delegation of Iran (Islamic Republic of) in relation to the Chair's Conclusions, carrying a disclaimer on the fact that it did not commit the SCCR in anyway whatsoever. Those were its preliminary comments.

415. The Delegation of Romania, speaking on behalf of CEBS thanked the Chair for the important efforts that were invested in producing the Chair's Conclusions. For the sake of the brevity, it expressed support of the remarks made by the Delegation of Japan, speaking on behalf of Group B. Although it understood the fact that the Chair may decide not to make any changes it appreciated that the points would be reflected in the way it was proposed.

416. The Delegation of the United States of America supported the statement of the Delegation of Japan, speaking on behalf of Group B, especially with respect to Paragraphs 19 and 25. It did not wish to open up a drafting exercise, but it would have preferred to see a more accurate reflection of the two opposing positions on time allocation. That was an affirmation or reaffirmation of its position which would be in the report.

417. The Delegation of Brazil commented on all the work that the Chair had put into the Chair's Conclusions regarding the series of discussions on different topics. It sought clarification on whether they needed any kind of safeguards or comments reserving their positions regarding any items on the Chair's Conclusions, which were drafted by the Chair with his sole responsibility.

418. The Delegation of India asked whether it could go into specifics or should wait until other delegations had made general comments on the legal part of the language.

419. The Chair confirmed that some of the interventions had commented on the content. He stated that if it had more than general comments it was free to make them, but they were not going to start a discussion on each and every paragraph because the Chair was not looking for approval.

429. The Delegation of India referred to Agenda Item 6, Paragraph 9 and stated that it sought clarification regarding its position, namely that there should be a right to prohibit any signal piracy in any platform. The first part mentioned, "the possibility of providing protection under any platform" and this posed a problem for its delegation. It supported the view of the Delegation of Iran (Islamic Republic of) that it was not completely right to mention that, except as stated by one of the delegations.

420. The Delegation of Nigeria, speaking on behalf of the African Group stated it accepted the Chair's Conclusions as a reflection of the Chair's view. The title of the document was the

Chair's Conclusions and in that alone it spoke to the fact that it was the Chair's reflection and understanding of the meeting. The Chair's Conclusions provided comfort to all groups as it tried to provide a balance of all the concerns raised by the different groups. Even the Africa Group had concerns that were not reflected in the Chair's Conclusions but in the interests of moving forward it reiterated its confidence for accepting the Chair's Conclusions.

421. The Chair confirmed that they had respectively heard that some of the Member States' positions seemed not to be reflected exactly as they were and they wanted to be reflected in a detailed way. He was concerned that they would have 50 pages rather than 3 pages if they opened that up, which would not be a summary but a record. Luckily they had a record for the different, particular views and specific positions and each one of those specific topics and the differing elements that were contained in the topic. The Chair's Conclusions were the Chair's view. It was not approved or subject to the approval of the SCCR and the SCCR did not have to make a decision on it. However in order to clarify, he stated that he would add that the Chair's Conclusions were the responsibility of the Chair and did not contain any decision by the SCCR. They could then avoid an exercise of common drafting on each one of the paragraphs. He referred to one common practice that had been used before to cover some errors, for example if there was a document, which was incorrectly named or if there was a mistake of one date or of a fact. If the factual corrections they were intending to reflect were individual positions regarding one specific topic, then that was not the intention. The different views on the matters had to be based on the consensual-based approach. The consensual based approach came from the different contributions and it was the Chair's role to read that and encompass it, which was a difficult task. He noted that none of the delegations would be completely happy, however they would have to suffer to some extent from the unhappiness of the different delegations, saying that not all of their views were contained in the Chair's Conclusions. There would be further discussions on the topics and the positions would be developed. As with previous Chair's Conclusions, whatever was contained in them, there were further discussions about the different positions to enrich the exchange of the views. He invited them to consider the approach made by the Delegation of Nigeria, speaking on behalf of the African Group. He referred to the Delegation of Romania, speaking on behalf of CEBS who stated that the Chair's Conclusions did not express any decision of the SCCR, nor did it apply to the SCCR, but reflected the Chair's view of the process. It would be complimented by the future work of the SCCR. If things went in another direction then they could probably say that on that specific point, the Chair's Conclusions were not complete or probably missing a specific point. It did not prevent the next stage. That was natural consequence of having a view that it would trigger more discussion. He suggested that they go to the next stage which was the SCCR's decision time.

422. The Delegation of the European Union and its Member States stated that the Chair's statement was well understood. It referred to Paragraph 23 and the question it had previously asked, whether its understanding was correct that regarding the studies under Agenda Item 8, the various studies and the scoping study had already been started. It asked whether in addition to updating the five regional studies, what the Secretariat would need to do was to look at the possibility of making one single study. The Chair's Conclusions seemed to imply that the Secretariat was requested to proceed with the consolidation. It made that point for the record, despite understanding the Chair's statement regarding the fact that they were not asked or supposed to make any comment at that stage on their positions.

423. The Chair stated that they could continue. He reminded them that the next General Assembly was after that session of the SCCR. If some recommendations were going to be submitted to the General Assembly, the discussion should take place at that time. In that regard a separate paper had been reproduced and was distributed including a set of three recommendations on the three substantive Agenda Items with a common view. The process followed had been to initially draft them and receive some contributions. He highlighted that in relation to the third topic, exceptions and limitations for educational institutions, educational and

research institutions and persons with other disabilities, there was a mandate to deliver to the 2015 General Assembly the SCCR's recommendation. That was one of the reasons they had prepared the document for the SCCR's consideration and discussion. It was prepared in a way to try to accommodate some different views. They did not reflect exactly the individual views that they had. However, it was a matter of their decision to take them. If they reached an agreement then they would be sent to the General Assembly. If they did not, they would not have the chance to send them to the General Assembly.

424. The Delegation of Nigeria, speaking on behalf of the African Group stated that it had requested for the floor before the Chair had closed the previous Agenda Item. The Group's opinion was that it should be careful of the precedent that they setting, by asking the Chair to have a disclaimer on the Chair's Conclusions. It had concerns that it could lead to the SCCR extending itself from the activities that took place in the sessions of the SCCR.

425. The Chair thanked the Delegation of Nigeria, speaking on behalf of the African Group for stating the Group's concerns for the record and warning them. The Chair confirmed that all delegations had the paper and requested that the Secretariat read the three proposed recommendations. They would then receive some comments on the three of them in order to have a view, initial reaction or a decision in a way expressing the consensus.

426. The Secretariat referred to the proposed recommendations for SCCR/30. Proposed recommendation Agenda Item 6; The SCCR recommended that the 2015 General Assembly direct the SCCR to expedite its work towards preparing a basic proposal for a Treaty on the protection of broadcasting organizations. The 2016 General Assembly would take stock of progress made and decide on the convening of the Diplomatic Conference to be held in 2017 based on sufficient maturity of the text. Proposed recommendation Agenda Item 7; The SCCR recommended that the 2015 General Assembly direct the SCCR to continue and expedite its work on the topic of limitations and exceptions for libraries and archives. Proposed recommendation Agenda Item 8; The SCCR recommended that the 2015 General Assembly direct the SCCR to continue and expedite its work on the topic of limitations and exceptions for educational, teaching and research institutions and persons with other disabilities.

427. The Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group supported the textual negotiations and agreed topics. It referred to the recommendation on Agenda Item 6 and stated that it supported negotiation on textual negotiation on agreed topics and discussions on those that required clarification. The Delegation believed that it was premature to talk about the exact timing of a Diplomatic Conference, which should be decided in due course after evaluating progress made.

428. The Delegation of the European Union and its Member States requested a short recess to consult with members of respective Groups so that they could respond.

429. The Chair confirmed a recess. (Break).

430. The Delegation of Romania, speaking on behalf of CEBS stated that since they were in the mode of expediting their work on every item of the SCCR, it suggested that they make no exception in the case of adopting the recommendations. It stated that if no words were changed in the proposed text, it accepted the whole text circulated.

431. The Delegation of Japan, speaking on behalf of Group B stated that although many of the comments that it had made during the informal consultation had not been reflected in the document, in the interests of having a concrete outcome for the SCCR, it was ready to accept the current package as it was without any further changes.

432. The Delegation of Nigeria, speaking on behalf of the African Group stated that in line with the spirit in the room, the Group had accepted the proposal for the recommendation on Agenda Item 6. With respect to Agenda Item 7 it expressed its desire to see progress on all three agenda items that had been discussed within the SCCR and suggested the following changes, “The SCCR recommended that the 2015 General Assembly direct the SCCR expedite its work towards an international legal instrument in whatever form on the topic of limitations and exceptions for libraries and archives.” It proposed the same language to be used for Agenda Item 8.

433. The Delegation of Brazil, speaking on behalf of GRULAC referred to the discussion on the proposed recommendation for Agenda Item 5 which took some time of the regional coordinators in the formal mode. There was a need from many developing countries to see the agreed language in the mandate reflected in a recommendation to the General Assembly. It supported the intervention made by the Delegation of Nigeria, speaking on behalf of the African Group that they should work towards an international legal instrument in whatever form as an objective for the future work on the proposed recommendation on Agenda Item 7. Regarding Agenda Item 8, the Group would show flexibility.

434. The Delegation of Pakistan, speaking on behalf of Asia-Pacific Group supported the proposal made by the Delegation of Nigeria, speaking on behalf of the African Group.

435. The Delegation of Georgia confirmed that the proposed recommendations on Agenda Items 6, 7 and 8 were acceptable to it.

436. The Delegation of Iran (Islamic Republic of) agreed with the statement of the Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group. It did not agree with the reference to Diplomatic Conference in 2017. Wording from the fourth, fifth and sixth lines should be deleted because many delegations had confirmed that text-based negotiations on the Treaty had not been conducted and there were no common understandings on key issues and key articles. The SCCR should continue its work on text-based negotiations and finding solutions for key issues and consensus on key articles in the draft Treaty. At the next stage, in accordance with the textual progress, the SCCR could decide on the date of convening a Diplomatic Conference. Regarding Agenda Items 7 and 8, it supported the statements made by the Delegations of Nigeria, speaking on behalf of the African Group and the Delegation of Brazil, speaking on behalf of GRULAC.

437. The Delegation of India supported the views put forward by the Delegations of Nigeria, speaking on behalf of the African Group, the Delegation of Brazil, speaking on behalf of GRULAC and the Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group regarding Agenda Items 7 and 8. The mandate of the General Assembly should be reflected in the language.

438. The Chair confirmed that they had received different views regarding the set of proposed recommendations for the SCCR to be delivered or submitted to the General Assembly that year. He invited them to receive the comments regarding the proposals that had been supported by other Groups.

439. The Delegation of Sudan (the Republic of) supported the statements made by the Delegations of Nigeria, speaking on behalf of the African Group, the Delegation of Brazil, speaking on behalf of GRULAC and the Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group regarding Agenda Items 7 and 8. The text should read, “ask the SCCR” rather than “direct”.

440. The Delegation of Romania, speaking on behalf of CEBS thanked all the delegations and expressed its regret with the fact that it was not possible to have a positive answer from all the

delegations. It was simply not worthwhile to engage in further negotiations of the text especially given they had no guarantee that they would reach a consensual outcome.

441. The Delegation of the Republic of South Africa supported the intervention made by the Delegation of Nigeria, speaking on behalf of the African Group with regard to Agenda Item 6. With regard to Agenda Items 7 and 8, it would like to see progress in all items of the SCCR. The language proposed by the African Group and supported by other delegations allowed the SCCR to expedite its work towards an appropriate legal instrument in whatever form, and did not prejudge the outcome. It requested the spirit of the discussion on broadcasting and exceptions and limitations continue.

442. The Delegation of Japan, speaking on behalf of Group B stated that the text struck a very delicate balance. Unfortunately, the proposal relating to Agenda Items 7 and 8 violated that delicate balance. It suggested that they go back to the original text proposed by the Chair to let the SCCR have a recommendation to be approved by the General Assembly. It called on other delegations to show their flexibility to accept the original package presented by the Chair.

443. The Chair referred to the legitimate points of view expressed and noted that the intention behind the preparation of the proposed recommendations was to try to encompass those differing views in a way that could lead them to keep working and paying attention to those different matters. Strong suggestions were coming from not only one Group but a number of Groups asking for some additions. The proposed recommendations for Agenda Items 7 and 8 had not reached consensus.

444. The Delegation of Brazil, speaking on behalf GRULAC stated that it was essential to have some language in Agenda Item 7 that assured the Group that they were working towards an effective solution to the issues that affected the libraries and archives.

445. The Chair stated that whatever recommendation was taken it should reflect a consensus. If consensus was not reached they could not have a recommendation. He agreed with the Delegation of the Republic of South Africa that there had been a very rich exchange on the different topics in the Agenda. Unless there was a way to reconcile the two different approaches for the proposed recommendations on Agenda Items 7 and 8 there was no consensus. As there was no agreement at that point on the proposed recommendation at SCCR 30, they would go to the next stage, which was the final closing of the session and final remarks.

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

446. The Secretariat thanked all people who had helped to make the meeting work, including the interpreters, the translators and the conference services. It expressed appreciation to the NGOs and those that had sponsored side events. It thanked the Member States for the great tone and good spirit.

447. The Chair thanked all the participants for their contributions in public or in private or through their debates and the interpreters and all of the staff that were really outstanding, the Secretariat and its excellent team. People were waiting for them to reach consensus and that was the way that they would try to proceed. He also thanked the Vice Chair.

448. The Secretariat also thanked the Chair and Vice Chair for making the meeting an enjoyable experience and running the SCCR in a professional way.

449. The Delegation of the European Union and its Member States expressed its disappointed that the SCCR was not in a position to make a recommendation for a concrete roadmap

towards the convening of a Diplomatic Conference on a treaty with regard to broadcasting organizations in 2017.

450. The Delegation of Nigeria, on behalf of the African Group stated that it had requested the floor under the previous Agenda Item and wished to give a second try because there had been a constructive and good spirit at that session of the SCCR. It wished to maintain that pace and felt that further effort could be made towards finding a language that was comfortable to all.

451. The Chair agreed to hear different views regarding the proposal of the Delegation of Nigeria, on behalf of the African Group and would stop with the closing statements.

452. The Delegation of the Republic of South Africa shared the same sentiments as the Delegation of Nigeria, on behalf of the African Group. It suggested that the regional coordinators could meet to find their way to each other.

453. The Chair requested that the regional coordinators come to the table. (Break). The Chair stated that he appreciated spirit of constructiveness in trying to reach a consensus. He was impressed and noted that in that way they were going to achieve results. It did not depend on time to arrive to a consensual-based solution, but it was the spirit of constructiveness in trying to get a solution. Regrettably consensus had not been achieved.

464. The Delegation of Nigeria, on behalf of the African Group stated that the outcome of the break was regrettable, in that they could not find consensus even with the language they had discussed and worked on informally. It reiterated that in the spirit of compromise, it had accepted the Chair's proposal for Agenda Item 6 and for Agenda Item 7 and it would like it to be reflected in the language going forward. It suggested, "The SCCR recommended that the General Assembly direct the SCCR to conclude its work towards an effective solution as to the issues that affect libraries and archives." It stated that it was a good compromise that would give comfort to all Groups. In such language, there was an effective solution for the two issues that affected libraries and archives, an effective solution could be interpreted in any way. There was the same commitment to an effective solution to the issue, the challenges that libraries and archives faced. For Agenda Item 8, the Group was happy to accept the Chair's initial language.

454. The Delegation of Pakistan, speaking on behalf of the Asia-Pacific Group stated that it was disappointed at the inconclusive conclusion of the session. However it believed that a better understanding and flexibility of each other's views allowed them to work towards inclusive consensual outcomes in the future.

455. The Delegation of Japan, on behalf of Group B stated that although it was regrettable that they could not agree with the recommendations, they had made steady progress during the week. On the respective protection for broadcasting organizations, they had agreed to some notions and at the same time, were starting the text-based work on the specific items as well as on the limitations and exceptions.

456. The Delegation of Romania, speaking on behalf of CEBS highlighted that it would have liked to see the progress translated into concrete recommendations to the General Assembly. It had demonstrated maximum flexibility and availability to work with the other Groups and other delegations. It was hopeful that notwithstanding the failure to agree on recommendations, they would continue advancing the work of the SCCR.

457. The Delegation of Nigeria, speaking on behalf of the African Group stated that although they could not agree on the recommendation despite all the efforts, it hoped that the constructive spirit would take them into the next sessions of the SCCR, leading up to the General Assembly.

458. The Delegation of China accepted the amended recommendations and hoped that the Groups would continue to strengthen cooperation and coordination in the spirit of flexibility and positive spirit, so to promote the SCCR towards a positive direction.

459. The Chair stated that it was an honor to be there and have the experience to work with all of them. The session was closed.



## **SUMMARY BY THE CHAIR**

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

1. The Thirtieth Session of the Standing Committee on Copyright and Related Rights (SCCR or Committee) was opened by Mr. Francis Gurry, Director General, who welcomed the participants and opened Agenda Item 2. Ms. Michele Woods (WIPO) acted as Secretary.

### **AGENDA ITEM 2: ELECTION OF THE CHAIR AND TWO VICE-CHAIRS**

2. The Committee elected Mr. Martin Moscoso Villacorta as Chair and Mr. Santiago Cevallos Mena as Vice-Chair for the period from the opening of SCCR/30 up until the opening of SCCR/34. One position as Vice-Chair remained vacant.

### **AGENDA ITEM 3: ADOPTION OF THE AGENDA OF THE THIRTIETH SESSION**

3. The Committee adopted the draft agenda (document SCCR/30/1 PROV. CORR.).

### **AGENDA ITEM 4: ACCREDITATION OF NEW NON-GOVERNMENTAL ORGANIZATIONS**

4. The Committee approved the accreditation as an SCCR observer of the non-governmental organization referred to in the Annex to document SCCR/30/4, namely the Finnish Copyright Society.

### **AGENDA ITEM 5: ADOPTION OF THE DRAFT REPORT OF THE TWENTY-NINTH SESSION**

5. The Committee approved the draft report of its twenty-ninth session (document SCCR/29/5) as proposed. Delegations and observers were invited to send any comments on their statements to the Secretariat at [copyright.mail@wipo.int](mailto:copyright.mail@wipo.int) by July 31, 2015.

### **AGENDA ITEM 6: PROTECTION OF BROADCASTING ORGANIZATIONS**

6. The documents related to this agenda item were SCCR/27/6, SCCR/27/2 REV. and SCCR/30/5.

7. The Committee welcomed the presentation of the Report on Current Market and Technological Trends in the Broadcasting Sector prepared by IHS. It also heard the information session on broadcasting as well as the presentations from and discussions with broadcasting experts invited to address some of the technical issues considered in previous discussions of the Committee.

8. The Committee pursued discussions on the protection of broadcasting and cablecasting organizations in the traditional sense following a signal-based approach and taking into account documents, informal charts and non-papers discussed at the three previous sessions of the SCCR.

9. In relation to the scope and object of protection, with the exception of one delegation that needed further time to consider the possibility of providing protection under any platform, the Committee was of the view that effective legal international protection be granted to broadcasting organizations to prohibit the unauthorized use of broadcast signals in the course of a transmission over any technological platform. Issues related to national regulations applying to the broadcasting sector were also raised.

10. The Committee also further considered definitions related to *broadcasting* and *broadcasting organizations*. These definitions should be drafted taking into account similar definitions in existing treaties. Discussion was also opened on the definition of *signal*.

11. The Committee requested the Chair to prepare for its next session a consolidated text with respect to definitions, object of protection, and rights to be granted. At that session the Committee will also exchange views on and further clarify other issues in order to reach a common understanding.

12. There was no agreement on recommendations to the WIPO General Assembly (WIPO/GA/47).

13. This item will be maintained on the agenda of the thirty-first session of the SCCR.

#### **AGENDA ITEM 7: LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES**

14. The documents related to this agenda item were SCCR/26/3, SCCR/26/8, SCCR/29/3, SCCR/29/4, SCCR/30/2 and SCCR/30/3.

15. The Committee welcomed the *Study on Copyright Limitations and Exceptions for Libraries and Archives: Updated and Revised*, prepared by Professor Kenneth Crews (document SCCR/30/3).

16. The Committee was informed of the completion of the *Study on Copyright Limitations and Exceptions for Museums*, prepared by Mr. Jean François Canat and Professor Lucie Guibault (document SCCR/30/2), which was made available for this session and will be presented at the next session of the Committee.

17. The Committee discussed and accepted the use of the non-paper introduced by the Chair on “exceptions and limitations for libraries and archives” during the twenty-ninth session of the SCCR. This non-paper consists of a chart, which is designed to serve as a useful tool to provide structure to discuss the substance of each topic, drawing on the many resources before the Committee. This will allow the Committee to have an evidence-based discussion respecting differing views and understanding that the goal is not to guide the discussion toward any particular or undesired outcome, but instead to lead to a better understanding of the topics and of their actual relevance to the discussions and the intended outcome.

18. In relation to the topic of preservation, the Committee stressed its importance and views, national laws and practices were exchanged in relation to the objectives, principles, conditions and other factors to consider when adopting an exception for preservation.

19. The Committee decided to continue discussions on the issue of limitations and exceptions for libraries and archives in the framework of the Chair’s non-paper complemented with additional information coming from sources such as user-friendly tools based on the contents of the *Study on Copyright Limitations and Exceptions for Libraries and Archives: Updated and Revised*, prepared by Professor Kenneth Crews, technical presentations by NGOs, searchable databases, regional seminars, among others.

20. A number of delegations suggested that the discussion on this topic would benefit from equal allocation of time among the three substantive topics on the agenda.
21. There was no agreement on recommendations to the WIPO General Assembly (WIPO/GA/47).
22. This item will be maintained on the agenda of the thirty-first session of the SCCR.

#### **AGENDA ITEM 8: LIMITATIONS AND EXCEPTIONS FOR EDUCATIONAL AND RESEARCH INSTITUTIONS AND FOR PERSONS WITH OTHER DISABILITIES**

23. The documents related to this agenda item were SCCR/26/4 PROV. and SCCR/27/8.
24. The Committee stressed the importance of limitations and exceptions for educational, teaching and research institutions due to the fundamental role of education in society. The Committee held discussions on the topic, with due consideration of the existing documents.
25. The Committee asked the Secretariat to proceed with updating the various studies on limitations and exceptions for educational, teaching and research institutions published for the nineteenth session of the SCCR in 2009 and to aim to cover all WIPO Member States. The Secretariat was requested to consolidate all the information from these studies into one single study. Some delegations requested that the studies include information on limitations on remedies for infringements applicable to educational, teaching and research institutions without prejudice to the introduction of other topics related to this agenda item. The Committee also asked the Secretariat to proceed with commissioning a scoping study on limitations and exceptions for persons with other disabilities.
26. A number of delegations suggested that the discussion on this topic would benefit from equal allocation of time among the three substantive topics on the agenda.
27. There was no agreement on recommendations to the WIPO General Assembly (WIPO/GA/47).
28. This item will be maintained on the agenda of the thirty-first session of the SCCR.

#### **AGENDA ITEM 9: OTHER MATTERS**

29. One Member State highlighted the need to ensure adequate compensation to visual artists and suggested that the Committee add the topic of the resale royalty right to its agenda and undertake further discussion on the issue. Many Member States expressed support for adding this item to the agenda of the meeting, while a few Member States expressed some concerns. It was suggested to analyze the issue further at the next meeting.

#### **SUMMARY OF THE CHAIR**

30. The Committee took note of the contents of this Summary by the Chair. The Chair clarified that the summary reflected the Chair's views on the result of the 30th session of the SCCR and that, in consequence, it was not subject to approval by the Committee.

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

31. The next session of the Committee will take place from December 7 to 11, 2015.

[Annex follows]

## **ANNEXE/ANNEX**

### LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

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

Antonella ZAPPIA (Ms.), Intern, Permanent Delegation, Geneva

III. ORGANISATIONS INTERGOUVERNEMENTALES/  
INTERGOVERNMENTAL ORGANIZATIONS

OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL / EUROPEAN AUDIOVISUAL  
OBSERVATORY

Sophie VALAIS (Ms.), Legal Analyst, Strasbourg

ORGANISATION MONDIALE DU COMMERCE (OMC) / WORLD TRADE  
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\* Sur une décision du Comité permanent, la Communauté européenne a obtenu le statut de membre sans droit de vote.

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

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NON-GOVERNMENTAL ORGANIZATIONS

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Alianza de Radiodifusores Iberoamericanos para la Propiedad Intelectual (ARIPI)

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

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

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Vice-présidents/Vice-Chairs: Santiago CEVALLOS MENA (Équateur/Ecuador)

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VII. BUREAU INTERNATIONAL DE L'ORGANISATION MONDIALE DE LA  
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