

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

**Thirty-Sixth Session**  
**Geneva, May 28 to June 1, 2018**

DRAFT REPORT

*prepared by the Secretariat*

1. The Standing Committee on Copyright and Related Rights (hereinafter referred to as the “Committee”, or the “SCCR”) held its thirty-sixth session in Geneva, from May 28 to June, 2018.

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: Algeria, Argentina, Armenia, Australia, Austria, Barbados, Belarus, Belgium, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Congo, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Germany, Ghana, Greece, Guatemala, Holy See, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Italy, Japan, Kazakhstan, Kenya, Kuwait, Latvia, Lithuania, Malawi, Malaysia, Mexico, Monaco, Mongolia, Morocco, Mozambique, Nigeria, Oman, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Senegal, Seychelles, Singapore, South Africa, Spain, Sweden, Switzerland, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States of America, Uruguay, Venezuela (Bolivarian Republic of), Viet Nam, Yemen and Zimbabwe (89)

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, Caribbean and Pacific Group of States (ACP GROUP), African Regional Intellectual Property Organization (ARIPO), African Union (AU), Eurasian Economic Commission (EEC), *Organisation Internationale de la Francophonie (OIF)*, Organization of Islamic Cooperation (OIC), South Centre (SC) and World Trade Organization (WTO) (8).

5. The following non-governmental organizations (NGOs) took part in the meeting in an observer capacity: Actors, Interpreting Artists Committee (CSAI), *Alianza de Radiodifusores Iberoamericanos para la Propiedad Intelectual* (ARIPI), Asia-Pacific Broadcasting Union (ABU), *Asociación Argentina de Intérpretes* (AADI), Association CONVERGENCE, Association for the International Collective Management of Audiovisual, Association of Commercial Television in Europe (ACT), Association of European Performers' Organizations (AEPO-ARTIS), Authors Alliance, British Copyright Council (BCC), Canadian Museums Association (CMA), Central and Eastern European Copyright Alliance (CEECA), Centre for Internet and Society (CIS), Chamber of Commerce and Industry of the Russian Federation (CCIRF), Civil Society Coalition (CSC), Communia, *Conseil national pour la promotion de la musique traditionnelle du Congo* (CNPMT), Co-ordinating Council of Audiovisual Archives Associations (CCAAA), Copyright Research and Information Center (CRIC), *Corporación Latinoamericana de Investigación de la Propiedad Intelectual para el Desarrollo* (Corporación Innovarte), DAISY Consortium (DAISY), Electronic Frontier Foundation (EFF), Electronic Information for Librarians (eIFL.net), European Broadcasting Union (EBU), European Bureau of Library, Information and Documentation Associations (EBLIDA), European Law Students' Association (ELSA International), European Publishers Council (EPC), European Visual Artists (EVA), *Fédération européenne des sociétés de gestion collective de producteurs pour la copie privée audiovisuelle* (EUROCOPYA), *Federazione Unitaria Italiani Scrittori* (FUIS), Health and Environment Program (HEP), Ibero-American Television Organization (OTI), Ibero-Latin-American Federation of Performers (FILAIE), International Association for the Protection of Intellectual Property (AIPPI), International Association of Broadcasting (IAB), International Association of Scientific Technical and Medical Publishers (STM), International Authors Forum (IAF), International Confederation of Music Publishers (ICMP), International Confederation of Societies of Authors and Composers (CISAC), International Council of Museums (ICOM), International Council on Archives (ICA), International Federation of Actors (FIA), International Federation of Film Producers Associations (FIAPF), International Federation of Journalists (IFJ), International Federation of Library Associations and Institutions (IFLA),

International Federation of Musicians (FIM), International Federation of Reproduction Rights Organizations (IFRRO), International Federation of the Phonographic Industry (IFPI), International Federation of Translators (FIT), International Literary and Artistic Association (ALAI), International Publishers Association (IPA), International Video Federation (IVF), Education International (EI), Karisma Foundation, Knowledge Ecology International, Inc. (KEI) Latin Artis, Library Copyright Alliance (LCA), Max-Planck Institute for Intellectual Property and Competition Law (MPI), Motion Picture Association (MPA), National Library of Sweden (NLS) North American Broadcasters Association (NABA), Program on Information Justice and Intellectual Property (PIJIP), Society of American Archivists (SAA), The Japan Commercial Broadcasters Association (JBA), Third World Network (TWN), Union for the Public Domain (UPD), Union Network International - Media and Entertainment (UNI-MEI), Association for the International Collective Management of Audiovisual Works (AGICOA), World Association of Newspapers (WAN) and World Blind Union (WBU) (71)

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

6. The Chair welcomed the delegations to the thirty-sixth session of the SCCR and invited WIPO's Deputy Director General to give her opening remarks.

7. The Deputy Director General welcomed the delegations and indicated that the Director General would speak that afternoon.

#### **AGENDA ITEM 2: ADOPTION OF THE AGENDA OF THE THIRTY-SIXTH SESSION**

8. The Chair stated that a year had passed since the Chair and the Vice-Chairs were elected to guide the work on the SCCR. Even then, copyright remained the most impactful intellectual property right in the international environment because of its reach, its impact and its ability to shape the lives of everyone in the world. That was because copyright is an area of intellectual property that is connected to the way we work, the way we live, the way we play, the way we identify. As such, the work of that Committee remained as important as ever. Regardless of the difficulties and challenges in moving the agenda forward, the Chair believed that the discussions in the previous years had enabled the Committee to move the agenda forward. As the WIPO General Assembly was set for September of that year, the Chair advised that in discussions, the Committee keep an open mind as to what it could recommend to the WIPO General Assembly. The Chair thanked the Vice-Chairs and the Secretariat for all their efforts, and declared the meeting open. Moving to the second agenda item, which was the adoption of the agenda of the thirty-sixth session of the SCCR, as included in document SCCR/36/1/Prov., the Chair noted that the Secretariat had circulated the draft agenda, with respect to the scope of the Committee's work that week. It had been proposed that the Committee would continue to work on all subjects of the draft agenda. As to the work of the Committee, the proposal was to discuss the protection of broadcasting organizations that day and the following day, before moving to limitations and exceptions, which would be discussed from Wednesday to Thursday. The Secretariat had circulated draft action plans, which the Chair hoped that the Committee would share its input. The Committee would then discuss other matters on Friday morning, with the review of the Chair's summary continuing Friday afternoon alongside recommendations to the General Assembly. The Secretariat had sent a schedule for the week to the group coordinators. The Chair requested that the Secretariat review that schedule in light of the modifications that had been proposed. He requested that the Secretariat read the schedule.

9. The Secretariat thanked the Chair and presented the draft schedule for the week.

10. The Chair inquired if there were any comments on the draft schedule. With no additional comments or objections, the Committee approved the draft agenda.

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

11. The Chair moved on to Agenda Item 3, the accreditation of new non-governmental organizations. The Secretariat had received three requests, which could be found in document SCCR/36/2. He invited the Committee to approve the accreditation of the three NGOs referred to in that document, namely, the Auto Alliance, the Connected Foundation and the Intellectual Property Center. With no objections or comments from the Member States the Committee approved their accreditation.

### **AGENDA ITEM 4: ADOPTION OF THE REPORT OF THE THIRTY-SIXTH SESSION OF THE SCCR**

12. The Chair opened Agenda Item 4, the adoption of the report of the thirty-fifth session of the SCCR. Delegations were invited to send any comments or corrections to the English version, which was available online, to the Secretariat, via email at [copyright.mail@wipo.int](mailto:copyright.mail@wipo.int). The comments should be sent in by September 15, 2018 in order to allow the production of the report before the following session. The Committee was invited to approve the Draft Report, document SCCR/35/11 PROV. The Committee adopted the document. The Chair then invited the Secretariat to inform the delegates about the side events that week and to make other announcements.

13. The Secretariat informed the delegates about the side events and made other announcements.

### **OPENING STATEMENTS**

14. The Chair opened the floor for general statements by group coordinators.

15. The Delegation of Tunisia stated that with regard to the protection of broadcasting organizations, it would like to see the Committee make progress and convene a diplomatic conference according to the General Assembly's mandate from the previous year. The Delegation was happy to see the preparation of the synthesis document on the protection to be given to broadcasting organizations was optimistic about the discussions with regard to that issue. Progress had been made on some of those issues, in particular on the issue of definitions. With regard to limitations and exceptions for libraries and archives, to ensure access to information, negotiations had to speed up so that the Committee could adopt a new binding document. The action plans contained in document SCCR/36/3 reflected the right way to move forward, particularly with regard to libraries, archives, museums as well as education and research organizations and persons with disabilities. The Delegation supported the resale right proposal submitted by the Delegations of Senegal and Congo and looked to put that topic on the standing agenda of the SCCR. The Delegation thanked the Secretariat for its cooperation and for reflecting both sides of that issue.

16. The Delegation of Indonesia speaking on behalf of the Asia and Pacific Group affirmed its support of the agenda and the work program for the session, which reflected a more balanced treatment of all issues facing the Committee. The SCCR was important to WIPO in dealing with 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. Those three issues were of great importance to the Asia and Pacific Group. Following the discussions in the Committee since the twenty-seventh session, it would not be wrong to say that they were facing difficulty in finding agreement on continuing work on each of the three important agenda items. In order to further their work, they should refer to the 2012 General Assembly guidance to the SCCR, on the work plan on those three issues. The broadcasting treaty and how rights applied to broadcasting was an issue that

required careful balancing. Members of the Asia and Pacific Group would like to see the finalization of a balanced treaty on the protection of broadcasting organizations based on the mandate of the 2007 General Assembly, approached in the traditional sense. For the Delegation, exceptions and limitations were of critical importance for individuals and the collective development of societies. The draft action plans were a good basis for further consideration in the Committee, to make progress on those very important issues. The Delegation reaffirmed its commitment to remain engaged in the discussion of the draft action plans. It hoped that all Member States could reach agreement on the draft action plans at that session. The Asia Pacific Group recognized the emergence of new important issues as well, such as copyright in the digital environment and director's rights. The Delegation was confident the document prepared by the Chair on the subsequent steps on matters would serve as a good basis for further discussion. Members of the group would make interventions in their national capacity under that agenda item and would proactively participate in the discussion on that topic. It reminded the Chair that the SCCR was the same Committee that concluded treaties achieved through the constructive engagement of all Member States. It was optimistic they could make further progress and arrive at meaningful outcomes by employing the same spirit of constructivism.

17. The Delegation of Morocco speaking on behalf of the African Group stated that it continued to attach great importance to the items being discussed in the SCCR, both the standing agenda items as well as other matters. Its priority on the agenda was exceptions and limitation for libraries and archives for education and research institutions and for persons with other disabilities. One of the main objectives of the copyright system was to share works that would go to improve the wellbeing of the public. That was why the principle of exceptions and limitations in the intellectual property system sought to meet those specific objectives, and guarantee that developing countries could access material and teaching resources that would enable them to develop their human resources and would ensure overall cultural, social and economic development. The Delegation took note of the draft action plans contained in document SCCR/36/3 asserting that discussions on those topics should take place on the basis of the mandate given by the General Assembly in 2012. The African Group hoped that the Committee would be able to make considerable and substance headway in the exceptions and limitations text. On the question of the protection of broadcasting organizations, the Committee shouldn't forget how important it was to have multilateral treaties in that regard. The position of the African Group was reflective of the 2007 General Assembly, which looked to have a treaty in that area. The resale right was important, as it went to establish balance between the economic situation of authors of graphic work and plastics and fine arts, and other creators who drove profit from the successive sales of their works. The African Group supported the proposal submitted by the Delegations of Senegal and Congo to approve the resale right and to give priority that issue whose discussions go back to the twenty-seventh session of the SCCR. The Delegation implored Member States to be flexible, to find common ground, and to overcome specific national positions so that the Committee can arrive at a compromise. The Delegation was committed to engaging constructively and encouraged Member States to recognize the needs and priorities of developing countries and ensure development in all aspects.

18. The Delegation of Ecuador, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), stated that the SCCR's work was of the greatest importance to its group. It had always advocated a well-balanced program of work on the protection of broadcasting organizations, limitations and exceptions for libraries and archives and limitations and exceptions for teaching and research institutions and for people with other disabilities, as well as the GRULAC proposal on copyright related to the digital environment. It hoped to tackle all of these questions through balanced discussions, respecting the interests and priorities of all Member States. With regard to limitations and exceptions, the Delegation was ready to engage pragmatically so as to develop a copyright system that would allow a balance between rightsholders and the collective development of society. The Delegation welcomed the draft

action plans on exceptions and limitations for libraries and archives and exceptions and limitations for research and educational institutions and persons with other disabilities, contained in document SCCR/36/3. GRULAC reiterated its willingness to continue discussions on the protection of broadcasting organizations, so as to update their protection, following the signal-based approach. At the previous SCCR the Committee had submitted consolidated and revised text, document SCCR/35/12. The Delegation looked to continue discussions based upon that document, taking into account other documents available. It thanked the Delegation of Argentina for presenting document SCCR/36/5 which contained a note on the draft treaty for the protection of broadcasting organizations and thanked the Chair for document SCCR/36/4. The Delegation was interested in continuing discussions on the GRULAC proposal for analysis of copyright in the digital environment and proposed that the Committee carry out an economic study which would allow Member States to know much more about the value chain of contents in the digital environment, and improve their understanding on how royalties are distributed. The Delegation stressed that the work of the Committee was important for the multilateral system as it provided roots for useful norm setting in contemporary society. The Marrakesh Treaty was a clear example of what that Committee can do to arrive at concrete results. The Delegation encouraged Member States to work constructively, so as to reach agreements on pending issues.

19. The Delegation of China expressed its support of the Agenda and the proposed time allocation. The Delegation believed that the Committee had made great efforts in the negotiations and promotion of the broadcasting treaty and encouraged Member States to seriously consider specific items in the relevant discussions. The Delegation wished to reach consensus on substantive issues. On the issue of limitations and exceptions and other agenda items, the Delegation would make statements on those specific agenda items. The Delegation reaffirmed its flexible attitude with regard to any constructive proposal. In the previous sessions regarding principles, objectives, and technical issues, it had expressed its views and proposals many times. In the current session, it would provide additional proposals.

20. The Delegation of Lithuania, speaking on behalf of the Group of Central European and Baltic States (CEBS), restated the longstanding position that it was committed to working towards the convening of a diplomatic conference, on the adoption of a treaty for the protection of broadcasting organizations, which would produce a meaningful outcome. The Delegation emphasized the need to have a treaty that would take in to account different types of broadcasting developed through rapidly evolving technologies. As stated in the previous SCCR sessions, the CEBS Group recognized the importance for exceptions and limitations for libraries and archives and for persons with other disabilities. The Delegation believed that the current international legal framework, which already allowed Member States to adopt or amend the national laws to ensure adequate copyright protection, contained necessary provisions on exceptions and limitations that would not undermine the incentive for authors to create. It was not in a position to lend its support to work on an international legal instrument in that area. However, the different approaches adopted by Member States, including explanations of best practices, was the best way forward in examining that topic. The Delegation thanked the Chair for elaborating the draft action plans regarding exceptions and limitations through SCCR 39 contained in document SCCR/36/3. The Delegation was prepared to provide its comments and to engage in constructive discussion on that proposal. Additionally, CEBS Group thanked the Delegations of Senegal and Congo on their resale rights proposal and supported the inclusion of that important item on to the agenda of the Committee. Finally, CEBS reassured the Chair of its constructive engagement in all the discussions during the SCCR session.

21. The Delegation of Switzerland, speaking on behalf of Group B, stated that it continued to attach importance to the negotiation of a treaty for the protection of broadcasting organizations. If that treaty was to sustain its relevance, they had the responsibility to take into account the voices of the real world and to respond to technological developments in various fields. The

significant economic value of broadcasting, and the appropriate protection of such value was an important consideration for the organization. In that regard, as Member States, they should work towards a solution, which fitted in the current environment. At the same time, the Delegation stressed the importance of reaching agreement on the objectives of specific scope and object of protection of the treaty, which conditioned the convening of a diplomatic conference. They noted with appreciation the efforts that had been made to prepare document SCCR/35/12, revised consolidated text on definitions, object of protection and rights to be granted and other issues. Part A of that document was an acceptable basis for further discussion on remaining issues. However, in all areas there was more work to be done to maximize the chances that the treaty would find success. Group B trusted that the discussions would be further elaborated under the Chair's able-chairmanship, and through the valuable contributions from all participants in the Committee. Turning to limitations and exceptions, it hoped that they could find a consensual basis for further work in the Committee. It appreciated that the aim of their discussions had been to reach a better understanding of the topics, and to explore common ground upon which the Committee could stand. As regards the working methods, the Delegation took note of document SCCR/36/3 which included the draft action plans on limitations and exceptions prepared by the Chair. The Delegation recognized that the draft action plans aimed to improve the Committee's understanding of the topics and was as such ready to discuss it. The Chair could stand assured that he could count on Group B's continued commitment to constructive engagement in the Committee's work.

22. The Delegation of Kazakhstan, speaking on behalf of the Central Asian, Caucasus and Eastern European Countries (CACEEC), stated that as one of the important WIPO Committees, the SCCR had proven itself as a significant negotiating platform in the field of copyright. It had produced treaties serving to the benefit of all Member States. However, despite the progress that had been made, there were outstanding issues which had been under discussions for a rather long time. CACEEC attached great importance to the issues on the Agenda of the meeting. The time had come to move to a new phase to accelerate the Committee's work. With regards to the broadcasting, it would like to take into account the technological advancements and challenges in the changing environment. As a consequence, it was aware that there was an urgent need to conclude the global treaty in protecting broadcasting organizations from piracy. It looked forward to fruitful discussions on that matter, the results of which could lead them to a diplomatic conference. On limitations and exceptions, it acknowledged the importance of access to knowledge and information for the benefit of all stakeholders, private and public. It hoped that the work of the Committee would come up with a solution, on the principles of inclusiveness and pragmatism. The Delegation called on the other Delegations of WIPO to support the initiative to strengthen the protection of the rights of theater directors at the international level. The issue of protection and enforcement of copyright and related rights of performance directors was important to a wide range of supporters of theater arts. In the absence of the relevant regulation, the risk of quality productions of stage performance and the abuse of rights of directors would increase. It was interested in promoting experience sharing in that area, and exploring possible ways to strengthen the protection and enforcement of copyright and related rights of performance directors of theatrical work. It hoped to get the support of Member States on that initiative. CACEEC was ready to undertake negotiations on the remaining unresolved issues in front of them. The Chair could count on their constructive engagement, with the view of having a successful completion of the work of the session.

23. The Delegation of the European Union stated that it had been actively involved in the discussions on the treaty for the protection of broadcasting organizations. Those discussions were of great importance. It was committed to continuing to work constructively to advance the complex and technical discussions. It was important that that would respond to the current and future needs and interests of broadcasting organizations, and reflect the developments of the twenty-first century. In that context, it looked forward to the further engagement of the Committee, in order to be able to proceed with in depth discussions on the revised consolidated

text, rights to be granted and other issues which had been prepared in the context of the previous session. Considerable efforts had been made during the previous sessions, in order to build consensus on the main elements of a treaty. The Delegation stressed that what was needed was a broad consensus as to the extent of the protection to be granted, so that a treaty could provide broadcasting organizations with adequate and effective protection. Taking that in account, it reiterated its commitment to progressing towards the conclusion of a worthwhile treaty, which reflected the technological realities and developments of the twenty-first century in a meaningful way. The Delegation hoped that that would be the session to agree on the elements necessary for that. In that regard, the Delegation thanked the Delegation of Argentina for its proposal contained in document SCCR/36/5. The Delegation of the European Union remained committed to active and constructive continuation of discussions on limitations and exceptions. In that regard, the Delegation remained convinced that the existing international copyright framework empowered Member States to introduce, maintain and update limitations and exceptions in their national legislation that could meaningfully respond to their local needs and traditions while continuing to ensure that copyright was an incentive and reward to creativity. The Committee's work should therefore aim at a better understanding of the issues at stake while simultaneously taking into account the various existing possible solutions and flexibilities in the framework of the international treaties. The Delegation did not see the need for any new and additional legally binding instruments in that area and was convinced that useful work could be carried out in that Committee to provide guidance regarding the manner in which the international treaties were implemented in national laws. The Delegation took note of the Secretariat's proposal for revised draft action plans regarding exceptions and limitations, document SCCR/36/3, and was ready to share its views and comments on the points contained therein. With regards to the topics currently being discussed under other matters, the Delegation took note of document SCCR/36/4 which contained the proposal of the Chair on the next steps on other matters. The Delegation of the European Union continued to support the proposal by the Delegations of Senegal and Congo to include the resale right on the agenda of the SCCR.

24. The Chair clarified that though circulated by the Secretariat, the draft action plans were in fact prepared by the Chair.

25. The Delegation of Senegal aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. That statement was of particular interest to the Delegation as it contributed to strengthening the necessary balance between rightsholders. Exceptions and limitations to copyright played a major role to human and capacity building by fostering better access to knowledge and other teaching tools. The Delegation wished to ratify the Marrakesh Treaty, which it stated had a positive effect on social and economic development. Discussions on limitations and exceptions on libraries and archives and on research institutions had to speed up so that other items on the agenda could too be discussed. It welcomed the progress made in the discussion of a broadcasting treaty and on issues of definitions, and in that regard highlighted the important contribution of the African Group. The Delegation would support a convening of a diplomatic conference on the protection of broadcasting organizations. The Senegalese government continued to make committed steps to defend the noble cause of copyright, and was multiplying its efforts in that area. As the Committee was engaged in the thirty-sixth session of the SCCR, the biennial for contemporary Africa was also taking place. That important meeting was an opportunity for high level debate, on issues with regard to intellectual property, between different stakeholders. The Delegation thanked the Committee for the efforts it had undertaken on the artist resale right proposal submitted by the Delegations of Senegal and Congo. The proposal was garnering more and more support particularly from the African Group, and deserved to be high on the agenda of the SCCR. The work that had been done on the international conference as well as on the economic impact study justified that need. The Delegation thanked the Member States who continued to support its proposal on a resale right, which it indicated sought to reestablish a



balance of rights for artists. The Delegation affirmed that it would continue to fully participate in the discussions on the different agenda items.

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

26. The Chair opened Agenda Item 5 on the protection of broadcasting organizations. He stated as a result of the hard work at the previous Committee meeting, the Chair presented document SCCR/35/12, Revised Consolidated Text on Definitions, Object of Protection, Rights to be Granted and Other Issues, which reflected the results of the discussions held during that meeting. The Committee had a number of new documents, including the note drafted by the Delegation of Argentina during the thirty-fifth session of the SCCR. The note indicated that there could be different transmission concepts, three categories to be specific. The Chair requested that the Delegation of Argentina expand on that in its statement. With regard to expectations of that agenda item, the Chair stated that the issue had been discussed extensively in the past and continued to be an issue of key importance for all of them. The discussions had to be conducted at a level that was constructive and pragmatic and which included certain technicalities. With that in mind, some of the sessions and discussions would move towards informal sessions, so that the Committee could have time to delve into those technicalities. He opened the floor to group coordinators for statements, followed by national delegations and Observers representatives.

27. The Delegation of Indonesia, speaking on behalf of the Asia and Pacific Group, reiterated that how the treaty would be applied was an issue that required careful balancing. It would like to see 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 and broadcasting organizations in the traditional sense. The Delegation was ready to discuss that agenda item on the basis of the revised consolidated document SCCR/35/12 and hoped that agreements could be reached on the key aspects of the protection of broadcasting organizations particularly on definitions, object of protection and rights to be granted. The Asia and Pacific Group thanked the Delegation of Argentina for preparing the note outlined in document SCCR/36/5 and expressed its hope that the note be discussed.

28. The Delegation of Switzerland, speaking on behalf of Group B, reiterated the importance of updating the international legal framework for the effective protection of broadcasting organizations, to address the technical issues and reality that they faced in the modern world. Group B stressed the importance of reaching agreement on objectives, specific scope and object of protection of the treaty, which conditioned the convening of a diplomatic conference. There were elements that required further discussions if they were to progress to a stage where the Committee could propose to the General Assemblies the convening of a diplomatic conference. With that in mind, it remained committed to the discussions and to furthering its technical understanding, in order to determine the most relevant, effective and mutually acceptable provisions that would allow them to provide maturity of the text. For that purpose, it welcomed the discussion of the new version of the Revised Consolidated Text on Definitions, Objects of Protection, Rights to be Granted and Other Issues, in part A of document SCCR/35/12, as a reasonable basis for further discussion. It should be it kept in mind that the critical element was the technical understanding and knowledge of the issues facing broadcasting organizations in the world, in order to decide how to best address the issues through a meaningful treaty text. Due consideration had to be paid to that fact, in any kind of exercises of the present and at future sessions of the Committee. It was important to take maximum advantage of the technical exercises, for the facilitation of the negotiation process of the treaty. The Delegation noted with appreciation of the contribution submitted by the Delegation of Argentina contained in SCCR/36/5. It committed itself to continuing to contribute towards reaching a meaningful outcome that would best serve all Member States and their

stakeholders.

29. The Delegation of Lithuania speaking on behalf of CEBS reiterated the great importance that its group attached to the conclusion of the treaty on the protection of broadcasting organizations and welcomed the great progress achieved in the previous session of the Committee as reflected in document SCCR/35/12. It also emphasized its eagerness to advance the work of the Committee in achieving progress on the Revised Consolidated Text on Definitions, Object of Protection, Rights to be Granted and Other Issues. It looked forward to building the discussions on the text and advancing the work towards developing an adequate, effective legal instrument that would favor the approach which equally protected any broadcasting organizations transmissions over computer networks and that reflected contemporary technological realities. The Delegation thanked the Delegation of Argentina for its proposal and indicated its preparedness in discussions outlined in that document. Transmissions should be protected not only at the moment of the first signal, but also during the reasonable time frame. Bearing in mind other international treaties such as the Beijing Treaty, the Committee should explore the possibility to use other references in drafting provisions related to the protection of broadcasting organizations, particularly with regard to exceptions and limitations. Member States would engage constructively in informal sessions and discussions over the above-mentioned document and articles, in order to finalize the treaty that had been discussed for a long time.

30. The Delegation of Ecuador, speaking on behalf of GRULAC, reiterated the need to continue debates on the protection of broadcasting organizations so as to update protection on the basis of a signal based approach. It was happy to see document SCCR/35/12 the Revised Consolidated Text on Definitions, Object of Protection, Rights to be Granted and Other Issues. The Delegation was closely examining the proposal presented by the Delegation of Argentina document SCCR/36/5. It hoped the Committee would be able to make concrete progress on the issues of the agenda and reiterated its intent to participate constructively.

31. The Delegation of the European Union affirmed that the treaty on the protection of broadcasting organizations was a high priority for its member states. It was strongly committed to advancing work on the various issues identified during previous Committee sessions. Therefore, it looked forward to furthering the engagement of all delegations, in order to discuss the various issues, with goal of achieving consensus on the main elements of the possible future treaty. It hoped that further progress could be made on the basis of the Revised Consolidated Text on Definitions, Object of Protection, Rights to be Granted and Other Issues contained in SCCR/35/12. It was ready for in-depth discussions, and would also share a number of technical and substantive comments with the Committee that it had on the text. As had been said on several occasions, it was of the opinion that the Committee's work should result in a meaningful treaty that reflected the technological developments of the twenty-first Century. In particular, transmissions of traditional broadcasting organizations over computer networks, such as simultaneous transmissions, catch up transmissions warranted international protection over acts of piracy. It also attached great importance to the adequate cataloging of rights, which would allow the necessary protection for broadcasting organizations against acts of piracy, whether they occurred simultaneously with the protected transmissions or after the transmissions had taken place. The Delegation thanked the Delegation of Argentina for its proposal contained in document SCCR/36/5 and the interesting ideas contained therein. It looked forward to a detailed discussion of its content. As regards the other issues that had been identified in the Chair's text, it maintained its strong conviction that the examples set by recent treaties in that area should serve as a template to guiding the Committee's work in that regard. The Delegation reiterated that what was needed was a broad consensus as to the extent that future Treaties could provide broadcasting organizations with adequate and effective protection. It hoped that the considerable efforts, which had been made during previous sessions could allow them to find a solution on the main elements of the treaty and bring them

to a successful outcome.

32. The Delegation of Egypt hoped that that the Committee would be able to reach consensus so as to move forward to the convening of a diplomatic conference on the protection of broadcasting organizations. The Delegation hoped to reach a balanced approach with regard to the protection of those organizations while keeping in mind the concerns of the developing countries.

33. The Delegation of Brazil stated that the SCCR had a very busy agenda with topics of utmost importance. Its hope was that the Committee would engage in constructive debates and make substantive progress on the issues being discussed. The Delegation expressed its full support of the revised consolidated text prepared by the Chair, document SCCR/35/12. That document reflected streamlined proposals that could lead the Committee to a consensus and formed a sound basis for the work of that Committee. As a member of the Rome Convention, in a country with important broadcasting organizations, Brazil fully shared the objective of combatting signal piracy. The Delegation considered it is absolutely necessary to update the Rome Convention, in light of the past and future technological developments. When the Rome Convention was concluded in 1961, several technological advancements that are often taken for granted in broadcasting did not even exist. While those have become pervasive, international regulations have not kept up with those changes, and as such, there was a much needed breakthrough in the Committee's discussions. At the previous SCCR, the Committee's discussion had been based on the consolidated text and there was progress made towards reaching a common understanding of the main issues. The Delegation hoped that further progress could be made during that session, so that there could be an adoption of a treaty to protect broadcasting organizations at the earliest convenience. The best strategy forward was to support the Chair's proposed text and send to the WIPO Assembly a recommendation to convene a diplomatic conference. On the topic of limitations and exceptions in broadcasting, taking into account previous discussions in the SCCR on limitations and exceptions, the Delegation of Brazil joined the Delegations of Argentina and Chile and put forward a proposal as an attempt to find a compromise between those Member States that favored a detailed list of permissible limitations and exceptions, and those that preferred only the three-step test. That proposal was a genuine attempt to bridge gaps between Member States and advance discussions. As the primary objective in broadcasting discussions had always been to promote consensus and agreement between delegations, allowing the advancement of those important discussions, the Delegation was ready to show flexibility and agree to the text on exceptions and limitations contained in part A of the Chair's document, which in its view was consistent with the multilateral norm and allowed for each country to address such issues as deemed necessary. The Delegation hoped that the Committee could constructively engage, so as to move forward a recommendation to the General Assembly to convene a diplomatic conference on that subject matter.

34. The Delegation of South Africa aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. As had been sufficiently articulated by many delegations, the broadcasting treaty was of particular importance in the digital era. Progress was made in the previous SCCR when an innovative agreement was reached on how to deal with the key terms of broadcasting and cablecasting. The Delegation believed that further progress could be made in that SCCR session if Member States employed the same flexibility and innovation, particularly on the key terms of deferred transmission, which could lead the Committee to recommend to the General Assembly a convening of a diplomatic conference to finalize that draft treaty.

35. The Delegation of Nigeria aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. With regards to the protection of broadcasting organizations, the Delegation would continue to support efforts to work towards the convening

of a diplomatic conference. The Delegation noted the progress made in ongoing discussion to finalize objectives, specific scope and object of protection. It had been mindful of the need to ensure that the impact of increasingly complex and new technological work was not overlooked, to avoid the intended consequences. The Delegation stated that it would like to see a conclusion of the balanced treaty on protection of broadcasting organizations in accordance with the SCCR's mandate coming from the 2007 General Assembly following the signal based approach in the traditional sense. It was hopeful that the Committee would consolidate on the gains of the discussions and progressively move toward a consensus on an acceptable text regarding the major issues, so as to facilitate the convening of a diplomatic conference in the nearest future.

36. The Delegation of the Islamic Republic of Iran associated itself with the statement delivered by Indonesia on behalf of the Asia and Pacific Group. On the issue of the protection of broadcasting organizations, the Delegation considered the revised consolidated text as the appropriate basis for the Committee's regulations during the course of that week. In its view, the document would facilitate fulfillment of the objective of the discussions based on the Committee's mandate. The Delegation stated that Part A and Part B of the documents were complementary and deserved equal treatment. It considered the documents submitted by the Delegation of Argentina as a positive and good contribution to the discussion of the Committee. Careful balancing between the legitimate interests of all parties and stakeholders in society was of utmost importance for all Member States and such an approach should be reflected in the body of the broadcasting treaty. The legitimate concerns of some states had to be recognized in that the treaty of protection of broadcasting organizations should not guarantee stronger copyrights or additional rights, and as such create additional costs for the public, as well as affect access to broadcasted content in developing countries. That was an important issue and deserved due consideration by the Committee. It went without saying that the 2007 General Assembly mandate was the milestone of discussions and the negotiations in the Committee's framework. The Delegation was of the view that the discussions in the Committee should not deviate from the mandate, with particular regard to the scope of the protection. Furthermore, discussions had to be conducted in a way that respected the interests and priorities of all Member States. The Delegation recalled that the scope of the treaty could be confined to the protection of broadcasting and cablecasting, and it highlighted that the evolving digital environment and technology development affected the way in which traditional broadcasting organizations carried out their activities. Those developments required due and careful considerations. It maintained that definitions contained in the instrument should ensure legal certainty and should be drafted in a way that prevented different interpretations and understandings in the future. The Delegation noted that though there were issues that deserved and required more discussion among Member States, it looked forward to advancing the work towards developing an adequate and effective legal instrument according to the signal based approach. The Delegation was of the view that the discussion on deferred transmission was the main remaining issue on a policy level and it looked forward to the discussion on that important issue, which could strongly contribute to bridge the current gap.

37. The Delegation of Japan stated that the means for distributing works had diversified with the development of the network technology, especially as web streaming services were becoming popular worldwide. However, the Delegation believed that the broadcast conducted by traditional broadcasting organizations had and would continue to have an important role for the dissemination of works. Therefore, the international protection of broadcast had to be achieved immediately. The Delegation hoped that as was accorded in the 2007 General Assembly mandate and for the purpose of the earliest adoption of the treaty, that the discussions would be based on the protection of broadcast conducted by traditional broadcasting organizations. Regarding deferred transmission in the object of protection, the Delegation preferred the optional protection that would be more acceptable for each member state.

38. The Delegation of Argentina associated itself with the statement made by the Delegation of Ecuador speaking on behalf of GRULAC. The Delegation reiterated the importance that it attached to the protection of broadcasting organizations. In recent years, progress had been made in the discussions on that topic. With regard to the future treaty, there were simply a few key questions that were still pending. The main one, on which consensus had not yet been achieved, concerned the definition and protection of deferred transmissions. For the Delegation, deferred transmissions had to be included in the future treaty and that was based on the importance of those transmissions in recent years, thanks to new technologies which made it possible for members of the public to choose where and when they wished to have access to a transmission. However, not all deferred transmissions should receive the same protection. Based on the relationship that deferred transmission had with an online linear transmission as reflected in document SCCR/36/5, the Delegation proposed classifying deferred transmissions in two three types: the equivalent deferred transmissions closely related deferred transmissions and unrelated deferred transmissions. It proposed granting equivalent deferred transmissions the same protection as that granted to simultaneous and near simultaneous transmissions. In the case of closely related deferred transmissions, while the protection should be obligatory, Member States should have the flexibility to carry out implementation with the sole condition of ensuring to be adequate and effective. In the case of unrelated deferred transmission, protection would be optional and subject to reciprocity. The Delegation stated that it submitted document SCCR/36/5 in a constructive spirit with the purpose of contributing and including a basic treaty proposal which was consistent with the mandate of the 2007 General Assembly. At the same time one that reflected the technological changes that had affected the way in which broadcasting organizations carried out their activities and changed the habits of the public. That was an adequate distinction amongst signals and contents. The Delegation stated that even after 20 years of discussion, it hoped that at that meeting, decisions would be taken that would go beyond mere continuation of work but would actually show real progress with a recommendation to the General Assembly to convene a diplomatic conference.

39. The Chair stated that it would later on call upon the Delegation of Argentina to explain its proposal in further detail.

40. The Delegation of the Republic of Korea hoped that during the thirty-sixth session of the SCCR, the Committee would be able to reach a consensus on the protection of broadcasting organizations. In order to create concrete outcomes of the discussion on the protection of broadcasting organizations it was necessary to consider the difference between broadcasting environments, and the laws of each country. It looked forward to engaging in the discussions with other Member States on that topic in a positive, constructive manner.

41. The Delegation of Kenya aligned itself the statement made by the Delegation of Morocco on behalf of the African Group. The Delegation supported the updating of the rights of broadcasting organizations. That support was based on the importance that broadcasters played in the dissemination of culture, information and knowledge, particularly in developing countries. The protection was also justified by the convergence of information and communication technologies as well as the advent of digitalization. That decision had created opportunities for multimedia platforms and multi-faceted platforms of exploitation as well as means of signal piracy. The scope of protection should cover all the new platforms as well as signal delivery means. The scope of protection should be forward looking and technology neutral. A treaty that did not address such issues would be ineffective in addressing signal piracy as well as broadcasters' entrepreneurial output. In that context, the Delegation supported the consolidated document prepared by the Chair as well as the views and proposal presented by the Delegation of Argentina. Such views suggested some of the best options to the current empires. The Delegation further proposed that a roadmap be provided that made the contours

of negotiation predictable, with clarity towards a diplomatic conference. It was pointless for the Committee to continue negotiating for such a long time without giving stakeholders a roadmap as to when that process would come to a definitive conclusion.

42. The Delegation of the Russian Federation stated that in a digital age there were new technologies that could not be allowed to be an obstacle. There was a need to support new progressive methods that were used in copyright. The Delegation noted Russia had achieved a lot of positive outcomes linked to block chain technology and collective management that went to protect and support the interests of authors. The task of the Committee was to decide on the convening of a diplomatic conference, something that should happen sooner than later. The Delegation supported the efforts and the proposals of those countries who spoke of the need for such a conference. It would be appropriate if during that session, the Committee sent to the General Assembly a draft treaty which could then be considered. That would give the Committee clear indications about how it was going to consider protecting broadcasting organizations rights. The main obstacle in that discussion, which had been happening for fifteen years, treaty was Internet broadcasting. There were those who support having the Internet broadcasting protected and those who thought it should only be traditional ones. As some of the other delegations had proposed to keep the mandate which was given to the Committee by the 2007 General Assembly, and to prepare a draft treaty on the basis of that mandate while looking at the idea of having optional inclusion of Internet broadcasting, the Delegation thought that would solve the problems that the Committee faced on that topic. The Committee would then be able to adopt a modern instrument that reflected the reality of the current time and digital age. The Delegation supported the convening of a diplomatic conference to adopt a treaty on broadcasting organizations.

43. The Delegation of the United States of America noted the technical progress made at the previous session of the SCCR on the Chair's draft consolidated text along with other selected issues. The Delegation stated that it would continue to work constructively to contribute to the discussion on technical issues related to the revised Chair's draft text. Part A was the appropriate text to begin the Committee's technical deliberations that week. Despite the technical progress made at the thirty-fifth session of the SCCR, the Delegation noted that there were still significant disagreements among Member States, such as object of protection and scope of rights to be granted under the treaty. As a result, rather than focusing exclusively on technical, textual work, it would be time well-spent to discuss some of the fundamental principles and purposes of the treaty. That goal was consistent with the Chair's invitation to regional broadcast associations to provide updates on business and technological developments.

44. The Delegation of Botswana aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. The Delegation echoed the need for the Committee to reach consensus on the protection of broadcasting organizations and to move ahead and recommend to the General Assembly the convening of a diplomatic conference. Progress made in the previous session of the Committee was notable and that session should be one where the Committee could reach consensus on the statement of issues. The Delegation thanked the Delegation of Argentina for its submission. It committed itself to engaging constructively with other Delegations so as to reach fruitful conclusions on the protection of broadcasting organizations.

45. The Delegation of El Salvador aligned itself with the statement made by the Delegation of Ecuador speaking on behalf of GRULAC. The Delegation was grateful for the work done to make progress on the issues on the agenda which it believed looked to adopt a broadcasting instrument that reflected the current concerns of broadcasting organizations. The Delegation referred to the proposal submitted by the Delegation of Argentina contained in document SCCR/35/5. The Delegation was grateful to the Delegation of Argentina for that proposal and

affirmed its support.

46. The Delegation of Columbia reiterated that it continued to support the consolidation of a binding instrument for the protection of broadcasting organizations, while working with a view to achieve consensus that took into account the needs and progress made by the digital environment. The Delegation referred to the various studies promoted by WIPO and to the statements made by the Delegations of Argentina, Colombia and Mexico in November 2017. The Delegation stated that the 1993 Andean 1321 decision was relevant as it was connected to the protection of broadcasting organizations and established a clear distinction between the contents of the signal and the delivery means. That distinction was relevant and should be part of the Committee's discussion.

47. The Representative of the Electronic Information for Libraries (eIFL.net) also speaking on behalf of the International Federation of Library Associations and Institutions (IFLA) thanked the Delegations of Argentina, Brazil and Chile for their proposal on limitations and exceptions and appreciated the inclusion of limitations and exceptions in document SCCR/35/12 revised consolidated text. The Representative stated that however, as they were currently drafted, they were optional and narrow when they needed to be mandatory and broader. The reason being that awarding new legal protection for the program-carrying signal in effect put a fence around the content that was broadcast. In order to allow continued legal access to that underlying content, there had to be a mechanism for institutions such as libraries to get access, and that mechanism was limitations and exceptions. Since the intention of the treaty was to protect against signal theft, not block access to third party content transmitted by the broadcast signal, clear safeguards to ensure access for social, educational and public interest purposes were necessary. To illustrate, the Representative shared four examples of diverse uses of broadcast material by different types of libraries - university, national and public libraries. In Botswana, the University of Botswana Library had a collection of historical films, the most popular were on black history. Students watched and analyzed the films as primary research material for their studies. In Armenia, lecturers at the American University of Armenia showed documentary films in the library for students studying topics such as human rights and genocide studies. Public libraries in Botswana provided access to a wide range of radio and TV shows for educational and community purposes, popular broadcast events included the opening of parliament, independence celebrations and presidents' celebrations in June and July. For children, their favorites were wildlife programs. In Lithuania, the National Library had a cinema where patrons could participate in educational programs and creative workshops about TV, film, and cinema. It would be terrible if the treaty caused significant unintended consequences for public institutions in using such broadcast content, for example, by making rights clearance more time-consuming and complex, increasing transaction costs for publicly funded institutions, or causing the activities to be stopped altogether because it was too expensive or legally risky. But without exceptions to the new right, that was exactly the scenario that would happen, especially when the proposed term of protection was 50 years. To avoid unintended consequences that would be harmful to education and society, or spill over to content that was in the public domain, or that was licensed under an open content license, robust exceptions were needed. The Representative drew the Committee's attention to limitations and exceptions in document SCCR/27/2 REV Alternative C for Article 10 as a good basis for discussion.

48. The Representative of Communia urged the Committee to consider the interests of all stakeholders when working on that agenda item. The Committee had to engage in discussions that would ensure the protection of users, namely the global community of educators, learners, researchers and librarians, and also the general Internet users that created user generated content. Taking public interest into account included developing mandatory exceptions and limitations that protected legitimate practices such as criticism, parody and uses for teaching and scientific research. It also required making clear that the competition for broadcasting rights were not less enabling for users. Furthermore, protection of users' rights implied that

broadcasters were not giving rights in the public domain or that were openly licensed. Finally, for any treaty granting post fixation rights, those rights did not extend beyond the term of copyright in order to give legal certainty to users and to avoid deepening already complex issues of accessing and using orphan works.

49. The Representative of Education International agreed with the Chair that it would be essential to remember what an impact the work of the Committee had on the ground. Broadcasting content was a fundamental part of the right to education and sustainable development goal 4 on quality education. Far too many teachers, researchers and students did not have affordable access to the materials they needed or are prevented from exercising their right to make fair use of those. That also included access to and the use of broadcast content. In terms of the current draft broadcasting treaty, it would be important to further discuss and broaden the exceptions and limitations for education and research purposes. Teachers and researchers used broadcast materials on a regular basis. And it would be essential to find a balanced approach to exceptions and limitations that did not undermine user rights and facilitate work on public institutions.

50. The Representative of Knowledge Ecology International (KEI) was really appalled by the direction that the broadcast treaty negotiations had taken. What was there was a proposal from the Chair for 50 years of rights, which were post fixation rights. That was a layer of rights that people had to clear and pay for the expense of copyright holders on consumers. Exceptions were narrower and quotations were mandatory than in the Berne Convention. The term was longer as in it would be 50 years every time it was transmitted. If one had the foresight to make a copy of an old copy and wait half a century, they could get around that. If that was how it was going to work, the people were being lied to. There was a need to figure out who one had a radio or television broadcast with, and who also owned the company then and track them down. All the talk about how there were no exceptions for works in the public domain, or those things that were open and licensed by creative commons were not future proof. That was an old guard treaty that would exclude YouTube and Netflix. There shouldn't be a creation of rights that BBC gets and NBC gets and Global gets but that did not convey to those new platforms, which were primarily American based big technology companies. There was a creation of a whole set of new rights for Google, for Amazon and for Netflix and Spotify.

51. The Representative of the Copyright Research and Information Center (CRIC) noted that for 20 years they had been making efforts to establish the protection of broadcasting organizations and it was about time to convene a diplomatic conference. To go to a diplomatic conference the Committee had to finalize the objectives, specific scope and object of protection to fulfill the 2007 General Assembly mandate. During that SCCR, the Committee had to concentrate its discussion on those issues especially on scope and object of protection. Concerning object of protection, on the issue of how to deal with deferred transmission. Some countries demanded the protection of deferred transmission and on that issue, opt in protection or adequate protection would be one candidate for compromise. Concerning the scope of protection, the right of making available would be very important for broadcasters in the Internet era. However, some Member States claimed that protection had to be limited to live signals, and not be extended to fixed ones. The Committee should remember the rule of interpretation of the international treaty under the Vienna Convention on the law of treaties or famous umbrella solution in organizations. The following wording might be one positions solution. "Broadcasters shall enjoy exclusive rights to authorize where appropriate transmission of their program carrying signals to the public over any medium, including in such a way that members of the public may access it by the way the individual chooses."

52. The Representative of the Asia-Pacific Broadcasting Union (ABU) stated that in the digital era, the need for protection of broadcasters deferred transmissions was imperative. Document SCCR/36/5 was a good basis for the discussions on how to move forward and should be



endorsed by Member States. After 20 years of discussions, the Committee had reached a stage where a concrete work plan was much needed.

53. The Representative of Centre for Internet and Society (CIS) stated that looking at the history of the Committee and its deliberations, limitations and exceptions had been significantly diluted over the years. There was a demand for increased protection in terms of the number of rights and scope and terms had increased. If the protection only extended to the signal and not to the underlying program, it was still not clear whether the 50 year protection was needed for signal. The Representative reiterated the statement made by the Asia Pacific Group that there was a need for careful balancing from a developmental perspective. It did not appear that the negotiations were even close to achieving that.

54. The Chair opened the floor to the Director General.

55. The Director General thanked the Chair for all of his extraordinary work both in the Committee and outside of it, and thanked the delegations for actively contributing to the SCCR agenda. The Director General was very pleased to hear of some of the momentum that was gathering and all of the energy that was being put into the broadcasting agenda item. He hoped that the action plans that had been put forward by the Chair for limitations and exceptions would find acceptance amongst the membership as those provide guidance to the international bureau on the work that it had to accomplish in the current biennium. The Director General was pleased to see the new items that were coming from delegations, first on the digital agenda, on the artist resale right, and on rights of theater directors. Some were newer than others, but it was always good to have a positive momentum and prospect for the future beyond some of the items that the Committee had had on the agenda for some years and were quite mature. The Director General encouraged the Committee to continue in that very positive spirit of looking for ways in which the Committee could advance all of the items on the agenda. He wished the Committee very successful deliberations.

56. The Chair once again opened the floor to observers

57. The Representative of Association Convergence stated that the question that was up for debate was of great interest, as one of its missions as an association was to support the creation of a legislative environment favorable for prosperity of the audiovisual sector across Africa. With a view to a diplomatic conference, the Representative encouraged African countries to adopt texts that included the issue of piracy, signals and broadcasting material that the sector suffered from so much. Those unlawful acts were something that needed to be punished, and severely so. As that scourge of piracy had reached a serious scale in Africa, it meant that a lot of revenue was lost by states and other rights-holders.

58. The Representative of the Japan Commercial Broadcasters Association (JBA) stated that as was proposed by the Delegation of Japan, granting optional protection to broadcasting organizations could be a useful and flexible solution to reach consensus. As a broadcaster, the Representative stressed the importance and need to adopt the document which included the fixation right together with the right of making available as proposed by several delegations in previous sessions. Too much time had been taken on that treaty, and as new agendas topics continued to be proposed by delegations at each session of the SCCR, it was time to solve that agenda and move along. The Representative proposed a special session to be held for Member States to focus on discussions regarding that topic. It was time for the SCCR to make a recommendation to the General Assembly with a workable roadmap towards the convening of a diplomatic conference for the broadcasting treaty and a special session.

59. The Representative of the International Council on Archives (ICA) stated when a new broadcast right went beyond signal protection into post-fixation rights, archives had to take

notice to ensure fair access to broadcast content. The holdings of many archives included fixations of the programs and newscasts of broadcasting organizations that were deemed to be of enduring value. Those works were important evidence of the social, cultural, political, and historical life of the community or the nation. The fact was that a new layer of rights that affected access to content was an additional barrier to access to knowledge. Archives would have to deal with an additional set of rightsholders to clear rights for access, creating extra costs and complexity on the rights clearance process. Furthermore, it would add to the extensive orphan works problem, for which no satisfactory legislative solution had yet been found. . Consequently any instrument had to contain robust, mandatory limitations and exceptions that required contracting parties to incorporate in their national legislation, limitations and exceptions for specific uses including private use, reporting of current events, use by archives and libraries, use for the purpose of teaching and research, and making accessible for persons with disabilities.

60. The Representative of the Civil Society Coalition stated that the current proposal seemed to be a proposed treaty that was mostly in search of a problem that did not exist. If the problem was piracy, there were adequate and effective means of stopping piracy in place virtually everywhere. The proposed treaty was inevitably going to cause unintended consequences and complications concerning the Internet. Among the many concerns the Representative had about the broadcast treaty, some were, whether the treaty would outlaw the use of Virtual Private Networks (VPNs) and whether the systems of safe harbors for ISPs for copyright also applied to the new broadcaster rights. The treaty would create a potentially impenetrable thicket of new rights that would prevent lawful access to the underlying content, even long after the copyright had expired. Similar to the WIPO Washington Treaty of 1989, which was about integrated circuit protection and which was the next big thing at the time that treaty was unnecessary and still had not entered into force 29 years later. The proposed treaty had been under urgent discussion for almost 20 years and there was still no evidence of any problems and the sky had not fallen. Indeed, new platforms for delivering digital content were exploding, and doing very well. Lawful and convenient offers had reduced the piracy problems. Canada had modest but adequate and effective provisions in its Copyright Act for the protection of the right of broadcasters. Those provisions did not create the many problems that the Representative foresaw with that treaty as it was proposed.

61. The Representative of the World Blind Union (WBU) hoped that the Committee would solve all issues which were still remaining to facilitate access to all related broadcasting, films, trust fund productions, theater and research for people who are blind, visually impaired and otherwise print disabled. The Representative stated that the WBU faced a number of issues pertaining to digitalization, technological development and even cultural and language barriers. The Representative hoped that the Committee would discuss those issues in the further sessions and reach some substantive solutions.

62. The Representative of Alianza de Radiodifusores Iberoamericanos para la Propiedad Intelectual (ARIPPI) aligned itself with the statement delivered by the Delegation of Argentina. The Represented stated that the text had been discussed at length, it was mature and the Committee just had to focus discussions on deferred transmissions. With regard to limitations and exceptions, it would be problematic not to follow the models from other WIPO treaties such as the WPPT in Beijing. With regard to generation of protection, at least for Iberian American broadcasters, the Representative saw no problem in following the Rome Convention model from 20 years ago in the discussions.

63. The Representative of the International Association of Broadcasting (IAB) stated that it had seen an increasing level of consensus for the need to protect broadcasting organization against that scourge of piracy. The Representative had seen consensus around the Chair's text, which was a very advanced text with regard to a draft treaty. The Representative stated

that the Delegation of Argentina's proposal was balanced and sought to establish a balance between the different interests that had been raised at the various sessions. Should it eventually be agreed to convene a diplomatic conference that last topic raised by the Delegation of Argentina would have to be discussing in the following two or three meetings of the Committee, giving the Committee enough time to achieve the necessary consensus on that last issue.

64. The Representative of the Electronic Frontier Foundation (EFF) had long supported the signal-based approach to the treaty for broadcasting organizations. The Representative stated that when the organization strayed too far away, it was time for a push back. The Representative recommended to the Committee a letter that had been cosigned by 11 civil society organizations to express their shared concern about eight elements of the draft, including but not limited to the 50-year protection period proposed, which would create a new layer of post-fixation rights. The lack of robust and mandatory limitations and exceptions, the harmful tech effects that the treaty would have on the public domain and the possible unanticipated consequences of the rights created by that treaty could end up in the hands of large technology companies and not the traditional broadcasting organizations as intended. It was clear that the treaty was not ready to move forward, as such, negotiations had to return to their earlier form of a narrow signal-based approach.

65. The Representative of the African Union of Broadcasting (AUB) stated that African broadcasters were amongst the very poor in that area and needed to develop and protect their activities. Like other delegations and representatives, the Representative asserted that the proposal by the Delegation of Argentina was worthy of a close study. The Representative supported the detail study of the proposal and supported the convening of a diplomatic conference.

66. The Representative of the International Federation of Film Producers Association (FIAPF) supported the move towards a limited international treaty to enable relevant professional broadcasting organizations to act to protect their signals against unlawful uses. The Representative supported the call for the treaty to be strictly confined to an instrument that permitted signal protection and that did not overlap or conflict with the exclusive rights of audiovisual content authors and producers. It was agnostic as to whether the treaty envisaged here be based on neighbor's rights approach or other practical alternatives. As there was diverse representation of national legal traditions, that added a flexible approach, it could be the best way forward to support an appropriate regulatory framework that empowered organizations but also limited the market for broadcast rights. Television broadcasters could come to play a role in the development of productions. In countries where that was the case, the relationship between broadcasters had proven fecund and productive. The natural constituents pursued partnerships based on broadcasters respect for film producers' rights to content and the level playing field in negotiations leading to the control and exploitation of such rights. The Representative supported a treaty that was coherent with the existing copyright framework with respect to important provisions such as limitations and exceptions and legal protections of technical protection measures. In that respect, the Representative affirmed the importance of the three-step test which it regarded as a feature of copyright law and one that provided individual Member States with requisite flexibility for the introduction of exceptions, whilst taking appropriate care not to undermine the economic engines of local cultural production.

67. The Representative of Corporación Innovarte believed that the proposed treaty for broadcasting rights had to take into consideration the need for balance among users and right holders as well as other industry stakeholders. In that context, the Committee should not repeat the mistake of previous WIPO treaties for copyright and related rights, which had generated new layers of rights without ensuring an easy way to implement. The availability of limitations and exceptions for legitimate activities or for the protection of competition was a problem faced by

developing countries. In that context, the Committee had to follow the model of the Berne and Rome Conventions where special attention was paid for detailing exceptions, in the case of the Berne Convention, where more than 11 including mandatory and optional ones. For a treaty negotiated in the twenty-first century, there was a need to provide robust exceptions based on the twenty-first century needs and safe harbor for diversity. There was need not to create an international legal framework that would exclude or put barriers to small and medium-sized commercial intermediaries, especially from developing countries. Those small and medium enterprises, such as small cable operators that served large populations particularly in rural areas, would otherwise face great costs to obtain the licenses to retransmit the broadcasts and cable signals. It was very important to permit Member States to provide remuneration instead of making mandatory the exercise of collective management.

68. The Representative of the Health and Environment Program (HEP) stated that national legislation on copyright in developing countries was modernizing somewhat more slowly. It was essential that there was a response to pending issues in order to best ensure the protection of copyright. The Representative looked to the convening of a diplomatic conference.

69. The Representative of the Program on Information Justice and Intellectual Property (PIJIP) stated that on the issue of limitations and exceptions in the treaty, the Committee should not use a 20-year-old model from the Rome Convention, nor should it ignore all the recent advancements in limitations and exceptions law. The Chair's text and the proposal submitted by the Delegations of Argentina and Brazil were unduly limited. They did not include the mandatory exceptions from other agreements, including Berne and Marrakesh. They did not consider the needs of libraries, archives, museums, or education and research, nor did they include the best examples of the proposals protecting domestic policy space such as a broad statement of permissive statements in Berne 9.2. They also did not include the WTC statement that made clear that states could create new exceptions in the development and broadcast environment and in the protection exceptions to TPMs similar to the Beijing Treaty.

70. The Chair stated that those observers who did not have a chance to finish their statements or deliver their statements orally on that agenda item, that they feel free to email their full written statement to the Secretariat. The Chair opened the floor to the Delegation of Argentina to explain its proposal contained in document SCCR/36/5.

71. The Delegation of Argentina stated that it would explain in further detail the proposal contained in document SCCR/36/5. To add some further clarity on the proposal, the Committee should consider the beneficiary of the protection as the broadcasting organization, which was that organization that constituted and prepared the signal with different kinds of content, some which may be protected by copyright and others not. The signal, whatever its content, would be the object of protection. That broadcasting organization had initial and priority protection with regard to the live linear transmission, but the same broadcaster made other uses of the signal or made transmissions that were not live. The broadcaster made deferred transmissions of the same programming, for example, replays of a sporting or artistic event or even the news at different times of the day. That was the so-called equivalent deferred transmission, as it appeared in the document. That could be broadcast over the air waves and over the Internet on the platforms organized and made available by the same broadcaster, so that users could access that content in different times and in different places. For that kind of deferred transmission, the Delegation proposed the same mandatory protection as simultaneous or near simultaneous transmissions. The broadcaster, under certain circumstances, may consider a transmission linear transmission, constituting reporting further footage and behind the scenes programs. Those were closely related deferred transmissions. Although they were not part of the original live transmission, they provided the user with further content to that generally available. They were broadcast exclusively online usually over the Internet and were made available only for a limited number of weeks or months. The Delegation proposed adequate

and effective protection in the terms provided for by each country. The only requirement would be that it would be independent protection from that which the right holder of the content might have, whether through copyright or related rights. Finally, unrelated deferred transmissions were related to the live signal. Those that the broadcaster made available in a nonsimultaneous that was not ancillary to the live transmission, they would be the supposed radio or television channels that were exclusively on-demand and could be accessed without time limitations such as on-demand catalogs, ones which were re still available once the expiry for replays online had expired. In that case, it would be clear that platforms hosting content such as opt in platforms, for example Netflix or opt out platforms for example YouTube, would not be able to benefit from that third level of protection as by definition, they were not broadcasting organizations and so that was clear, the Committee should summarize that the beneficiary once again could only be a broadcast organization and that the signal could be transmitted by the same broadcasting organization by different means using existing technologies as the treaty would in that way seek to be neutral. The importance was protection. The preparation and broadcasting of a signal using the media that the broadcaster considered appropriate, whether the related right granted by the broadcaster. The signal could be broadcast by different ways and as technology evolves, the treaty had to be allowed not to become obsolete. It should be clear that it should always be protection for the signal as broadcast by the broadcaster.

72. The Chair stated that he would summarize the informal discussions for the benefit of those who were not involved in the technical discussions and or those who did not have the opportunity to follow them. The Chair stated that the informal discussions were centered on document SCCR/35/12, the Chair's consolidated text as well as document SCCR/36/5, the proposal submitted by the Delegation of Argentina. In those discussions, Member States were able to go into very substantial technical detail on the different provisions and proposals and on policy rationale and objectives. On the topic of deferred transmission, which Member States spent the most time discussing, the focus was to look at the proposal submitted by the Delegation of Argentina and to see whether that proposal, which unpacked a lot of the concepts behind deferred transmission, could be helpful in understanding the issue of deferred transmission. Strictly speaking in his capacity as the Chair, the Chair found that the proposal submitted by the Delegation of Argentina was very welcomed since Member States had been unable to come to a common understanding on a single definition of deferred transmission. When the Delegation of Argentina proposed to the delegations a set of provisions that unpacked it into three categories and with different levels of protection that helped to clarify thoughts. However, as it was a new proposal, and as such brought up new issues, there was a need for Member States to reflect a bit more. The final outcome on the discussions on deferred transmission was that the Delegation of Argentina together with the Delegations of Kenya, Colombia, and the Vice-Chair, who was involved in those discussions, would further consider that matter. The Chair stated that there were some suggestions presented that were exploratory in nature and one of such suggestion was whether the treaty unpacking of deferred transmission could be collapsed into two. The Chair stated that he would leave the delegations to reflect on that and to come back to the plenary at some point with their suggestions. Apart from deferred transmission, there were other issues discussed. On the definition of broadcasting, which had been on the table for quite some time, the Chair stated that the Delegations of Brazil and Chile had agreed to the proposal that was in Part B of the Chair's consolidated text, enabling the Chair to move that into the part A of the Chair's text. There were some technical issues regarding the last sentence of the definition of broadcasting, but the idea more or less was that with a common definition or with one definition of broadcasting, there was no need any more to have the word cablecasting reproduced throughout the entire text, which the Chair stated cleaned up a substantial part of the text. The Delegations of Chile and Brazil's flexibility and their constructive spirit should be very much commended and was deeply appreciated by all Member States. There remained technical work but that was not going to be a show stopper. The Delegation of the European Union and its Member States would be working with the Delegations of Brazil and Chile to fix some issues. There were already some

discussions going on which included a suggestion by the Delegation of Finland that perhaps some of those issues could be resolved by some language that drew upon a provision that stated that proposals in the text would not affect other treaties or national legislation. On the issue of prebroadcast, an issue previously raised by the Delegation of Switzerland, there had been a general consensus to move that text into a part of the Chair's text. Regarding paragraph 3 of the proposal, there were some technical issues and suggestions which the chair would leave the Delegation of the European Union and its Member States and the Delegation of Switzerland to figure out. On both definition of broadcasting and prebroadcasting, there was text that had almost reached consensus. On the issue of limitations and exceptions, there were a number of countries that had suggested an alternate provision in part B who had since decided to drop that proposal. For exceptions and limitations, the Committee would go with the proposal in part A. The Chair stated that there was textual development which was very positive. . On TPMs, the Chair stated that the country had suggested it still needed it to be there, so that would be kept in part B. On the term of protection, there were views expressed that probably the term of protection was an issue that would be discussed in tandem as part of the package when all the issues were considered together. The Chair stated that Part A of the Chair's text as it was, was not the most accurate, and did not reflect some changes, but that when he revised the text, it would as 50, 20 and X to assure that there was a range of possibilities in terms of term of protection. That was the way to make sure that there was a more accurate depiction of the different options for term of protection. The Chair stated that although the discussions were technical, , there was a momentum towards trying to clean up the text and towards answering the policy issues in a very clear way. There was a sense that more issues could be moved towards consensus. The Chair commented all the parties, including Member States and stakeholders, for contributing to that development. The Chair opened the floor for comments, starting with group coordinators.

73. The Delegation of Chile stated that with regard to broadcasting organizations, especially on the definition of broadcasting, the Delegation was very happy to see that there was agreement on a single definition. That move enabled the Delegation to have its internal regulations, both copyright and limited to live broadcasts, and to be flexible with regard to limitations and exceptions, which was Part A of the Chairman's text. The Delegation had some comments on the language, particularly with regard to the issue of scientific works and also wanted to have artistic and literary works included. That was something it would discuss in greater detail at the following session.

74. The Delegation of Lithuania speaking on behalf of the CEBS Group appreciated the informal discussions which indicated a good momentum for the Committee's work. The Delegation thanked the Chair for his active engagement and efforts in trying to find landing zones for the treaty. The Delegation was looking forward to seeing the new text which it would examine and bring back to its capital. The goal of the Delegation was to have a meaningful treaty which gave protection to broadcasting and cablecasting signals including the fair transmissions.

75. The Chair hoped that the positive spirit would continue as the Committee move away from that agenda item to start discussing Agenda Items 6 and 7. The Chair announced that over the following two days, the discussions would very much center on the draft action plans. The Chair gave the floor to the Delegation of the Russian Federation to share a bit more of its side event on directors.

76. The Delegation of the Russian Federation stated that it supported the efforts made and agreed to the proposal that had been made. The Delegation announced that it had invited leading theater directors from Russia to share why they needed that level of protection.

77. The Chair requested that the Secretariat and group coordinators made their

announcements.

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

78. The Chair opened the agenda item relating to the topic of limitations and exceptions for libraries and archives. He stated that discussions on that agenda item would be based on the draft action plans which he had prepared at the request of the Committee and contained in document SCCR/36/3. The Chair summarized the way in which they would work on the topics. He opened up the floor to group coordinators, Member States, and NGOs to make general statements on limitations and exceptions.

79. The Delegation of Indonesia, speaking on behalf of the Asia and Pacific Group, delivered its statement on agenda items 6 and 7. In order to advance and promote culture, science and education, the Delegation believed in a balanced copyright system, which too benefited the larger public by enhancing access to works. Exceptions and limitations made an important contribution to the attainment and access to knowledge and education by all. Many developing countries were often hampered due to lack of access to relevant educational and research materials. The Asia and Pacific Group noted the progress achieved in the discussion on all those subjects and on exceptions and limitations for all libraries and archives. That discussion was reflected in document SCCR/34/5. The Delegation thanked the Chair for the draft action plans as reflected in document SCCR/36/3. The Group believed that the draft action plans were a good basis for the Committee to progress on those very important issues, and reaffirmed its commitment to remain constructively engaged in the discussion of the draft action plans. The Delegation hoped that all Member States would engage constructively on the issues of limitations and exceptions.

80. The Delegation of Ecuador, speaking on behalf of GRULAC, stated that the topic of limitations and exceptions was of great importance to the Delegation. The Delegation recognized education as a great contribution to knowledge and those exceptions and limitations as critical for the development of modern societies. There had to be balance in the copyright system that recognized the legitimate rights of the creators and the needs of the population for its assured economic and cultural development. The Delegation recognized the important role of WIPO, particularly of the SCCR, where exceptions and limitations were discussed. The Delegation had been an active promoter of proposals and further reiterated its willingness to work in a constructive manner during the debate which would enable the Committee to conclude its work in accordance with the 2012 mandate. The Delegation stated that the draft action plans contained in document SCCR/36/3 were an excellent basis for the Committee's work. The Delegation stated that the national delegations of GRULAC would speak in their national capacity and further expressed its interest in achieving a consensus which would enable the adoption of the two pragmatic action plans during that session.

81. The Delegation of Lithuania, speaking on behalf of CEBS, thanked the Chair for his preparation of the action plans for limitations and exceptions for libraries and archives as presented in document SCCR/36/3. The Delegation acknowledged the fundamental role played by libraries, archives and museums in social and cultural development. The Delegation stated that as it had already mentioned in its opening statement, it was not in favor of a legally binding international instrument on limitations and exceptions for libraries and archives. The work under that agenda item had to focus on examining best national practices that were in place while implementing current international treaties. That approach could provide a set of good examples for other Member States on how to address those issues in their national laws. The Delegation was prepared to discuss the draft action plans for limitations and exceptions for libraries and archives through SCCR/39, as they contained useful suggestions on the way forward. On the previous action plans, the Delegation recognized the high importance of educational and research institutions to societies as well as the need to ensure access to works

for persons with other disabilities. However, the Delegation believed that the current international legal framework was flexible enough to establish adequate national legislation in that area. The CEBS Group reiterated its position that it could not support the work on a legally binding international instrument. Against that backdrop, the Delegation believed that further discussions on limitations and exceptions would be most useful if they were focused on the exchange of best practices.

82. The Delegation of Morocco, speaking on behalf of the African Group, stated that exceptions and limitations were of greatest importance to the Group and that it continued to consider the issue of exceptions and limitations for libraries, archives, educational and research institutions and persons with other disabilities as a priority in the Committee's agenda. The Delegation remained convinced that these issues had to be discussed on the basis of the 2012 General Assembly mandate. The Delegation hoped that the Committee would move the debate forward and have substantive discussion on the basis of a text. The Secretariat could therefore use its material resources to support proposals made by Member States in order to prepare one or several international legal instruments. According to the African Group, document SCCR/29/4 along with the text proposed in document SCCR/26/3 as established by the African Group, were the foundation for such a legal instrument. The Delegation reiterated its contentment with the pairing of projects of those draft action plans for limitations and exceptions for libraries and archives through SCCR/39 contained in document SCCR/36/3. The Group remained concerned by the absence of the draft articles which it believed were the most urgent stage of the Committee's work on exceptions and limitations. The African Group hoped that all Member States would work in a sincere and constructive manner on those two issues with a view to have negotiations based upon parallel text with the planned activities in the draft action plans.

83. The Delegation of China thanked the Chair for the draft action plan. The Delegation stated that the work on limitations and exceptions had been efficiently summarized by the Secretariat and that much consensus had been reached on the substantive part of those issues. The Delegation reaffirmed its commitment to participate constructively in the discussions.

84. The Delegation of the European Union and its Member States strongly believed in the important role that libraries and archives and museums played in the dissemination of knowledge, information and culture along with the preservation of history. The Delegation saw merit in discussing how a balanced international copyright framework could enable those institutions.

85. The Delegation of Nigeria aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. Exceptions and limitations required contracting parties to recognize and maintain a balance between the rights of rightsholders and the larger public interest, particularly education, research and access to information. The Delegation supported a text based discussion and hoped that the draft action plans would help the Committee make further progress in text based work in line with the 2012 General Assembly mandate. The Delegation welcomed regional workshops to engage stakeholders and improve understanding of issues of exceptions and limitations.

86. The Delegation of Malaysia aligned itself with the statement made by the Delegation of Indonesia on behalf of the Asia Pacific Group. The Delegation believed that the key to the proper functioning of the copyright system was balanced, achieved on one hand by providing incentives for the creation of works and on the other hand by promoting access to those works. That was clearly reflected in Article 7 of TRIPS which alluded to the need to maintain the rights of authors and larger public interest particularly education, research and access to information. To that end, the Delegation underscored the important role of exceptions and limitations in the copyright system in ensuring access to knowledge and attainment of quality education to enable



sustainable development and inclusivity of societies. The Sustainable Development Goals (SDGs) gave impetus to the urgency of that task. The Committee's work on that agenda item was linked to SDG 1 on ending poverty, SDG 4 on quality education and SDG 5 on gender equality, SDG 9 on industry innovation and infrastructure and SDG 10 on reducing inequalities achieved through SDG 17 partnerships for those goals. The SCCR was the Committee that gave birth to the Marrakesh Treaty in which exceptions and limitations have allowed visually impaired persons around the world to benefit from limitations and exceptions to copyright rules so as to access materials in formats designed to be accessible to visually impaired persons and to permit exchange of those works across borders. The Delegation hoped that the Committee could replicate the same constructive spirit as it made progress on the remaining exceptions and limitations. The Delegation appreciated the Chair's effort in preparing the draft action plans for libraries and archives, museums and draft action plans and education and research institutions and for persons with other disabilities as contained in document SCCR/36/3. The Delegation welcomed the draft action plans which it stated provided a good basis for discussions. The Delegation reaffirmed its commitment to engage constructively on that very important agenda item so as to ensure progress.

87. The Delegation of Brazil aligned itself with the statement made by the Delegation of Ecuador on behalf of GRULAC. The Delegation favored a copyright system that took into account the interest of rightsholders and scientific and cultural progress goals in a balanced manner. The promotion of knowledge went hand in hand with the provision of adequate incentives for the creation and production of works. Under that framework, exceptions and limitations had an important role to play in attainment of the rights of education and the access to knowledge without damaging the objectives of ensuring the sustainability and the efficacy of the copyright system. The work in that Committee had the potential to make a great contribution to the copyright system. However, there was a continuous need to clarify the scope of legitimate use of positive protected works under exceptions and limitations for libraries and archives, educational research institutions and persons with other disabilities, taking into account the dramatic changes brought by the digital environment. That clarification would provide users of those exceptions and limitations with the legal certainty in the implementation of their important activities and would too guarantee the protection of authors. Clarity with regard to applicable rules was beneficial to every stakeholder. The SCCR in particular had an important responsibility to bring coherence as to how exceptions and limitations should be approached at the international level. Studies done at the request of the Committee had provided essential information that enabled Member States to discuss the issue in a substantive fashion, while taking the interest and constraints of Member States into due account. The Delegation looked forward to continuing constructive work and discussion with Member States and was open to dialogue with stakeholders and all interested parties.

88. The Delegation of Gabon aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. The Delegation thanked the Chair for the draft action plans which it believed were a good basis for reflection and progress in the Committee's work on limitations and exceptions for libraries, archives and research institutions. The Delegation supported the organization of regional seminars which would allow Member States to hear the views of the stakeholders and to understand the problems encountered in the day to day work of Member States. The Delegation stated its preference which was for the Committee to initiate text based negotiations.

89. The Delegation of the Islamic Republic of Iran aligned itself with the statement made by the Delegation of Indonesia on behalf of the Asia Pacific Group. On the issue of limitations and exceptions for libraries, archives and museums, educational institutions and persons with other disabilities, the Delegation highlighted the importance of having an effective and balanced approach where limitations and exceptions would benefit both rightsholders and the general public interest. The importance of the fair use of the copyright system, and having a system

with relevant regulation on exceptions and limitations, could not be emphasized more. There had been a lot of discussion, studies and work done by different experts and academics in previous sessions, which involved the updating of information contained in very ample studies on copyright limitations and exceptions for all subject matters. The Delegation was of the strong conviction that the work of the Committee on limitations and exceptions was not intended only to reach a common understanding among Member States and for sharing experience or best practices. Rather, there was a mandate to create a legal framework for exceptions and limitations. Based on the mandate given to the Committee by the General Assembly, the Delegation strongly supported establishing a legally binding instrument in the area of limitations and exceptions. It was of the opinion that norm setting was the only way to ensure that Member States could provide a basic level of harmonized limitations and exceptions for such institutions. On the draft action plans, the Delegation commended the Chair for proposing two draft action plans for limitations and exceptions for libraries, archives, museums as well as for educational institutions and persons with other disabilities. The proposed action plans constituted a good basis for further deliberation on those issues. In the process of finalizing such action plans, consideration should be given to the development and history of the consideration of those topics by the Committee and fulfilling the mandate had to remain the main objective of any future action plans. Avoidance of the duplication of the activities already undertaken by the Committee had to be restrictively respected. Proposed activities contained in the draft action plans were positive and assistive tools for the Committee to progress the discussion on limitations and exceptions. The Committee should be cautious that proposed actions were not there to substitute substantive negotiation by the Committee in order to fulfill its mandate. After all the preparatory activities, studies and presentations undertaken in the previous years, drafting a legal instrument had to be a part of the action plans of the Committee. The subject matters had been addressed sufficiently in a preliminary level on all subject matters on the exceptions and limitations and were mature enough to be considered by Member States in a normative level. Drafting an instrument on exceptions and limitations for all subject matters in collaboration with all stakeholders should be a part of the action plan.

90. The Delegation of Japan wanted to continue constructively discussing that agenda item and stated that in the previous month, it had approved the Marrakesh Treaty. The Delegation recognized the importance of that Treaty in facilitating access to published works for visually impaired persons, while considering balance between the interests of rightsholders and the public. The Delegation hoped that more Member States would accede to the Marrakesh Treaty and that the cross border exchange network of that Treaty would expand.

91. The Delegation of Ecuador speaking in its national capacity aligned itself with the statement it had made on behalf of GRULAC. The Delegation recognized the importance of that Committee in finding practical solutions in the area of exceptions and limitations. It was hopeful that the Committee would find concrete results so as to attend to the needs of various populations. The development of knowledge and education as well as the promotion of culture were fundamental. The Delegation welcomed all initiatives which concretely contributed to the Committee's progress under that agenda item. The Delegation welcomed the draft action plans on limitations and exceptions for libraries, archives and museums and for educational and research institutions and persons with other disabilities and thanked the Chair for the preparation of document SCCR/36/3. The Delegation believed that the action plans had a number of valid proposals which would facilitate the work of that Committee based on the 2012 General Assembly mandate. The Committee had been discussing those exceptions and limitations for libraries, archives, museums, educational research institutions and persons with other disabilities for a number of years. Consequently, the Delegation believed that all those activities planned in the future should not duplicate the work which had already been undertaken but rather should add value.

92. The Delegation of Egypt stated that the topic of exceptions and limitations was a priority

for developing countries. Given the important role those countries played in that context, there was a need to put in place a series of provisions to protect rights, copyrights, in particular. The Delegation believed through national legislation, that those provisions could be beneficial for its people as its national laws already contained provisions that were similar. That was why it was critical that the Committee arrive at a consensus on exceptions and limitations in the field of copyright so that copyright protection was not an impediment to providing channels for the general public to acquire knowledge. That would also shut down illegal channels such as pirating of software. The Delegation thanked the Chair for his draft and committed itself to engaging constructively.

93. The Delegation of the United States of America stated that it would continue to constructively contribute to the discussion on limitations and exceptions for libraries, archives and museums and for educational and research institutions and persons with other disabilities. The Delegation stated that as it had put forward in documents SCCR/26/8 and SCCR/27/8, the best approach for limitations and exceptions for both sets of issues was focused on high level objectives and principles. That approach took into account the aspirations of harmonizing important goals for limitations and exceptions while preserving Member State's ability to tailor domestic limitations and exceptions to their own cultural and economic circumstances.

94. The Delegation of Venezuela aligned itself with the statement made by the Delegation of Ecuador on behalf of GRULAC. The Delegation stressed the importance of exceptions and limitations for libraries and archives to its country and stated that it would continue to contribute so as to achieve the Committee's established goals. The Delegation stated that it was currently working on ratifying the Marrakesh Treaty.

95. The Delegation of Indonesia speaking in its national capacity believed that the issue of exceptions and limitations was one of the most significant issues on the agenda of that Committee. One of the main intended purposes of the copyright system was to advance culture, science and education. The Delegation strongly believed that the Committee should take into account commercial interest in copyright by rightsholders and also should also take into account other competing interests in copyright including the public interest in scientific, cultural and social progress, particularly education, research and access to information. The Committee should continue to substantively discuss the issues on exceptions and limitations to find a common ground for normative work towards establishing an effective international framework to facilitate the lawful exercise of limitations and exceptions. With regard to the draft action plans, the Delegation hoped that the Committee could agree on a final text during that session. It stated that it would continue to engage constructively so as to fulfill the 2012 General Assembly mandate so that the Committee should continue to work towards an appropriate international legal instrument or instruments on the topic of limitations and exceptions for libraries, archives, museums as well as education and research institution and for persons with other disabilities.

96. The Delegation of India aligned itself to the statement made by the Delegation of Indonesia on behalf of the Asia and Pacific Group. The Delegation understood that while the protection of IPRs was crucial for the rightsholders, at the same time, IPRs were seen as drivers of access to knowledge worldwide. The Delegation supported the promotion of a balanced copyright regime that ensured an environment of creativity and innovation for all. Attainment of the right to education and access to knowledge by all should be the guiding principle for the Committee's work on exceptions and limitations. It was also necessary that libraries and archives were able to work internationally, in the interest of international research and cultural heritage. The Delegation acknowledged the progress made on the discussions on all topics related to exceptions and limitations for libraries and archives. The Delegation commended the Chair the draft action plans contained in document SCCR/36/3. The Delegation appreciated the efforts in the draft action plan to bring together the subject of limitations and exceptions for

libraries, archives, and museums on one hand instead of taking them up separately. The draft action plans needed to be further refined. It was important that the action plans, besides encouraging activities and sharing of past experiences and understanding the scope of studies and seminars among others, should also provide direction towards an eventual consensus based on a harmonized outcome document on limitations and exceptions. The prepared action plans along with document SCCR/34/9, the Chair's informal chart on limitations and exceptions for libraries and archives, needed to be further studied and intensively discussed.

97. The Delegation of South Africa aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. The Delegation considered limitations and exceptions to be critical for a balanced copyright system. As a developing country, the Delegation appreciated the importance of access to education and information as well as the exploitation of cultural integral elements to development and socioeconomic growth. Library, archives, museums and education and research institutions played a critical role in providing access to information and in the dissemination of knowledge. Empowering individuals to make well informed decisions should seek to facilitate and not inhibit those important functions. The Delegation welcomed the Committee's desire to move discussions forward and believed that Committee should make full use of previous work including various useful studies which had identified and outlined the state of play with regard to copyright exceptions and limitations on those issues. Based on those studies, the Committee had to be aware of the fundamental gaps that existed. It was important that the end goal of the proposed work program was to assist to fill in those gaps both in national and global copyright frameworks.

98. The Delegation of El Salvador aligned itself with the statement by the Delegation of Ecuador on behalf of GRULAC. The Delegation thanked the Chair for drafting document SCCR/36/3 which contained the draft action plans for the topics of limitations and exceptions. On exceptions and limitations, the Delegation hoped that the Committee could achieve a finalized plan based on transparency, a plan that met the needs of the beneficiaries.

99. The Delegation of Cote d'Ivoire aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. The issue of exceptions and limitations was of great interest to the Delegation as it had to do with the spreading of knowledge and of sharing information while looking to balance the interest of all those involved. The Delegation questioned what type of society it would be if there was no good balance of interests, especially when some parties denied the interests of others while seeing the profits of others increasing exponentially. In that gray area, the Committee had the opportunity to reestablish balance as had been the case with many other treaties such as the Marrakesh Treaty to facilitate access of works to the visually impaired. With a collective spirit, the Committee had to continue to work towards creating a global intellectual property system that was accessible to all, beyond the purely economic aspects. The world depended on that and that was the moral, psychological and physical sense of the term security.

100. The Delegation of the Republic of Korea attached great importance to the exceptions and limitations to copyright and related rights and believed that it was crucial to take into consideration the deferring issues and circumstances of the Member States when determining the scope and management of the limitations and exceptions. The Delegation hoped that the Member States would be able to develop mutual understanding, thereby building consensus on those issues through the exchange of ideas, experiences, and insights. The Delegation thanked the Chair and Secretariat for the draft action plans on limitations and exceptions.

101. The Delegation of Botswana aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. Limitations and exceptions were critical to ensuring an effective and balanced copyright system which benefitted the rightsholders and larger society to access protected works for fundamental aspects of life, such as education and research. The

Delegation hoped that the Committee could engage extensively and objectively on the topic towards a balanced outcome for the benefit of all. The Delegation thanked the Chair for the draft action plans contained in document SCCR/36/3 and SCCR/36/4, which it believed formed a good basis for the Committee to discuss how to move head on that matter. The Delegation looked forward to engaging constructively in the discussions and action plans and hoped that consensus would be reached on the action plans.

102. The Delegation of Uganda aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. Several WIPO commission studies had shown that exceptions and limitations were treated disparately across different Member States, an issue that called for international harmonization. The Sustainable Development Goal 4 enjoined all global players to equitable education and to the promotion of lifelong learning opportunities for all. A number of developing countries still lagged behind and that was due to the lack of access to affordable materials. Quality education for all would require increased efforts. The Delegation underlined the importance of the work of the Committee on exceptions and limitations for libraries and archives, museums, education and research institutions and for persons with disabilities. The most recent outcome of that work was the 2013 Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled. The Delegation stated that it ratified the Treaty in March 2018 and that the Treaty would come into force in July 2018. The Delegation had certain national processes of implementing the treaty and the treaty allowed access to published works for visually impaired people. The Delegation stated that the Chair should seize that opportunity and build on that momentum if the Committee were to achieve inclusive education as well as extend learning opportunities for all vulnerable persons. The Delegation welcomed the development of draft action plans on limitations and exceptions to SCCR/39 contained in document SCCR/36/3. The Delegation believed that implementation of those action plans would help close existing gaps and clarify Member States' positions and lead the Committee to move towards text based negotiations for a binding international instrument in accordance with the decision of the 2012 General Assembly.

103. The Delegation of Guatemala aligned itself with the statement made by the Delegation of Ecuador on behalf of GRULAC. Archives and libraries played a key role in intellectual development of people as well as access to knowledge. The Delegation thanked the Chair for the draft action plans contained in SCCR/36/3. That was a good roadmap that could be used for the Committee's future work and would help the Committee achieve its goal of having a system for exceptions and limitations.

104. The Delegation of Argentina aligned itself with the statement made by the Delegation of Ecuador on behalf of GRULAC. The Delegation had listened attentively to the other delegations' statements and observed that there was some discordance in the regional projects on that agenda item. There were some voices for international exceptions and limitations systems regarding archives and libraries and there were also some delegations that felt that their national legislation allowed them to meet their own needs. There was an intermediary position which would allow us to have a more constructive process. The Delegation understood that the Committee could also consider an alternative mechanism which could bring positions together. It was true that all countries had the freedom to have their own exceptions and limitations systems, as was noted in the Crews and Seng studies. It was true that studies could give the Committee some guidelines for how to implement national limitations and exceptions. Concerning the uniformity of exceptions and limitations, the Delegation saw that there may be some difficulties with that. However, as there was the cross border traffic of works was an important issue, the Committee needed to have a balanced system that would allow knowledge to circulate. The Delegation recalled its presentation of document SCCR/33/4 and proposed a variety of instruments and a coordinating system. That coordinating rule would bring the different systems into line regarding the use that could be made of works in an international

environment. Concerning that freedom it would allow freedom for users. The Delegation urged delegations to consider that document SCCR/33/4. With regard to the application of cross border exceptions and limitations, the Delegation thought think it should be included in the draft action plans.

105. The Delegation of Colombia stated that it had recently approved a law on copyright and related rights which had just finished its round in senate. Based on that, it was important to the Delegation to maintain a balance between the rights of rightsholders and the public. That law updated the normative framework which had not been changed since 1993. Given those, the evolution the cultural and digital environment that had been taken into consideration in national normative framework. That new law technically balanced and allowed those rights as well as accounted for the needs of different types of users. The law included a significant number of exceptions and limitations, particularly on the rules that Colombia was a part of. It was important that the Committee continue its work on exceptions and limitations on libraries, archives, museums and research institutions and for persons with other disabilities. Like other Member States, the Delegation was interested in the draft action plans.

106. The Delegation of the Russian Federation stated that the issue of limitations and exceptions was very important in achieving balance of interests for rightsholders and users. The Delegation of the Russian Federation supported the action plans on limitations and exceptions for libraries and archives and also limitations and exceptions for educational and research institutions and for persons with other disabilities. The roadmap that was the action plans was an excellent basis for further constructive discussion allowing the Committee to address issues of limitations and exceptions. At the previous session of the SCCR there was a proposal to accelerate work by merging Agenda Items 6 and 7. Those documents had the same end goal which was to set out the limitations and exceptions for education and science. It was advisable to consider a single draft working document on limitations and exceptions for libraries, archives, educational and research institutions and persons with other disabilities.

107. The Delegation of Senegal aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. The Delegation reiterated the importance that it continued to attach to limitations and exceptions for research, educational institutions, libraries and archives and persons with other disabilities. Those exceptions and limitations played a particularly positive role in striking the necessary balance between the interests of rightsholders and the interests of the public at large. Those limitations and exceptions allowed Member States to foster access to knowledge and teaching tools. The contribution of the SCCR in that regard was very much appreciated. That important Committee had already produced the Marrakesh Treaty. The Delegation thanked the Chair the draft action plans contained in document SCCR/36/3. The action plans contained interesting aspects and were the foundation for discussions. The Delegation believed that any approach to exceptions and limitations, including the action plans, should consider the 2012 General Assembly mandate as well as work already done by the Committee including proposals from the Chair, Member States and groups.

108. The Delegation of Burkina Faso aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. As access to knowledge was fundamental for social investment, the Delegation attached crucial importance to exceptions and limitations in literary and artistic property. The Delegation stated that its national legislation on literary and artistic property which went back to 1995 already contained limitations and exceptions. That same law was reviewed that previous April to include some provisions on the Marrakesh Treaty which it ratified in 2017. That had enabled the national union, with the support of the Secretariat, to ensure that accessible books were made available to those with reading difficulties attached to printed publications. The Delegation reiterated its gratitude to WIPO. The Delegation believed that the action plans contained in document SCCR/36/3 were a good foundation for the

Committee's discussions.

109. The Delegation of the European Union and its Member States stated that it would deliver a combined statement for Agenda Items 6 and 7. The Delegation of the European Union and its Member States strongly believed in the important role that libraries, archives and museums played in the dissemination of knowledge, information, and culture along with the preservation of history. The Delegation attached importance to the support of education and research institutions and for people with disabilities, both in the analog and digital worlds within the existing international copyright framework. The Delegation saw merit in discussing how a balanced international copyright framework could enable libraries, archives and museums to fulfill their public interest mission and support educational and research institutions and people with disabilities. The Delegation was willing to continue to engage constructively in those discussions and stated that it had fully taken notice of the timely published draft action plans on limitations and exceptions for libraries, archives and museums, and the draft action plans on limitations and exceptions for educational and research institutions, and for people with other disabilities contained in document SCCR/36/3. It recognized that there were various items presented in the draft action plans that from its point of view would seem worthwhile pursuing. The Delegation stated that it would have some further comments and questions on some of the other points at the appropriate time and stood ready to engage in discussions about the individual points and the content. The Delegation reiterated the importance of having a clear and common understanding of the purpose and the direction of the work in that Committee. Its favorite approach in that context remained one where the work in that Committee focused on the way in which limitations and exceptions could function efficiently within the framework of existing international treaties and where WIPO Member States could take responsibility for their own national legal frameworks supported by an inclusive exchange of experiences and best practices and when necessary, the assistance of WIPO. In many Member States, licensing played an important role either along the side of application of exceptions or instead of the application. It was important that WIPO Member States maintained a certain degree of flexibility in that field, which was particularly relevant in view of the different legal systems across WIPO's membership. The Delegation believed that a meaningful way forward would be to focus on the thorough and systematic understanding of the problems faced by libraries, archives, educational and research institutions and persons with other disabilities against their needs, giving full consideration to the solutions already available to Member States provided by innovation and relevant markets and those available under the current international framework. Against that background the Delegation believed that a possible outcome of the discussions in that Committee under that agenda item could ultimately be guidance regarding the international implementation of the international treaties. The Delegation reiterated that it could not support work towards legally binding instruments at the international level or any preparations in that regard.

110. The Chair opened the floor to the observers for their comments.

111. The Representative of the Electronic Information for Libraries (eIFL.net) thanked the Chair for the preparation of the draft action plans and all the delegations for their supportive statements on limitations and exceptions for libraries and archives. The Representative stated that at the previous SCCR, Professor Crews presented the statement for limitations and exceptions for libraries and archives. Trends in the development of national laws illustrated three points. First, brand new laws were not providing for current technologies that were widely used by libraries, students, educators and citizens everywhere. Second, there was a growing inequality in the means to legally access knowledge that would only serve to drive people towards unauthorized sources. Third, WIPO needed to take a leadership role in setting basic international standards for use of copyrighted works by libraries, not only for the sake of access to knowledge but also the credibility of the copyright system especially among the so-called digital native generation. An agreed action plan building on the substantial body of work already

undertaken by the Committee and in line with the 2012 General Assembly mandate would help to show commitments to such leadership because what happens in that room mattered. Decisions of that Committee or lack of action affected the extent to which people in different countries had legal access to the information they needed for work, study, and life-long learning. In that context, the Delegation expressed its dismay at the outcome of discussions the previous day, particularly on limitations and exceptions in the Chair's text of the proposed broadcast treaty. Without proper protection, social and educational purposes would be prevented. The Delegation asked that Member States consider that issue at the following SCCR. Professor Crews called for common sense copyright laws to ensure the future vitality of the copyright system for everyone's benefit.

112. The Representative of *Corporación Innovarte* stated that the existence of limitations and exceptions for copyright were essential, not only in facilitating access but also for the observance of those rights by artists, industry, and authors since they facilitated a commitment in the realm of intellectual property. All of the studies being carried out under the auspices show that many countries did not have the exceptions required in order to legally meet the needs for access for furtherance in that field. The lack of exceptions was caused by several factors, but without any doubt, it led to legal uncertainty in connection with the three steps, the aim of which was to restrict exceptions and not to establish obligations to generate exceptions which were essential for balanced interests. It was indispensable for the work being done by that Committee to be continued on the basis of texts or developed by regional groups and members in order to come up with an instrument or instruments complementary to the three-step process at the international level and to facilitate the use of exceptions which were legitimately required internationally. In that context the Representative appreciated the action plans presented by the Chair. However, some elements of those plans had to be reviewed so that they were effectively ancillary to the work of that Committee and that they did not delay it further.

113. The Representative of Education International stated that, at its sixth world congress, the organization adopted the global resolution that mandated it to defend and broaden limitations and exceptions that balanced the right of creators and users at WIPO. Its membership agreed that it was essential that national and international copyright legislation facilitated the provision of quality education for all. Education was a right and the role of that Committee could play in achieving SDG 4 had been raised by many stakeholders. Teachers and education personnel relied upon the fair use of work in their daily work. The Representative was concerned about how limitations and exceptions were side lined in the draft treaty discussion and hoped that the following days would give more focus on exceptions and limitations for museums, archives, libraries, and as well as other persons with disabilities, which included the appropriate and balanced legal instrument for education. The Representative stressed that the SDGs were not only about national matters but solidarity, partnerships and cross-border issues. The Committee's work was indispensable and could achieve those important objectives through strengthening limitations and exceptions. There was a need to ensure that when teachers work in digital and non-digital environments copyright legislation did not become a barrier but that it facilitated cultural change and the provision for modern education for all. It was essential to involve all stakeholders, teachers, education unions, researchers and other civil society actors in all discussions. The Representative hoped for a transparent process.

114. The Representative of the World Blind Union (WBU) stated that the new draft action plans on limitations and exceptions would bridge the gap with a positive and constructive approach and that cross-border exchange would be simplified. On one hand, those new action plans would address fears and on the other hand would clarify the positions of stakeholders and contracting parties, further facilitating access to knowledge by audiovisual modules and the distance learning programs for blind, visually impaired and otherwise print-disabled. Technology greatly supported blind people and the dream was for a time when all libraries,



archives, museums, scientific and artistic work would be fully accessible in the digital environment for the people who could fulfill their dreams by that.

115. The Representative of the International Federation of Film Producers Associations (FIAPF) stated that with regard to the important discussions on various areas of limitations and exceptions, the FIAPF supported ongoing exchanges of views as a means of fostering best practice where required by Member States and more understanding of that complex field of copyright law. The Representative was of the view that the international copyright framework included treaties that provided the requisite flexibilities to enable Member States to introduce limitations and exceptions that addressed specific public interest issues relevant to the specific national laws and cultural outlook, and in compliance with the three-step test. In that respect, the Representative saluted the initiatives by many Member States to ratify WIPO treaties and thus modernize their copyright framework. The Representative welcomed the draft action plans proposal in the field of limitations and exceptions and thought them a valid way of providing additional structure and support to meet Member States' needs.

116. The Representative of the Electronic Frontier Foundation (EFF) stated that the draft action plans were a good short-term work plan to that Committee's work on limitations and exceptions. Based on history, there was skepticism as to whether non-normative work could lead to meaningful reforms in international laws and practices. What happened in Geneva often took the form of normative work. That did not mean that only treaty negotiations would be valuable but it was important to keep in mind that the various scoping studies, discussions and negotiations set out in the draft may not be enough for libraries, archives, and persons with disabilities to increase their access to knowledge. If there were discrepancies with the stakeholders in different Member States after their needs had been fully explored that alone indicates the need to do more. The Marrakesh Treaty was an example that WIPO could engage in normative limitations and exceptions and without the sky for rightsholders falling in. Although the Representative appreciated the draft action plans, its intent in participating in that work was with the possibility of reassuming normative work after 2019.

117. The Representative of Communia stated that normative work of that Committee ensured the grant of exclusive rights. One would have expected that by now, users' rights would have been subject to similar legislative efforts. However, Member States that already benefitted from sophisticated exceptions had been reluctant to make a convergence of laws, suggesting that a protection of public interest such as access to knowledge deserved less international attention than protection of private interests. The Representative recalled that the European Union would be in motion to adopt mandatory exceptions for various uses which would harmonize the laws of 28 European countries despite their different traditions. That meant that agreeing on minimum standards was possible while still taking into account local specificities. The reason why the European Union was harmonizing national laws was very straightforward; the European Union countries had such narrow exceptions that they were making daily illegal practices such as showing a YouTube video in class. The Representative was well aware that the industry claimed that the needs of the global community of users could be solved through licensing. If that was the case, there wouldn't be a need to be in that Committee. The fact was that licenses were first of all expensive. One-third of teachers surveyed in Europe said they or their schools could not afford to buy licenses. Furthermore, there was a study on licenses in Europe that found that the current licensing practices were not commendable. Licenses restricted the scope of protection of exceptions, they granted questionable rights to right holders, and imposed burdensome obligations on users. The Representative doubted legislative intervention, fair educational and research activities that took place locally but also across borders would continue to be harmed. The Representative urged the Committee to agree on action plans that were aimed at finding a model for a minimum harmonization in the field of limitations and exceptions.

118. The Representative of the Library Copyright Alliance (LCA) stated that it had the honor of testifying before the United States Senate Foreign Relations Committee in favor of the ratification of the Marrakesh Treaty and that the Foreign Relations Committee had voted unanimously in favor of ratification. Additionally, the Senate Judiciary Committee voted unanimously in favor of implementing legislation. The thrust of the Representative's testimony before the Foreign Relations Committee was that ratification of the treaty would benefit people with disabilities in the United States by increasing the availability of foreign titles in accessible formats. Yes, the treaty would also benefit blind people in other countries, but the key point for the Senators was how the treaty would benefit their constituents. The Representative stated that as the Committee would begin the discussion on action plans for libraries, archives, museums and education, the delegations from the developed countries had to remember that the work in that Committee would benefit not only people in the developing countries, but would also benefit their citizens. More robust exceptions would allow libraries, archives, museums and educational institutions to better perform their public interest missions and better prepare their citizens for the challenges they would face in what was an interdependent interconnected world.

119. The Representative of the International Federation of Journalists (FIJ) appreciated the numerous references to involving stakeholders in the discussions, but was disappointed that the only mention of who the stakeholders could be was a reference to publishers and consumers participating in brainstorming on libraries. The Representative reminded the Committee that without the dedication of professional authors and performers, publishers had nothing to publish, consumers had only amateur creations to consume and that libraries had little or nothing to make available. The Representative welcomed the contribution by the Delegation of Ecuador on behalf of GRULAC, noting a balanced solution involved in recognizing the interests of creators. The Representative agreed with the Delegation of Lithuania and others that the best way forward was to share best practices. It would be unfortunate to subsidize libraries or archives or schools at the expense of authors or performers, especially when new technology meant that libraries effectively became online publishers. Journalism was fragile and under threat worldwide and in order to promote informed public debates and to represent the diversity of cultures and political developments, journalists and other authors, particularly those in the global south, needed the Committee's support.

120. The Representative of the Center for Internet and Society (CIS) stated that for a true balance to be realized, and for the purpose of access to knowledge, the rights of all users of copyrighted works would have to be treated on par with those of the rightsholders. The Representative was disappointed with the state of limitations and exceptions in the broadcast treaty. It stated that the present international legal framework did not sufficiently address the opportunities presented by new information and communication technologies. The Representative reiterated the need for open ended limitations and exceptions in that area, which it believed would facilitate smooth cross-border exchange of knowledge.

121. The Representative of the Knowledge Ecology International, Inc. (KEI) stated that it had three points. First, the 1971 Berne annex which dealt with access for developing countries was widely considered a failure and could be reformed and made relevant to the digital age. Second, the 1976 Tunis Model Law, the soft norm, could be updated using modalities of the original negotiation, which was driven by an exercise undertaken by experts nominated by Member States. Third, it may be useful to have a serious discussion about how different parties think the three-step test was or should be interpreted before driving versions of that test, somewhat different from earlier formulations into the fabric of international agreements. The Representative called attention to the preparatory work for the 1967 revisions of the Berne Convention, specifically the records of the Stockholm conference 1967, volume 1, page 112. In discussing the three-step test, when it was first introduced into the Berne Convention, the study group stated that the three-step test did not apply to the particular exceptions in the convention where an existing standard for an exception already existed. Citing specifically Article 10,

exceptions for quotations and illustrations for teaching as well as ten business, 11 *bis*, paragraph 3, and the exception in Article 13 for compulsory licenses, the Representative noted that the three-step test did not exist in the Rome Convention.

122. The Representative of the International Federation of Library Associations and Institutions (IFLA) stated that WIPO had an essential role as regards exceptions and limitations to copyright. At that first formal discussion in 2008, the Secretariat prepared a document calling for an action plan. The Representative was very grateful to the Chair and Deputy Director General for delivering on that. Action was as necessary as ever as technology and user expectations had changed, globalization had accelerated and the uniqueness and importance of WIPO's had role grown. As some had suggested, it was true that Member States did have the possibility to implement exceptions and limitations for themselves. However, as recognized in the impact assessment published by the European Commission ahead of its draft directive on copyright in 2016, the resulting chaotic legal framework could leave users disadvantaged or confused, notably libraries, archives and museums. In too many cases, as highlighted in the Rostama report from the previous meeting, updates to exceptions and limitations had not kept up with the creation of new rights. In that vein, the Representative urged members not to make that mistake in discussions on broadcasting. With the shift to digital, licensing had become the standard means of accessing many resources. Where those offered new rights, they had proved highly valuable. However, the Commission noted that they were too often unhelpfully restrictive, or simply inadequate for the task. Finally, the Commission underlined that due to limitations and exceptions not having cross border effect, institutions looking to promote the flow of knowledge between countries – in line with stated political priorities – faced prohibitive transaction costs. The impact assessment therefore argued that international 'intervention is indispensable to achieve one key objective of the copyright modernization, which is to guarantee legal certainty in cross-border situations. A similar view was expressed by the Delegation of Argentina in document SCCR/33/4. Those were arguments that the Committee had heard before, thanks to extensive discussions on libraries, archives and museums, the Committee had built up an understanding of the areas where the right exceptions to copyright would make the difference. The action plans had the potential finally to prove the value of WIPO's work to its users. Progress on exceptions and limitations for libraries, archives and museums should not be controversial. As Vice President Ansip of the European Commission had noted at that year's Charles Clarke lecture, new exceptions for public libraries, museums and archives would not destroy publishers' business models. What progress would mean was better legal conditions for librarians, archivists, museum creators, teachers, tutors, trainers, researchers, innovators and creators in delivering sustainable development across the board.

123. The Representative of Karisma Foundation stated that libraries and archives provided public services which made it possible to exercise human rights. It was here that the Committee had to pay close attention and where the Committee could play an important role because unequal poor communities such as those in Latin America could benefit from an essential role played by institutions to reduce the digital divide. That discussion was about a desire for knowledge and to have access to knowledge for professional, social, and personal advancement, and there was also a need to be able to share that knowledge. Despite the existence of flexibilities in copyright and the educational field, teaching practice and the needs of researchers in an increasingly interconnected world meant that the Committee had had to take a fresh look at that situation internationally. In that context, the Representative welcomed the draft action plans which were an indicator that the Committee was ready to make progress on that issue. The Representative hoped that the implementation of those action plans would be open, inclusive, participatory and transparent but also that they would lead to the development of a binding instrument that would contribute to a more balanced system for libraries, museums, archives, and educational institutions in the near future.

124. The Representative of the Third World Network (TWN) called upon Member States to

realize that SDG 4 on quality of education and facilitating access to knowledge was an important step in the achievement of all other SDGs. The capacity in developing countries could only be built by enhancing the quality of the technical workforce in developing countries. Thus, copyright laws played an important role in facilitating technology transfer. It was especially important to expand the availability of new and quality materials in educational institutions in developing countries. That improved not only textbooks but also journals and articles, important sources for the development of quality engineers, scientists and other technical officers working on SDGs. Copyright monopoly related to digital materials resulted in the concentration of knowledge production and its circulation. A study conducted in 2013 revealed that five multinational publishing houses accounted for 50 per cent of all papers published in 2013. Therefore, there was an urgent need for that Committee to discuss the issues of limitations and exceptions in light of access to copyright materials, especially educational materials at affordable prices. Lack of access to copyright material at affordable prices not only compromised the right to education but also the right to take part in cultural life as guaranteed under Article 151A of the International Covenant on Economic, Social and Cultural Rights. In that context it was important for Member States to move forward on the discussions on limitations and exceptions for educational and research institutions and persons with other disabilities as well as limitations and exceptions for libraries and archives.

125. The Representative of the Civil Society Coalition (CSC) stated that unfortunately, certain interest groups and some experts were attempting to push back on limitations and exceptions and to use that forum to achieve that goal internationally. It seemed as if the Delegation of Canada was the focus of much of that debate and that there were even frightening references to the "Canadian flu" being the supposedly dangerous cumulative effect of three Supreme Court cases that were in fact decided before the inclusion of the word "education" in the fair dealing provisions of the Canadian Copyright Act that took effect in 2012. Certain experts were shocked that multiple copies were now being made and used legally in Canadian classrooms in a manner perfectly legal even before the 2012 Canadian legislation. There were very incorrect and incredible allegations that Canadian law contravened the Berne three-step test and the TRIPS Treaty. Canada's statutory regime and case law stopped far short of many respects of Section 107 of the United States Copyright Act which enables "teaching including multiple copies for classroom use," and had been in law since 1976 without any challenge under international law. However, preferred that the American concept of fair use and its embodiment in American law should not be adopted outside that country and they had no hesitation in saying "do as we say, not do as we do." The Representative stated that that Committee should be used to achieve a better understanding of users' rights and the expansion of limitations and exceptions in what its Supreme Court calls a large and liberal manner consistent with other exemplary laws such as that of the United States of America, for example.

126. The Representative of the International Association of Scientific and Technical and Medical Publishers (STM) welcomed the Chair's revised draft action plans on limitations and exceptions. The Representative stated that the draft action plans did not predetermine outcomes but rather facilitated a number of forum interactions between Member States and stakeholders with the benefit of the advice of experts in the field. STM members had been leaders in the innovation of digital technologies and in developing new forms of access to published materials. The association and its members had a lot of expertise in innovative publishing products and business models that supported them and were happy to contribute to those discussions and make available experts. The Representative remained opposed to mandatory copyright limitations and exceptions at the international level and its support for the draft action plans was based on that solution. The international framework provided sufficient necessary flexibility to develop national solutions which did not prejudice cross-border exchanges that could be assured by best practices, convergence, license, and regional solutions such as that of the European Union of which there were 28 highly converged economies and legal frameworks over decades. The Representative noted that many Member

States needed to implement existing treaties instead of calling for exception treaties.

127. The Representative of the International Publishers Association (IPA) welcomed and supported the revised draft action plans. The Representative stated that it had a number of comments on the draft action plans and wished to reiterate some high level principles. Firstly, the Representative opposed the establishment of new mandatory copyright limitations and exceptions at the international level and its support for the draft action plans was linked to that position. The international copyright framework provided WIPO Member States with ample flexibility to develop national limitations and exceptions that allowed them to pursue their policy imperative and that permitted Member States to encourage the growth of local publishing industries which furthered sustainable knowledge and information based economies. Strong exclusive rights, contractual freedom and copyright exceptions were crucial to any balanced national copyright framework. The Representative stood ready to assist national law makers in developing copyright laws which not only incentivized creativity and investment, but which also brought practical licensing solutions to real problems. Secondly, the Representative stated that it had organized a side event at the previous SCCR, that showcased four publishers from developing countries for whom strong and stable copyright laws were the foundation for innovation. Contractual solutions were the best approach to not only ensure wider access to copyright works but also to drive the development of local publishing and other creative industries. Exceptions had to be clearly associated with the promotion of legal certainty which was necessary to the development of such industries. On the draft action plans, the Representative stated that they set out a coherent plan for WIPO's work in the important field of limitations and exceptions. The proposed work should be about providing support for local efforts to achieve balanced copyright regimes and practical solutions rather than developing new international norms. The work included the commissioning of studies, organizing regional workshops and conferences. The Representative understood that conferences would take place independently from the other work and would not constitute SCCR work product. In terms of the detail, the typology research was useful in showing what already happened worldwide at a national level. The regional seminars were important opportunities for dialogue away from Geneva. The Representative offered its assistance through participation in brainstorming sessions and workshops and was happy to put forward local experts from the sector. It was also happy to provide assistance in connection with the global conference in order to help ensure that all voices were heard. The Draft Action Plans were well structured and fair in that they did not prejudge outcomes but instead called for a measured approach over a two-year period. That was an opportunity to introduce much expert technical opinion to a debate that was sometimes polarized.

128. The Representative of the Society of American Archivists (SAA) stated that the limits of copyright law created significant challenges for them and their researchers. Limitations and exceptions were necessary for archivists to serve their global audience in the twenty-first century and meet their primary goal of access for users and to do the preservation that made access possible. Libraries, archives and museums were a triad of institutions with three overlapping needs: One, the ability to share items legally, both locally and across borders without fear of contravening technological protection measures. Two, the ability to utilize new means and technologies to fulfill essential activities without legal liability. Three, for works that were never in commerce or works untraceable to copyright holders, there was a need for appropriate exceptions to enable cultural institutions to preserve and make those orphan works available. Together with libraries and museums, archives were essential resources for public knowledge and the preservation of heritage. If copyright were to remain vibrant in a twenty-first century digital society, robust and related exceptions were needed for that triad for libraries, archives and museums. Clearly, the triad of archives, libraries, and museums had far more commonalities than differences. They were all resources for public knowledge and the preservation of heritage. That was why a plan that split those organizations apart moved the Committee backward and worse, wasted the considerable effort that Member States had

invested in that conversation, and devalued the Crews' studies, NGO statements, and past side events. Uncoupling the triad of institutions and adding new studies would merely duplicate work, only to arrive at the same conclusion, that they all needed the same limitations and exceptions to enable them to fulfill their mission to society.

129. The Representative of the Program on Information Justice and Intellectual Property (PIJIP) stated that action plans should inform and not distract the SCCR mandate towards building an appropriate framework or instrument in whatever form. The problem society faced was illustrated in the Seng study. It was not a lack of ample flexibility in the current international system, it was the lack of adequate guidance in the international system. The Seng study revealed that many countries lacked adequate education exceptions for the modern digital environment and they needed guidance which that body could provide to harmonize exceptions towards best practices. Many countries had aged exceptions that did not apply to modern uses like streaming a video in a classroom or sharing text over a closed network. The argument for harmonizing exceptions was the same as for harmonizing protections. There was a need to fill gaps so that creators and users in every country operated on a level playing field. Another problem that had not been covered by that Committee but that should part of the focus of the action plan activities was that access to educational resources were often priced at globally harmonized levels. Often hundreds of dollars for textbooks and thousands for journal subscriptions in countries where average salaries are just a few dollars a day. Teachers in such countries were forced to create their own materials. But often lacked adequate copyright exceptions to do so legally and affordably. The Representative hoped that those would be some of the subjects of the regional meetings and activities of the draft action plans and that they would work towards a proper instrument or framework that could guide countries as they formed copyright laws.

130. The Representative of Conector Foundation stated that Colombia had just updated its copyright law which included exceptions. That represented considerable progress in the country and was a good precedent to continue along that path which they had been working together for some time and to come up with agreements to continue to build on what they had already done. The Representative wanted to know how it was possible that libraries had been able to function for so long. Libraries, archives and museums were not competitive with the cultural industries market. Those three industries were competing with themselves and 70 per cent of libraries in Colombia were in the five larger cities in the country and in those cities, there were strong library snugs. The training there was focused on people to buy books, to buy prints, and the market was broadening beyond reach. The Representative stated that it was aware of the huge challenge and wanted to harmonize its laws in order to be more constructive. The Representative agreed with all of the SDGs not only for its country but for the entire world and was very grateful for that approach. More than a thousand librarians in Colombia had signed a pledge for an update and there was need for harmonization at the national level.

131. The Representative of the International Confederation of Music Publishers (ICMP) stated that the current international framework provided sufficient flexibility which allowed individual countries to determine their own policies, adapt to technological developments and provide access solutions in the digital environment. In particular, individual countries could determine the legitimacy of limitations and exceptions in light of their purpose, the different uses in question, the legitimacy of the needs of beneficiaries and the relevant technological and societal context. ICMP considered licensing and voluntary solutions as facilitated by the three-step test to be the optimal tools to provide flexibility and honor exceptions in the targeted effective way. ICMP supported the constructive discussions at that Committee and believed, as many other there, that much progress could be made in building on experiences in different countries and providing good national models as examples of best practices. All appropriate tools should be considered, including sector-specific solutions, innovative partnerships and licensing mechanisms for providing and improving access. Within that context ICMP was happy to

participate in any constructive discussions regarding the proposed action plans.

132. The Representative of the Authors Alliance stated that authors around the world were likely to benefit from limitations and exceptions at every stage of the creative process and long thereafter. On the topic of limitations and exceptions for libraries, archives and museums it was in the long-term interest of authors that their creative and intellectual legacies lived on through these preservations and access efforts of those cultural stewards. The efforts could only enhance the authors works being discovered improving the chances that those works would reach the audiences for which they were intended. In the educational setting, limitations and exceptions could actually enhance some authors' incentives to create. Limitations and exceptions for education could promote authors' goals of advancing knowledge and could help authors build educational capital and educational use of authors' works could help authors reach more readers. Likewise, limitations and exceptions for persons with disabilities helped their members reach the broadest possible audiences for their creative works. Limitations and exceptions helped the creative systems to flourish.

133. The Representative of the International Council on Archives (ICA) stated that WIPO's mission was to "lead the development of a balanced and effective international intellectual property system that enables innovation and creativity for the benefit of all." The role of that Committee was to ensure that copyright works effectively and internationally. Limitations and exceptions were a fundamental component of an appropriately balanced copyright system which provided reasonable access to works for the benefit of society. Past interventions and discussions had made it clear that national regimes on copyright functioned poorly in a global digital world. Among the issues affecting libraries, archives and museums were cross-border uses and orphan works, two issues that were desperately in need of a truly international solution which was WIPO's unique responsibility. As the Supreme Court of Canada had said, limitations and exceptions were not just loopholes. They were in fact users' rights which along with owners' rights were a fundamental part of the copyright system. Limitations and exceptions were essential to innovation and the advancement of knowledge. Robust limitations and exceptions had to be a mandatory component of whatever framework emerged from that endeavor.

134. The Representative of the Center for Information Policy Research (CIPR) attested that in universities across the globe, librarians, archivists and curators were trained within the same school or college or in close collaboration across departments. For example, at Kent State University, the curriculum contained course work on all three entities and the University of Wisconsin-Milwaukee offered course work preparing both librarians and archivists while future curators combined the Master of Library Information Science with either a second master's degree or a certificate in museum studies from the Department of Anthropology. That was no accident of planning as in the digital age, the work of libraries, archives and museums increasingly converged as all three entities shared core functions impacted by copyright, such as acquiring, preserving, organizing and curating and disseminating material, whether information, historical documents, or objects. As a result, there was already a close connection between those three heritage institutions and their practitioners. Their educational training reflected that reality. Moving towards unified treatment where access was not only logical, it was needed. The Committee had to therefore execute a unified action plan regarding those entities in order to avoid confusion and offer legal certainty to all stakeholders. The Representative urged the work of the Committee to deal with those institutions together.

135. The Representative of the Health and Environment Program (HEP) stated that limitations and exceptions were important for public access to information. Sharing information did require a development of the action plans as presented by the Chair. The Representative endorsed the action plans.

136. The Chair opened the floor to the Deputy Director General to give an update on the status of the study on libraries, archives and museums.

137. The Deputy Director General stated that the study was in response to the mandate to collect data and information on limitations and exceptions in the area of museums. Although there were not concrete results to present to the Committee, the study was ongoing. The study was being conducted by Benoit Müller who was using the method that had been suggested at the outset of that study, namely using a survey that was developed to analyze the cases of limitations and exceptions for museums given their activities, inter alia, at the national and international levels as well as on their activities in a digital world. The questions in the survey were reflective of the museums' activities, namely activities with regard to limitations and exceptions or the use of copyright within the framework of their activities. The study approach adopted and agreed upon was to organize direct exchanges with museums directors and other professionals working in that field on the basis of those questions. The surveys would be sent out to a list of museums which had expanded thanks to the help of ICOM as well as other organizations and professionals who were involved. The survey would continue to be shared until the following July, at which point it would no longer be circulated so that Professor Yaniv Benhamou could update what had already been conducted and furthermore finish the study. Thereafter, the results of the study would be submitted to a number of professionals, who worked in the field of museums, be it practitioners or university professors or those individuals who were involved in the study of museums in the digital age, for their comments on the study. Their comments would be incorporated in the study in the following September, with the results of the study published at the following SCCR. The advantage of sharing the results of the study at the following SCCR was that it enabled those working on the study to appeal to experts in museums throughout the world. As such, the study would include not just one expert perspective, but of many experts stemming from different regions of the world. That was the broad approach and the Deputy Director General hoped that the responses would be in line with the expectations of the Secretariat and the Committee.

138. The Chair stated that the Committee would proceed to the presentation of the draft action plans for libraries, archives and museums contained in document SCCR/36/3. The Chair wished to recap the genesis of the action plans. As members of the Committee could recall, during the previous SCCR, the Secretariat drafted action plans and presented them to the Committee. The feedback from the Committee at that SCCR was that many Member States needed more time to react to the draft action plans. There were a number of issues related to the draft action plans in terms of the number or modalities, and as such, the decision was taken at that Committee meeting to have the Chair be the one to take a more active role in formulating the draft action plans, taking into account revisions and views that had been expressed at the previous SCCR, to circulate the draft action plans in a timely fashion and to present those in that meeting. As requested by Committee members, the Chair stated that he had worked with the Secretariat and the plans were circulated the previous April 20. Based on the responses, the Chair believed that most of the Committee had had a chance to look at the draft action plans in detail. The draft action plans was intended for the Committee to structure its interactions and structure its engagements over the following 18 months to the end of the biennium. The draft action plans were meant to build up and lead up from Agenda Items 1 all the way to Agenda Item 5. Looking at the draft action plans for libraries, archives, and museums, those were based on the assumption that there would be two SCCR meetings per year, which meant that the draft action plans could cover the Committee all the way to SCCR 39, which was the last SCCR meeting of 2019. On the typology, which was the most burning question of the entire SCCR, what was a typology? Since the Chair was from the Anglo-American school of thought, he confessed that when he saw the word typology, he was a little bit puzzled. That was not something that was common in the Anglo-American world. After having had the chance to speak to the Secretariat, the Chair understood that a typology was for example, what happened under the Crews and Seng studies, under practices, laws, all kinds of actualities in the various



Member States. With all of that information presented in those studies, what was probably useful was to synthesize that information, organize it and classify it in a way that made sense, in a way that it was digestible. That was really the sense of typology, to find some category, find some way in which that information could be organized into categories, into a form that the Committee could use. For example, the information in the Crews study and the Seng study, under typology, could be organized under the themes: right to reproduction, methods and flexibility under which copyrights are framed, and so on. That information could be categorized and organized in a way that was easier for the Committee to use. Typology was not that mysterious at all. In the Anglo-American world, it would be referred to as organization of the work. That was useful for the Committee because the information presented by both studies was in a form that was not so easily formalized. That typology put the information in a way that made it easier for the Committee to work. The following draft action plans were to commission and undertake a scoping study focused on archives. The Committee had heard from stakeholders that perhaps those were not needed as there had been previous studies. Those statements had been made by a number of archivists and institutions because of convergence between libraries and archives. The Chair stated that it could be useful to have at least one study done. With reference to the twenty-second session of the SCCR, which the Chair had not read that study, as a result of convergence, there had been changes in practices, changes in the way archives were organized and, as a result, there had been some legal challenges. Such a study on archives was probably necessary as it gave the Committee information that would be useful. If the draft action plans were approved at the end of that SCCR, a study could commence in the second half of that year and a preliminary report on the study could be presented at the following SCCR in November, with the final study presented at the SCCR in the following year. Another item in the draft action plans was completion of the ongoing study on museums, which the Deputy Director General had spoken very extensively about. That study would be completed and presented to the Committee during the second half of 2018, precisely at the following SCCR in November. The draft action plans also included a couple of events which were built around the typology and the studies which include undertaking a brainstorming exercise on libraries. That would involve professionals and a wide range of stakeholders including publishers and consumers. As some had indicated, that approach needed to be comprehensive and holistic. The idea was to identify subjects that would benefit from further work at the international level. One of the examples that the Committee heard repeatedly from many different sources was that a lot of limitations and exceptions needed to be considered from a cross-border perspective. Looking at libraries from a brainstorming exercise, one issue that would benefit from that exercise would be a topic of cross-border e-lending. As for all other items, that work would draw on the previous and following SCCR documents on the subject. Building from the brainstorming exercise, the idea in number five was to conduct up to two regional seminars upon the request, with SCCR members and stakeholders. That would be a larger exercise involving members and stakeholders. The objective of those regional seminars would be to analyze the situation of libraries and archives and museums. It would be a holistic approach that would include research and educational institutions, cutting across Agenda Items. For the regional seminars, the idea would be to do one during the second half of 2018 and one during the first half of 2019. In terms of not having more regional events, that was because there were budgetary and resource restraints from the Secretariat. The Secretariat felt it was feasible to arrange two regional seminars, one during the second half of 2018 and the second during the first half of 2019. All of those would build up to a cross-cutting conference on limitations and expectations that would cover libraries and archives and museums as well as educational and research institutions. That would be broad based, including SCCR members and stakeholders and could be held for example, a couple days before an SCCR. The objective of that would be to consider the opportunities and challenges provided by various international solutions. The Chair stated that he wouldn't prejudge, but there was a possibility to include soft law, contractual licensing arrangements and even include normative approaches. The Chair stated that he was very careful to be nuanced and balanced given the sensitivity to normative approaches as appropriate. All the draft action plans would

incorporate and take into account the work that the Committee had done previously. A number of Member States and others had referred to the fact that work had already been done and that there were other documents and other efforts by predecessors to move the work of the Committee. The work on the draft action plans would be in reference to the efforts by predecessors to help establish the work of that Committee. The idea was that the conference would be during the second half of 2019. The Chair opened the floor for comments on the draft action plans for Agenda Item 6.

139. The Delegation of Switzerland speaking on behalf of Group B stated that it supported the view that libraries and archives played an important role in social and cultural development. As the studies presented during the previous sessions had described, many countries had already established their own limitations and exceptions for libraries and archives which worked well in the respective domestic legal systems within the current international framework. The work in that Committee should be shaped in a manner reflecting that reality and complementing the well-functioning current international framework. Group B appreciated that the aim of the Committee's discussions was to reach a better understanding of the topics. As regards the working methods, the Delegation took note of the Chair's draft action plans on limitations and exceptions for libraries, archives, and museums contained in document SCCR/36/3 through SCCR/39. That draft was a good basis for discussion in order to explore common ground upon which the Committee could stand. There should be a full regard of the reality that within that Committee, no consensus existed for normative work. That had to be duly taken into account. The Delegation highlighted the objectives and principles proposed in document SCCR/26/8 on the topic of limitations and exceptions for libraries and archives. The objectives and principles laid out in that document could complement that work. Group B stated that it would continue to engage in the discussion on limitations and exceptions for libraries and archives, including the draft action plans prepared by the Chair in a constructive and faithful manner.

140. The Delegation of Indonesia stated that it was considering the draft action plans and looked forward to giving its detailed comments in informals. On the draft action plans for libraries, archives and museums the Delegation stated that it had tried to understand what was meant by action plan by going to different dictionaries. Its search indicated that an action plan was an agreement of steps to achieve a particular goal or objective. As such, for the Delegation, it was very important that even if delegations did not see eye-to-eye on every detail of the plans, that should not stop the Committee from approving the action plans. The action plans could potentially provide an answer that could address the different aims of delegations. The Delegation stated that it would be a valued addition if the draft action plans were focused on making concrete progress without undue delay. The Delegation would like to see the draft action plans add value to whatever that Committee had been working on. As such, brainstorming had to add value to the brainstorming that the Committee had had in the previous ten years of that Committee. The Delegation agreed that things had changed in terms of additional items that had to be discussed but as long as the action plans were adding value, that would be a positive indicator. If the Committee did go on to approve the draft action plans that did not have to mean that any substantive discussion with regard to the agenda on limitations and exceptions within the Committee would be stopped.

141. The Delegation of Brazil stated that based on what the Committee was looking to achieve with the draft action plans, the background that the Committee had to consider was the 2012 General Assembly mandate. According to that mandate, the Committee had to work towards an appropriate international instrument or instruments, whether model law, general recommendation treaty or other forms, with a target to submit recommendations to the General Assembly by the twenty-eighth session of the SCCR. The twenty-eight session of the SCCR was in 2014 but the discussions were still about how to give proper execution of that mandate. According to the Delegation, that goal had to be reflected when the action plans were adopted. The Delegation stated that it continued to be interested by any proposals. The representatives

of libraries and archives had eloquently expressed the practice and how the copyright system influenced them. As such, it was up to Member States to give a concrete answer that enabled and facilitated the activities. On the draft action plans, the Delegation agreed that the action plans needed to be synthesized, categorized and organized so as to reflect the vast amount of information contained in the Seng and Crews studies. The Delegation proposed that the consolidating document SCCR/29/4 could be used for that. There were also the informal charts on limitations and exceptions which could be used. The Committee should avoid duplicating work that had already been done and focus on providing concrete answers that could guide the Committee's work. Typology had to go beyond the formal charts and make clear the scope of limitations and exceptions and how they were implemented at the national level. Regarding the proposal on the study on archives and museums, the Delegation would follow the consensus on that study, although it had first seen the proposal envisaged for libraries and archives. On the regional seminars, the Delegation understood the budgetary limitations but stated that there were differences between regions. For example, in Latin America, there were many Spanish speaking countries but that was not the case for Brazil. There was greater potential for cross-border uses of works if that region were to be compared to others. The regional seminars could clarify those specificities and illuminate the Committee's work as well as provide Member States with recommendations. With regard to the conference on limitations and exceptions, the Delegation supported it and saw the value in it. The Delegation stated that there should be reports submitted back to the Committee which would allow the Committee to make informed recommendations to the WIPO General Assembly, and at long last implement the mandate given. That reporting could be done, for instance, through the designation of someone, as it had been done in other WIPO Committees. As had also been referred to by the Delegation of the Russian Federation, the Delegation thought it advisable to create a draft working document on limitations and exceptions, enabling the Committee to make practical progress in complying with the 2012 mandate.

142. The Delegation of El Salvador stated that it was important to have specific actions and a roadmap as that was the best way to guide debates. The Delegation found valuable elements in the plans set out. On the notion of typology, which the Chair had clarified, the Delegation stated that that understanding should be clearly reflected in the decision taken by the Committee at the end of that meeting. On the need to safeguard the principles of transparency and inclusion in all the activities carried out within the framework of the Committee, with regard to item 4, the brainstorming exercise, the Delegation wanted to know if provisions were made for an open inclusive format. The Delegation asked what would be the profile and the selection mechanism of the professionals that would participate, a point that it would like to have reflected in the document at the end of that session. As a footnote in the document highlighted that the brainstorming exercise should be carried out "based on maturity of the topic" the Delegation stated that it would be important to decide which topics could usefully be pursued internationally. The Delegation wondered whether the Dr. Kenneth Crews 2008 study and subsequent update of that study in 2017, had not generated enough topics for discussion and development at the international level. The Delegation stated in the point referencing the development of typologies, mention is made that possible spheres of interest included preservation, access, and useful exploitation of works, in particular the digital environment. Those were precisely the issues discussed in Dr. Crews's study which was intended to be discussed under the point on the brainstorming exercise. As referenced by some of the observers, in the future perhaps it would be more efficient to deal with all of the issues with regard to limitations and exceptions for libraries, archives and museums jointly. Those three institutions shared the same challenges and problems. Bearing in mind that there was already a study on libraries and that provision was being made for scoping studies for archives and museums the Delegation wondered if the Committee could not use as a starting point the elements contained in those three studies and develop them further at the international level without the need for carrying out further activities. The usefulness of studies was not just to inform the Committee, but on the basis of their conclusions for the Committee to be able to

undertake relevant discussions. The aim was for the typology to be used as the foundation for the Committee's discussions. Those studies should as such be used as a starting point.

143. The Delegation of Morocco speaking on behalf of the African Group noted that the action plans contained a range of activities to detail the activities under the plan. The Delegation requested some clarifications on the specific functions of the action plans relative to the 2012 General Assembly mandated as mentioned by many delegations. The Delegation also wanted to know whether the action plans would complement the work underway on limitations and exceptions of the Committee, or would they replace them partially or entirely.

144. The Delegation of the European Union and its Member States stated that the action plans helped frame and outline the discussion on limitations and exceptions. The Delegation thanked the Chair for his presentation and for clarifying what was meant by typology. Although the draft action plans were pointing in the right direction, the Delegation had some comments and required some clarifications which it would bring up in the informal discussions.

145. The Delegation of the United States of America viewed the action plans as advancing the work of the Committee under the 2012 General Assembly mandate. The action plans were entirely consistent with the United States of America objectives and principles. For the informal session the following day, the Delegation had a number of suggestions which it would discuss then. The Delegation was happy to see that in a number of the action plans the Chair had utilized an integrated and holistic approach on limitations and exceptions for libraries, archives and museums. The Delegation stated that there were a couple of places that could use with an integrated or holistic approach even more apparent or clearer.

146. The Delegation of Kenya stated that the draft action plans were holistic in the sense that they were among the first documents the Delegation had seen in the SCCR that tended to give the Committee a direction as to how it was moving forward. That was the best management practice globally when there was a broad framework giving details and setting timelines and targets that must be achieved within a scope of time. That approach brought predictability as well as gave the Member States an opportunity to plan from time to time. The draft action plans document may not be one that was 100 per cent, but members could build on that and give suggestions.

147. The Delegation of Lithuania speaking on behalf of the CEBS stated that it was prepared to discuss the draft action plans as they contained some useful suggestions on the way forward. The Delegation's main concern was that brainstorming exercise and conference mentioned in the draft action plans would not produce any recommendations to the Committee and that only a summary on the events would be reported by the Secretariat. The Delegation would provide more comments and questions during informal discussions.

148. The Delegation of Botswana sought to have clarity on a point raised by the Delegation of Indonesia which was in reference to the action plans document and what would be happening to the substantial discussion of limitations and exceptions in the Committee. The Delegation looked forward to engaging in discussions on the draft action plans.

149. The Chair stated that as the Delegation of Kenya had observed the draft action plans were developed to organize and to give predictability and structure to the Committee. The draft action plans would not take away the ability for Committee or as Member States to discuss what was right and fit to be discussed concurrently and under the Agenda Items. The draft action plans were not meant to take away, but rather to add value as the Delegation of Indonesia had pointed out.

150. The Delegation of the Islamic Republic of Iran thanked the Chair for the draft action plans

which it considered as a very positive and assistive tool in the discussions of the Committee on limitations and exceptions. The Delegation reiterated that the main objective of any action plan must be to work towards fulfilling the mandate. And as the General Assembly clearly mandated the Committee to continue discussion to work towards an appropriate international legal instrument and instruments, the Delegation wanted to know how those draft action plans could contribute positively to the fulfillment of the mandate. As most of the proposed actions were going to take place outside of the Committee as such the SCCR sessions would be the space by which reports from such activities were presented, the Delegation wanted to know what was really going to be done in the course of the SCCR sessions. The Delegation stated that it had more detailed comments which it would keep for the information sessions.

151. The Chair stated that a number of the actions would interact with that Committee through the studies, the typologies as well as the results of the exercises in the seminars. As had been practice in the Committee, all that would be presented there. The Committee was where decisions were made and even though the Committee met two weeks in a year, the activities had to go on throughout the year. The Chair did not see the work on the activities as taking away from the work that was one in the Committee.

152. The Delegation of Tunisia thanked the Chair for preparing the draft action plans on limitations and exceptions and for his presentation. The Delegation believed that the document was an excellent basis for negotiation and discussion. The programed activities in the plan were interesting and presented a broad framework that would allow the Committee to move forward and its schedule would allow achieving its objectives.

153. The Representative of the International Federation of Library Associations and Institutions (IFLA) stated that many of the observers had been coming to the SCCR for more than a decade, when exceptions and limitations for libraries and archives were first brought onto the SCCR agenda by representatives of GRULAC and the African Group. In that context, the Representative thanked the Chair for presenting action plans on those issues, signaling a mutual desire for substantive progress. The Representative was especially pleased with the plan's proposal for regional meetings, as those voices from the field would make even more real and specific the major challenges faced by librarians and archivists in a world where information was borderless. The Representative was eager to work with the Chair, Secretariat and Member States to identify agendas, sites and participants for those meetings as soon as possible. While the draft action plans called for "up to 2" regional meetings, more would ultimately be needed to ensure that needs from all regions of the world were addressed. The Representative had several suggestions for improvement on the plans, two specifically designed to accelerate action: the first was to design regional meetings to serve as the brainstorming sessions, which were currently proposed as separate events in the draft action plan and the second, which was even more critical, was to treat libraries, archives and museums in a holistic manner, not as separate sectors. While libraries, archives, and museums were in the past quite different, they were experiencing the same convergence as in other sectors. That convergence meant that they had common functionalities that needed to be permitted in a common legal framework. Museums had libraries and archives; archives had libraries and museum-like artefactual collections; and libraries housed archives and also had artefactual collections. Convergence was so complete that there was an acronym often used to describe that triad: LAM's. In that context, the separate treatment proposed in the draft action plan, including a separate "scoping study" for archives, seem duplicative, retrograde, and ill-advised. Instead, the most productive approach was for the SCCR to focus on the core issues it had been addressing for several years, as reflected in summary form in the Chair's chart document SCCR/34/5: as the "typology" or taxonomy, one that was based on common activities or uses, not on an artificial separation of the LAM sectors. In that regard, the Representative appreciated the Chair's clarification on that point. One final suggestion was that a brief chapeau be added to the action plans, clarifying how actions proposed in the plan would be shared with and guided by SCCR

Member States.

154. The Representative of the International Council of Museums (ICOM) thanked the Chair for the opportunity to address exceptions and limitations for libraries, archives and museums. The Representative appreciated the efforts undertaken by the Secretariat and the SCCR in examining copyright issues associated with the care and management of museum collections. Given the degree of integration in acquiring and then managing collections among libraries, archives and museums, it was imperative that the Committee's work for the cultural heritage sector as a whole be undertaken consistently both in subject and in practice. Libraries, archives and museums shared subject matter and practices. In fact, museums held many archival and library collections. The same could be true of archives and libraries holding "museum" collections. As an example, the Library and Archives of Canada represented a formalized merger between Canada's National Library and its National Archives, where the newly merged institution was also responsible for Canada's National Portrait Collection. In addition, cultural heritage institutions, whether libraries, archives and museums were now collaborating in acquiring collections. As an example, the Museum of Modern Art and Columbia University Libraries jointly acquired The Frank Lloyd Wright collection. The collection was jointly owned, preserved, managed, stewarded and exhibited by both institutions. Acquisition practices had emerged, therefore, across cultural heritage institutions so as to comprehensively manage collections, drawing upon the curatorial and preservation expertise resident in each regardless of institutional title. It was, therefore, incumbent upon WIPO, the SCCR and the Secretariat to acknowledge that convergence when studying the cultural heritage sector. It meant that there was a requirement for standardized methodologies of study and an acknowledgement of existing practice norms so that SCCR can benefit from an ability to compare and contrast study results.

155. The Representative of the International Council on Archives (CIA) thanked the Chair for the draft action plans. The Representative assumed that the various activities in those plans would advance the work on exceptions for LAMs but was not sure to what end. It was not clear how those activities led to the end goal, which presumably was agreement on a solution, be it a treaty, model law, or a statement of principles. The Representative had some questions about specific components of the action plans. The Representative thanked the Chair for clarifying typology, which had mystified many. The Representative questioned why there was a need for more brainstorming as that would only mean more talking. Brainstorming was usually done at the beginning of a project, not at that stage. The Representative questioned the need for a scoping study on archives and wanted to know exactly what a scoping study was and why archives were being separated in that way and also how the many archives that were part of libraries and museums would be dealt with. That Committee had always treated libraries and archives together, and it was disheartening to see them separated in the plan. The Representative understood that the intention was not to isolate archives, but how was the data to be collected in such a study related to the museum study currently underway, or to the library sector. The Crews study provided sufficient data for libraries but not for archives, even though archives had always been included in the Crews study. Data from three separate studies conducted by different people using different methods to address different research questions were unlikely to add anything to what was already known that LAMs had common interests already identified in the former Chair's chart document SCCR/34/5. The proposed action plans separated clear common needs, ignored the considerable work already done by the Member States, and stalled the progress already achieved. The NGOs representing LAMs had produced an alternative action plan that streamlined the work and kept the three sectors together. The Representative urged Member States to consider that alternative.

156. The Representative of Centre for Internet and Society (CIS) stated that it had recently concluded a qualitative study on archives in India to examine how limitations and exceptions helped them in achieving their mission. The study found that the Indian Act went to the extent

of making an exception for preservation for libraries. To make up for the unintended gap in that clause, Indian archives and museums went into overlapping functions with libraries and used that exception within limits, which counted as an implied application of the exception as reported by the ex-registrar of the Indian Copyright Office in 2010 to WIPO. Undeniably, an institutional approach had created unintended barriers for other institutions performing the exact same function. The draft action plans adopted similar approaches in the three tracks for libraries, archives, and museums, as many of the core functions of those institutions overlapped and indeed there may be an archive housed in a library or vice versa. The approach had to change to focus on the functions and not the formal limitations of such institutions. The Representative proposed that the draft action plans be suitably amended to reflect the purposeful approach to drafting that treaty and not create artificial distinctions between institutions that did not reflect reality.

157. The Representative of Society of American Archivists (SAA) stated that as the draft action plans called for a scoping study on archives that disregarded the fact that archives had been part of the Crews study in a very consistent fashion, not since twenty-second session of the SCCR but since SCCR 17, over ten years ago. It was common for archivists to feel that they were not understood and when thinking about it in terms of typologies, the Representative had a list of seven, eight or nine activities that archives did that intersected with copyright. One, archivists established collection strategies to identify which aspects of an institution, society, or culture must be preserved for use into the long-term future. Two, archivists had to be able to survey, examine, and select particular content, no matter the format, to decide what had enduring value and what did not. Before archivists decided to acquire, they needed to determine whether the works were entangled by intellectual property rights that constricted their potential for future use. Three, in the digital era, technological barriers might need to be bypassed to make such decisions. Otherwise we are prevented from acquiring that content. Four, archivists had to copy original works recorded on deteriorating or ephemeral formats onto more enduring formats to preserve them. Five, archivists often had to copy all or parts of works from collections to answer research requests from users, who then were responsible for further copyright compliance. Six, archivists needed the ability to display works or parts of works in occasional exhibitions, sometimes online. Seven, when audio or audiovisual works were requested by an on-site research or personal user, it had to be legal for archivists to play, i.e., perform those works in their reading rooms. Eight, on a daily basis, archivists assessed the copyright status of works to provide user services, preservation, and consider digitization projects. Archivists were diligent in communicating to users all the known information they had about the materials they were seeking and they constantly educated them about their responsibilities to respect copyright law.

158. The Representative of the Electronic Information for Libraries (eIFL.net) stated that an agreed action plan that was in furtherance of the General Assembly mandate would complement the work of the Committee. The Representative stated that it would comment on three practical issues in the section on libraries, archives and museums. It was important to recognize that extensive work had already been done identifying and classifying limitations and exceptions. There was the Crews study, the informal chart on limitations and exceptions, the study on museums with another one underway, and the topics contained in proposals by Member States documents SCCR 26/3, SCCR/26/8 and SCCR/33/4. In proposed action number one, the Representative recommended to develop a searchable database that utilized the data in the Crews study. The outputs could be used to identify gaps and best practices in the application of limitations and exceptions in national law. There had to be a clarification that the work was focused on noncommercial uses and suggested focus areas included exploitation of works in action number one. It was important to clarify as libraries, archives and museums also had only ever focused on noncommercial uses of material to provide access for social, educational and public interest purposes. In the context of limitations and exceptions, the addition of commercial uses would add a significant new dimension to the discussion that had

not been requested by the beneficiary groups. For clarity, the Representative appreciated the word commercial to the exploitation of works. There had to be coordination with beneficiary groups. Meetings and conferences as proposed had to be organized in cooperation with global representative groups like the IFLA, the CIA, ICOM, and ICM. That was important to ensure a balanced program, participation and ultimately successful events.

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

159. The Chair introduced the draft action plans for educational and research institutions and for persons with other disabilities. The Chair stated that the second draft action plan that was circulated on the previous April 20 was quite similar to what he had presented as the first draft action plan the previous day. The plan included a typology which was there to provide a link to the application the Committee's needs to educational and research institutions. As with the previous action plan, the action plan before Committee was intended to take the Committee's work to SCCR 39. For that typology, there should be a report presented at the following SCCR in November of that year. In terms of the studies, there was a suggestion that there be two studies, one of which was on the additional issues at stake for the educational and research institutions at the national levels. The reason for that was that the issues relating and surrounding educational and research institutions, had to be looked at in the broader context including the impact of eLearning and distance learning, massive online courses and MOOCs that were in the educational sector. It was not just a national study, but would also include the international elements, the cross-border elements. The plan also intended to carry on the good work that Professors Reid and Ncube had started. There was a proposal to expand the update in the study and to add the results from additional questionnaires that were given to Member States and that were a result of suggestions from Committee members when the study was previously presented in the Committee. Those studies could be presented in the first half of 2019, and probably be reported at the SCCR in the first half of the following year. The common elements between that action plan for education and the action plans for libraries, archives and museums were to conduct up to two regional seminars which would analyze limitations and exceptions across the board, not just for educational and research institutions and persons with other disabilities but also for libraries, archives and museums. The same strategy would be utilized for the conference which would discuss the different opportunities and challenges across all of those exceptions and would report the solutions and areas for international cooperation at SCCR 39. The Chair thought it useful and inspiring to have a side event on the subject of persons with other disabilities that would showcase solutions with special emphasis on educational and audiovisual works including experimental solutions and current research approaches in that view. The Delegation of Argentina had showed a video on some of the initiatives taken by civil society or NGOs on behalf of the government to improve the works for visually impaired individuals. The idea was to have that project in the first half of 2019, and it would be reported at the SCCR in the first half of following year. The Chair stated that there were quite a number of activities, which that approach was the structuring of Committee activities so that those activities led to something. It was a clear, systemic and predictable approach. The Chair opened the floor for comments from the regional coordinators followed by members and lastly by observers.

160. The Delegation of Switzerland speaking on behalf of Group B continued to recognize the importance of the exchange of experiences with regard to limitations and exceptions for educational and research institutions. The studies presented in the previous sessions had described that many countries had established their own limitations and exceptions for research institutions which worked well and took into account the domestic legal systems within the current international legal framework. The work in that Committee should be shaped in a manner reflecting that reality and complimenting the well-functioning current international



framework. Group B observed a similar lack of consensus for work on those topics as was the case with limitations and exceptions for libraries and archives. The Delegation stated that the aim of the Committee's discussion was to reach a better understanding of the topics. As regards the working methods, the Delegation took note of the Chair's draft action plan on limitations and exceptions for educational and research institutions and persons with other disabilities through to SCCR 39 contained in document SCCR/36/3. It was ready to continue discussions in order to explore common ground upon which the Committee could stand. The Delegation highlighted the objectives and the principles proposed in document SCCR/27/8 on the topic of limitations and exceptions for educational teaching and research institutions. The Delegation believed the objectives and principles laid out in that document complimented the Committee's work.

161. The Delegation of Lithuania speaking on behalf of the CEBS Group thanked the Chair for the preparation of the draft action plan for limitations and exceptions for educational and research institutions and for persons with other disabilities, which formed a good basis for the Committee's work. The Delegation had some questions and remarks with a view of having some clarifications and possibly streamlining that it would discuss in the informal setting. The Delegation wanted to make sure that the dialogue was carried out in an impartial measure by keeping a good balance of different views and interests. The Delegation stated that it would appreciate the possibility to hear the views of stakeholder organizations in that plenary session, which it would listen with great attention.

162. The Delegation of Brazil stated that it would overburden the Committee by repeating the comments it had already made on the other draft action plan and as such would engage more dynamically in the informal session. With regard to point seven, the Delegation thought it important to recall the mandate that was guiding the Committee's work and to have it in the back of the mind when discussing those draft action plans.

163. The Delegation of Chile stated that the question of exceptions and limitations for educational and research institutions and persons with other disabilities was of great importance to the Delegation. The Committee continued to have debates so as to have international results, but so far there were not that many results. The Delegation appreciated the draft action plan both in terms of its structure and also in terms of its content. It noted with satisfaction the proposed activities to continue to deal with that topic, particularly the idea of having regional seminars. As to activity number one, developing a typology, that was a good starting point, and the Delegation wanted to know if that would lead to a text for the Committee. It had the same question with regard to activity number 4 and activity number 6 on developing libraries and archives, whether that would lead to a specific result for that Committee.

164. The Delegation of Indonesia thanked the Committee for supporting and participating in the side event on exceptions and limitations for education cohosted by the Delegation of Indonesia and Educational International. At the side event, there were different stakeholders with different interests including teachers, schools, authors and universities as well as publishers and other stakeholders working on limitations and exceptions for educational and research purposes. The Delegation thanked the Chair for preparing the draft action plans and stated that it would reserve its detailed comments for the informal session. The Delegation stated that there was lack of consensus and was not sure whether the best strategy was simply the exchange of experiences. The Delegation observed that there were those in the Committee who wanted to just exchange experiences and those who thought that there was a need for an international legal instrument. The Delegation believed that there was a middle ground and that the Committee could actually find a solution that would be acceptable to all. The action plans were a statement of steps that needed to be taken to achieve a goal or objective.

165. The Delegation of El Salvador reiterated the importance that it attached to the question of

limitations and exceptions which made it possible to balance out the interests of rightsholders with social aspects, including social exclusion. The Delegation state that it was interested in the issue of limitations and exceptions for education. With regard to the action plan, the Delegation was happy with the planned activities, with the definition given and was happy with the activities related to the plan of action on exceptions and limitations for libraries. The Delegation expressed its satisfaction with point 2b and 5 in that plan of action on the scoping study on persons with disabilities.

166. The Delegation of Malaysia stated that it did not take the floor when the draft action plan for libraries and archives was discussed. The Delegation thanked the Chair for the draft action plans on exceptions and limitations which were a good basis for discussion. On the draft action plan for educational and research institutions and for persons with other disabilities, a typology would be useful. That could be done based on the extensive Seng study and the Committee could discuss the proposed language. Any new study and topics proposed had to be of added value and with a view to inform the Committee of a new area. They could not be intended to replace the existing discussions in the Committee, considering that there had been ample analysis of the copyright laws of WIPO Member States. The Delegation welcomed the hosting of the regional seminars for both exceptions and limitations and hoped that all regions would have the opportunity to benefit from that exercise. The Delegation was of the view that a conference would be useful. The congregations of policymakers, copyright experts, practitioners, teachers, users, authors, academia, and international organizations would enable a rich exchange on exceptions and limitations. The Delegation stated that it would be keen on hosting one of the regional seminars, on updating the study and on having the side event. The Delegation hoped that the Committee could come to an understanding as to how the action plans fitted into the 2012 General Assembly mandate for the SCCR on exceptions and limitations and the way forward, a notion that several delegations had raised and could be discussed in the informal session. The focus of the Committee had to be on making concrete progress, on avoiding replication of the efforts that had been undertaken and contributing positive value added activities to the draft action plan.

167. The Delegation of the Islamic Republic of Iran thanked the Chair for the draft action plans and stated that it positively considered the plans. The Delegation stated that it had some more detailed comments that it would express during the informal session. With regard to the regional seminars which were one of the most welcomed inclusions in the draft action plan, and with reference to the constraints of the budget and time of the Secretariat, since only two regional seminars were planned, the Delegation wanted to know what would happen if more regional groups were interested. The Delegation stated that it was interested in having the conference and that it was very important to link the proposed action plans with the General Assembly mandate. That was very important to the Delegation.

168. The Representative of the Knowledge Ecology International, Inc. (KEI) suggested that between the two regional seminars or the conference there should be a panel that would raise some attention to two issues. One was in the context of developing countries, to give people the opportunity to give some feedback on the Berne annex, since it referred to education. The panel would find out whether they were using it or not and if they were not using it, why they were not using it and also if there was a need for something to replace it so as to achieve the original objective of the 1971 annex. The second was whether or not the model provisions that related to education on the Tunis model law needed to be updated.

169. The Representative of Communia thanked the delegation for their support for education and thanked the Chair for preparing the draft actions plans. The Representative stated that it had two suggestions the first of which was on the typology. The Representative welcomed the Chair's proposal to synthesize, organize and classify the information contained in the study performed by Professor Seng and would be pleased to offer its advice to the Chair on the

development of the proposed typology. Communia had been mapping educational opportunities and had broken down the different provisions into their essential elements which were: users, uses, proposed purposes, works, conditions and preclusions and simple yes/no, results. That template had been updated to reflect the different provisions referenced by Professor Seng. The second suggestion was with regard to the study on digital issues. It was only useful if it brought evidence regarding the gaps and legal uncertainties that could improve the digital research. For that, the methodology had to go beyond policy and legal analysis. Interface interviews involving educators, learners, and researchers were essential. The Delegation suggested the topics of digital actions carried out by the education and research communities on a regular basis, types of tools, devices used for educational and research purposes, restrictions encountered by the stakeholders in relation to the different types of digital materials, mechanisms to ensure the exceptions and limitations regarding TPM protected works and obstacles faced by the stakeholders and cross-border related problems encountered by the stakeholders.

170. The Representative of the International Federation of Journalists (FIJ) supported high quality education for all. Interesting high quality journalism needed an educated audience and educated journalists. The Representative supported fully funded education, although ensuring funding was outside the competence of that Committee. The Representative recognized the problems with research journals and some textbooks. The solutions to that had to include flexible pricing. There was a need for creators, including journalists, to make a living independently in order to produce high quality work worthy of a place in education. A sustainable income for authors for works was essential to maintain that independence. The Representative asked delegates to consider what would happen if, for example, schools were obliged to rely on works by authors who wanted to give their work away. There must be a defense for personal authorship.

171. The Representative of Karisma Foundation welcomed the draft action plan for educational and research institutions, although, they were more about educational activities, rather than institutions. In a study of that type, there was a need to look at key aspects such as costs and lack of access to educational materials in developing countries. That could serve to identify examples and to obtain a better grasp of the economic impact as well as barriers concerning copyright for the acquisition of educational materials. For example, a 2013 Latin American study found that the average annual cost of textbooks in Sao Paulo University was 1,900 Euros. That figure represented a huge proportion of the average income in that country. The lack of textbooks could mean that photocopies could be given instead, but even then, there wouldn't be enough money to meet that demand. That was a considerable barrier for low income students that necessarily led to the adoption of illegal practices to have access to knowledge. If one understood that scenario, it made it easier to follow and to understand the work of that Committee.

172. The Representative of the Program on Information Justice and Intellectual Property (PIJIP) wished to make its comments on behalf of some of the members of the educational community. The Representative stated that one point that it would like to highlight was what the Representative of Karisma Foundation had just mentioned that there was a much needed emphasis on identifying pricing, access and copyright barriers to research and learning. The Representative stated that in its written submission, it had included a link to a spreadsheet tool that would be a useful basis for working on a typology. That tool used data from the Seng study and tracked the degree to which education and research exceptions were often to a full range of activities users for purposes needed in modern education and research. The Representative had tested that tool at its university using some student researchers and had tested it on a basket of 26 countries from the Seng study, countries with different development levels and from every region. It found that often exceptions were limited to certain kinds of works. For instance, 23 per cent of the countries that were surveyed lacked an exception that would allow

the reproduction of a work of art for use in an art class. Other exceptions were limited to the rights that were covered. For instance, while many exceptions authorized the reproduction of a reprographic for portions of works for a class, only 16 per cent included the distribution right for that material that would be needed for online or distant learning. The Representative submitted its proposal to the Committee and it was released under an open license so that delegations could adapt as they wished.

173. The Representative of Education International speaking on behalf of the Global Federation of Education Unions thanked the Chair for the preparation of the action plans which it hoped would accelerate and not delay the process on exceptions and limitations and would apply the balance of international instruments for education. The Representative had three suggestions the first was that the agenda should read exceptions for educational and research activities as the current term did not capture the breadth of education or practices. Education did not only take place in educational institutions but also took students throughout the cultural heritage institutions where important educational activities were taking place. While it was important to discuss that, the availability of free modules and the development of operation of distance learning was not within the scope of copyright law. The Representative wanted to see a stronger focus on how copyright legislation affected the digital practices. In addition, the focus on a few selected activities that did not capture the breadth of modern teaching and learning practices. That should light on the broader range of activities by teachers and learners, be it the use of digital work for collaboration, exchange in digital environments or in and across countries. That would help to make informed decisions and copyright concerns. The Representative supported the regional seminars and suggested that the seminars should be publicly announced to all relevant stakeholders.

174. The Representative of the International Federation of Library Associations and Institutions (IFLA) stated that it sympathized with the positions taken by the colleagues from the education sector. As key actors for education, libraries stood ready to turn any legislative progress that had sustainable development. On the topic of people with other disabilities, it invested considerable resources in supporting all users with special needs and would be happy to contribute in that area. It continued to be a matter of regret for libraries that the Marrakesh Treaty focused only on people with print disabilities. The proposed event would be helpful but the treaty too began with the idea that innovative solutions could provide a comprehensive answer. The event should draw on the increasingly rich experience that was a result of the implementation of the Marrakesh Treaty. In particular, understanding how the new laws had been applied and their impact. Articles 4.4 and 4.5 on commercialization and remuneration would support the Committee in its discussions.

175. The Representative of the Health and Environment Program (HEP) stated that the environmental program was very attached to education and intellectual property particularly in Cameroon. For that reason, with regard to the action plan, the Representative recommended that people in the field and experts from Africa, who had already spoken in regional discussions, be involved in the process and be included among the human resources for deciding upon the activities. People were often very surprised that came from developed countries and came to give them lessons. What they should be learning from people who were in the field and who were working in the field and who could very well express their needs. The Representative would like to hear those voices and hoped that the Committee could be attentive to the persons who best knew those needs. The Berne Convention authorized the delivery of licenses for teaching but that did not really encourage creation. Delivering obligatory licenses did not really help as people did not always have the means to pay for them and that person who created the works still did receive compensation for it. That was what the Representative had seen from the field and there was need to take into account all of those considerations in developing the action plans.

176. The Representative of Centre for Internet and Society (CIS) stated that it had focused on the distance learning initiatives. Although they were related to increasing, they were hardly a substitute for classroom learning and the primary objective of the treaty should be for classroom education, especially for developing countries. The Represented suggested that that item in the plan be examined in light of more beneficial action items.

177. The Representative of the Third World Network (TWN) wanted to make two suggestions. The first suggestion was with regard to the study. It was important that the study cover the ability and the accessibility aspects of educational materials, especially covering the higher education, instead of simply looking at the mechanisms. As a second point, the Representative wanted to draw the attention of the Committee to the recommendation of the right to education reporters report to the General Assembly. One of the recommendations was that "states should work towards creating an exception to copyright law, nationally and internationally, that permits the international companies for any formation for nonprofit educational purposes. Such an exception would better balance the public interest in improving education in developing countries in modernized international cooperation." The Committee had to explore the possibility of creating an international open licensing network for educational resources in consultations with stakeholders. The Representative urged the Committee to invite the right to education reporters to the Committee to make a presentation on that issue.

178. The Representative of the Center for Information Policy Research (CIPR) stated that education was global and school student populations reflect that. The Representatives own school had students residing in 37 states, 14 countries and 6 continents. The opportunities of current online digital education meant that knowledge, that education, like knowledge, was an international good. Any new studies undertaken had to inform and not replace the discussions of the Committee. Any study of digital issues had to identify digital education practices and the impact of copyright framework on such aspects. The Seng study included detailed analysis of WIPO Member States exceptions related to education by surveying the international community to understand the legal uncertainties of copyright related obstacles faced by them.

179. The Chair welcomed the Committee back to the plenary after informal sessions and stated that the Member States were working towards consensus on the draft action plans. The Chair wanted to take the Committee through some of amendments that were discussed during the informal session and had two very technical amendments that he wanted to discuss. Starting with the draft action plan for archives and libraries, the first set of amendments which would also be reflected in the draft action plan for educational and research institutions and persons with other disabilities would start with a chapeau. The chapeau would read: the activities under the action plan shall be based upon and built upon the prior work of the Committee and the associated documents and are intended without prejudging the final outcome to provide the committee for possible international cooperation to be discussed at thirty-ninth session of the SCCR. There was a suggested amendment that in the third line, first "on libraries", that first "on" had to be deleted and subsequently delete first "on" with regard to archives and museums. The idea was that the typology would be developed for the libraries, archives and museums, as some of the Committee members had explained. The following technical suggestion was to amend the word "exploitation" in view of some confusion that it could be pejorative or would make an impression of being pejorative. The discussion in the room was to use the word "Commission" and undertake a scoping study on archives integrating aspects of the Crews study where relevant. There were some technical suggestions to connect to the Crews study. Commission an update of the Crews study to provide additional relevant information on archives. The word "inclusive" was added to brainstorming exercise and the phrase "relevant associations" was meant to refer to the relevant professional associations, for example, associations of archives and libraries. Someone had commented that perhaps users had a better and more accurate phrase than consumers. The first footnote had to be deleted. In relation to five, there was an agreement that there would be up to three, instead of two regional

seminars. Due to additional financial obligations on the Secretariat and in the spirit of pragmatism, where possible, the seminars could be associated with other planned regional activities so as to save costs and not duplicate. There was a suggestion from the Member States to add "and the specificities of the regions," so that the seminars could address regional issues. The regional seminars had to take place before the conference, as the idea of the regional seminars was to feed into the conference. On the conference, the last sentence had been deleted and some of the language there had been brought up to the chapeau. On the draft action plan for educational and research institutions and persons with other disabilities, the chapeau from the previous draft action plan had been reproduced at the top. Some of the amendments made in the previous draft action plan were going to be reproduced there. For both action plans, all three were going to go up to 2019. The Chair opened the floor to the Committee on comments for grammatical and spelling mistakes.

180. The Delegation of the United States of America stated that with respect to Item Number one in the first part of the action plan, given the amendment, the timing on the right hand column had to be amended.

181. The Chair stated that the timing of all three typologies would be amended. The Chair declared the draft action plans adopted by the Committee.

#### **AGENDA ITEM 5: PROTECTION OF BROADCASTING ORGANIZATIONS (Cont.)**

182. The Chair reopened Agenda Item 5 as there were two developments on the Chair's consolidated text which would impact the issue of the definition of broadcasting and the prebroadcast issue. On the definition of broadcasting in Subparagraph A of the Chair's consolidated text, there were a couple of amendments that were being discussed on the refinement of the very last sentence of that paragraph. The Chair opened the floor to members involved in that discussion to update the Committee if there were any more refinements.

183. The Delegation of the European Union stated that it was the Delegation that had a technical suggestion with regard to that sentence since it was important for the Delegation to clarify possible repercussions that the sentence could have for the definition. Based on discussions with the Delegations of Brazil and Chile, that clarification could be achieved if the last sentence could be slightly rephrased. That last sentence could read, "without prejudice to this, the definition of broadcasting for the purposes of this treaty shall not affect the contracting parties' national regulatory frameworks."

184. The Chair invited the Delegation of the European Union or the Delegation of Switzerland to introduce the other amendment on the prebroadcast issue. The Chair stated that there had been the suggestion to add the word "for national broadcasting organizations."

185. The Delegation of the European Union stated that it had asked for the possibility of revisiting the drafting of that paragraph at the following session and requested that the Chair bracket remained in the text for the time being. The Delegation stated that it had had preliminary discussions with the Delegation of Switzerland regarding the beneficiaries of the protection for the prebroadcast signal. The Delegation would revisit that in the following session.

186. The Chair stated that on the definition of broadcasting, it was a good sign that the definition was nearly finalized. The Chair asked if there were any other Member States that wished to make a comment on the definition of broadcasting.

187. The Delegation of Brazil stated that the idea it had was not to restrict the scope of the protection but rather not to mix the protection under related rights with the telecommunications

framework, which were very different regulations. That made it clear that they were not to be mixed when the treaty was implemented. The Delegation stated that it was in agreement with that definition.

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

188. The Chair opened the floor to Agenda Item 8, other matters. The Chair stated that in his document titled Next Steps on Other Matters and contained in document SCCR/35/4 he had suggested possible steps for each topic. The items before the Committee were three quite different topics and members of the Committee should not be forced to have joint statements for all topics on that agenda item. The first topic under other matters was on resale right. In the previous April, based in the Committee's request, the Secretariat hosted a successful international conference on the artist resale right which included a wide range of experts and artists from all regions of the world. The Committee had commissioned a study which was completed by Professors Farchy and Graddy. One of the findings from that study was that it seemed to be that the resale right had no negative impact on the competitiveness of the art markets. The Committee had welcomed the effort made by the professors. Some work had already been done to better understand the implications of that right. With regards the next steps on that agenda item, the Committee needed to discuss the status of that agenda item as some Member States had asked that it be made part of the standing agenda of the Committee taking into account the work that had been done and the possible actions for it. Based on the previous discussions on that item, no consensus had been achieved. Moving forward, one possibility was to set up a task force of experts to report back to the Committee, regarding the practical elements of an artist retail rights system. That expert group could be composed of Member States and main stakeholders, representatives who would be entrusted with identifying the key elements of an effective resale right royalty scheme. That task force would report on its work to the SCCR, perhaps at the following SCCR, or the one 2019. The Chair opened the floor for comments.

### *The Artist Resale Right*

189. The Delegation of Indonesia, speaking on behalf of the Asia and Pacific Group, thanked the Chair for document SCCR/36/4. With regard to the status of the resale right agenda item, the Asia and the Pacific Group could go along with the consensus if there was a consensus on that agenda item. The Delegation supported the possibility of setting up a task force of experts that would report back to the Committee. That would be useful in ensuring that there was a better understanding on the topic of the artist resale rights.

190. The Delegation of Morocco, speaking on behalf of the African Group, stated that it was very much aware of the importance of resale rights for audio visual that would give creators a fair remuneration of their works. The Delegation supported the proposal by the Delegations of Senegal and Congo to include the resale right and invited all Member States to support that proposal.

191. The Delegation of Lithuania, speaking on behalf of CEBS, reiterated its appreciation for the Delegations of Congo and Senegal for tabling the resale right. That proposal was highly relevant to the mandate of that Committee and deserved to be included into its agenda as a standing item. The Delegation supported the Chair's proposal to set up a task force of experts that would report back to the Committee on the practical elements of an artist resale right. The Delegation saw the value for an experienced sharing exercise, including presentations of the directives.

192. The Delegation of the European Union stated that as it had expressed in the previous

meeting of that Committee, the European Union and its Member States supported the Delegations of Senegal and Congo for their proposal to include the resale right, *droit de suite*, on the agenda of the Committee. There was dedicated legislation in all of the 28 Member States that underlined the great importance that the European Union attached to the resale right. The Delegation stated that some of its Member States would take the floor and share their respective national experiences in that regard. The Delegation had carefully taken note of the Chair's proposal as regards a task force of experts to report the practical elements of the artist's resale right and believed that there would be merit in procuring that approach. The Delegation supported discussion on the resale right at the international level, especially during SCCR. It would like to share its experience and information on the implementation of the European Union resale right directive and the merits of that right. The proposal by the Delegations of Senegal and Congo to include the topic in the agenda of the SCCR went back to the twenty-seventh session of the SCCR and was tabled at the thirty-first session of the SCCR. Priority had to be given to the resale right over any other topics should the SCCR agenda be expanded to cover additional items in the future. The Delegation urged all delegations to support the proposal submitted by the Delegations of Senegal and Congo and to accept the inclusion of the resale right as a standing item of the agenda of the SCCR.

193. The Delegation of Senegal aligned itself with the stated made by the Delegation of Morocco on behalf of the African Group. The Delegations of Senegal and Congo desire to include that item on the agenda of the SCCR was in response to the important debate on adding that important element to the copyright rights. That would contribute to the fair and equitable treatment of artists. The resale right was central to the copyright system, and as such, its place should be on the main agenda of the SCCR. The resale right did not have any negative impacts on the market, as the study by the professors had shown. That proposal had increasing support from individual Member States and from regional groups in light of that. The Delegation reiterated its position on that joint proposal to include the resale right as a standing item in the work of that Committee. The proposal was first submitted during the twenty-seventh session and was resubmitted during the thirty-first session. The Delegation remained available to respond to any questions.

194. The Delegation of Egypt aligned itself with the stated made by the Delegation of Morocco on behalf of the African Group. The Delegation thanked other Member States for the overwhelming support the proposal had acquired during the previous session of that Committee. The Delegation wanted to see a bit of clarity on the title of the proposal in English as the English term "resale right" did not reflect the same term in the French term, *droit de suite*. There was a missing word in the English title and that was royalty. A royalty right provided artists with an opportunity to benefit from the increased value of their work over time by granting them a percentage of the proceeds from the resale of their original works of arts.

195. The Chair responded that the delegation was right. It was resale royalty right. The Chair suggested that the Committee use the full term onwards.

196. The Delegation of Tunisia aligned itself with the stated made by the Delegation of Morocco on behalf of the African Group. The Delegation reiterated its support of the proposal submitted by the Delegations of Senegal and Congo to make the resale royalty right a permanent item on the agenda of the SCCR. The Delegation was particularly paying attention to that topic and stated that it had a national law which provided for the protection of resale rights. The Delegation was working in close collaboration with WIPO to put into place a collective management for resale rights. It remained open to discussions affirmed its attachment to keeping that item as a permanent item on the agenda. The Delegation took note and thanked the Chair for the idea to create a task force.

197. The Delegation of France aligned itself with the statement made by the Delegation of the



European Union. The international conference which took place in 2017 allowed the Committee to raise awareness of the importance of the resale right and what was now needed was the universal adoption of that. Visual artists were not in the same situation as other artists and generally that affected their representation but not the right of reproduction. Creating that resale right would enable those artists to have fair pay for the successive reproduction of their work, and would enable a rebalance that would allow graphic artists to have a chance to live from their art. Establishing that right would also meet the social and familial challenges of such artists. The Delegation stated that it established that right in 1920 so as to align itself with the value of the artist's work and the subsequent reproduction thereof, a point that was particularly important so that those artists could gain some recognition. As the Delegation of the European Union indicated, those rights have been harmonized in the European Union since 2001, and as the Delegation of Senegal had noted, establishing that right would not cause an impact on the art market, but would allow those artists to live from their work and help them to contribute to revitalize the art market. The Delegation stated that France was a little behind in its implementation of that right, although it was almost 100 years ago that that right was established. However, the implementation of that right did not stop France from offering an important space for that right on the art market. Since the 1950s and 1960s other art markets had taken the lead. As had been highlighted by the Delegation of Senegal the study that was commissioned by WIPO showed that that resale right would not result in the dealer leaving a particular art market and there were reliable figures through analyses, particularly on the European directives. As the study indicated, the existence of the resale right would not impact sales and there would not be any negative impact. There were 80 countries that recognized that right. Artists, however, did not perceive that right unless they were citizens of the country itself or had obtained naturalization, or if the resale of their work occurred in a different country. In accordance with the Berne Convention, which had an option, it was time to have a universal adoption of that right. It would be fair to all audio visual artists and would only be right that those artists are able to benefit.

198. The Delegation of Congo extended the greeting from all Congolese artists in the field of graphics and photography to the Committee. Those artists were focused on their own work and were hoping for significant developments on that topic. At heart of that concern was the relevance of the resale so that it becomes a standing item on the SCCR agenda. Given the increase of prices in the art market, particularly with regard to photography, graphic art, and poster cards, that topic of resale right was of particular importance. It was time that the Committee really addressed that question. The fact that the resale right was applied in certain countries but that creators coming from other countries that were Member States of WIPO were not privy to mutual was a cause for concern which required a global solution. The Delegation stated that that topic was a priority for it.

199. The Delegation of Nigeria aligned itself with the stated made by the Delegation of Morocco on behalf of the African Group. The Delegation recognized the importance of the resale right and welcomed the proposal from the Delegations of Senegal and Congo on that agenda item. The issues at hand in that discussion would recognize and maintain a balance between the rightsholders and the larger public interest. The Delegation saw no problem in including that topic on the SCCR agenda, and stated that it would rather help with creativity in the work of arts. The resale right had been adopted by many national delegations. The growing trend of recognition of resale rights across member nations transferred important economic rights and benefits to rightsholders. Nigeria also made provision for the resale right in its new draft copyright bill. By including the resale right in the future work plan of the SCCR, members would be more informed of national legislations and the benefits from the practices and knowledge arising from the exchange of national experiences on the subject matter. In that regard, the Delegation welcomed the introduction of the resale right in the agenda of the SCCR.

200. The Delegation of Japan stated that it was one of the countries that did not have the

resale right in national legislation, and recognized that some countries did not have the resale right in their legislation system either. Information and research, especially on the implementation and performance of the resale right or its mechanism, would be very important and useful for in order to analyze objectively the current situation and discuss it objectively. The opinion of the wide range of stakeholders had to be collected. With regard to the agenda of that Committee, the Delegation reiterated that a priority had to be given to the protection of broadcasting organizations because it had been discussed for a long time. The Delegation expressed concern that introducing new topics as standing items could reduce the time on the existing agenda, especially for broadcasting. The Delegation stated that the Chair's proposal on the next steps for the Committee was a good basis for discussion. The objective of the task force had to be clarified and should be only fact finding research such as background or the reasons for implementing the resale right in each Member States. If the objective of that task force was to make a policy recommendation of implementation or to design a specific system, the Delegation could not support it. In fact finding research, the task force had to research the necessity and the tolerance of the resale right, for example, the reason for justification of returning the resale benefit, the reason why only visual art works were given a particular right compared with other types of works, the possibility of negative impact for the quantity of distribution, and the reason why the Internet auction was excluded from the recent system.

201. The Chair stated that the study by the Professors did touch on some of the fact finding. That was why the Chair's suggestion was not to just do fact finding but to identify the key elements of an effective resale right royalty system. The elements of an effective resale royalty right system were very neutral and were designed to be quite neutral.

202. The Delegation of South Africa aligned itself with the stated made by the Delegation of Morocco on behalf of the African Group. The Delegation supported the proposal from the Delegation so Senegal and Congo to include the resale royalty right on the agenda of the SCCR and to undertake further work on that issue. The SCCR's work on that issue could assist Member States, particularly those who were undertaking copyright reforms and wished to include it in their national laws.

203. The Delegation of Brazil stated that on the topic of droit de suite there was an excellent study that had been conducted as well as international conference that had been hosted. Both the study and conference provided welcomed inputs to the discussion in the SCCR and to national level discussions. With a need to continue that debate, the Delegation welcomed the Chair's proposal for an expert text. On making the resale right a standing item on the SCCR agenda, the topic merited it. The resale right was a copyright issue which included complex technical issues. Moving it from the list of other topics to a self standing agenda item would facilitate a richer discussion without affecting the other very important discussions that the Committee had been having such as on broadcast, as referred to by the Delegation of Japan.

204. The Delegation of United States of America reiterated what it had stated in the past that it was not in a position to endorse a norm setting work in that area, nor was it in a position to support making the resale royalty right a standing SCCR agenda item at that time. Within that broad context, the Delegation was very supportive of a robust and informed discussion of the resale royalty right. The Delegation welcomed the proposal to set up a task force to report back to the Committee on the practical elements of the resale royalty rights system. The Delegation particularly liked the idea of focusing on the practical elements of that topic and too liked the selected topics in the proposal. Those topics were factual in nature and not policy directed and did not tilting in a norm setting direction therefore able to inform a policy neutral discussion of that important area. The Delegation was not sure if the establishment of a task force was the best means to bring that information back to the Committee but as long as it was composed of Member States and principal stakeholders. The Delegation requested to hear more about the task force.

205. The Chair stated that those topics were designed to elucidate the practical aspects of that topic without projecting the outcomes. The point was to get the facts and to see how that resale right had been working. On the task force, the idea was to have Member States involved as without them, the implementation process in countries would be lost. It would be useful to hear from and learn from those countries that had implemented the resale right. Apart from Member States, the task force had to incorporate the different stakeholders. Some of those stakeholders include artists, auction houses, galleries and representations from academic communities, including from developing countries. The resale royalty right had topics from both developing and developed countries making it quite cross cutting. The thinking was that there would be two Member States per regional group and the groups themselves would decide on which countries.

206. The Delegation of United States of America thanked the Chair for his explanation and clarification.

207. The Delegation of Finland wished to include the resale right regime as a standing item on the agenda. The Delegation stated that its resale rights regime dated back to 1995 and was harmonized with the European Union directive since 2001. The Delegation stated that the resale right regime could provide concrete benefits to visual artists worldwide. The European Union could share its experiences with the system, particularly the implementation effects.

208. The Delegation of Ecuador speaking on behalf of GRULAC thanked the Delegations of Senegal and Congo for bringing the artist resale right to the table. There had been some interesting discussions and GRULAC's experiences had been useful. The Delegation wished to continue reviewing that topic and reiterated its interest in keeping that topic under other business so as to alleviate any concerns about adding it as a permanent standing item. That would allow more time to discuss broadcast and other issues important to the SCCR.

209. The Delegation of Cote d'Ivoire supported the resale right proposal and its inclusion in the future work of the SCCR. To further issues on the resale right, the Delegation supported the Chair's proposal with regard to the establishment of a task force. There was a need for a more integrated study of that matter, so that it could be recognized internationally.

210. The Delegation of Iran (Islamic Republic of) thanked the Delegations of Senegal and Congo for tabling such a proposal. The Delegation supported the Chair's proposal to set up a task force of experts to discuss the proposed activities. That could bring added value to the discussions in the Committee and could shed more light on the different aspects of that issue.

211. The Delegation of Czech Republic supported the inclusion of the resale right topic on the agenda of the SCCR. The Delegation had a good experience with the implementation of the resale right in its national legislation, as directed based in the Berne Convention and based on the European Union resale right directive. The Delegation was prepared for more detailed discussions on that topic.

212. The Delegation of Russian Federation stated that the resale right was an important economic right. It was a necessary defense for a certain category of artists. In the world, there was a very good practice which would allow Member States to effectively use that mechanism. In France, the Resale right had been working effectively for a long time and in the previous year, the Russian Federation had taken a legislative step and broadened the participants in that market and issued a governmental decree which took additional steps to protect the interests of such artists. The Delegation supported the idea of including that topic as a standing item. As proposed by the Delegations of Senegal and Congo, the resale right was very important for the entire world. The Delegation supported the idea of creating a task force which could develop concrete recommendations for the Committee.

213. The Delegation of Botswana aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. The Delegation supported the resale right proposal submitted by the Delegations of Senegal and Congo and stated that it was reviewing its national legislation. Already a number of countries had indicated that they were implementing the resale right which meant that that was especially the time for the Committee to discuss that subject. The Delegation supported making the resale right a standing item of the Committee and welcomed the possibility of establishing a task force.

214. The Delegation of Uganda stated that resale rights were part of moral rights and recognized a continuing relationship between the artists and their works, even after resale. The artist resale right was a question of equity as it regarded protection. The WIPO study indicated no negative impact on the prices of all sales and on the volumes of works sold, as a result of the resale right. The Delegation supported the inclusion of that topic as a standing agenda item of the Committee.

215. The Delegation of Zimbabwe aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. The Delegation supported the proposal made by the Delegations of Congo and Senegal to include the resale right as a standing agenda item of that Committee. That would enable the Committee to pursue more focused discussions on that pertinent issue and would assist Member States to get a better understanding of the matter.

216. The Delegation of United States of America stated that one topic that had been discussed other contexts that week was the importance of emerging technologies, including block chain technologies. That could a topic to include in the Committee and the Delegation was happy to send to the task force whatever research it could find.

217. The Representative of the Association of Commercial Television in Europe (ACT) stated as a visual artist, a painter, it was not that easy to sell art works. As artists usually worked with galleries, the gallery would take fifty per cent and would give ten per cent discount to the collector. Additionally, there were VAT taxes as well as taxes in the artist's home and more often than not, the artist had to rent a studio to paint materials, and after the work was sold, there was usually not a lot left for the artist. The resale right could be an interesting solution for some artists, particularly those with children, so as to take care of them. That would mean that if there was a resale, then the children of the artist could get something back. Artists use a lot of energy, a lot of their own soul, a lot of their creativity in their art work, something that had to be considered in the Committee.

218. The Representative of the International Authors Forum (IAF) thanked all the Member States, particularly the Delegations of Senegal and Congo, for supporting the inclusion of the resale right on the agenda of the SCCR. Continuing payment to creators could fund the seed for the next creation. That continued payment was a mean to build a lasting connection between the artist and their works, particularly with a resale right that recognized globally. That would bring globalization to the community of creators. It was important that artists in all countries benefit from the resale of their creations without disadvantage. A consistent approach to artist rights internationally would ensure that in every country, an artist's creation was respect and encouraged. The Representative welcomed the result of the study on the economic implications of the artist resale right, which had shown that that right did not have a negative effect. That was further proof that that measure had to be introduced to ensure that creators received remuneration for their creativity. The Representative supported the proposal for a task force.

219. The Representative of the Knowledge Ecology International (KEI) supported further work on droit de suite. The resale right was an appropriate norm setting for the SCCR. The proposal

by the Delegations of Senegal and Congo would benefit artists and provide a modest redistribution of income from the collectors and the dealers to artists, particularly those artists who were at a point in their lives where they had to bargain the prices for their work. There was a strong cross border trade of physical works of art.

220. The Representative of the International Federation of Journalists (IFJ) urged all delegations to support the *droit de suite*. That was a case where an international measure was absolutely required to give artists their due, without loopholes, wherever and however their works were resold.

221. The Chair stated that there seemed to be a growing support, even curiosity, for the possibility of having the resale royalty right included as an agenda item. There was no unanimity where it could be carried by the entire Committee. The most practical way forward was to have the task force constituted and report back to the Committee at the following SCCR. The idea was that at the following SCCR, the task force would present an interim report of its work and the following year, that report could be finalized. It may be disappointing to some that the topic did not achieve full consensus, but Member States had to continue their espousal on that topic and those who were considering the topic had to continue engagements with an open mind. Perhaps when the typologies were put together, there could be a possibility of a conclusion. On the task force for the resale right, the Chair suggested that some Member States undertake studies to develop a deeper understanding of that topic on the ecosystem of creative industries.

#### *Digital Environment*

222. The Chair stated that he wanted to move forward with the proposal on the analysis of copyright related to the digital environment. The Chair opened the floor for comments on the item.

223. The Delegation of Indonesia speaking on behalf of the Asia and Pacific Group thanked the Chair for the proposal reflected in document SCCR/36/4. In the proposal, the next steps for the digital environment were to undertake studies, including economic studies. The Delegation stated that it wanted to make sure that those studies were economic studies, as those would help the Committee to better understand the issues at stake. If that were the case, the Delegation would support the proposal.

224. The Delegation of Lithuania speaking on behalf of the CEBS Group supported the proposal for analysis of copyright related to the digital environment. That topic was important in terms of ensuring effective and adequate protection of copyright in the digital era. In the previous sessions, the Committee discussed the preliminary report of the scoping study on the impact of the digital developments on the evolution of national legal frameworks. The Delegation stated that it was in principle supportive of studies in that area as long as the questions and the scope of the studies were agreed upon by the Committee. The Delegation reiterated that discussions should bear in mind the mandate of that Committee.

225. The Delegation of the European Union and its Member States believed that copyright in the digital environment could be better protected. In that context, the Delegation had studied its notes from the presentation in previous session, and taking into account that discussion and the work thus far carried out, the Delegation reiterated the large scope of those topics, the fact that they were not always clearly defined and not only related to copyright. It was necessary for that topic to be further pursued but there was a need determine the subject of the Committee's conversation.

226. The Delegation of Brazil stated that in December 2015, at the twenty-first session of that

Committee, GRULAC had presented a proposal contained in document SCCR/31/4 on issues and challenges related to copyright in the face of technological developments in the digital environment. There was a need to ensure that the fruits of the online environment were enjoyed by those who were at the core of the copyright system, namely authors and performers, whose legitimate demand for fair remuneration for their works needed to be addressed by WIPO and its Member States. The Delegation noted with satisfaction that in 2017 the music recording industry reported a growth of 8.1 per cent compared to 2016. The results in the digital market were even greater with a growth of 19.1 per cent representing now 54 per cent of all revenue. The Delegation thanked the Chair for its efforts to incorporate its suggestion for a study to deepen the understanding of the impact of digital technology on the ecosystem of creative industries. The underlying idea was to provide further clarity and information on the phenomena of digital users of works. The first conclusion reached from the brainstorming exercise was the urgent necessity of having a deeper understanding of the playing field around the world and of the phenomena of digital uses of works. Its proposal was focused on gathering information in light of national legislations and fast developments in the music sector whose licensing practices were not prepared taking into account the digital environment. Its proposal was to provide more clarity and would initially be restricted to the music sector. At a later stage, other studies could address other sectors such as audio visual and literary works, but as a start, focusing on one industry could help to avoid bringing together very different industries, each with different rights and users of works in the digital environment. Such a document had to be developed by a pool of experts, respecting regional balance representation, and always under the welcomed supervision of the Secretariat. In light of the importance of that area, both to Member States and stakeholders, various topics had to be addressed including but not limited to: First, identification of the value chain in digital musical services, addressing the actual structure of distribution of incomes and the flow of the use of works by service providers, including how copyrighted works were used by intermediaries such as streaming services and music hosting websites; Second, analysis of the chain of rights for digital business models and existing remuneration mechanisms or alternative tools for digital uses, such as licensing of exclusive rights, collective management, and equitable remuneration; Third, licensing conditions for the exploitation of works and the role of online distributors; for instance the obligations to report the use of works to the licensor or the information received by phonogram producers from the online users; fourth, analysis of transparency mechanisms utilized the digital environment, including block chain technology and emerging tracking technologies that facilitated the monitoring of the use of works by right holders. Creators, intermediaries and users of works needed to understand the different elements of value chains that go into experiencing the use of works. Authors and intermediaries could use such information to understand how their rights were being fulfilled. The Delegation reiterated that there was a market issue and that players had different bargaining power. It was up to artists and intermediaries to negotiate among themselves, but transparency measures could reduce asymmetries and help market efficiency. In a nut shell, the ultimate goal was to provide an enabling international environment in which creativity could bloom worldwide without affecting private contractual liberties.

227. The Delegation of Ecuador speaking on behalf of GRULAC stated that the proposal to analyze copyright related to the digital environment in various sectors would be relevant to performers and artists. In that context, the Delegation looked to continue discussing that issue and to seek out solutions that would meet the needs of all stakeholders in terms of copyright in the digital environment. The Delegation thanked the Chair for preparing document SCCR/36/4 and took into account the Chair's suggestions, particularly, the value chain in the digital environment.

228. The Chair asked the Delegation of Brazil to clarify that the parameters it laid out about the study would not be undertaken by the Delegation, but were the parameters to be considered by the Secretariat and the members who would take on that study.

229. The Delegation of Brazil clarified that those were just ideas and suggestions to enable the Secretariat to take care of the study.

230. The Delegation of the European Union and its Member States stated that those were interesting topics that the Delegation of Brazil had proposed and that it would be interested in pursuing a study along those lines. As regard the parameters, the Delegation stated that the Committee should be involved in setting the parameters and should be able to submit questions to the persons entrusted with the study.

231. The Delegation of Senegal thanked GRULAC for their proposal which was very firmly rooted in reality and addressed the heart of the issues that faced artists throughout the world. The Delegation welcomed the relevant analysis made by GRULAC and supported all proposals made by GRULAC and the Delegation of Brazil, which aimed to deepen the Committee's understanding of the issue in order to find solutions.

232. The Delegation of Argentina supported the proposal made by the Delegation of Brazil. The digital environment had many challenges one of which was how to remunerate all of those who contributed to works and who made works available. The value chain was complex and involved many people. Some of those had only recently been involved with new technologies. There were real signs that the income received by artists was very unbalanced. In order to better balance the ecosystem, that great puzzle had to be resolved. For that reason, the Delegation of Argentina felt the topic should remain on the agenda and that the studies proposed by the Delegation of Brazil should be carried out. That would allow the Committee to clarify its work.

233. The Delegation of United States of America stated that when it approached the topic of copyright related to the digital environment, it did that through a specific and broader context for SCCR. The Delegation reiterated that the SCCR should be a forum to discuss timely, significant, and substantive copyright issues without preparing for norm setting and that area fit right into that larger context. As such, the Delegation was supportive of the convening of the recent task force and the group of experts. With regard to the presentation by Professor Ginsburg, there was one project that the Delegation noted which was the commissioning of a WIPO guide, or even a check list on terms and conditions, provisions of contracts in the creative sector, that could assist particular individual creators in their negotiations, since often they were at a disadvantage because of a lack of technical capacity. The Delegation wanted to know if that idea was still in play. The Delegation noted the Chair's proposal to undertake studies, including economic studies and data analysis to develop a deeper understanding of the impact of the digital technology that would go to enrich the Committee's discussion without the pressure of norm setting, was a good idea. There were certain topics that were more likely to lead to productive exchanges, and topics that were less likely. Certain marketplace issues including questions of the bargaining power of individual artists were topics that were less likely to produce any rich exchanges. Many of the topics presented by the Delegation of Brazil did have merit especially the reference that in no way should those topics be construed as contravening, freedom of contract. The Delegation appreciated that point.

234. The Chair stated that the suggestion to have a guide that would help freelance artists or individual musicians was useful and it could be part of that work. The Chair stated that perhaps at the following SCCR, the Secretariat could present the terms of reference of that study.

235. The Delegation of El Salvador aligned itself with the statement made by the Delegation of Ecuador on behalf of the GRULAC and thanked the Chair for document SCCR/36/4. The Delegation reiterated how important that topic was for it. It was important to include the digital environment in the creative industries and to consider the current standards that existed. The

Delegation thanked the Delegation of Brazil for the structure of the study in the music sector that it had presented and hoped it would be done. It was necessary to have a broader view with the experience of that study and to carry out other analysis such as the audio visual or audio industries, taking into consideration the capacity of the Secretariat to do them.

236. The Representative of the *Asociación Argentina de Intérpretes* (AADI) speaking on behalf of the Argentinian association of artists thanked the Chair for the balance he had brought to that work. The Representative reiterated that it welcomed document SCCR/31/4, proposals for analysis of copyright in the digital environment, presented by the Delegation of Brazil and supported the fact that there should be a legal solution in every country. That document brought to light the situations and activities that affected the creativity of music artists in the digital environment. The situation for artists was getting grimmer and that was reality of their lives. Those artists had the right to be remunerated for the Internet streaming of their works as defined in the legislation on related rights for artists and musicians. That would lead to a richer analysis of those issues which were ever important.

237. The Chair closed that agenda item.

#### *Rights of Theater Directors*

238. The Chair stated that in the previous SCCR the Russian Federation had brought before the Committee the proposal with regard to strengthening the protection of theater directors' rights at the international level contained in document SCCR/35/8. During the previous meeting, a number of Member States were interested and curious but were not able to comprehensively engage with the proposal because of lack of time. The Chair opened the floor to the Delegation of the Russian Federation to provide a more detailed description of the proposal.

239. The Delegation of the Russian Federation stated that in modern theater, a director was someone whose creation brought together all the elements of staging including the play, staging, decorations, sound and music. Because international and national legislation, legal mechanisms for protection and relevant intellectual property rights were often insufficient and theatrical productions were used by third parties without the consent of the director and without any royalties paid to them. To strengthen the protection of the rights of theater directors in Russia, a law entered into force on January 1, 2018. Under that law a production and a show were subject to related rights and must be expressed in a form that allowed them to be reproduced or to have a second live production, as long as the audience still recognized the play. That meant that in the live performance of a production, the director had the right to the integrity of his or her production. The director had the right to protect his or her production from any distortion or change that could lead to a change in the creative idea or violation of the integrity of the play or production when it was played in public. Theater directors did not fall under the remit of the Rome Convention and the WIPO Performances and Phonograms Treaty. Therefore, the Delegation had a proposal to study the national legislation of WIPO Member States with regard to the rights of theater directors particularly on their productions. It proposed that the Committee carry out that study and include that topic on the Committee's agenda. The Delegation pointed out that though its experience included protecting the rights of the directors through related rights, it was not advocating the same. The study could potentially reveal that the rights of theater directions could be protected under copyright. If a decision was made to carry out such a study, the Delegation indicated that it would be happy to take on the role of carrying out the study out.

240. The Chair stated that if a study were to be done, the Secretariat could carry on the study and the Delegation of Russia could give its views. The Chair opened the floor to the Committee for its comments.



241. The Delegation of Kazakhstan speaking on behalf of the Caucasian Central Asian and Eastern European Countries (CACEEC) supported the proposal by the Delegation of the Russian Federation to carry out a study on the legislative and normative act and enforcement practice to protect the rights of theater directors and their productions. Theater production was a complex subject of intellectual property right and the creative activity of a theater director was unique. It brought together complete staging with different elements of the play including acting, musical accompaniment and so on. Moreover, the outcome of that creative activity of the theater director was expressed live and not through technical means. Undertaking a complex and comprehensive study on that subject was vital to analyze the effectiveness of how theater directors' rights were protected including within the agreement of international law.

242. The Delegation of Lithuania speaking on behalf of the CEBS Group thanked the Delegation of the Russian Federation for the proposal on protecting the rights of theater directors at the international level and for organizing the side event during that session. The Delegation stated that it had studied the Chair's proposal and agreed with the proposal to invite the Delegation of the Russian Federation to provide a more detailed description of their proposal.

243. The Delegation of the European Union and its Member States took note of the proposal submitted by the Delegation of the Russian Federation and thanked the Delegation of the Russian Federation for its side event. It had taken note of the Chair's proposal and stated that it would listen attentively and engage in preliminary discussions.

244. The Delegation of Senegal thanked the Delegation of the Russian Federation for its efforts to enable the Committee to understand what was involved in its proposal. The Delegation stated that the side event organized by the Delegation of the Russian Federation enabled it to better understand the problem that the proposal described. It had a few questions but was nonetheless favorable to a continuation of that work to enable the Committee to understand the proposal.

245. The Delegation of Brazil thanked the Delegation of the Russian Federation for providing the Committee with additional information about that topic and for organizing the side event. The Delegation was happy to learn more about the topic through discussions in the Committee. Since that was a new topic in the SCCR, additional documents, such as a study, would be helpful.

246. The Delegation of the Republic of Armenia supported the proposal submitted by the Delegation of the Russian Federation. It was necessary to study the existing international protection of theater directors' rights and the practice in different countries. That could serve as a starting point for moving forward to protecting the rights of those creators in a more effective way.

247. The Delegation of Belarus believed it was important to support the proposal from the Delegation of the Russian Federation to include on the agenda of the SCCR the issue of protecting the rights of theater directors. History indicated that that category of art and creation was important in many countries and was an important part of the lives of many people. There was an important role played by theater directors in the development of the theater art that could not be underestimated. As a subject of copyright or related rights, the existing international treaties on copyright and related rights did not have the same approaches to ensure the legal protection of theater rights in every country. Therefore, in one way or another, the work of theater directors had to be protected. In some countries such as Belarus, theater directors were enjoying related rights for their productions. Other jurisdictions perhaps protected theater director's work through copyright. More often than not, the work of theater

directors was not limited to the territory of one country but often went on tour to different countries. The lack of a single approach to protect their rights clearly created problems in terms of enjoying those rights, particularly in international theater productions. The Delegation proposed international experiences in protecting the rights of theater directors be studied as that would allow the Committee to address any problems that cropped up. The study had to also include the protection of moral and economic rights in practice, enabling the Committee to draw up a unified approach in the address of that issue at the international level. The Delegation supported the initiative to carry out a study of international experiences and practices on the enjoyment of theater directors' rights.

248. The Delegation of Japan appreciated the explanation from the Delegation of the Russian Federation about its proposal as well as the side event. The Delegation stated that it would be better to clarify several points before discussing that agenda substantially. There was a need to clarify the definition of theater director as well as to clarify the interpretation of the existing treaties, especially WPPT and the Beijing Treaty because, according to those two treaties, performers included the persons who interpreted the works. It had to be made clear whether performers in those treaties included theater directors.

249. The Delegation of South Africa supported the proposal submitted by the Delegation of the Russian Federation pertaining to strengthening the protection of theater directors' rights at the international level. The study would shed some more light on that important issue and would add value to the discussions in the Committee and to the development of international copyright law.

250. The Delegation of Kazakhstan supported the proposal submitted by the Delegation of the Russian Federation and in that regard thanked the Delegation for bringing that issue to the attention of the WIPO Member States. The side event was very helpful, as it was very interesting to hear Russian theater directors' perspectives on the issue and to provide clarifications on the proposal. The Delegation looked forward to the development of that issue in future sessions.

251. The Chair invited the Delegation of the Russian Federation to answer some of the questions and to clarify points that had been raised by Member States. There was the point made by the Delegation of Japan on the definitions of directors and the second point raised to have more details as to how the study could proceed and the thoughts of the Delegation on the Secretariat undertaking the study with views from the Delegation of the Russian Federation.

252. The Delegation of the Russian Federation stated that what the Committee raised as an issue of the resale right was also an issue for the rights of theater directors. Those were the new subjects of discussions that the Committee should have to develop copyright across the world. The Delegation stated that whether it was about broadcasting organizations, about audiovisual production, or about topics that the Committee had discussed for many years, for example issues linked to exceptions and limitations, the Delegation understood that the key role was played by the Secretariat in organizing the work on those studies. The Delegation was very much ready to support the work of the Secretariat and was ready to participate in that study. After its initial proposal, colleagues and experts from other European countries, including Spain and Finland, had stated their readiness to actively participate in such a work. If the Secretariat were to take that on, the Delegation would be the first in line to help. The Delegation explained that that topic cropped up because it involved theater directors for theater productions a topic which included the majority of countries in the world. There were theaters in every country in the world and that category of people were not protected in any international treaties including the Rome Convention, the WPPT and the Beijing Treaty. The term theater director's was not used in any of those treaties. Theater productions were protected under the Beijing Treaty as an audiovisual production. Unfortunately, directors as authors were not

protected in any of those treaties. The Committee's great responsibility to a large number of creators and authors across the world was to give them that level of protection. Whether to define them as copyright or related rights would be determined by the outcome of the study and the work of the Committee.

253. The Delegation of China thanked the Delegation of the Russian Federation for its proposal, the side event and the explanation given by the Delegation. It stated that all of those activities would enable further understanding of the issue. The proposal was of great significance and it supported the efforts by the Delegation of the Russian Federation to continue its study in that field. The Delegation lent its support to the proposal by the Chair for the Secretariat to conduct a study.

254. The Delegation of Indonesia speaking on behalf of the Asia and Pacific Group thanked the Delegation of the Russian Federation for the side event and for the explanation shared in the Committee. The Delegation stated that it supported any next step that was aimed at helping the Committee better understand topics such as the theaters directors' rights.

255. The Representative of Corporación Innovarte thanked the Delegation of the Russian Federation for introducing the issue of the protection of theater directors. That proposal had value not only because it would protect theater directors, but also because it enabled the Committee to take a critical look at the system of copyright where the same subject matter of theater directors could be protected either by copyright or by related rights. The Representative stated that it would be useful for the Committee to continue the discussion. The study should not only map which countries were protected under copyright or related rights but should also include an analysis on the implication of the nature of the protection for the other industries that were related and also for the public. The Representative supported better understanding that issue.

256. The Representative of the Health and Environment Program (HEP) stated that even though time was short, the NGOs present had been here all week and had the right to participate in the debate without being able to vote. Being deprived of those rights went against the good functioning of WIPO.

257. The Representative of the Electronic Frontier Foundation (EFF) stated that his intervention was about the digital environment. EFF would like to support the conduct of studies related to copyright in the digital environment and evidence based approach to that topic would be a welcome change from the reflexive approach to the so called value gap that some Member States have taken, being unduly influenced, by entertainment industry lobbyists. For example, a current proposal to require Internet platforms to automatically filter uploaded works for copyright infringement was a disproportionate measure that would create an infrastructure for content censorship and was incompatible with the exercise of copyright limitations and exceptions. As the Delegation of Brazil pointed out in its intervention on that topic, the entertainment industries have been thriving in the recent years as they have been effectively adapting to the digital environment and creating new value for consumers. That was not to say that there weren't still difficulties particularly for individual creators and artists. He welcomed the prospect that the studies proposed under that agenda item could review and suggest solutions to these problems in an inclusive and balanced way.

258. The Representative of the *Instituto de Autores (IA)* was convinced that the study had to be furthered. The theater sector was in a way important to everyone in the Committee. The Society of Collective Management and Theaters in France laid the foundation stone in protecting copyright, even before the Berne convention was adopted. Rightsholders in the framework of theater works were certainly worthy of protection. The Representative saw no obstacle to that and certainly not to a study being carried out to scope its importance

internationally.

259. The Representative of the Ibero-Latin-American Federation of Performers (FILAIÉ) stated that on copyright in the digital environment, since the first session in 2015 when the proposal was introduced by GRULAC, the Representative had noted that normative standards for performers and phonograms were also needed to help all of those involved in the digital environment. In the use of recordings, that had nothing to do with the existing treaties. The legal studies carried out to date and discussions at previous sessions highlighted the lack of legal protection for performers and artists in the digital environment. Economically speaking, it had been highlighted that the same artists were suffering in that situation and that undermined the existence and survival of audiovisual works, particularly for national industries in most of the Member States. For all those reasons, the Representative supported the holding of the study suggested by GRULAC.

260. The Representative of the International Federation of Actors (FIA) stated that WIPO should continue to address copyright and neighboring rights in the digital environment, but from a more practical angle, and the perspective of those performers that were seeking to earn a decent income from the online exploitation of their work. It was not an understatement to stress how much the digital environment had changed the way audiovisual content was produced, distributed and accessed. The multitude of downloading and streaming business models were making content available to a global audience, reshuffling the value chain. Those new distribution models had become or were becoming profitable forms of exploitation. Far from being a secondary market, they were a key strategic asset promoting further investment and generating profits. Without performers, much of the content would not exist. Yet as the media entertainment industry flourished, performers' profits were dwindling. Most performers enjoyed no contractual freedom and had no choice but to sign extensive buyout agreements where all their exclusive rights were transferred to producers in perpetuity and for all forms of exploitation present or future. The Representative therefore supported the suggestion to undertake economic studies and data analysis to develop a deeper understanding of the impact of digital technology on the ecosystems of the creative industries. In particular, it was urgent to get concrete objective and quantitative information with respect to the benefits that performers derived from online exploitation. He welcomed the proposal made by the Delegation of Brazil. That proposal was helpful to separate the audiovisual and audio sector, but he recommended two studies to be carried out in parallel rather than one after the other.

261. The Representative of the International Federation of Library Associations and Institutions (IFLA) welcomed the GRULAC proposal for analysis related to the digital environment. The Representative was supportive of the Delegation of Brazil's proposal on how to investigate that topic. Raising new challenges and exacerbating existing problems of protected works as well as compensation for creators, an assessment of how benefits were distributed in that new paradigm would provide a basis for future work in the Committee. As had been highlighted in the education side event, where photocopying lobbies perhaps provided lower revenues, total spending boosted by increased purchasing of digital works had actually grown. In the case of libraries, those respond to the demand from users who increasingly expected to be able to study not only through library computers but on their phones, tablets and other devices, and continue research abroad. In order to understand the situation for an individual creator, a study would bring clarity and fight myths. Beyond the looming orphan works crisis, a particular concern for libraries was the way in which revenues were distributed by a variety of different actors. The Representative welcomed WIPO's work to develop best practices for collective management but worried that expensive new rights for broadcasters would only end up disadvantaging creators and other rightsholders. Such study had to take a holistic approach as to how authors benefitted from use of their works in libraries. That would show how developing reading libraries supported the creators of the future.

262. The Representative of the Knowledge Ecology International, Inc. (KEI) stated that with regard to the GRULAC proposal for analysis of the copyright related to the digital environment, the Committee should request that WIPO's chief economist attend the following session of the SCCR to discuss with Member States the types of analysis that could be undertaken or reviewed in order to shed light on how the Internet had changed the distribution of income between artists, distributors and users, and between countries.

263. The Chair stated that the Committee had discussed the proposal for both resale rights as well as digital environment. In relation to the proposal on the rights of theater directors, there was continued interest on engaging on that topic but no consensus to make it a separate agenda item. The Chair suggested that perhaps a study be done by the Secretariat taking into account views from the Delegation of the Russian Federation and others who were interested, including the Delegations of Finland and Spain. The Chair opened the floor to the Deputy Director General to respond.

264. The Deputy Director General stated based on everything that had been decided during that session, it was clear that it had been a very rich and interesting SCCR session. The Secretariat had the task of setting out a plan for what it needed to do and if quality work were to be produced, the Secretariat could not be asked to do work too quickly. As that was a very important topic which required analytical research as well as more far reaching research on the situation in different countries around the world, with the assistance of the Delegation of the Russian Federation the Secretariat needed to find the right person to lead that study. The Deputy Director General proposed that the Secretariat do the study on the creative industries in the digital era and provide a presentation during the following session of the SCCR. That presentation would include a method of how the study could be carried out, and thereafter could launch that study the end of that year or at the beginning of the following year. The Secretariat had not included all of those new projects into its program and budget for that year. As a way forward, the Secretariat would present a methodology.

265. The Delegation of the Russian Federation indicated that it was very much ready to work alongside the Secretariat so as to support its work. The Delegation stated that it could include the financing for that into its work plan for the following year.

266. Without any further comments, the Chair closed that agenda item.

267. The Chair stated that there had been many negotiations amongst the groups as to a possible recommendation relating to broadcasting that the Committee could propose to the General Assembly in September of that year. After extensive consultations, the Committee had a consensus on the possible drafting of the recommendation. "In view of the progress made in recent SCCR sessions, the General Assembly is invited to consider appropriate action towards convening a diplomatic conference for the adoption of a Treaty on the protection of broadcasting organizations, subject to reaching consensus on fundamental issues, that its objectives, specific scope, and object of protection." The Chair stated that that was something that had been worked on by a lot of members and group coordinators and represented the Committee's best chance to have a consensus on that topic. It reflected the substantial hard work that had been done not just in that SCCR session, but previous SCCR sessions in the spirit of positivity and cooperation.

268. The Delegation of Kenya stated its concern that since the beginning of that week, the Committee had have been a talking about action plans backed up with definite dates in the document, it was open ended and did not give the predictability as to how the Committee was moving forward. It would have been more comfortable if there were specific timelines.

269. The Chair appreciated the comments from the Delegation of Kenya and noted that that was a compromised way of bringing everyone together. On the summary of the Chair, the Chair reiterated that that was the Chair's summary which he had have tried to reflect as accurately as possible a record of what had happened during that meeting.

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

270. Without any comments on the Chair's summary, the Chair opened the last agenda item, the Closing of the Session. The Chair opened the floor for regional coordinators and Member States to make any comments.

271. The Delegation of Switzerland speaking on behalf of Group B thanked the Chair for his leadership and dedicated guidance throughout that week and also the Vice-Chairs, the Secretariat, the conference service and the interpreters for their hard work. The Delegation thanked the other regional coordinators for the fruitful exchanges and appreciated the significant progress made on the discussions regarding the Chair's text on the protection of broadcasting organizations. Group B thanked, in particular, the Delegations of Argentina, Brazil and Chile for their positive engagement in the discussions and their constructive proposals to improve the text and narrow the gaps between the different views on the topic. The Delegation thanked Mr. Yukka Liedes who had facilitated the discussions between the delegations so that they could determine the most relevant, effective and mutually acceptable provisions that would allow the Committee to make further progress on the maturity of the text. On limitations and exceptions, the Delegation thanked the Chair for his commitment and efforts in drafting the two action plans and leading the discussions which facilitated the approval of the plans by the Committee. Group B looked forward to seeing the Chair at the following SCCR session, and assured him that he would be able to count on their continued commitment and constructive engagement to the work of the Committee.

272. The Delegation of Lithuania speaking on behalf of CEBS thanked the Chair for his hard work during the work of the Committee. In the same vein, it expressed gratitude to the Vice-Chairs. It had also taken note of the extremely efficient efforts of the Secretariat and the DDG. They had invested in the advancement of the work of the Committee. The Delegation also thanked the skillful interpreters for their professionalism and patience. It also thanked the Member States and all regional coordinators that enabled the Committee to achieve progress on the broadcasting treaty and to adopt the action plans on limitations and exceptions. The Delegation noted the comments made by NGOs, which had taken into account while considering its own position so that there was balanced protection of copyright and related rights. The Delegation was looking forward to the following session which would productively discuss the aforementioned issues, including in particular, the resale right.

273. The Delegation of Ecuador speaking on behalf of GRULAC expressed its thanks to the Chair for all the work that the Committee was able to accomplish that week under his leadership, which it stated was not always easy. It also extended its gratitude to the Secretariat and the Vice Chairmen for their work, and thanked the regional groups for their flexibility. GRULAC also thanked the interpreters for their support. The Delegation was delighted with the progress of the Committee including the adoption of the action plans for libraries, educational and research institutions and persons with other disabilities which directly contributed to the 2012 General Assembly Mandate. The Delegation had enthusiastically participated in the debates around the protection of broadcasting organizations and was happy to see that a consensus had been reached prior to the following General Assembly. The Delegation was looking forward to continuing the debate under other business and was looking to the development of the study on the analysis of copyright in the digital environment. The Delegation would continue to participate in the Committee in a constructive manner.

274. The Delegation of Morocco speaking on behalf of the African Group expressed its thanks to the Chair and Vice-Chairs for all the work they had accomplished during that session, as it was not an easy task. Thanks to the professionalism and leadership of the Chair and Vice-Chairs, the Committee had been able to engage with all the items on the agenda in a detailed fashion. The Delegation thanked the Secretariat for its hard work as well as all the Member States for their constructive spirit. The African Group commended the recommendation from the Committee to the General Assembly on the protection of broadcasting organizations and urged Member States to be flexible with regard to the convening of a diplomatic conference. The Delegation also commended the efforts of the Committee which led to the adoption of the action plans considering the two categories of limitations and exceptions. The implementation of the 2012 General Assembly Mandate with regard to the development of several legal instruments would remain the final element of that work. The Delegation would continue to constructively participate in discussions. The Delegation expressed its thanks to the interpreters.

275. The Delegation of Indonesia speaking on behalf of the Asia Pacific Group thanked the Chair, the DDG and the Secretariat for all the hard work. The Delegation expressed its thanks to conference services because although it had been requesting rooms haphazardly, conference service always managed to get the Delegation its room. The Delegation thanked all regional groups, regional coordinators as well as observers who had been making a lot of inputs. As addressed in its opening statement, the Delegation reiterated its commitment to positive engagement which had yielded great progress in that session. The Delegation welcomed the progress made on the protection of the broadcasting organizations including the recommendation to the General Assembly. It too welcomed the adoption of the action plans on exceptions and limitations for library, archives and museum and exceptions and limitations for educational and research institutions and persons of other disabilities. The Asia Pacific Group believed that those action plans would lead the Committee to make more progress and to fulfill the mandate of the work of the Committee. The Delegation reaffirmed its commitment to continue to be optimistic and flexible.

276. The Delegation of China thanked the Chair for all his hard work and able leadership which had yielded fruitful results. The Delegation expressed its thanks to the DDG, the Secretariat as well as the interpreters for their hard work. It thanked the Member States and the regional coordinators for their efforts and constructive attitudes which had helped advance the discussions on the protection of broadcasting organizations and on other agenda items, making positive advancements. The Delegation would continue to actively participate in future discussions in a very constructive manner.

277. The Delegation of the European Union and its Member States thanked the Chair, Vice-Chairs and Secretariat for their efforts in successfully conducting the discussions. The Delegation considered the discussions carried out in that Committee to be of great relevance and remained committed to engaging constructively in them. The discussions on the treaty for the protection of broadcasting organizations were of great importance for the Delegation. The Delegation expressed its thanks to the Delegation of Argentina for its interesting proposal as regards to fair transmissions and also thanked Mr. Lieder for facilitating the conversation. It welcomed the progress that was made in the framework of discussions on that future treaty and looked forward to finalizing the emerging consensus on fundamental issues. The Delegation remained committed to finalizing a treaty that was reflective of the realities and developments of the twenty-first century. The European Union and its Member States were committed to pursuing fruitful discussions on exceptions and limitations. The Delegation congratulated the Chair on the adoption of his action plans for work under those respective agenda items and thanked the DDG for her significant personal commitment to secure action plans that provided a framework for the Committee's future work in that area. The Delegation was convinced that the action plans would serve as a good basis to deepen the Committee's understanding of the

challenges faced by educational and research institutions and persons with other disabilities and would serve as a useful tool and framework for future work. As it had consistently expressed, the Delegation's view was based on the understanding that the intention was not to undertake any normative work. As the recent reports of that Committee showed, there was clearly no consensus to work towards a normative outcome. A meaningful outcome of that work could be guidance to Member States regarding best practices, taking advantage of the flexibility of the international copyright legal framework to adopt maintain or update national exceptions that adequately responded to local needs and traditions. As regards the resale right, the European Union and its Member States, along with many other delegations, supported the proposal by the Delegations of Senegal and Congo to include the resale right as a self-standing item on the agenda of the SCCR. The Delegation welcomed the launch of the task force and was looking forward to the report. As to the proposal for the analysis of copyright related to the digital environment, the European Union and its Member States considered that the topic was relevant and should be further clarified and framed to facilitate the Committee's discussions. The Delegation was looking forward to the presentation of an outline of the terms of reference of the possible study by the Secretariat at the following session.

278. The Delegation of Nigeria thanked the Chair and his team for their able leadership in providing guidance to bring the work of that session to a successful end. The Delegation commended the efforts of the DDG and the Secretariat for the excellent arrangements at that session. The Delegation attached great importance to the work of the SCCR. The Delegation stated that during the thirty-seventh session of the WIPO General Assembly in 2017, the Delegation had submitted four important copyright related instruments in WIPO, namely the WIPO Copyright Treaty, WIPO Performances and Phonograms Treaty, the Beijing Treaty and the Marrakesh Treaty. The Delegation was pleased to report that steps were being taken to ensure that principles and obligations under the four ratified instruments were implemented within the scope of the new draft copyright bills currently undergoing the process of enactment in Nigeria. At the thirty-fifth session of the SCCR in 2017, Nigeria had hosted a side event that showcased the development of the copyright area in Nigeria and the professional impact that had in Nigerian film industry. That event showcased the impact of the copyright law that was proposed by the Nigeria Copyright Commission. Those significant steps underscored the progressive efforts of the government of the Federal Republic of Nigeria to strengthen the intellectual property regime and bring it in line with international standards. The Delegation stated that it was grateful for the support of WIPO to Member States and to Nigeria in particular. The Delegation remained committed and looked forward to engaging constructively in the following session of that Committee.

279. The Delegation of Brazil thanked the Chair for all his efforts in guiding the work of that Committee. The Delegation was grateful for the hard work of the Secretariat in the preparation for that session including the preparation of the documents. The Delegation thanked the conference services for facilitating all administrative requirements. That week saw important advances in the topics of the SCCR agenda. The Delegation underlined the remarkable progress made in the drafting of the broadcasting treaty during that session. The decision of the Committee to invite the General Assembly to consider the convening of a diplomatic conference on that subject was a significant step forward. The Delegation noted with satisfaction that its proposal for a study on digital music service was approved by the Committee. It looked forward to agreeing on the modalities of the study and to hearing additional inputs that could further frame the Committee's considerations, in the following sessions at the SCCR. The discussion of copyright in the digital environment continued to raise a lot of interest on the part of many countries and wide variety of stakeholders. It was important not to lose the sense of urgency of that topic. The adoption of the action plans on exceptions and limitations was also a positive step in the right direction. The Delegation hoped that those action plans would substantially contribute to discussions in the SCCR. The draft action plans should not stop the Committee from continuing discussions to work towards an appropriate



international legal instrument or instruments. The Delegation thanked the interpreters for their hard work.

280. The Delegation of the Islamic Republic of Iran expressed its thanks to the Chair for his able leadership, appreciated the Secretariat for the excellent preparation of that meeting and commended Member States for their positive and engaging contributions in the course of the discussion. The Delegation considered the progress a positive contribution to the implementation of the mandate and also a positive way towards the drafting of an international legal instrument by the Committee as mandated by the General Assembly. The Delegation noted the recommendation of the Committee to the General Assembly with regard to the broadcasting treaty. The Delegation stated that it was ready to have more discussion on that issue at a later stage. The Delegation reaffirmed its commitment to the objective of the Committee and its full and constructive engagement in future sessions of the Committee.

281. The Delegation of Malaysia expressed its appreciation to the Chair, Vice-Chairs and Secretariat for their leadership during that fruitful session. The Delegation was delighted that the Committee had an action plan that would enable it to make concrete progress on exceptions and limitations. The Delegation noted the progress made on the broadcasting treaty as well as the fruitful exchange on other issues. The Delegation hoped that that positive spirit would carry the Committee in all subsequent sessions.

282. The Delegation of El Salvador thanked the Chair for his efforts in conciliating the different views of Member States and congratulated the Chair on his success. The Delegation thanked all the Member States for their flexibility, positive and constructive attitude which enabled the Committee to conclude that session with significant results. The Delegation was particularly pleased by the adoption of the action plans on exceptions and limitations and the work the future work on copyright in the digital environment. The Delegation thanked the Secretariat for their logistical support and for organizing that meeting, and thanked the interpreters for their hard work.

283. The Delegation of the United States of American thanked the Chair for his leadership that week and thanked the DDG and Secretariat for the excellent preparations for that meeting. The Delegation stated that the thirty-sixth session was memorable as a result of all the rich exchange of views on a broad range of topics, with good outcomes. Among the highlights of the week there was the discussion on the thoughtful proposal of the Delegation of Argentina on the broadcasting treaty. The Delegation appreciated the flexibilities shown by all delegations with respect to the successful conclusion of the Chair's draft action plans for exceptions and limitations. The Delegation looked forward to continuing the discussion at the following sessions.

284. The Chair thanked his Vice-Chairs, who were very instrumental in what the Committee had achieved that week, and the Secretariat for the wonderful support it gave the Chair not only during that week but all the weeks before. The Chair expressed his thanks to the group coordinators, who had put in a lot of effort to bring everyone together, reflective in the results during that week. The Chair thanked the Member States who had exercised energy, flexibility and a positive spirit in aiming to progress the work. The achievements during that week laid a foundation for the rest of the biennium, giving the Committee a chance to work on all the agenda items, including broadcasting, limitations and exceptions and all the different topics under Agenda Item 8, resale rights, digital environment and the rights of theater directors. That was a good achievement for the Committee, very satisfying for all of those involved and it gave the Committee a good base on which to take its work further. The Chair thanked the interpreters who were always ready to work late and the conference services because without their help, the logistics of the meetings and the sessions would not be possible. The Chair expressed his thanks to the NGOs who had offered many interesting insights, suggestions and

views.

285. The Deputy Director General thanked all the Member States for all their contributions, especially their conclusions. The Committee had a roadmap which was both precise and ambitious. The commitment that all Member States had demonstrated during that week in all the discussions was encouraging for the Secretariat as it meant that they had fulfilled their role. The amount of work that the Committee had carried out was very significant and it was now the responsibility of the Secretariat to meet the expectations of Member States. The Secretariat was delighted to have a number of new projects that would be developing and had projects that it concluded in the best conditions for all Committee members. The DDG thanked the conference services and interpreters for all their work that week and her team for their invaluable efforts. The DDG commended the Chair for the excellent manner in which he led that work and helped the Committee to reach those results.

286. The Chair closed the meeting.

## **ANNEXE/ANNEX**

### **I. MEMBRES/MEMBERS**

#### **AFRIQUE DU SUD/SOUTH AFRICA**

Renah LUSIBA (Ms.), Chief Director, International Relations and Stakeholder Management, Communications, Pretoria

Collin Dimakatso MASHILE (Mr.), Chief Director, Broadcasting Policy, Communications, Tshwane

Tilana GROBBELAAR (Ms.), Deputy Director, Multilateral Trade Relations, International Relations and Cooperation, Pretoria

Sizeka MABUNDA (Mr.), Deputy Director, Audiovisual, Department of Arts and Culture, Pretoria

Cleon NOAH (Ms.), Deputy Director, Multilateral, International Relations, Arts and Culture, Pretoria

Lloyd John MATSEEMBI (Mr.), Legal Support Copyright, Pretoria

#### **ALGÉRIE/ALGERIA**

Sami BENCHEIKH EL HOCINE (M.), directeur général, Office national des droits d'auteur et droits voisins (ONDA), Ministère de la culture, Alger

Fayssal ALLEK (M.), premier secrétaire, Mission permanente, Genève

#### **ALLEMAGNE/GERMANY**

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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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