

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

**Thirty-Seventh Session**  
**Geneva, November 26 to 30, 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-seventh session in Geneva, from November 26 to 30, 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: Australia, Austria, Azerbaijan, Bahamas, Barbados, Belarus, Bolivia (Plurinational State of), Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Côte D’Ivoire, Croatia, Cuba, Czech Republic, Democratic People’s Republic of Korea, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, Ethiopia, Finland, France, Gabon, Georgia, Germany, Ghana, Guatemala, Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Italy, Jamaica, Japan, Kazakhstan, Kenya, Kuwait, Lebanon, Liberia, Libya, Lithuania, Malawi, Malaysia, Mexico, Monaco, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Oman, Pakistan, Panama, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Senegal, Singapore, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, United Republic of Tanzania, United States of America, Viet Nam and Yemen (100).
3. The European Union (EU) participated in the meeting in a member capacity.
4. The following Intergovernmental Organizations (IGOs) took part in the meeting in an observer capacity: African Intellectual Property Organization (OAPI), African Regional Intellectual Property Organization (ARIPO), African Union (AU), International Labour Organization (ILO), South Centre (SC), West African Economic and Monetary Union (WAEMU) and World Trade Organization (WTO) (7).
5. The following non-governmental organizations (NGOs) took part in the meeting in an observer capacity: African Library and Information Associations and Institutions (AfLIA), African Union of Broadcasting (AUB), Alianza de Radiodifusores Iberoamericanos para la Propiedad Intelectual (ARIPI), Asia-Pacific Broadcasting Union (ABU), Asociación Argentina de Intérpretes (AADI), Association for the International Collective Management of Audiovisual Works ((AGICOA), Association of European Performers’ Organizations (AEPO-ARTIS), Authors Alliance, British Copyright Council (BCC), Canadian Copyright Institute (CCI), 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, Confederation of Rightholders’ Societies of Europe and Asia (CRSEA), 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), Education International (EI), Electronic Information for Libraries (eIFL.net), European Broadcasting Union (EBU), European Law Students’ Association (ELSA International), European Publishers Council (EPC), European University Association (EUA), Federazione Unitaria Italiana Scrittori (FUIS), Health and Environment Program (HEP), Ibero-Latin-American Federation of Performers (FILAIE), Instituto de Derecho de Autor (Instituto Autor), Intellectual Property Center (IPC), International Association for the Protection of Intellectual Property (AIPPI), International Association of Broadcasting (IAB), 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 Film Producers Associations (FIAPF), International Federation of Library Associations and Institutions (IFLA), International Federation of Reproduction Rights Organizations (IFRRO),

International Federation of the Phonographic Industry (IFPI), International Law Association (ILA), International Literary and Artistic Association (ALAI), International Publishers Association (IPA), International Video Federation (IVF), 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 Association of Broadcasters (NAB), National Library of Sweden (NLS), North American Broadcasters Association (NABA), Program on Information Justice and Intellectual Property (PIJIP), Société portugaise d'auteurs (SPA), Society of American Archivists (SAA), Software and Information Industry Association (SIIA), The Japan Commercial Broadcasters Association (JBA), Works (AGICOA), World Association of Newspapers (WAN) (62).

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

6. The Chair welcomed the delegations to the Thirty-Seventh Session of the SCCR and recalled that at the previous SCCR, the Committee had proposed a recommendation to the General Assembly to consider the possibility of convening a diplomatic conference on the broadcasting treaty. The Chair invited WIPO's Deputy Director General to give her opening remarks.

7. The Deputy Director General welcomed the delegations to the Thirty-Seventh Session of the SCCR and thanked the Chair for his leadership and support in the preparation of the work of the Committee. The

8. The Deputy Director General stated that there were a number of items on the Agenda, some of which were familiar to the Committee and others that had recently been introduced. The Deputy Director General stated that thanks to the spirit of cooperation exhibited by all the delegations, there had been a great deal of progress on the issue of broadcasting. The work undertaken during and between meetings, the active commitment of Regional Groups, and the proposals from the Delegations of Argentina and the United States of America would stimulate debate and help the Committee to clarify pending issues. The Deputy Director General hoped that the tentative timeline agreed upon at the previous General Assembly would be implemented. During that Session, she would present the status of work on limitations and exceptions on the basis of the action plan adopted at the previous session and toward the end of that week, delegations would have the opportunity to discuss the three topics under agenda item other matters, namely the analysis of copyright in the area of music and in the digital environment, the work on artist resale rights and the draft study on the rights of theatre directors.

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

1. The Chair stated that as no NGOs had requested accreditation, the third item on the agenda would be deleted and the subsequent items renumbered. 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, with a fair amount of time in informal discussions, especially considering the two new proposals that had been placed before the Committee by the Delegations of Argentina and the United States of America. As the Committee discussed the issues towards the possible convening of a diplomatic conference, the Chair stated that informal engagements would be useful as they would enable more dynamic, technical discussions. On Wednesday and Thursday the Committee would discuss limitations and exceptions and there were quite a number of presentations planned during those two days. On Friday, the Committee would discuss other matters including copyright in the digital environment, the resale royalty rights, and the proposal by the Delegation of the Russian Federation on the protection of theatre

director's rights. 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. Chair inquired if there were any comments on the draft schedule as amended with the item on the accreditation of new NGOs having been removed. With no additional comments or objections, the Committee approved the draft agenda.

### **AGENDA ITEM 3: ADOPTION OF THE REPORT OF THE THIRTY-SEVENTH SESSION OF THE SCCR**

11. The Chair opened Agenda Item 3, the adoption of the report of the Thirty-Seventh Session of the Standing Committee. 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 had to be sent in by January 15, 2019 in order to allow the production of the report before the following session. The Committee was invited to approve the Draft Report, document SCCR/36/8 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.

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

### **AGENDA ITEM 4: OPENING STATEMENTS**

13. The Chair opened the floor for general comments by group coordinators.

14. 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 because of the role they played in economic, social and cultural development. The African Group welcomed the action plans on exceptions and limitations up to the Thirty-Ninth Session of the SCCR as approved by the Committee at its previous session. The Group welcomed the work done by the Secretariat in drawing up the action plans and looked forward to the presentations of the results of those promised activities. The results of the activities indicated in the action plans had to lead to discussions on the basis of the 2012 General Assembly mandate which called on the SCCR to work towards the creation of one or more appropriate legal instruments on that subject. On the issue of the protection of broadcasting organizations, the Committee need not lose sight of how important it was to have multilateral treaties on the subject. The Group's position has always been to have a treaty in that area in line with the 2007 General Assembly and it welcomed the work done to date by the Secretariat and the Committee and hoped for a diplomatic conference as soon as possible. The Group stated that it remained aware of the important subjects dealt with in the SCCR and on the agenda item of other matters, it was particularly interested in the proposal by the Delegations of Senegal and Congo to include the artist resale right on the agenda of that Committee. Support for that matter had been growing over previous sessions and seeing that it was such an important issue with great impact in the creative industry, the Group repeated its full support and called on all member states to support it. On the basis of that proposal, the Group recalled the decision made at the Thirty Sixth Session of the SCCR to establish a team of experts on the basis of the proposal by the Delegations of Senegal and Congo. The composition and modalities outlined in document SCCR/37/5 were a good basis to achieve significant progress

in discussions on the artist resale right, which the Group stated had to be given a place on the main agenda of the SCCR. The Group stressed the importance of the contribution of all of the competent bodies of WIPO to the implementation of the Development Agenda's recommendations. The decision made at the 2010 WIPO General Assembly requested that WIPO competent bodies include in their annual report to the Assemblies a description of their contribution to the implementation of the Development Agenda recommendations. The Intergovernmental Committee (IGC) was the only Standing Committee which submitted its contribution to that subject to the General Assembly in 2018. The Group reminded the SCCR, like it reminded all the other Committees of WIPO, of the importance of this exercise and called upon the Committee to annually present its contributions as it did before. 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.

15. 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. 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. Most 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 to provide protection on the signal-based approach for cablecasting and broadcasting organizations in the traditional sense. The Group conveyed its appreciation to the Delegations of Argentina and the United States of America for the proposals put forward under that item. The Delegation believed that the proposal would help the Committee move forward its deliberations. For the Group, 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 Group looked forward to the discussion on the report on copyright practices and challenges of museums and was hopeful that would contribute to the Committee's deliberations on that matter. The Group recognized the important new issues and thanked the Secretariat for the proposed modalities on the study on the protection of the rights of theatre directors, the modalities of the studies on digital music services and the modalities of the work and scope of the task force on the artist resale loyalty rights. The Delegation would make interventions under those items and would continue to proactively participate in the discussions of that Committee.

16. The Delegation of Canada speaking on behalf of Group B continued to attach importance to the negotiation of a treaty on the protection of broadcasting organizations. For that treaty to be relevant, the Committee needed to consider a broad range of stakeholder views as well as reflects on technological developments and relevant fields. The significant economic value of broadcasting and appropriate protection was an important consideration for Group B. In that regard, Group B believed that Member States had to work towards a practical and meaningful solution. The Group stressed the importance of remaining faithful to the mandate of the 2007 General Assembly which outlined the convening of a diplomatic conference on the Committee reaching agreement on the objectives, specific scope and object of protection for the treaty of the protection of traditional broadcasting organizations. Group B welcomed the discussions held at the previous SCCR and on the basis of SCCR/35/12, those discussions helped clarify a number of technical issues and promoted enhanced understanding of the respective positions of Member States. Group B trusted the Committee would remain focused as it conducted the remaining work necessary so as to further clarify the various technical issues, gaining a deeper

understanding of complexities so that they could maximize the chances of a successful outcome. On exceptions and limitations, Group B welcomed the discussions held at the previous SCCR on the development of the two action plans outlined in document SCCR/36/7. The Delegation recognized that the action plans and implementation sought to enhance the Committee's understanding of the underlying issues and looked forward to continuing to engage on that matter.

17. The Delegation of El Salvador speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC) attached great importance to the work of the Committee and considered that the balancing of the agenda of the Committee between the major issues, the protection of broadcasting organizations and exceptions and limitations to copyright and related rights for libraries and archives, limitations and exceptions for educational and research institutions and for people with other disabilities, was essential. As those issues had been examined for several years, the Group hoped that at that session, the Committee would make significant progress towards achieving results. The Group believed that the Committee should maintain its relevance in addressing current issues where copyright and related rights played an important role. The Group stated that it attached great importance to the discussions on the GRULAC proposal for the analysis of copyright in the digital environment. With regard to the protection of broadcasting organizations, GRULAC members would participate actively and constructively in those discussions. The Group thanked the Delegation of Argentina for its proposal contained in document SCCR/37/7 and stated that group members would discuss that proposal in their national capacities. The Group thanked the Delegation of The United States of America for the presentation of document SCCR/37/7 and regretted not having had the translation of the document into Spanish because of the limited time. On the issue of exceptions and limitations to copyright and related rights, the Group reiterated what it had said at previously sessions about the importance of the balance that needed to exist between the interests of the right holders on one hand, and the collective development of society on the other hand. The Group stated that the framework of the agreed upon action plans were a first step in the right direction and thanked the Secretariat for the execution of the action plans and for the presentation on updates that was scheduled for that session. The Group attached great importance to the proposal by the Delegation of Brazil to conduct a study on digital musical services in the framework of analysis of the digital environment. The Group thanked the Secretariat for document SCCR/37/4 which contained proposed modalities for that study and stated that the members of GRULAC would will be participating actively in the discussions on that study as well as on documents SCCR/37/3 and SCCR/37/5. With regard to the modalities proposed on the study of the protection of the rights of theatre directors, and the task force of the resale rights of artist, the Group stated that there was a need for inclusiveness and transparency with regard to all the work and activities carried out within the framework of the Committee and as such it was important that all documents and information were accessible to members. In the case of GRULAC, that meant having all the documents translated into Spanish, including the full reports of the studies being carried out. With regard to the meetings could take place outside the location and dates of the Committee's sessions, it was important that members had access to the relevant information. The Group stated it would intervene on that issue during the relevant time in the agenda and encouraged the Committee to work in a flexible and constructive matter so as to make progress on the discussions.

18. The Delegation of Lithuania speaking on behalf of the Group of Central European and Baltic States (CEBS) looked forward to continuing negotiations on the treaty for the protection of broadcasting organizations aiming at meaningful outcomes that would take into account different types of broadcasting developments through the rapidly evolving technologies and encompass forward looking provisions. The Group was encouraged by discussions in the previous sessions on the different types of broadcasting and looked forward to working with the same dedication so as to make progress on the outstanding issues. The Group thanked the

Delegations of Argentina and the United States of America for their proposals which it stated were helpful in the Committee's substantive discussions. The CEBS Group was pleased that the two action plans on exceptions and limitations were adopted at the previous Committee meeting. The work under those action plans would help Member States to have a better understanding on how those issues were addressed in different jurisdictions and identify potential gaps in their national laws. The Group underscored the need to ensure adequate copyright protection that contained necessary provision on exceptions and limitations and at the same time did not undermine the incentives for others to create. The Group stated that it was looking forward to discussing the outcomes of the different activities and work plans. As regards to the Committee's work on other matters, the CEBS Group was pleased that the issue of rights would be convened and was ready to discuss the modalities of the two studies on digital music services and on the protection of the rights of theatre director

19. The Delegation of China stated that it had great interest in different items on the protection of broadcasting organizations and was too pleased that the proposal made to the General Assembly was accepted, with the Committee having been given the mandate to continue its work. The Delegation looked forward to constructive discussions during that session so as to form more consensus on substantive issues. On the issue of exceptions and limitations, the Delegation was pleased that the action plans were adopted at the previous session and stated its support of the studies and research in order to move that agenda item forward. The Delegation stated that it would participate in the discussions on other matters, contributing positively to the Committee's discussions.

20. The Delegation of the European Union and its Member States stated that the discussions on the treaty for the protection of broadcasting organizations were of great importance to the European Union and its Member States. The Delegation remained committed to advancing the complex discussions constructively, in view of ensuring progress during that session. It was of paramount importance for the Delegation that the treaty took into account and responded to technological realities of the twenty-first century and the corresponding current and future needs of broadcasting organizations. In that context, the Delegation looked forward to further discussions on definitions, objects of protection to be granted and other issues further consolidated by the Chair in SCCR/36/6. Considerable efforts had been made during previous sessions in order to consolidate views on the main elements of the treaty. The Delegation reiterated that what was needed was the broad consensus on the extent of the protection to be granted so that the treaty could provide broadcasting organizations with adequate, effective protection. Taking that into account, the Delegation reiterated again its continuous commitment to progressing towards the conclusion of the worthwhile treaty which reflected the technological realities and developments of the twenty-first century and hoped that the session would allow the Committee to agree on the elements necessary for that. In that regard, the Delegation thanked the Delegation of Argentina for its commitment to advancing the discussion and for tabling document SCCR/36/5 during the previous session, and for the new proposal contained in document SCCR/37/2. The Delegation also thanked the Delegation of the United States of America for tabling its proposal document SCCR/37/7 and stated that it looked forward to the presentation and the subsequent discussions on those two proposals. The European Union and its Member States remained committed to an active and constructive continuation of the discussion on limitations and exceptions. It supported the Committee's action plans on limitations and exceptions through SCCR 39 as agreed upon the previous session and as reflected in document SCCR/36/7. The Delegation was ready to engage in the work as set out in that document. The Delegation recalled that the existing international copyright framework empowered WIPO to maintain exceptions and limitations in the national legislation, and meaningfully responded to local needs and traditions while continuing to ensure that copyright was an incentive and reward for creativity. The work in that Committee had to 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. As such, the Delegation did not see the need for a new and additional legally binding instrument in that area. Based on that understanding, the Delegation was convinced that the action plans would serve as a good basis for deepening the Committee's understanding of the challenges faced by libraries, archives, museums, educational and research institutions and persons with other disabilities and serve as a useful tool and framework for future work. As the Delegation had stated in the past, a possible outcome for the work carried out in that Committee could be to provide guidance regarding the manner in which the international treaties were implemented in national laws. As regards to other matters, the Delegation looked forward to hearing the envisioned updates and reports regarding the work on the topic under that agenda item as agreed upon at the previous session and stressed its support of the proposal by the Delegations of Senegal and Congo presented at SCCR 37 to include the topic of resale right on the Committee's agenda.

21. The Delegation of Egypt aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. The Delegation hoped that the debates would lead the Committee to a greater consensus so as to be able to convene a diplomatic conference on the adoption of a treaty for the protection of broadcasting organizations taking into account the concerns of developing countries and least developed countries. The Delegation recognized the importance of limitations and exceptions for libraries and archives with a view to align those institutions to disseminate information and knowledge on a broad basis and in cooperation with teaching and research institutions. Any copyright issue in the digital environment had to enable access to knowledge. As discussed during the previous session, so as to increase the dissemination of knowledge, the Delegation stated that it had established a knowledge bank which was functioning to strengthen motivation and creativity within the framework of the sustainable development strategy 2030. The Delegation supported the proposal made by the Delegations of Senegal and Congo as to the inclusion of the resale right on the agenda of that Committee. Because of the importance of that issue in the copyright area, the Delegation stated that it would continue to participate in discussions in constructive manner.

22. The Delegation of Cote d'Ivoire aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group and stated that the agenda and allocation of time was balanced, allowing the Committee to discuss each issue in a rational manner. The topic of broadcasting organizations was crucial for social and economic development and recognizing the results achieved to date despite the difficulties, the Delegation hoped that the debates would lead to the convening of a diplomatic conference. The Delegation stated that the issue of limitations and exceptions of libraries and archives was also particularly important, with legal protection in that area being of the greatest importance for the Delegation. Under the agenda item other matters, the issues listed there were importance, with the issues of copyright in the digital environment and the proposal from the Delegations of Senegal and Congo being particularly important. Resale rights had to be established as a permanent item on the agenda.

#### **AGENDA ITEM 4: PROTECTION OF BROADCASTING ORGANIZATIONS**

23. The Chair opened Agenda Item 5 on the protection of broadcasting organizations. He stated that the Committee had before them document SCCR/36/6 which was the revised consolidated text on definitions object of protection, rights to be granted and other issues. That document, which was introduced in the Committee during the previous session, reflected the results of the discussions held during the previous SCCR, SCCR 36. The Chair introduced two new documents before the Committee. Document SCCR/37/2 was a proposal submitted by the Delegation of Argentina which reflected a revised proposal on what was the scope of protection under the grouping of deferred transmissions and document SCCR/37/7 was a broader proposal touching on several issues submitted by the Delegation of the United States of America. The Chair stated that after group statements he would give the floor to the Delegation



of Argentina and then the Delegation of the United States of America to introduce their respective proposals and have some preliminary reactions before going to informals. With a mandate from the previous General Assembly to make progress on that particular agenda item, the Chair encouraged the Committee to exhibit a spirit of compromise openness so that the Committee could reach a common understanding.

24. The Delegation of Lithuania speaking on behalf of the CEBS Group reiterated the great importance it attached to the conclusion of the treaty on the protection of broadcasting organizations. The Group welcomed the good progress achieved in the previous session of the Committee which was dually reflected in document SCCR/36/6. The Group stated that it looked forward to negotiations during that session, with the view to make further progress on the basis of the document containing the most recent version of the revised consolidated text on definitions, object of protection, rights to be granted and other issues. The Group appreciated the proposal made by the Delegation of Argentina contained in document SCCR/37/2 and were prepared to engage in a detailed discussion with regard to the issues that were outlined in that document. The Group continued to believe that transmission should be protected not only in real time but also during the reasonable timeframe afterwards. The CEBS Group thanked the Delegation of the United States of America for the proposal contained in document SCCR/37/7 and looked forward to its presentation.

25. The Delegation of Canada speaking on behalf of Group B reiterated the importance of updating the international legal framework for the effective protection of broadcasting organizations with the view to better reflect the current reality faced by broadcasting organizations. The Group stressed the importance of reaching mutual agreements on the objectives, specific scope and object of protection of the treaty upon which the mandate of the 2007 General Assembly stated the need to convene a diplomatic conference on the protection of traditional broadcasting organizations. The Group welcomed the discussions during the previous session of the SCCR on those issues and looked forward to continuing its understanding of the text contained in document SCCR/36/6. Earlier in its intervention, Group B had underscored the current reality faced by broadcasting organizations because mutual understanding of that current reality and related issues faced by broadcasting organizations was crucial in the address the issues through meaningful, relevant treaty text. In that regard, Group B took note of document SCCR/37/2 by the Delegation of Argentina and document SCCR/37/7 by the Delegation of the United States of America and looked forward to the discussion of those documents.

26. The Delegation of Indonesia speaking on behalf of the Asia and Pacific Group stated that as outlined in its opening statement, how intellectual property rights applied to broadcasting was an issue of careful balancing. The Group stated that 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 in the traditional sense. The Group welcomed the discussions held in the thirty-sixth session of the SCCR and stated that its members were ready to discuss that agenda item on the basis of the revised consolidated text contained in document SCCR/36/6. The Group hoped that agreements would be reached on key aspects, in particular on the definitions of the square bracket of protection and rights to be granted and other issues. The Group took note of the new proposals presented under that agenda item and hoped that the proposals from the Delegations of Argentina and the United States of America would help the Committee's deliberations on that matter.

27. The Delegation of China expressed its gratitude to the Chair for the revised consolidated text on definitions, objective of protection and rights to be granted and other issues. That text was in line with the result of the discussions held at the previous SCCR session and included many options on the issues that were involved, clarifying the direction of the discussion for that meeting. In that regard, the Delegation stated that it would cooperate actively and

support the discussion on important issues.

28. The Delegation of the European Union affirmed that the treaty on the protection of broadcasting organizations was a high priority for its member states. The Delegation stated that as reflected in document SCCR/36/6, good progress was achieved at the previous SCCR and that it was strongly committed to advancing the work on those agenda items. The engagement of all delegations in the discussion of those items was crucial in view of making further progress and reaching consensus on the main elements of the possible future treaty leading to the convening of a diplomatic conference in the future. The Delegation hoped that the revised consolidated text on definitions, object of protection, rights to be granted and other issues contained in document SCCR/36/6 would allow the Committee to bridge certain issues and make further progress. The Delegation was ready for in depth discussions on the text and would contribute to suggestions in that regard as the Committee's work had to result in a meaningful treaty that reflected the technological developments of the twenty-first century. Transmissions of traditional broadcasting organizations over computer networks such as simultaneous transmissions or catch up transmissions were not intentional in protecting against acts of piracy and the catalog of rights which would allow the necessary protection of broadcasting organizations against active piracy whether they occurred simultaneously with protected transmissions or after the transmissions had taken place. The Delegation expressed its gratitude to the Delegation of Argentina for its proposal contained in document SCCR/37/2 regarding the protection of the deferred transmissions, and we thanked the Delegation of the United States of America for tabling in document SCCR/37/7 its proposal regarding the rights. The Delegation looked forward to the presentation and discussions on those two documents. As regards the other issues that had been identified in the Chair's text, the Delegation reiterated its strong conviction that the examples set by the recent treaties in that area, such as for example the Beijing Treaty should serve as a template to guide the Committee's work in that regard. What was needed was a broad consensus as to the extent of the protection to be granted so that a future treaty can provide broadcasting organizations evolving in an increasingly complex technological world with adequate protection.

29. The Delegation of Argentina aligned itself with the statement made by the Delegation of El Salvador on behalf of GRULAC. The Delegation reiterated the importance it gave to the holding of a diplomatic conference which reflected technological advancements and expressed the way in which broadcasting was done as well as the needs of the public. There were a number of pending issues like those of resale, an extremely important issue because deferred transmissions were extremely important and were increasingly frequent since the public could determine the time at which they wished to view a transmission. However, not all deferred transmissions had to receive the same level of protection. Bearing in mind the debates at the previous session, the Delegation had submitted a new proposal contained in document SCCR/37/2 and in that proposal it had reviewed document SCCR/36/5 and had simplified its proposal and classification of deferred transmission, related deferred transmission, unrelated deferred transmission, related and unrelated. The Delegation had proposed that deferred transmissions should be classified as equivalent to deferred transmissions and other deferred transmissions only equivalent deferred transmissions should have obligatory protection leaving it up to each country to protect other deferred transmissions as they saw fit. The Delegation thanked the Delegation of the United States of America for the scope of the protection contained in document SCCR/37/7.

30. 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. The Delegation hoped that the Committee's deliberations in the course of the week would facilitate fulfillment of the objective of the discussion based on the Committee's mandate and the recent decision of the General Assembly. Careful balancing between the legitimate interests of all parties and stakeholders in society was of utmost importance for Member States and such an approach had to be reflected in the body of the broadcasting treaty. The Committee had to recognize the concern of Member States that a new treaty for the protection of broadcasting organizations may lead to additional costs for the public and affect access to broadcast content in developing countries. That was an important issue and deserved due consideration by the Committee. It went without saying that the General Assembly mandate was the milestone of the discussions. The negotiations in the Committee framework were not to deviate from that mandate, in particular with regard to the scope of protection. Furthermore, discussion 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 would be confined to the protection of broadcasting organizations in the traditional sense and highlighted that the evolving digital environment and technology development affected the way in which traditional broadcasting organizations carried out their activities, therefore those developments required due and careful considerations. The Delegation maintained that definitions contained in the instrument had to ensure legal certainty and be drafted in a way that prevented them from different interpretations and diverse understanding in the future. The Committee needed to be cautious not to create rights that could have unintended adverse effects or be misused by some entities to restrict the rights of the public to access information. Another issue which required more consideration was the post fixation rates and the consistency with the signal-based approach of the treaty. The Delegation was of the view that the discussion on the different transmissions was one of the main remaining issues at the policy level. The Delegation looked forward to the discussion on that important issue which could strongly contribute to bridge current gap positions. The Delegation noted that there were still some issues which deserved and required more discussion among Member States, but that it looked to advancing the work toward developing an adequate, effective legal instrument on a signal-based approach. The Delegation stated that it was ready to consider the new inputs from Member States.

31. The Delegation of Brazil stated that based on the historic discussions held in that Committee on the protection of broadcasting organizations, it had a renewed commitment to continue to serve WIPO as a constructive partner to bridge the remaining gaps of that matter with a view towards convening a diplomatic conference for adoption of a treaty on the adequate and effective protection of broadcasting organizations. In this sense, at the previous session, the Committee was able to proceed in a positive and dynamic direction in the debate, which brought parties very close to each other's issues. Such advancement was confirmed at the previous General Assembly which directed that Committee to achieve consensus on the remaining issues. In its view, consensus related to the Committee being able to achieve the convening of a diplomatic conference and the ability to draft such an important treaty. The Delegation reaffirmed its commitment to fighting against signal piracy.

32. The Delegation of the Republic of Korea aligned itself with the statement made by the Delegation of Indonesia on behalf of the Asia Pacific Group. The Delegation recognized the need for reaching an agreement on the treaty for the protection of broadcasting organizations and the essential role that Member States played in reaching that goal. The Delegation thanked the Delegations of Argentina and the United States of America for their proposals contained in documents SCCR/37/2 and SCCR/37/7 respectively.

33. 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. Additionally, broadcasters were regulated in several ways because of the public aspect and as such broadcasting organizations continued to play an important public role. In light of these important roles of broadcast, we hope that international protection for broadcast should be achieved immediately. 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. On the definition and the scope of protection under discussion, the Delegation stated that in its discussions, the Committee should make note of the differences between traditional broadcasting organizations and webcasters. Member States had to be flexible in terms of the protection of Internet transmission. In that regard, the Delegation appreciated the new proposal by the Delegation of the United States of America because of its interesting standpoint that provided a flexible way of protecting broadcasting over the Internet. The Delegation was looking forward to the detailed explanation of that proposal.

34. The Delegation of the Russian Federation agreed with the position stated by a number of delegations that the protection of broadcasting organizations had to be amenable, with room for compromise allowing different Member States to bring forward their views with the intent of holding a diplomatic conference. The Committee had to do its best to conclude its work on the language of such a treaty so that there could be a diplomatic conference. The Delegation stated that it welcomed the proposal from the Delegation of the United States of America and thought it to be interesting.

35. The Delegation of Kenya stated that it was among the first countries that presented the draft proposal and treaty language for the protection of broadcasting organizations. The Delegation had participated in most SCCR and regional meetings on that subject since the 1998 symposium and now think that the deliberations are mature. The Delegation took recognition of the fact that any meaningful international norm in the protection of broadcasting organizations had to take account of the new technologies that responded to the new platforms and means of signal delivery brought about by new technologies. The Delegation took note of the proposal submitted by the Delegation of the United States of America on the broadcaster's rights and expressed its gratitude to the Delegation for its willingness to engage constructively on that matter. The Delegation would be intently listening to the Delegation of the United States of American so that it could receive clarity on the proposal. At the end of the Committee, any formulation of the Chair's text should include all elements, including the document in view of the diplomatic conference.

36. The Delegation of India stated that on September 25, 2018 it acceded to a WIPO treaty so as to show its resolve for global cooperation on intellectual property, especially copyright in the digital arena as well as to ensure better coordination between the collective management organizations. The infringement of copyright was a serious crime which not only adversely affected the creative potential of the society by denying the creators legitimate use but caused economic losses for all those invested in the entire value chain. The Delegation supported the early finalization of the balanced treaty for the protection of broadcasting organizations. The Delegation believed that the Committee would work towards resolving concerns and maintaining the interests of all Member States on fundamental issues, so that the draft treaty is more balanced. The discussions on important issues like the definition of broadcasting organizations, rights of broadcasting organizations, limitations and exceptions and terms of protection would facilitate resolving the key issues of the treaty.

37. The Delegation of Senegal stated that it supported the timely holding of the diplomatic conference which would lead to the adoption of a treaty which took into account the evolution of broadcasting. The Delegation congratulated the Delegations of Argentina and the United States

of America for their proposals and was looking forward to the introduction of those proposals.

38. The Delegation of Canada welcomed the proposal by the Delegation of the United States of America contained in document SCCR/37/7 for the implementation and protection of broadcasting organizations. The Delegation also expressed its gratitude to the Delegation of Argentina for its contributions including document SCCR/37/2. Without prejudice for any position established by the Delegation, it believed that the proposal by the with the proposal of the Delegation of Argentina also allowing the Committee to progress its debate. The proposal by the Delegation of the United States of America raised a number of technical issues on fundamental issues, particularly the need for protection and the need for countries to maintain some flexibility for their internal policies. The Delegation welcomed any efforts undertaken in order to move the debate forward so that the Committee could come to a common understanding on very complex technical issues.

39. The Delegation of Botswana thanked the Delegation of Argentina for the proposal contained in document SCCR/37/2 and the Delegation of the United States of America for its proposal contained in document SCCR 37/7. The Delegation was committed to engaging constructively in the discussions on both proposals and acknowledged the progress made in the previous session of the SCCR. The Delegation hoped that the Committee would reach a consensus on outstanding issues, with a view to convening a diplomatic conference for the adoption of the treaty for the protection of broadcasting organizations

40. The Delegation of Algeria stressed the importance of the issues discussed within that Committee and stated that it supported all efforts that would move the work forward. The Delegation encouraged the Committee to pursue debates in a spirit of compromise in order to reach an agreement on pending issues, particularly on technical issues such as the scope of that protection. The Delegation thanked the Delegation of the United States of America and the Delegation of Argentina for their proposals on deferred transmission and the scope of the implementation of rights and looked forward to the discussion on those two proposals. It was important to find regulatory solutions which would protect broadcasting organizations while protecting the positive development of digital environment, particularly in developing countries. The Delegation looked forward to the convening of a diplomatic conference that would lead to the adoption a treaty on broadcasting organizations.

41. The Representative of the Knowledge Ecology International, Inc. (KEI) stated that the most important questions about the broadcasting treaty were, how do you draw a line from somebody who is a traditional broadcaster on one hand, to someone who does something that competes directly with traditional broadcasters on the other hand. In a lot of markets, people were receiving news broadcasts, sports broadcasts, entertainment broadcasts not through traditional broadcasters but streamed over services like Amazon Prime, which now had licenses for a lot of sporting events around the world, through services such as Netflix, Hulu. The Representative asked how the definition was supposed to work because those new services had fewer rights than broadcasters did, in areas where broadcasters had rights, but were more successful. Another area of concern was with regard to what to do when content was meant to be freely available, like under the Creative Commons license. To what extent would that still be free if there was that layer of rights under the broadcast treaty? The Representative stated that perhaps the signal protection should be retired because it was just a layer of rights on content.

42. The Representative of the International Federation of Library Associations and Institutions (IFLA) stated that broadcast material had an important value to society because it often contained pieces of history or culturally relevant information. Libraries were at the forefront of preserving and giving access. That was particularly vital when films were not accessible as then, broadcasters and media libraries were not permanently available and also when recordings from the broadcasters were not offered or disproportionately expensive and

transmitted archives were not accessible. In Sweden, for example, broadcasting companies made only a limited volume of content available and routinely referred researchers to the Swedish National Library. The work of libraries in that area was indispensable. For example, when university libraries contributed to the training of young artists by providing opera recordings for students of music and stage design, theater, and ballet recordings for students of the performing arts, and film recordings for film and drama students. To carry out that mission, libraries needed to identify existing rights, rights holders, check whether there was an exception or limitation. Additional layers of rights risked making that already complicated process impossible, and too many restrictions would make it impractical for libraries to carry out their mission. The Representative encouraged Member States to ensure that adequate mandatory exceptions and limitations were present in the treaty, at least equivalent to the ones applying to other rights in the broadcast work.

43. The Representative of Education International stated that they were there to support personnel who relied on works for teaching and learning. The Representative hoped to ensure that the Committee would help facilitate the work on educational institutions and develop policies that would match the complex realities on the ground. Education was a human right, a collective interest, essential for having sustainable societies. The use of textbooks and other materials for teaching and learning was a fundamental right. That also included access to and use of broadcasted signals and its content. Teachers and researchers used broadcasting materials on a regular basis with social science teachers working with snippets of news. Language teachers broadcasted that material in order to create authentic language learning experiences, and professors in universities used broadcasted signals and its content for research and study purposes. As new and exclusive rights for broadcasters were in the process of being created, the Representative was concerned that exceptions and limitations were not adequately addressed. As teachers and students had to be able to use broadcast content, the treaty needed to adequately address exceptions and limitations for education and for research purposes.

44. The Representative of the Society of American Archivists (SAA) stated that for at least eight decades, archives had included not just paper records but also important sound and video recordings, many of which had come from broadcasters. Those were invaluable documents that connected society with its past. It was impossible to think of any major event of the past 50 years, for example, the fall of the Berlin wall or the September 11 collapse of the twin towers, without the video images that came first from broadcasts. Those documents were what gave substance and impact to history and society. Thus, regardless of whatever measures were necessary to be put into place to provide the signal protection that broadcasters desired, it was essential that they did not add any further layers on the copyright protection that already existed in the content or extend that protection for terms beyond the current business needs of broadcasters. Archivists were responsible for heritage over a long passage of time, but the fortunes of all institutions and businesses were ephemeral, and they disappeared with regularity. Thus, adding a new right that effectively extended to the content of broadcast signals would add immeasurable difficulties for archives in preserving and providing access to those documents that were such important parts of the society's record.

45. The Representative of Centre for Internet and Society (CIS) stated that it had concerns about the weak language of limitations and exceptions in the proposed treaty. The proposed treaty was found to have adverse effects on legally accepted practices of sharing and using online works, libraries, archives, museums, educational, and research institutions, public interest organizations such as Creative Commons, organizations and efforts directed at making orphan works available online. There was a looming threat on the continuation of their ability to access and to provide the public with subsequent access to their collections, thus, there was a dire need to incorporate robust solutions into the treaty text to not have unintended consequences on societal progress. In such an environment, it was becoming impossible to

technically eliminate the role of computer networks insofar as the originating signal and transforming the relative content was concerned. The Treaty text did not totally benefit transmissions over computer networks. In light of the new business realities and technological realities, the deficiencies of the treaty were already apparent. The Representative urged the Committee to work to ensure that the resulting treaty was balanced in both letter and spirit.

46. The Representative of the Japan Commercial Broadcasters Association (JBA) stated that the broadcasting Treaty was an urgent issue for WIPO and the broadcasters in the world. The Representative expected that the treaty should provide an efficient way to fight against piracy on uses of programme-carrying signals, especially the uses of the Internet across international waters. The fight was urgent as there was a need for those basic rights to fight against such piracies on the Internet. As to right of retransmission, the Representative acknowledged the proposal from the Delegation of the United States of America. As that proposal provided various options for implementation under the various legal systems of Member States, it would be a good starting point for compromise. The Representative was encouraged as Member States looked to be interested in making progress as General Assembly had directed the SCCR to make best efforts to achieve consensus the outstanding issues in order to move toward a diplomatic conference. To achieve that mandate, the Representative requested that the SCCR convene extra sessions in order to secure enough time for discussions.

47. The Representative of Alianza de Radiodifusores Iberoamericanos para la Propiedad Intelectual (ARIPPI) congratulated the Delegations of Argentina and the United States of America for their respective proposals. The Representative stated that the proposals were in fact complementary with the proposal from the Delegation of Argentina addressing the object of protection, online signals, online transmission and distinguishing between deferred transmissions. The proposal from the Delegation of the United States of America was more of an explanation signaling an exclusive right prohibiting retransmission through the provision of adequate protection was effective only to the certain point of preventing piracy. The Representative believed that the retransmission of programs was actually not a topic under the mandate of that Committee. Thank you.

48. The Representative of the International Association of Broadcasting (IAB) stated the new text brought clarification and adequately took into account the contributions made by Member States at the previous session of the Committee. The Representative thanked the Delegation of the United States of America for its proposal. The Representative encouraged Member States to be flexible so that the Committee could fulfill the requests from the General Assembly and propose a complete text for the convening of a diplomatic conference to have a new treaty which would effectively protect broadcasters from piracy on the Internet.

49. The Representative of the North American Broadcasters Association (NABA) thanked the Chair and Committee for its ongoing efforts to establish an international instrument that would provide protection for broadcasting organizations around the world. The Representative expressed its support for the proposal by the Delegation of the United States of America contained in document SCCR/37/7. The proposal incorporated both strong protection for broadcasting organizations against the unauthorized retransmissions of their signals and the necessary flexibility to implement that protection in ways that reflected differences in domestic markets and legal systems throughout the world. The Representative was pleased that that critical issue continued to receive attention in that body and hoped that consensus could be reached in the near future.

50. The Representative of the Copyright Research and Information Center (CRIC) stated that the establishment of a broadcast treaty was an urgent task for the Member States. The Committee should not forget that an international treaty had to be at a minimum standard,

based on the speed of harmonization. As such, the transmission over the Internet should be excluded from the definition of broadcasting. The Committee had to make compromises so as to eliminate outstanding issues. Among them, was the object of protection, especially how to treat deferred transmission. The Representative strongly hoped that Member States would think about that issue based on the spirit of harmonization. The proposal provided various options for implementation according to each country's own domestic situation, therefore serving as a good base for the Committee's discussion to reach consensus. In order to work to reach consensus and ensure enough time for discussion, it was very important to hold an extra session focusing only on the broadcasting treaty.

51. The Representative of African Regional Intellectual Property Organization (ARIPO) welcomed the proposal made by the Delegation of Argentina. The Representative believed that the Committee would make progress towards the convening of a diplomatic conference on broadcasting treaty. The Representative welcomed the task force on the artist resale royalty right and looked forward to the report from the task force and supported the proposal made by the Delegations of Senegal and Congo on resale rights and encouraged ARIPO Member States to support and contribute constructively. The Representative stated that it looked forward to the regional meetings on limitations and exceptions, as those would add value and help in furtherance of the SCCR agenda.

52. The Representative of Communia stated that illegal streaming of broadcast signals was a serious issue, but broadcasters in most countries already enjoyed solid legal protection against signal piracy and other unauthorized uses. Copyright protection was available to them since broadcast content would qualify as audiovisual or cinematic works and broadcasters may invoke protections for those works and other rules or transfer of rights in their film production agreements. The existing protection might not be perfect, but if a treaty was to be concluded

at the present time, extreme caution was needed because the changes in that industry were occurring so fast that it seemed extremely difficult to overcome certain definitional problems around the subject matter of protection and the limitation of the group of right holders. There was a risk of either having an outdated treaty soon after being adopted or if the definitions were broader, of having a treaty provided unintended rights to intermediaries other than the traditional broadcasters. With that in mind, the Representative recalled that much of the content that broadcasters transmitted was of cultural importance. In order to avoid creating new obstacles to the access to culture, knowledge, and information, mandatory exceptions and limitations that were not less enabling for users than the exceptions that applied to copyright should be adopted. In addition, no rights should be given in works that were in the public domain or that were openly licensed.

53. The Representative of the Health and Environment Program (HEP) stated that as the well-being of society depended on what it consumed, with regard to broadcast information, it was important that the information remained trustworthy. It was important that individuals had free access to content that would lead to their well-being and particularly to ensure that it did have to be revised because something or the other was missing. The Representative stressed the need for limitations and exceptions as there were still some open cases that needed to their draw inspiration from legislation that was already been tried and tested, enabling those countries to catch up.

54. The Representative of the European Broadcasting Union (EBU) thanked the Delegations of Argentina and the United States of America for their proposals and stated that it looked looking forward to the discussion on both proposals during that week. On the timeline for the broadcasting treaty, the action plan from General Assembly envisaged a quasi-final decision the following year with a diplomatic conference in 2020. The average time necessary for WIPO treaties to enter into force was about five or eight years, meaning the broadcasting treaty would



enter into force around 2030. The Representative stated that as had been stressed by Group B, in its discussions, the Committee should consider the fact that the treaty should be relevant in 2030.

55. The Representative of African Intellectual Property Organization (OAPI) stated that it had close ties to WIPO in various intellectual property areas, particularly linguistic and artistic copyright. The Representative endorsed the introductory statement delivered by the Delegation of Morocco on behalf of the African Group and stressed its interest in exceptions and limitations as useful and necessary flexibilities for the social and economic development of societies. As regards its organization, the Representative stated that the resale right of that agenda fit into Annex 7 of the Bangui Accord, an international protection for artist resale rights, it fit into the Brussels Convention, which only provided rights to artists the first time their work was sold. The digital environment was also very important as regards copyright. There were different approaches under different legislations as regards to the protection of broadcasting organizations and the Representative was pleased that the Committee recognized the work of public order played by broadcast organizations and the right to information. However, the role of copyright and related rights was to maintain balance, and Member States had to do what they could to provide appropriate protection that respected that balance.

56. The Representative of the Motion Picture Association (MPA) expressed its appreciation to the Delegation of The United States of America for proposing a possible alternative approach reconciling the various issues that were important to address in the protection of broadcasting organizations treaty.

57. The Chair opened the floor to the Delegation of Argentina to present its proposal contained in document SCCR/37/2 and stated that the presentation would be followed by questions from Member States. Thereafter, the Chair stated that he would invite the Delegation of United States of America to present its proposal which would too be followed by questions from Member States.

58. The Delegation of Argentina thanked the civil society organizations present for reminding the Committee of the importance of broadcasters to social well-being. The rationale of that proposal was to be able to have more content that could be distributed to societies, because it was not precisely possible to distribute something that was not available to begin with. The Delegation hoped that broadcasters would be able provide information as well as make it accessible as a treaty that promoted programming of information would not neglect the aspect on making it accessible to the public as well. The Delegation stated that it had two documents which it had worked on, document SCCR/37/2 which was before the Committee, and the previous document SCCR/36/6, which was a revised consolidated text on protection and other matters. The Delegation stated that it had decided to work on two parts, Part A on consistence so far, including proposals on things still under debate, and Part B on the definition proposed at the previous session, including the proposal on deferred transmissions which was discussed at length during the previous session. The Delegation understood that several delegations had doubts, which was why it was proposing a simplified version on deferred transmissions, distinguishing between equivalent deferred transmissions and other deferred transmissions. Equivalent deferred transmissions were those that corresponded to linear broadcasts and were available to the public for a limited period of weeks or months, such as online repeats, on-demand catch-up services, and previews. This presented a possibility of having access to the broadcasts by the broadcaster but made at different times, hence, the rationale for the equivalent and the difference between simultaneous and quasi-simultaneous. Those were subject to digitalization so that the broadcaster could choose between various ways of broadcasting at different times. That included everything together with publicity in most cases and that was usually called catch-up services or video on demand. The timeline indicated was indicative, and it would depend on different regions or countries. Sometimes it was a question

of hours or weeks or days, so that time period under equivalent deferred transmission did not have a direct link with the time of protection of the broadcast. It just referred to online repeats or simultaneous or quasi-simultaneous broadcasts, but the timeline that was considered appropriate would be applied. As for other deferred broadcasts, very frequently not connected with linear transmissions, which could contain additional content, for example, scenes behind off camera, or scenes that were not available to the public, or the preparations for a concert or what happened before a match, those went on additional separate fields. Those did not fall into the main part of the broadcast but were options for the users and were of commercial value as well. The Delegation was proposing optional protection which could be subject to reciprocity. One party could provide that reciprocity for other broadcasts and another could offer it only if they received reciprocal treatment.

59. The Delegation of the United States of America stated that as it had stated at the previous General Assemblies and building on discussions in the most recent sessions of the SCCR, it had given considerable thought to ways to bridge the gaps between different positions on the draft broadcasters treaty, and had submitted the proposal contained in document SCCR/37/7, which it would be presenting. The SCCR had been discussing the proposed broadcaster's treaty for many years now and during that time, the Committee had developed a better understanding of the issues but had still not achieved agreement on the fundamental issues of objectives, specific scope, and object of protection. The Delegation stated that it had been difficult to reach consensus because of three main reasons. First, was the conceptual and practical difficulty of distinguishing between signal protection and content protection, as required by the Committee's mandate from the 2007 General Assembly. Second, was the fact that

there was very differing legal treatment among the Member States, involving different bodies of law. Those were primarily but certainly not solely telecommunications law and copyright or related rights. Third, there had been, for the entire period of time that the Committee had been discussing that issue, a shifting due to the rapidly changing use of technology by both broadcasting organizations and pirates. Given all of that context, if the Committee was to be able to move forward, it needed to find an area of common ground and at the same time to allow for a degree of flexibility in methodology in order to accommodate Member States' divergent systems of protection. The Delegation stated that it had, for some time now, suggested an approach based on a single right, a right to control the retransmission of the broadcast signal to the public, as the best way to address the core problem of signal piracy while still being able to achieve consensus at the international level. In response to some of the earlier interventions, one advantage of such a single-right approach was that it would not prevent reproductions made by consumers or libraries or researchers. The Delegation stated that its proposal built on that single-right approach but added flexibility for Member States to give room for the provision of that core right through a combination of different bodies of law. The approach would also give Member States the ability to adjust their own combination of bodies of law over time as technology and market conditions evolved in each country going forward. That would be a minimum of rights treaty so that each country or region would be free to provide additional, more specific rights as they saw fit. Turning to the specifics of the proposal, the Delegation asserted that it was important to explain what the proposal was and what it was not. It was not meant to be a comprehensive treaty text to replace the Chair's text in document SCCR/36/6, rather it was an insert to be incorporated appropriately into the existing framework of that text. The Delegation stated that its proposal dealt only with the scope of the rights to be granted and the nature of their implementation, so that it would appropriately be placed in Section 3 of the Chair's text. Other provisions in that text would remain in place, subject to further discussion by the Committee. Those would include, for example, the definitions, the object of protection, exceptions and limitations, and technological protection measures, among others, and those issues remained important to the Delegation of the United States of America, even though they were not explicitly noted in that new proposal. Article 1(i) of the proposal text included the exclusive retransmission right from the Chair's draft, and, that

was the exclusive right to authorize retransmission to the public of a broadcast signal using any means. The essence of what was new in the proposal could be found in the following paragraph, and that was Article 1(ii) which recognized that different Member States recognize the scope of signal protection differently while ensuring that they all did so in an adequate and effective way. Member States would be required to provide that exclusive right, but they would then have the ability to provide certain limitations on the scope of the right, as required by their national law, but only upon two conditions. One was that they had to provide transparency through a notification to WIPO of their specific limitations on the right, and second, they had to fill in any gaps in effective protection through their copyright or related rights laws. That approach drew on the approach of TRIPS, Article 14-3, which also related to the implementation of protection for broadcasters in national law, but it was a major substantive improvement for broadcasters in two important respects. First, TRIPS Article 14-3 offered WTO members a choice. They had to either grant broadcasting organizations rights to prohibit certain acts or provide the owners of copyright in the subject matter of the broadcast with the possibility of preventing those same acts. By contrast, under the new proposal, contracting parties would be required to provide broadcasting organizations with an exclusive right to authorize retransmissions to the public of their signals. Merely providing protection to the owners of the copyright in the programs carried by the signal would not be sufficient. Second, in circumstances where the contracting party imposed some limits on the exclusive right, that right had to be adequately and effectively supplemented by copyright or related rights that may be exercised by the broadcaster, not just the owner of copyright in the programme. For example, under current U.S. communications law, broadcasting organizations had the benefit of a retransmission consent requirement, meaning that entities who wished to retransmit their broadcasts had to obtain their consent. That requirement, however, in U.S. law was limited in its application in various respects, but retransmission consent was supplemented by U.S. copyright law, which also helped protect broadcasters against piracy. They were able to assert copyright claims in the content that they broadcast in various ways, so, for example, a broadcasting organization could assert a copyright claim in its broadcast day as a compilation copyright based on the selection and arrangement of the programming. A broadcasting organization could also assert copyright as the producer of original content contained in the broadcast, such as, for example, newscasts. And then broadcasters could also assert copyright under the exclusive distribution agreements that they entered into with the owners of copyright in the programs that were broadcast. Now, the totality of the rights provided to broadcasters in the United States of America through the combination of retransmission consent and copyright ensured the availability of strong and effective protection against unauthorized retransmissions to the public. Other countries undoubtedly had their own ways of achieving that outcome and could similarly benefit from the flexibility of that proposal. Paragraphs X, Y, and Z were labeled X, Y, and Z because the Delegation was not exactly sure where the Chair would want to place them in the text. Paragraph X was essentially a safeguard provision. It sets out safeguards from the perspective of both users and copyright owners that were owners of the programs. The first subparagraph helped users by making clear that the reference to copyright and related rights in Article 1(i) did not require or envision the addition of new layers of copyright protection or affect any existing exceptions and limitations in copyright and related rights systems. The second subparagraph helped copyright owners by making clear that the new signal protection did not affect existing copyright and related rights protection using standard WIPO Treaty language based on Article 7-1 of the Geneva Phonograms Treaty. Paragraph Y dealt with methods of implementation. It was based on Article 3 of the Geneva Phonograms Convention, ensuring that contracting parties had the flexibility to draw on a wide range of domestic laws to implement the treaty obligations, and that would include telecommunications law, copyright and related rights, and other bodies of law relied on by different Member States. And finally, Paragraph Z addressed the practical ability of broadcasters to assert copyright or related rights claims in countries that relied on such claims as part of their overall package of rights to ensure adequate and effective protection. In SCCR meetings over the years, the Committee had heard that copyright owners supported the ability of broadcasting organizations to help prevent piracy

in places where they themselves may have had difficulty doing so because of a lack of presence or resources or due to various procedural impediments. Paragraph Z, therefore, would require those Member States to allow broadcasting organizations to enforce those rights, but, of course, only to the extent that they were authorized to do so by the owner of the copyright or related rights in the programming, and the agreement statement that the Delegation was proposing made clear that contracting parties may impose their own conditions on how that type of authorization could be granted. In the United States of America, for example, that would require the grant of an exclusive license in written form. Overall, the Delegation believed that that proposal represented a pragmatic and workable approach to bridging the divergent systems for protecting broadcasters among the different WIPO Member States. The Delegation hoped that it could lead to greater consensus on common goals in order to move the Committee's work forward. The Delegation stated that it was more than happy to respond to any questions and also to listen to the various reactions and views from other delegations. The Delegation thanked the Delegation of Argentina for their new constructive proposal contained in document SCCR/37/2.

60. The Delegation of the Russian Federation stated that it had studied in detail the proposals, particularly the one coming from the Delegation of the United States of America and believed that the proposals would give the Committee a very good chance of finding an agreeable solution with regard to the treaty text. Those proposals gave each Member State the possibility of taking part in that agreement in a way that in no way limited or violated their own rights or sovereignty and could bring the Committee closer to an agreement.

61. The Chair stated that for those who had been following the discussions in the informals, Member States had discussed the proposals from the Delegations of Argentina and the Delegation of the United States of America. Member States had also discussed the Chair's text in full, namely the definitions, the scope of protection, the rights to be accorded, and other issues. After having gone through those discussions, the proposals were now consolidated in a single Chair's text, and the reason for that was because the General Assembly had given the Committee a mandate that at the following General Assembly, the SCCR should present a recommendation as to the next steps for the broadcasting treaty, and specifically as to whether there would be a convening of a diplomatic conference. In order for the Committee to do that, there needed to be a working document, in which all of the proposals were reflected completely and comprehensively and within the context of all the other provisions in the proposal. The Chair stated that the Chair's revised consolidated text was not a Committee text, it was the Chair's text, as it presented what the Chair thought to be a fair reflection of the different proposals and discussions and had square brackets in areas which the Committee could not agree upon. The text also had square brackets in areas which there were some editorial issues, with the goal being that there was one single working document which reflected all the proposals and what had been achieved over the previous 2 days. Reading the Chair's text, the Chair stated that there no longer was Part A and Part B as those parts had been consolidated and simply reflected, the Chair's text. There was an agreement to retain the phrase transmissions over computer networks shall not constitute broadcasting, clarifying the scope of the treaty. The proposal from the Delegation of Argentina was reflected in several new proposals, specifically in the new definition of deferred transmission. Although there were some refinements that needed to be made, the Committee had by in large agreed on the language of prebroadcast. What was not agreed upon was deferred transmission and it remained the single most important policy issue on which the Committee needed to find a landing and address as a policy matter. There were a lot of square brackets around concepts related to deferred transmission, how much of it was protected and how much of it was within the scope of that convention. On object of protection, there was now an alternative 1 which was the old proposal and that was now alternative 2 which was the Delegation of Argentina's proposal in document SCCR/37/2. The proposal from the Delegation of Argentina indicated that for simultaneous, near simultaneous and equivalent deferred transmission, there would be mandatory protection,

but for any other deferred transmission, parties may provide protection on the reciprocal basis as was reflected in alternative 2. There were agreed statements which clarified some of the elements of equivalent deferred transmissions and other deferred transmissions as well as what limited period of weeks or months meant. On the rights to be granted, a lot of changes were also in relation to the proposal from the Delegation of the United States of America. The old proposal and the proposal from the Delegation of the United States of America started with the sentence, broadcasting organizations shall have the exclusive right of authorizing the retransmission of their program carrying signal to the public by any means meaning there was a right for broadcasters to authorize retransmission that was not connected to copyright. The proposal the Delegation of the United States of America highlighted a possibility for contracting parties to confine and limit the application of protection in some ways, provided that overall there was adequate and effective protection, which may be made through a combination of the right in 1.1 and copyright and related rights. That was meant to reflect different systems around the table, the U.S. system plus other systems as well. The old proposal from the Delegation of the United States of America which related to where enforcement through a combination of retransmission of signals as well as copyright. Proposals X and Y of the proposal from the Delegation of the United States of America moved to other issues. In other issues, there were provisions from part B that had been proposed by other countries. Under beneficiaries of protection, there was a proposal by the Delegation of the European Union and its Member States in terms of the beneficiaries of protection right being only accorded in situations where the headquarters of the broadcasting organizations was within the contracting party and the broadcast was transmitted from transmitters situated in the same contracting party. The Delegation of the United States of America said it needed to consider that and it was in square brackets. There was a proposal from the Delegation of Brazil in square brackets, which received some discussion, but no consensus yet. On proposal from the Delegation of the United States of America X and Y were moved and renamed under implementation and relation to other rights. One of the issues that was raised was whether the phrase, broadcast was needed in F and G and E needed to be further refined. The Chair stated that what happened in informals is that the Member States were able to bring the different proposals into one working text. There was a need to have a discussion on the policy issue of deferred transmission as it continued to be an issue with different views around the table.

#### **AGENDA ITEM 5: LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES**

62. The Chair opened Agenda Item 5 on limitations and exceptions for libraries and archives and Agenda Item 6 on limitations and exceptions for educational and research institutions and persons with other disabilities. The Chair stated that discussions would include considerations on the Report on Copyright Practices and Challenges of Museums, document SCCR/37/6. The Chair stated that statements made by delegations could cover both Agenda Item 5 and Agenda Item 6. He informed the Committee that discussions would include the consideration of specific elements of the action plans, starting with a presentation from Dr. Kenneth Crews on certain typologies.

63. The Delegation of El Salvador, speaking on behalf of GRULAC noted that the agenda item was of extreme importance. The Delegation underscored the essence of a balance between the interest of rightsholders and the collective interest of society at large and stressed the importance of this for access to knowledge and the right to education, in which libraries, museums and archives and teaching and research institutions play a predominant role. The Group proposed that the exceptions and limitations should ensure that the right is universal and inclusive to make them relevant for persons with other disabilities. It reiterated that actions agreed on and the framework of the action plan were a first step in the right direction and looked forward with interest to reports on the studies, and updates of studies that were being carried out according to action plans as well as reports on the typologies, libraries, teaching and research institutions. The Delegation highlighted the importance of ensuring clarity, inclusivity,

and transparency in the work and activities within the framework of the Committee and the accessibility of all documents to members.

64. The Delegation of China expressed its openness to the agenda item because of its importance for the development of culture in all countries. The Delegation looked to engage in constructive discussions and share the experience of China in that regard. The Delegation reiterated that the action plan approved during the Thirty-Sixth session laid a very solid foundation for discussion and expressed willingness to actively participate in discussions and support the holding of seminars and studies to promote that item. The Delegation hoped that the subsequent session could raise more consensual support on the substantive elements of that agenda item.

65. The Delegation of Lithuania, speaking on behalf of the CEBS Group welcomed the work already started under the action plan on exceptions and limitations for libraries and archives as set out in document SCCR/36/7. The CEBS group acknowledged the fundamental role played by libraries and archives and museums in social and cultural development and looked forward to the presentation of the museum's scoping study by Professor Benhamou. The CEBS Group underscored, among its concerns, the lack of awareness of the museum community of copyright in general and specifically its licensing as well as exceptions and observed that there was scope for awareness raising activities on existing exceptions and limitations regimes, which could be used by museums. The CEBS Group welcomed the update on archives and information in the Crews study and the additional research that was being done by Professors Ronan Deazley and Victoria Stobo and looked forward to the preliminary report, and to the discussion of the final report at the following session of the SCCR. The CEBS Group thanked Dr. Kenneth Crews for working collaboratively on the typology for education that was to be presented at SCCR 38 and looked forward to the preliminary introduction. The Group was pleased that the report looked at perceived obstacles in national legal practices, the implementation of current international treaties, noting that the evidence-based approach could give solid basis for discussions and grounds for exchange of the best practices on how to address potential gaps in national laws. The Group commended the Secretariat for its work on the organization of the regional summit on the importance of education and research institutions to the society as well as the need to ensure access of works for persons with other disabilities. The CEBS Group believed that the international legal frameworks in place gave enough space for establishing adequate national legislation in the area and welcomed the adoption of the action plans on limitations and exceptions for educational and research institutions, and for persons with other disabilities, through SCCR 39, contained in document SCCR/36/7, and looked forward to its implementation. The Group was pleased to hear that the study by Professor Reid and Professor Ncube was to be updated and expanded and that a study on digital issues for education would be prepared. The CEBS Group looked to the preliminary presentation of the typology on education carried out by Professor Daniel Seng. It reiterated its belief that the evidence-based approach could give solid basis for discussions and grounds for exchange of the best practices on how to address potential gaps and national laws and commended the Secretariat for its work on the organization of the planned regional seminars on the issue.

66. The Delegation of Indonesia, speaking on behalf of the Asia and the Pacific Group stated that a balanced copyright system that considered copyright and rightholders as well as the larger public benefit by enhancing access to these works promoted cultural and science and education. The Group stated that exceptions and limitations have an important role to play in the attainment of the access to knowledge and education for all and noted the progress achieved on the discussion on all subjects on the limitations and exceptions for libraries and archives which had also been reflected on the Chair's chart on limitations and exceptions for libraries and archives. The Asia and the Pacific group reiterated that the agreed action plans had set good basis for further consideration of the committee, to progress on the issues. The Group reaffirmed its commitment to remain constructively engaged in the discussion and

expressed belief that the regional meetings in 2019 as agreed under the action plans at SCCR 36 was an important component of the work of the Committee. The Group looked forward to the regional meeting in the Asia Pacific Region and stated that it would enable all stakeholders from policymakers, beneficiaries and practitioners the opportunity to analyze the situation of libraries, archives and museums, as well as educational and research institutions, and areas for action with respect to the limitations and the exceptions regime and the specificities of the region. The Group stated that the regional perspective would later enrich the discussions on limitations and exceptions planned under the action plans. The Group also looked forward to the discussion on the report on copyright practices and challenges of museums, prepared by Professor Benhamou and hoped it would contribute to the Committee's deliberations on the matter. The Group looked forward to the education typology by Professor Daniel Seng and hoped that all Member States would engage constructively on the issues of limitations and exceptions based on previous discussions and the agreed action plans towards positive direction to deliver real progress on the issue. The Group reiterated the commitment of its members to actively participate on each of the agenda items of limitations and exceptions.

67. The Delegation of Canada, speaking on behalf of Group B stated that libraries and archives play an important role in cultural and social development. Group B noted that studies presented during previous sessions of the Committee showed that several Member States had established national limitations and exceptions regimes as regards libraries and archives and stated that the regimes worked well and responded to national interests while according with the international framework. The Group welcomed the development included in SCCR 36 in the spring of 2018, of action plans on limitations and exceptions for libraries, archives and museums and thanked the Chair for his work in the matter. Group B stressed that there was no consensus on the normative work on limitations and exceptions for libraries, archives and museums but expressed belief that the action plans in document SCCR/36/7, provided a practical way for the Committee to continue its work on the issues. Group B proposed document SCCR/26/8 on the topic of limitations and exceptions and expressed belief that the objectives and the principles laid out in the document could compliment the Committee's work. Group B welcomed the exchange of experiences in the Committee with regard to limitations and exceptions for educational and research institutions. The Group reiterated that the studies discussed reported that several Member States had already implemented domestic limitations and exception regimes for educational and research institutions which worked well and reflected both national context and the international legal framework and expressed its position that the work of the SCCR 37 should reflect the existence of well-functioning national regimes and compliment the similarly well-functioning international framework. Group B welcomed the developments included in SCCR 36 of an action plan on limitations and exceptions for educational and research institutions and persons with other disabilities and thanked the Chair for his work in the development of the action plan. The Group wished to highlight the objectives and principles proposed in document SCCR 27/8 on the topic of limitations and exceptions for educational teaching and research institutions and reiterated its belief that the objectives the principles laid out in the document could complement the Committee's work. Group B noted that there was a lack of consensus around normative work on limitations and exceptions for educational and institutions but looked forward to further enhance the Committee's mutual understanding of the issue and expressed readiness to engage in the discussions as the Committee explored possible common ground.

68. The Delegation of Morocco speaking on behalf of the African Group acknowledged the importance the agenda item. The Group reiterated that the issue of limitations and exceptions for libraries, archives, and research institutes, and people with other disabilities should be one of the priorities of the agenda of the Committee and agreed that the debate on limitations and exceptions as approved should progress. The African Group congratulated the Chair and the Secretariat on the work done and looked forward with great expectations to the report on the progress made. The Group proposed that the results of the activities in the plan of the action

should be open to discussion on the basis of the 2012 mandate, and the SCCR should work on a special legal instruments in that area and looked forward to the report on the discussions. The African Group expressed willingness to participate or conduct the seminar on the issue and actively take part in the work underway. The Group thanked Mr. Hamil for the study conducted in the African Group.

69. The Delegation of the European Union and its Member States acknowledged the important role that libraries, archives and museums play in the dissemination of knowledge, information, and culture, along with the preservation of history and expressed its value of the subject of support of education and research institutions, and for people with disabilities, both in the analog and the digital worlds within the existing international copyright framework. The Delegation stated that it was important to discuss how a balanced international copyright framework could enable libraries and archives and museums to fulfill their public interest missions, and support educational and research institutions and people with disabilities. The Delegation expressed willingness to engage constructively in the work as set out on the action plans on limitations and exceptions through SCCR 39, contained in document SCCR/36/7, and reiterated its support of an approach where the work of the Committee focused on a way in which limitations and exceptions could function efficiently within the framework of existing international treaties mindful of the important role that licensing plays in many WIPO Member States. The Delegation stated that a meaningful way forward was a systemic understanding of the problems faced by libraries, archives, educational and research institutions and persons with other disabilities against the needs to give full solution to those available under the current international framework. The Delegation looked forward to the preliminary report on the work carried out regarding the update of the Crews study with a view to include archives and the scope on museums which was due. The Delegation looked forward to learn more about the work on the typology of various existing legislative and other mechanisms related to the application of the limitation and exceptions regime to educational and research institutions. The Delegation stated that it could not support work towards legally binding instrument at the international level or any preparations in this regard but expressed belief that a possible outcome could be an exchange of best practices and guidance regarding the national implementation of the international treaties.

70. The Delegation of the Islamic Republic of Iran stated that having an effective balance and contributing limitations on the exceptions regime for the benefit of both rights holders and the general public interest on the issue of limitations and exceptions for libraries, archives museums, educational institutions and persons with other disabilities was important. The Delegation expressed its belief that the work of the Committee on limitations and exceptions was not intended only to reach a common understanding among Member States but mandated to create a legal framework for exceptions and limitations. The Delegation supported a legally binding instrument in the area of exceptions and limitations based on the mandate given to the Committee by the General Assembly and the notable progress achieved on all subject matters. The Delegation stated that norm setting is the only way to ensure that WIPO Member States provide a basic level of harmonized limitations and exceptions for such institutions and pointed out the discussions, studies and works by different experts and different third parties on limitations and over the year. The Delegation stated that the action plans the Committee agreed on in the previous session included some important elements for fulfillment of the mandate and constituted good basis for further deliberation on the issue. The Delegation stated that activities contained in action plans were positive and assistive tool for the Committee to make progress on the discussion on limitations and exceptions and pointed out the regional seminars for analyzing the situation on all subject matters as the most welcomed inclusion. The Delegation stated that the main objective of action plans should be the fulfillment of mandate and proposed that the SCCR should undertake a stock-taking exercise and make recommendations to the General Assembly according to its mandate, at the end of the implementation of the action plan. The Delegation looked forward to presentation and



discussion on the Report on Copyright Practices and Challenges of Museums contained in document SCCR/37/6 and welcomed the Secretariat's updating reports on the actions undertaken in implementation of action plans.

71. The Delegation of Senegal aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group and reiterated its interest in the issue of limitations and exceptions. The Delegation stated that the Committee must establish an appropriate balance between the rights of rightsholders and the interests of the public at large. The Delegation endorsed the activities to be undertaken in the action plan as appropriate measures to allow the Committee to achieve its common goal and thanked the Secretariat for the steps it had taken, particularly the organization of the regional seminars, which would undoubtedly contribute to improving mutual understanding of the needs and the concerns of developing countries and least developed countries (LDCs) for access to knowledge. The Delegation stated that education, training and development are important to the countries. The Delegation supported the action plan and expressed willingness to participate constructively to the debate. It called for an inclusive debate, which would allow the Committee to collect the views of all stakeholders and fulfill the mandate given by the General Assembly.

72. The Delegation of Malawi aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group and stated that libraries, museums, education and research institutions, as well as archives played a crucial role in social and cultural development by facilitating access to information. The Delegation stated its appreciation of the input and role played by rightsholders in making their works available to the public and stated its willingness to participate in discussions that would provide a balanced framework at the international level with an outcome that did not compromise the rights of rightsholders.

73. The Delegation of India stated the significance of limitations and exceptions for research institutions and people with other disabilities for the developing countries as enabling tools for education and access to knowledge, besides advancement in culture. The Delegation supported the proposed balanced regime to give rightsholders their due and ensure an environment to learn, create and innovate for all and noted the progress made on the discussions on all topics on the limitations and exceptions for libraries and archives. The Delegation applauded the effort made in incorporating the amendments in Action Plans on Limitations and Exceptions Through SCCR/39 (2nd Meeting in 2019), document SCCR/36/7, which brings the subject of limitations and exceptions on libraries and archives and museums on the one hand, instead of taking them up separately as a positive move. The Delegation stated that the action plan besides encouraging activities like sharing of past experiences and undertaking scoping studies and seminars, among others should also provide direction on eventual consensus-based and harmonized outcome document on limitations and exceptions. The Delegation expressed willingness to contribute constructively to the deliberations of the Committee in the true spirit of multilateral cooperation.

74. The Delegation of Malaysia aligned itself with the statement made by the Delegation of Indonesia on behalf of the Asia and the Pacific group and stated that the key to the proper functioning of the copyright system is balance as reflected in Article 7 TRIPS which alludes to the need to maintain the balance between rightsholders and that of larger public interests. The Delegation stated that the Sustainable Development Goals (SDGs) gave the Committee impetus to the task to ensure that knowledge and education reach the farthest first and to promote inclusive societies and welcomed the progress achieved by the SCCR in the area limitations and exceptions noting that the Marrakesh Treaty which had become WIPO's most popular Committee came from the Committee. The Delegation applauded the success of the SCCR at its Thirty-Sixth Session in adopting the action plans on limitations and exceptions which would guide its work through to SCCR 39 and the flexibility and the constructive spirit of all Member States as the backbone for the success. The Delegation stated that the regional

meetings as set out in the action plans would be an opportunity for all stakeholders to exchange views, share ideas, gather feedback on specificities of trends, of copyright and limitations in the respective regions and work towards action-oriented outcomes. It noted that the regional perspectives could further enrich the discussion at the scheduled limitations and exceptions conference. The Delegation announced that Malaysia, in respect of promoting a balanced copyright system, had successfully hosted the World Library and Information Congress which congregated librarians, policy makers, copyright experts and other stakeholders to deliberate on the role of libraries in promoting access to information and knowledge. The Delegation informed that the Congress, themed “Transform Libraries, Transform Societies” reached its aim of promoting libraries and librarianship at national, regional and international levels. The Delegation stated that Kuala Lumpur had been selected as the UNESCO World Book Capital for the year 2020 and that would further boost the development of Malaysia’s local book industry and promote access to books and reading throughout the country. The Delegation stated that the effort to ensure the success of developing a knowledge-based society, that promotes inclusive education and ensures accessible reading materials could not be undertaken by no one party alone and required the contribution of all stakeholders from authors, publishers, collecting societies, policymakers and beneficiaries. The Delegation stated that there was room for progress and the action plans presented a good roadmap.

75. The Delegation of the Russian Federation acknowledged the work that had been carried out by the Committee on the issue of limitations and exceptions and particularly highlighted the studies that were conducted and presented. The Delegation stated that the Committee had a clear idea of the situation on limitations and exceptions in many countries around the world and that allowed it to progress in its work. The Delegation noted proposals made by the delegation of China and other countries about the necessity of conducting regional seminars and proposed for an important conference on limitations and exceptions that could come up with recommendations which would be a sort of platform for further work of the Committee rather than the regional seminars. The Delegation expressed its support of the action plans and stated that it was necessary for the Committee to concentrate its efforts on realizing the action plans. The Delegation proposed that the two documents on all issues related to archives, libraries, research institutes and educational institutes should be merged to the Committee’s efforts are concentrated and more effective. The Delegation expressed willingness to work cooperatively with others in the context that had been decided by the Committee and in line with the action plan.

76. The Delegation of Brazil aligned itself with statement made by the Delegation of El Salvador on behalf of the GRULAC and stated its support of a copyright system that takes into account the interests of rightholders and scientific and cultural goals in a balanced manner. The Delegation stated that adequate incentives for the creation and the production of works should go hand in hand with the promotion of knowledge, and in that sense, limitations and exceptions played a key role in attainment of the rights of education without prejudice benefiting the sustainability and the efficacy of the copyright system. It stated that this also applied to the limitations and exceptions for libraries, archives, educational research institutions and persons with other disabilities in particular, due to the dramatic changes brought by the digital environment and the new dynamics generated by its advent. The Delegation stated that legal certainty and protection of authors as well as access to key stakeholders was beneficial to the copyright system itself and also to all Member States in the Committee. The Delegation expressed willingness to participate in discussions and looked forward to continuing the constructive work and discussion with all Member States. The Delegation stated that the regional seminars could further clarify and illuminate the role of the Committee and that progress was made by forward movements.

77. The Delegation of Uganda aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group and stated that exceptions and limitations in corporate

law was an important tool for balancing the rights of owners and the public. The Delegation stated that several WIPO commission studies had shown that exceptions and limitations were treated disparately across different Member States and that the challenges posed by the digitization of published works for users were not envisaged in existing international instruments. It looked forward to a harmonized minimum standard approach on how Member States should treat limitations and exceptions for education and research activities for libraries and archives and museums and for persons with other disabilities that would create transparency and credibility. The Delegation welcomed the action plans on limitations and exceptions that were achieved by SCCR 36. It stated that the success of the action plans and approved activities would help bridge existing gaps and clarify Member States' positions and lead the Committee towards the text-based negotiations for a legal binding international instrument in accordance with the decision of the 2012 General Assembly. The Delegation looked forward to constructive discussions on the issue.

78. The Delegation of Japan stated that it was essential for the Committee to aspire to appropriate balance between the interest of the rightsholders and the public interest and expressed willingness to contribute constructively to further discussions. The Delegation informed the Committee that Japan had deposited the instrument of accession of the Marrakesh Treaty on October 1, 2018 and the Treaty would go into effect with respect to Japan on January 1, 2019. The Delegation hoped that more Member States would accede to the Marrakesh Treaty and that the close border exchange network of the treaty would expand.

79. The Delegation of the United States of America stated support for the work of the SCCR to develop high-level principles and objectives for national copyright limitations and exceptions for libraries and archives, and for educational activities. The Delegation noted that it had put forward proposals of objectives and principles for libraries and archives contained in document SCCR/26/8 and for educational activities in document SCCR/27/8 and stated that the approach would establish an international consensus on areas where appropriate limitations and exceptions would be desirable at the national level. The Delegation stated that those principles when developed would provide a framework of common understanding as a basis for seminars and workshops and providing technical assistance in developing high quality legislation and WIPO and its members could work together to improve and update their national laws. The Delegation stated that it supported that approach over binding norm setting since the international framework provided appropriate flexibility pursuant to well-established standards for countries to enact limitations exceptions to advance their own social, cultural and economic policies. The Delegation informed the Committee that it was in consultation with many delegations on the approach and the exchanges were productive and looked forward to continuing them.

80. The Delegation of Ecuador aligned itself with the statement made by the Delegation of El Salvador on behalf of the GRULAC and stated that it was important to have a balanced system between the interests of rightsholders and society as a whole. The Delegation stated that the work of the Committee was directly linked with achieving the development objectives, Inter alia number 4, which guaranteed inclusive highquality teaching and allowed people to learn throughout their life cycle. It noted that archives and libraries played an important part for social development and in the compilation of documents, archives are important and the issue of copyright is key here. The Delegation noted that users experienced challenges when those institutions try to harmonize new technologies with their existing services and stated that there should be an effort to align international standards in the field to give assurance for all users. The Delegation stressed that there was a grand diversity of domestic legislation and this was difficult for archives, libraries and research institutions in managing their work. The Delegation informed the Committee that Ecuador had worked hard to achieve a greater level of flexibility by recognizing the important role that libraries and archives play in social development and that Ecuador's national archives conserved documents and preserved documents for people with

disabilities. The Delegation stated that it was working with the Secretariat to create document 37/7, which contained the action plan or rather the 36/7 on limitations and exceptions. It hoped that the Committee would be able to come up with the mandatory document for members, a binding document. The Delegation expressed willingness to continue discussions to achieve concrete results.

81. The Delegation of Botswana aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group and stated that limitations and exceptions were an important tool in ensuring the balance for both rightsholders and the larger society for continuous creativity and exchange of information for use by libraries, archives and education research and access by persons with other disabilities. The Delegation stated that its focus was on balance as the discussions continued. It applauded the Secretariat for the work already begun in implementation of the action plans on limitations and exceptions and welcomed the organization of regional seminars whose outcomes the Delegation believed would enhance the discussions of the Committee. We looked forward to presentations that would be made on the topics of limitations and exceptions. It expressed willingness to continue in the discussions.

82. The Delegation of Sudan aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group and highlighted the importance of achieving a balance between the interests of rightsholders and those of society as a whole. The Delegation noted the developments in the digital environment which raised new challenges, legal challenges among others and stated that the Committee had to facilitate access to works by the public.

83. The Representative of the Electronic Information for Libraries (eIFL.net) looked forward to the update on implementation of the action plan on limitations and exceptions and to the specific presentations for the day. She stated that an important feature of the action plans was that they built on the existing work of the Committee. The Representative stated that the work towards minimum mandatory limitations and exceptions was extensive, substantive, and had enjoyed support and engagement from many Member States over ten years. She pointed out that the regional seminars, as part of the action plans provided opportunity to discuss the products of the SCCR work to learn about practical issues on the ground, in particular, cross border issues, and to test the ideas and the proposals with regional stakeholders. The Representative stated that the updated studies on limitations and exceptions provided a good basis for understanding how the issues had been addressed in the laws of different jurisdictions, the gaps in national laws and the pace of change. She informed the Committee that an analysis of the 2017 edition of Professor Crews' study compared to the 2015 version, showed that it could take another 70 years for the laws of every country to catch up with the activities of libraries and archives and stated that it could not be an acceptable situation for the Committee. The Representative stated that the key question was how to address the gaps and how to speed up the pace of change and acknowledged that the pace of change for one sector, persons with print disabilities, had increased noticeably because of the Marrakesh Treaty.

84. The Chair stated that observers who did not finish their statements could give full written statement to the Secretariat.

85. The Representative of the Library Copyright Alliance (LCA) stressed the importance of instruments in the area of limitations and exceptions and why best practices and guidance were not sufficient. The Representative noted that libraries, archives and museums and educational and research institutions all operated in a cross border manner because of digital networks and copyright could act as a barrier to those cross border activities. He pointed out that the European Union had recognized the importance of exceptions to remove such barriers and its directives that include the software directive, the Marrakesh directive and the digital single market directive now under discussion. The Representative stated that international problems called for international solutions and that many countries failed to act at a domestic level without

the impetus of a formal instrument. He stated that the rapid implementation of the Marrakesh Treaty was proof of the impact an instrument could have on domestic law.

86. The Representative of Communia requested Member States from developed countries to soften their position against the need to harmonize copyright exceptions for the benefit of public interests related to access to knowledge and freedom of expression. The Representative stressed that those interests were protected by human rights and were of no less importance than the interests of rightsholders which were highly harmonized. She pointed out that the European Union was going to adopt mandatory exceptions for various uses including for text and data mining and library and cultural heritage institutions. The Representative stated that the new exceptions were designed to work across borders, have strong protections against contractual overrides and give enough flexibility for Member States, namely on the level of remuneration and stressed that the regional effort showed that agreeing on minimum standards was possible, while still taking into account local specificities. The Representative informed the Committee that Communia had worked together with other NGOs on the draft of the Civil Society Proposed Treaty on Copyright Exceptions and Limitations for Educational and Research Institutions (TERA) which was based on previous works by the committee and incorporates provisions of existing international agreements and of national laws. The Representative hoped that the draft would be of use to the Committee, and would be taken into consideration during the regionals works towards the creation of guidance and recommendations to build an international instrument.

87. The Representative of the International Federation of Library Associations and Institutions (IFLA) welcomed the action plans adopted by Member States at SCCR 36 as action and results needed at the international level after more than a decade of talking and looked forward to hearing Professor Crews' latest report on issues relating to limitations and exceptions for libraries. The Representative stated that libraries needed comprehensive solutions for sharing knowledge, particularly those discussed over the decade and summarized in document SCCR 34/5. The Representative highlighted information from the study that the creation of rights fit for the digital age had massively outpaced creation of exceptions for the digital age, eroding the balance between users and owners' rights that is fundamental to fair and effective copyright regimes. He stated that the existing patch work meant that not only libraries and the users were distressed, but also publishers and other rightsholders who faced a confusing, unworkable morass of provisions and terms. The Representative pledged to work with Member States and the Secretariat to outline clear objectives and outcomes desired from the regional meetings and to help identify local experts who could bring to life the impediments, lack of international norms present for those working in libraries, archives in all regions of the world.

88. The Representative of the Centre for Internet and Society (CIS) stated that the regional seminars would be an excellent opportunity for the diverse communities working on and promoting access to research data, archival material and developing materials to benefit persons with other disabilities in India. It would be an opportunity for them to interact with various stakeholders and government delegates to help formulate concrete principles that should inform the international legal instrument which she hoped would be developed and discussed sooner. The Representative urged the Secretariat and Member States to actively work with civil society to identify and invite such community leaders to enable substantive and comprehensive discussions.

89. The Representative of Education International (EI) applauded the advancement made in the work around the action plans and looked forward to making normative progress on the agenda items. The Representative stated that many teachers and researchers could not make use of creative works for teaching and learning and hoped that WIPO as a specialized United Nations agency would ensure that the United Nations moved forward on quality education. She stated that it was important to create authentic opportunities for language learning and these

opportunities include collaboration and exchange of creative works from classrooms across borders. The Representative stated that restrictive corporate regimes and a lack of the international copyright instrument that addresses cross border online collaboration and exchange, a common feature of education did not empower but creates barriers for teachers in their daily work. The Representative stated that EI had endorsed TERA because of the reasons mentioned. She informed the Committee that TERA built on the work already done by the Committee, carefully balanced the rights of creators and users and at the same time took into account complex educational realities and addressed gaps that only an international treaty could fill. The Representative hoped that the Member States would discuss its text with the members of EI in the different regional meetings and looked forward to supporting a global commitment to making copyright work for education.

90. The Representative of Knowledge Ecology International, Inc. (KEI) stated that enforcement was becoming more efficient and in some cases automated and driven into more trade agreements. He underscored the importance of having realistic exceptions for society that are consistent with practices considered appropriate. The Representative expressed support for text-based negotiations are important and invited the Committee to look at the proposed treaty on education and research. He stated that archives and preservations were areas for possible norm setting and it would be easier to reach a consensus in that area rather than in others. The Representative proposed that the Committee should think about updating older instruments, such as the Tunis Model Law on Copyright as it related to the provisions on exceptions, where the 1971 Berne appendix which was a failed instrument on access for developing countries was outdated.

91. The Representative of the Society of American Archivists (SAA) stated the essential functions of archivists are hamstrung by antiquated copyright laws. The Representative was pleased that SCCR 36's action plan called for an archive study but was disappointed that there was no preliminary report available on the day. The Representative encouraged the Secretariat to quickly commission a substantive work to be presented at the following SCCR and stated that the ability to copy was essential to SAA's mission. The Representative highlighted UNESCO's universal declaration on archives that states that archives must be accessible to everyone to safeguard society's memory and stressed that its fulfillment required archivists to copy for purposes of education, research, heritage and securing of personal rights. The Representative stressed the need for balanced exceptions operating across borders. He stated that SAA members wanted to be ambassadors of the copyright system, not law breakers, that why SAA seek exceptions to meet UNESCO's mandate to respect the pertinent laws and rights of individuals, creators, owners and users and contribute to the promotion of responsible citizenship. The Representative solicited the Committee's help to meet those mandates.

92. The Representative of the Program on Information Justice and Intellectual Property (PIJIP) urged the Committee to use the session to add content to the agenda for the regional seminars. The Representative stated that the intent of the following year was to promote action on remaining limitations and exceptions agenda items and encouraged that each regional meeting should be designed to inform and promote endorsement of a draft instrument on whatever form on the remaining issues in each region. The Representative proposed that those drafts should then be reported back to the conference on limitations and exceptions in November of 2019, where the SCCR should discuss the merits of the different forms of instruments adopted at the regional meetings. He stated that the regionals should have as part of their agenda, the consideration of the terms of the civil society draft treaty on education and research activities that was released at a workshop that morning.

93. The Representative of the Corporación Latinoamericana de Investigación de la Propiedad Intelectual para el Desarrollo (Corporación Innovarte) stated that all the preparatory studies for the Committee with regard to exceptions and limitations for people with disabilities for education

libraries and museums and archives, with regard to these exceptions and limitations are not accessible in digital format to the majority of countries because they do not have adequate access through technological means. The Representative observed that the existing flexibilities were not adequate and only countries with more resources and more institutionalization were able to access through the available means. He stated that developing countries and the groups within the societies required public policy for the protection of their interests and stressed that it was time to finalize the work adopted by the Committee and adopt the unresolved instruments on mandatory exceptions for academic institutions libraries, museums and archives in order to launch the process and to not lose the work that had already been achieved. The Representative stated that the regional seminars around the plan of action were needed with regard to the texts and principles put forward by the civil society and hoped that they would come out with useful suggestions for the work of the Committee.

94. The Representative of Federazione Unitaria Italiana Scrittori (FUIS) informed the Committee that a survey on the economic situation of writers carried out by FUIS in Italy highlighted that only 3.6% of Italian writers got enough remuneration to allow them to live from their work. The Representative stated that the implementation of international and national copyright instruments were essential tools for authors to make money from their work and that any changes to copyright should ensure that the author is able to be paid. The Representative noted that the existing copyright framework and the instruments contained within it were sufficient to meet the needs of all copyright stakeholders, users and rightholders and authors without any need for further instruments. She stated observed that it was understandable that certain institutions felt restricted by copyright and had applied for further limitations and exceptions. The Representative stated that exceptions to copyright already existed in the international framework, which could be used to develop national laws and systems such as collective licensing, as already existing in many countries which grant libraries, archives, educational and research institutions, affordable access to copyright protected works while paying authors. She stated that that ensured a fair deal for all partners and provided sustainable systems in which there is income to allow the authors to keep working and provide the materials on which the institutions rely to carry out their important work. The Representative expressed willingness to work together with all of those represented at the SCCR to achieve that worldwide taking into account local as well as cross border conditions and needs.

95. The Representative of the International Council of Museums (ICOM) appreciated the efforts undertaken by the Secretariat and the SCCR in examining copyright issued associated with the preservation of and access to museum collections. The Representative aligned itself with the requests for limitations and exceptions for the preservation of and access to collections and noted the degree of convergence and integration between libraries, archives and museums. The Representative stated that the degree of similarity and collection practices and policy concerning distinctive materials whether in artifacts, art, unpublished material or study and research collections, made it imperative that the Committee's work for the cultural heritage sector as a whole be undertaken consistently in methodology. She stated that cultural heritage institutions were acquiring collections jointly and that acquisition practices had emerged across cultural heritage institutions so as to comprehensively manage collections, drawing upon the curatorial and preservation expertise resident in each institution, regardless. She stated that it was incumbent upon WIPO, the SCCR and the Secretariat to acknowledge that convergence when studying the cultural heritage sector. The Representative stated that the regional meetings would provide optimal opportunity to hear from local leading museum practitioners and professionals looked forward to updates and presentations on the studies. She stated that the next step to follow was a reconciliation of the museum studies from 2015 and the one that was to be presented on the following day.

96. The Representative of the Health and Environment Program (HEP) highlighted that the SCCR and its work included people who held traditional cultural knowledge, traditional cultural

expression and genetic resources, people who had the ability to express their folklore through a variety of cultural forms. She stated that people who are holders of certain rights needed to turn to the Committee with regards to their requests for limitations and exceptions particularly with regard to benefits sharing, linked to the millage that those persons hold. The Representative stated that people with other disabilities--work in the health and the environment. The Representative stated that people who worked in museums, libraries, archives, research institutions, require accurate information otherwise risked problems for persons accessing incorrect information. The Representative observed that there were various international instruments, including the Berne Convention, the Rome Convention. She welcomed the use of available exceptions if possible and also expressed support with regards to the possibility of a specific treaty on limitations and exceptions.

97. The Representative of the African Intellectual Property Organization (OAPI) welcomed the plan of action of the Committee on limitations and exceptions. The Representative stated that she followed with interest the discussions--during the session and looked forward to the regional seminars both seen in the plan. The Representation expressed willingness to work with the African Group, in order to bring OAPI's contribution to the adoption of limitations and exceptions which was important for access to information, to education, and to culture. She stated that the balance of interests was importance.

98. The Representative of the African Library and Information Associations and Institutions (AfLIA) stated that AfLIA was committed to the values of providing balanced access to knowledge that offered fair remuneration to rightsholders and at the same time maximized the impacts of books and other resources for learning, creativity and development. She stated that the regional seminars on limitations and exceptions would assist in furthering and adding value to the SCCR's agenda and looked forward to them. The Representative stated that the Africa region would be glad to see the involvement of players on the ground as participants and official speakers. She stated that the African experts know the terrain and could best explain the challenges Africa faces and form the solutions that would help them by areas for action. The Representative stated that it was going to be a great opportunity to hear from the grassroots and those who did not attend the SCCRs. She proposed that the regional seminar be scheduled to occur early enough in the year so that the report could be presented at the SCCR 38, scheduled to happen from April 1-5, April 2019.

99. The Representative of the International Publishers Association (IPA) expressed support for the action plans. He applauded Member States that had established what was demand-driven needed at national level and at regional level. The Representative stated that the seminars were good to take the temperature locally and to assess where gaps could be, what capacity needed to be built and what experiences could be shared. He stated that the existing flexibilities were there to arrive at solutions that met demands at the local level. The Representative stated that they were not uniform in the different places and even if the laws were identical in wording around the world the laws in those countries would still not be identical. The Representative stated that WIPO had a leading role and expressed support for the Committee. He stated that IPA would participate with their knowledge in the local seminars.

100. The Chair opened the floor to the Deputy Director General to give an update on the implementation of the action plans for limitations and exceptions contained in document SCCR/36/7.

101. The Deputy Director General stated that she would focus on activities that were to be concluded by the Committee. She proposed amendments and changes to deadlines that had already been made due to the fact that the following two stages of the SCCR would happen earlier in the year than it was envisaged. The Deputy Director General informed the Committee that that Dr. Kenneth Crews would present an update on the typology on the subject of libraries.



She stated that it would be a preliminary version of his report for the Committee's initial comments but he had a few months within which to give his final version. The Deputy Director General indicated that Professor Daniel Seng was responsible for preparing a typology in the area of education and research and stated that he worked closely with Dr. Crews and that had allowed for a consistent approach across the two typologies. The Deputy Director General stated that the item relating to archives was included in the update of the Crews report and the Secretariat would provide clarification on that. The Deputy Director General stated that on the study on museums, a Report on Copyright Practices and Challenges of Museums, document SCCR/37/6, had been put to the Committee and its author Professor Yaniv Benhamou would present its conclusions the following afternoon. The Deputy Director General stated that there was nothing specific to highlight with regards to persons with other disabilities. Work was underway and nothing was envisaged for that session on the subject. The Deputy Director General informed the Committee that Professor Seng who was responsible for working on the subject of education and research institutions was not able to be in Geneva for that session but had prepared an update of the typology. Dr. Crews had accepted to present on his behalf and at the same time would present his own work on libraries. The Deputy Director General pointed out that the Committee might have to place certain objectives in the action plan for 2019. She stated that the Committee might have to reconsider the date envisioned for the action plan on archives, libraries and museums and the brainstorming exercise and the results of which should be presented in April 2019 because of budgetary restrictions. She stressed that that did not mean that the Secretariat was going to put an end to the project. The Deputy Director General stated that in order to optimize budget resources for the implementation of the action plan on regional meetings, the general principle was to try to combine regional meetings with other events in order to reduce costs and to allow the largest possible number of Member States to participate. She informed that a planning exercise for the work plan for 2019 was underway and three regions, the GRULAC, the African Group and the Asia Pacific Group regions, were envisaged under that. She stated that the locations and the dates of the meetings would be given to the Committee as swiftly as possible. The goal was to hold the meetings between May and July 2019. The Deputy Director General announced that the plan for the international conference on exceptions and limitations was to hold it from October 17 – 18, 2019, in Geneva at WIPO headquarters before the SCCR. She stated that the Secretariat would be able to give more clarification on the conference at the Committee's April session.

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

103. The Chair opened the floor to Dr. Kenneth Crews to present his views and findings on the development of the typology on libraries and to provide information on the development of the typology on education, which had been prepared by Professor Daniel Seng.

104. Professor Crews made a presentation related specifically to the limitations and exceptions for libraries. The presentation of that study can be found at **(Wednesday, November 28, 2018 Afternoon Session):** <https://www.wipo.int/webcasting/en/?event=SCCR/37#demand>

105. The Chair thanked Dr. Crews for taking the Committee through the work he had done to elucidate the different elements and factors in the typology. The Chair noted that it was clear that 'typology' went beyond a classification system and that it was a full framework for analyzing not just from the intellectual angle but hopefully in a way that was useful for policymakers and other stakeholders. He opened the floor for comments and questions to enable discussions.

106. The Delegation of Brazil pointed out that with the burning of the National Museum in Rio de Janeiro on December 2, 2017, most of the scientifically and culturally invaluable artifacts and 200 years of memories and science were lost forever. The Delegation asked for clarification on how countries could harmoniously act or resort to law or turn to treaty making law that could in

the aftermath of such tragedies assure that cross-border action and cooperation among stakeholders were possible and in place in order to seek assistance and support to review their scientific and cultural heritage.

107. Dr. Kenneth D. Crews indicated that the experience of Brazil was an important example of the importance of preservation. He stated that it was one thing to have said it would be extremely important to have had a statute and a preservation program in place that would have clearly facilitated the making of preservation copies, the deposit of those copies at another institution or otherwise off site so that they were not in the same building with the originals, and to have that apply to all different types of works including artifacts, many of which are subject to copyright protection in their original form. Dr. Crews highlighted that because there were a wide range of materials, the statute should apply to a wide range of materials. He stated that because the goal was to prevent loss, the statute would be most effective if it allowed for copies to be made before the work suffered any loss because they were rare, fragile or were at risk. He observed that the disaster had already occurred but it was not too late because while many of the works in a great institution like a national museum were one of a kind, there were going to be others that could be available elsewhere. Dr. Crews indicated that even after the fact, a good statute could facilitate the rebuilding of the collection and a provision could allow for receiving some of those materials from other countries. He stated that it was too late in some respects but not too late to get some other good things done. Dr. Crews pointed out that a country might draft a statute that would reflect the policy position of its government in its eagerness to rebuild that collection.

108. The Representative of Corporacion Innovarte asked Professor Crews about what he thought his study could be used during the regional seminars to analyze the work and progress made by the Committee.

109. The Chair noted that the earlier question focused on a process-driven issue. The Chair stated that it was Member States and not Dr. Crews that was driving the process around that and reframed the question posed by the Representative of Corporacion Innovarte to a broader one. He asked Dr. Crews to share on how he thought the typology could be used for policymaking by policymakers and by other stakeholders.

110. Dr. Kenneth D. Crews stated that he saw a tool like that typology as being well suited to make sure that discussions and decisions about where the Committee was choosing to go were fully informed by the experiences that all of the Member States had engaged in in their lawmaking. He stated that the typology was a tool for learning from experience. He noted that if the typology was a way of systematically identifying and organizing elements of law, those elements handed to a policymaker in any context would then have the benefit of knowing what each of the Member States had already considered, already thought of, and be able to bring that into the local discussion and to be able to think more fully about the potential of a statute. He concluded that the typology was a tool for gathering experience, sharing experience, and learning and building on that experience. He said it was an instrument for making sure that the full range of issues had been discussed and debated.

111. The Delegation of Argentina thanked Dr. Crews and stated that the presentation had opened up doors for the Committee to explore. The Delegation stated that there were more difficult decisions to be made at the SCCR because there were some Regional Groups that would give preference to a mandatory international agreement while others would prefer good practices. Others would prefer the three-step test or for the national regime to be more flexible and adapt to those situations. The Delegation noted that the Committee was faced with a certain amount of uncertainty as it decided on the way to take. The Delegation stated that if one of the possibilities was to get into a detailed process of norm-setting that would uniformize the limitations and exceptions, that would be difficult because of all the different national regimes.

The Delegation noted that another way might be a mechanism to reach harmonization with rules on conflicts involving private law three-step test. The Delegation observed that another approach could be a midway solution – a step that might be adopted or be clear what each country would be doing. The Delegation asked if Dr. Crews could give the Committee some guidance as to the feasibility of going in any of the particular directions at the multilateral level so as to make progress.

112. Dr. Kenneth D. Crews noted that he was going to be careful not to interfere with what the Member States had already decided because the Delegations knew what was right for the countries, maybe for the regions and maybe for partners. Dr. Crews reiterated that the typology analysis had the potential to tell the Committee what was possible but noted that it did not identify what was best. He observed that the question posed by the Delegation of Argentina was a kind of push for the Committee to think about what could be appropriate or even best and that the Committee already had the three-step test. Dr. Crews stated that if an instrument from the years of exploration and analysis resulted in something that was fundamentally the three-step test then he would say that the Committee did not get far. He pointed out that on the other hand if the Committee created a strict normative standard that was highly detailed, there would be two other problems one being that future change would be prevented, something the Committee might not want to do as there would be new works and new technologies and new needs in the future. Dr. Crews stressed that the Committee did not want to be too rigid in the way it approached the decision. He stated that in some respects, the typology was not only telling the Committee the details of what might go into a law, but it was at least telling in a slightly higher level the general notions and concepts that might go into a guiding instrument, noting that he did not say what type of instrument. Dr. Crews stated that there needed to be a kind of guiding instrument that would remind Member States as they make law on the issue that they needed to think about the scope of institutions, the scope of what works, the condition and circumstances of those works and about digital technologies. He stated that in identifying the broader concepts, the Committee might collectively go a particular direction on many of them. Dr. Crews reiterated that the Committee did not want to be too detailed because it wanted to motivate good lawmaking around the world and at the same time did not want to prevent improvements in that lawmaking in the following generation and in the forthcoming years.

113. The Chair noted that in its work, the Committee, tried to find the good zone and this was difficult because of the many diverse views and individuals represented. He stated that with the typology and the organization of that data, the possibilities as mentioned by Dr. Crews would help the Committee move forward.

114. The Delegation of the European Union stated according to its understanding of what was heard, the objective of the typology was to provide a systematic but at that point descriptive and factual overview of the existing options for legislation under the international treaties also taking into account the diverse situations in the different Member States with a view to the diverging legal traditions. The Delegation reiterated that the European Union was of the view that the existing copyright framework already offered contracting parties the possibility to provide for meaningful solutions for the topics discussed under the agenda item. The Delegation stated that the existing framework allowed in particular to give appropriate flexibility regarding national traditions, specificities and the roles that licensing could play. The Delegation indicated that the European Union and its Member States were of the view that there was great value in reflecting and carrying on work on how the Committee could raise awareness and make the best use possible of the existing rich options. The Delegation concluded that the work of Dr. Crews that was carried out could ensure that in the future national legislators would have an easily accessible compendium of their options at hand while duly taking into account the respective national situations. The Delegation looked forward to further updates in that regard.

115. The Representative of Communia stated that she had noticed that elements analyzed in

detail in the mapping of educational exceptions were missing in the presentation and asked for clarification on whether users as an element would be taken into consideration. She pointed out that Dr. Crews had mentioned the scope of institution and reiterated her concern on whether the beneficiaries of the exceptions would be a subject of analysis. She stated that such analysis was important for the educational exceptions because the exceptions could benefit different people and entities such as teachers, learners, schools, publishers, museums and other users. The Representative asked for clarification, in relation to the issue of quantitative restrictions, on whether the typology would analyze the extent to which works could be used. The Representative noted that having quantitative restrictions analyzing the typology seemed useful because the use of entire short works and entire images was essential for educational activities. She highlighted the issue of other conditions or preclusions that applied to users protected by the copyright exception and asked for clarification on whether the devised methodology accounted for them. She indicated those conditions and preclusions as temporal limitations, an example being embargo periods; physical limitations, an example being the condition to limit users to school premises or to the classroom; and technological limitations, an example being provisions that limit digital users to schools' secure networks, preventing exchanges through email or to cloud services. The Representative highlighted other concerns on the issue of noncommercial users' restrictions – whether users were subject to fair use or fair dealing tests, if attribution was required and if the use was subject to remuneration.

116. The Chair noted that Dr. Crews was there to help answer questions on work done by Professor Seng on education and stated that the question could be conveyed to Professor Seng. The Chair stated that the typology obviously had to address the needs of the students, teachers and users.

117. Dr. Kenneth D. Crews stated that some of the issues raised in the question were hinted at on his presentation slides. He stated that quantity limits was on the list of elements and noted that the element applied to some of the library issues as well and not only the education issues. Dr. Crews indicated that the point about users and who users were was kind of subtle and could be complicated in a surprising way. He stated that a typical library statute made it clear that it was about the library could make the limited copies for users but occasionally there was a national statute that would refer to it is not unlawful to make copies of materials from libraries. Dr. Crews stated that in that kind of passive, indirect way, the statute never says who makes the copies and it is something that is left out of the active voice of what could have been an active voice of the statute. He stated that the point raised would remind him to watch for that and find a way to include it in the analysis in some meaningful way.

118. The Representative of the Library Copyright Alliance (LCA) congratulated Dr. Crews on the development of the methodology for the typology. The Representative stated that the description of the realm of what was possible would make discussions of exceptions in that area more concrete and would refute the constant suggestion from some that almost any proposed exception violates the three-step test. He raised a question on how the typology addressed the critical issue of cross-border transfers and its compatibility with the existing international copyright law framework.

119. Dr. Kenneth D. Crews stated that he had included the cross-border transfer concept in the list in column four of issues of further consideration and it was ongoing consideration. He pointed out that one other way that he characterized that fourth column during the presentation was that they were issues that seldom apply or seldom appear in the statutes, or something to that effect. He stated that it was an issue of discussion in the Committee and in meetings back home in the countries. Dr. Crews pointed out that it was also a concept that had become real in the Marrakesh Treaty and because of that the Committee had a model. Addressing the question on how he would address the cross-border transfer concept in the typology, Dr. Crews stated that he intended to include it on the list of issues and pointed out that it was not the

purpose of the typology to explain each of the issues. Dr. Crews stated that the Committee could begin its conversation in other ways about that by starting with the Marrakesh Treaty and looking at that model of two countries that had ratified and fully implemented the Treaty. He noted that in that way, the work that qualified for the making of the format in country A could be moved to country B, and vice versa. He hoped that the Committee could come to some reasonable kind of proposal like that out of the discussion and stated that that was doable. Dr. Crews highlighted the issue of preservation as an example and stated that if a preservation copy could be made inside country B consistent with whatever instrument, then it could also be delivered to a library in country B for its preservation and for safe keeping. He expressed hope that the Committee could come to a reasonable resolution on that issue as part of the mix of other issues.

120. The Representative of the International Federation of Library Associations and Institutions (IFLA) asked for clarification on how Dr. Crews would focus between then and the following April and what sort of subjects and areas he would focus on or whether he would cover everything. The Representative stated that Dr. Crews had implied a couple of times that the Committee was likely to see a lot of vagueness coming out, gaps of things that were uncertain simply because statutes at that point in time did not cover them and solicited Dr. Crews' opinion on what he thought that said about the merits of more flexible provisions that allowed some sort of way forward to interpreting the way out of uncertainty. The Representative asked for clarification on what sort of policies are Dr. Crews was referring to when he mentioned the impact that policies had in determining the choices countries made about their copyright laws. The Representative expressed interest in understanding the extent to which the huge variation impacted the way in which markets worked together and the way in which anyone operating across borders and trying to sell things into different markets would face different terms and conditions on what they were allowed to do.

121. Dr. Kenneth D. Crews stated that with regards to how far the Committee would go with working through the many different issues, the approach to each issue would take a different shape. He stated that he had chosen preservation as a model both because it was the issue that appeared most frequently in national laws and it had a number of the elements or variables that helped make his point. Dr. Crews noted that in many of the other statutes, example the statutes about limitations on the liability of the library in the event of infringement were, the variables were typically by comparison simpler, fewer and would be presented a little bit more clearly. He expressed willingness to answer other questions later and asked the Representative of IFLA pick one off the list that he wanted Dr. Crews to answer at the time.

122. The Representative of the International Federation of Library Associations and Institutions (IFLA) asked for clarification on what was the merit of more flexible provisions in steering the way through the issue of vagueness in copyright reform.

123. Dr. Kenneth D. Crews stated that while he did not think he had used the word, vagueness, it did get to the point and the issue in drafting some kind of instrument. He stated that he presented a range of possibilities that could start with the three-step test, which was where the Committee was at the point, to some kind of instrument that would be highly detailed. He noted that he had suggested that the greater the detail, the more the Committee could lose valuable flexibility for adjusting and adapting to new needs in the future. Dr. Crews stressed that questioning how far back from that detailed example the Committee would step if it was going to put forward some kind of instrument was where the practical measure should be – a question of whether the instrument could give enough guidance to assure that any member country enacting a statute consistent with that guidance had considered and included sufficient details that would make the statute both workable and respectful of the goals of libraries, of rights-holders, and of other interested parties together in that effort. He noted that at the same time, another question would be whether the instrument could give enough guidance and that there

would be some rough harmonization, noting perfect harmonization was seldom attained in copyright law. He stated that generally speaking, the Committee would know that each country that would follow the guidance from WIPO would develop a statute whose constituent elements and general direction could be predicted. Dr. Crews hoped that the typology could give the Committee those details to think about whether to aspire towards an instrument with that level of detail or to step back from it and be more general.

124. The Representative of the Electronic Information for Libraries (eIFL.net) asked for clarification on how Dr. Crews envisaged the final product to look like. She was interested in knowing, for example, whether he would be able to select one of the options highlighted in the column to show a list of countries with those options or to navigate the data in other ways.

125. Dr. Kenneth D. Crews stated that he wanted to present the data and the analysis in a way that was most useful with respect to some objectives and the dominant one was to show to the Committee what was possible. He stressed that the analysis was not statistics, it was not numbers and it was not finding the ideal statute or identifying some model that all Member States should follow. Dr. Crews stated that he therefore did not see a presentation that would take an element and then list the countries that had adopted that element into their statute because that would move the Committee towards a measure of what was most common. He noted that at that point what the Committee really wanted was not what was most common but what was most thoughtful and what was most consistent with achieving the objectives of the law. He stated that in the preservation and replacement statutes it was very common for a country to say that they applied in the event that the work was deteriorating or damaged but very few countries by comparison said that the preservation provision applied if the work was at risk or fragile or rare. Dr. Crews highlighted that what he was interested in was finding the good ideas that the laws of Member States had and to bring them forward in the analysis so that all ideas would be the table together for the Committee to examine, evaluate, and decide which ones to keep in its future lawmaking. He stated that he did not envision a connection to lists of countries and reiterated that he was interested in any ideas about how to present the material in a way that sets forth to the Committee that those were what the possibilities that it needed to be thinking about in the work that it did.

126. The Representative of the International Publishers Association (IPA) asked whether it would it be fair to characterize the typology as the beginnings of a toolkit that allowed people to apply their minds to make rational laws. He requested clarification on whether there was a general difference between published and unpublished works that Dr. Crews could see. The Representative expressed interest in whether Dr. Crew had given thought to overlaps one would find in the area of preservation and stated that there were often issues of orphan works as well. He asked clarification on I wonder just as a matter of developing the typology how Dr. Crews would or whether he had been able to give thought to the issue of overlapping of categories in relation to developing the typology.

127. Dr. Kenneth D. Crews stated that a toolkit might be a great way to conceive of where the Committee was going with the typology. Dr. Crews indicated that he could imagine that a useful resource would be a connection from a concept, an issue, an element in the typology, not to the name of a country but to an example or two of the exact phrasing from statutes. He noted in relation to the notion of the typology as a toolkit that if a country or any other organization said they would like to begin drafting a new statute, on for example preservation, then that country would have actual language to pull from to start drafting that statute. Dr. Crews noted that on the issue of published and unpublished works, that was sometimes defined in the law and there were different definitions. He stated that the main point that he saw about published and unpublished was in the area of preservation. Dr. Crews pointed out that it was the unpublished material that was very much at risk because if it disappeared or if it was lost it could not be replaced and so was an important issue in the preservation area. Dr. Crews stated that he had

been anticipating that there would be overlaps, repetitions and even redundancies and noted that a big one was going to emerge at the beginning because most of the detailed elements in preservation also appeared in the replacement statutes. He pointed out that he was going to keep that in or at least cross-reference to different issues because sometimes organizations and as countries picked up an issues one at a time and so he wanted all of the issues to be together with that topic. He noted that that would ensure that they were all in one place together in all of the elements for consideration and hoped that he was going to be able to do that as he proceeded with this project.

128. The Representative of the Knowledge Ecology International, Inc. (KEI) stated that he liked that the work had been described as possibly having application as a toolkit. He raised a question as to whether Dr. Crews had looked at the state of exceptions in comparison to what was in the Tunis Model Law copyright section on exceptions for Developing Countries.

129. Dr. Kenneth D. Crews noted that the Tunis Model Law dates to 1976. He stated that at least for libraries, it was a general provision, a provision that authorizes libraries to make copies sufficient, suitable to meet the needs of the library. Dr. Crews pointed out that it entailed good news and bad news depending upon what kind of law one liked. He stated that one aspect of it is that it is very general so it could apply to anything and on the other hand, it is very general and so Countries are left with the need for a lot of local interpretation of what that statute means. Dr. Crews pointed out that at the same time that Tunis statute applied only to published works and noted that it is problematic for modern libraries which have important collections of unpublished works. Dr. Crews stated that the Tunis model reiterates the last two steps of the three-step test and brings them into the law. He was reiterated his concern about that and stated that the three-step test existed for an important purpose and that purpose was to moderate whether domestic laws were consistent with the international agreed standard, which is the three-step test. He stressed that the three-step test when it is put into statutes then has the effect of becoming the law for the citizens and residents of that country and that was a different thing which demands then that a country had to come to some domestic meaning of the three-step test. He stated that that was not good for the Berne Convention because there would be competing interpreters of that language of the three-step test. He noted that he was not a fan of the Tunis language and that 40 years had gone by. He stated that the Committee could do better.

130. The Representative of Society of American Archivists (SAA) asked for clarification on how many of the typology charts Dr. Crews was going to have. He stated that his more complicated question came from looking at a slide Dr. Crews had towards the end of his presentation where under the area of the analysis beyond preservation, he had a series of things that could be subject matter for what he would be working on a typology. He stated that he had noted down dedicated terminals which struck him as a category that was rather different from a category such as preservation or copies for users. He observed that in that regard, it was not in the same universe of typologies and requested for clarification on that.

131. Dr. Kenneth D. Crews stated that the best answer he could give at the time about the number of charts was to go back to those last three or so slides of his presentation where he had the double column of concepts of topics, et cetera. He pointed out that the bulleted points, the main points on those three slides constituted topics that if the data lend themselves to appropriately would become a chart. He stated that there was a rough gauge of what to expect and expressed willingness to take that discussion further later. Dr. Crews stated that he was happy to respond to the issue about dedicated terminals because it was a fascinating example. He noted that it was a legal development and that the European Union deserved the credit for developing it and including it in the Information Society directive of 2001. Dr. Crews stated that it fitted because it was applicable to libraries. He highlighted that in the language of the European Union's law, it was about the making available of works from the library on dedicated

terminals for individual research and study. He noted that that was the general concept. Dr. Crews stated that he saw it as an extension of the more traditional provision in the statutes in countries around the world about making the library make copies to give to users for their private research and study. He stated that he saw the dedicated terminal concept as another means whereby the library could make, in the case digitize a copy of a work to make it available for users for their private study, by dedicated terminals on the premises. Dr. Crews pointed out that he found it to be a very important provision because it was one of many ideas in lawmaking that had emerged in the last couple of decades and so there was energy that surfaced with practical output of some innovative lawmaking and it appeared in the directive. He stated that it had become the law of 28 countries and had been borrowed by non-European Union countries who had seen that and had determined it as a good idea and had adopted it into their statutes sometimes on in their own terms. He highlighted that it was a library concept but also a fascinating way of understanding how the law changes and how ideas in the law spread.

132. The Chair noted the presence of Dr. Crews and Professor Yaniv Benhamou. He opened the floor to the Secretariat to update the Committee on the work regarding the update and elaboration of the informational archives that had been provided by Dr. Crews in his previous studies.

133. The Secretariat informed the Committee that it had set in motion the process to correlate additional relevant information on archives as per the Action Plans on Limitations and Exceptions Through SCCR/39 (2nd Meeting in 2019) contained in document SCCR/36/7 approved the previous May. The Secretariat stated that its endeavor was to facilitate a fruitful and comprehensive global understanding of the issues most relevant for maintaining and enabling archives with a special emphasis on the new challenges and opportunities in the digital environment. The Secretariat noted that the ongoing process was to better identify the scope of that project, and proposed to focus on archival collections of materials. The Secretariat highlighted that primarily focus would be on the creative content-related archives, while also taking into account all other materials when copyright considerations arose from their use. The Secretariat stated that through that process, it envisioned bringing forth the geographically diverse practices and challenges faced by archives in relation to preservation, access to, and use of archival materials and facilitating and understanding of the interface of archival materials with international copyright framework. The Secretariat informed the Committee that its efforts in the subsequent months would be to continue the work based on feedback of the archivists around the world through interviews that were to start sooner. The Secretariat stated that it would grateful if the Member States could provide some useful context in the countries and insights on the issues.

134. The Representative of the International Council on Archives (ICA) stated that she was deeply disappointed that the Committee did not have a preliminary report on archives as required by the Action Plan that was adopted in the previous SCCR. She pointed out that the various studies that comprised that Action Plans were intended to provide Member States with a deeper understanding of copyright issues facing libraries, archives and museums and that of the three, archives was perhaps the least understood. She stated that most people were well acquainted with libraries and had visited at least one museum but doubted that many had entered an archive or done research using archival material. The Representative stated that while the functions of archives overlapped with those of libraries and museums, the nature of archival material, not created for commercial purposes and largely unpublished, meant that archivists faced particular copyright challenges. She stressed that the archive study was a key part of the action plan for libraries archives, and museums. She pointed out that the final report for the archive study was due at the following SCCR in April so that participants at the regional seminars, the first of which would be as early as that May would be informed by the study. The Representative stressed that there was no time to be wasted if the April deadline was to be met and urged the Secretariat to place the highest priority on getting a team in place to continue the



work on the archive study. She stated that if the final report could not be completed in time for regional seminar participants to be able to reflect on the study then a preliminary report was to be produced for SCCR 38 in April in order to round out the discussion at the regional seminars and stated that the ICA was ready to assist in any way that could ensure that that happened.

135. The Representative of the Knowledge Ecology International, Inc. (KEI) stated that the area of archives and preservation were two areas where there had been a compelling case that not only that exceptions in the area were important socially, but also that there were significant cross-boarder issues and under implementation of appropriate exceptions in many countries. He stated that it was noteworthy and helpful that Dr. Crews had dived deep on archives and preservations in his examples during his presentation. The Representative stated that to the extent that there was emphasis on testing the waters on text-based negotiations on exceptions that archives and preservation had made a very compelling case. He stated that that would be a very good area for a United Nation's body to consider making progress in, not at the expense of other areas necessarily, but in parallel to whatever progress that could exist in other areas.

136. The Representative of the Library Copyright Alliance (LCA) asked for clarification on what the Secretariat meant when it mentioned that the study was going to focus on creative content. The Representative pointed out that the presumption was that everything that the Committee was worried about was copyrighted content, otherwise there would not be an issue and the archives would not be the subject matter of the Committee.

137. The Secretariat stated that it had in mind that the subject of the study was archives in general and pointed out that the mandate of WIPO, nevertheless, was to concentrate its efforts on the so called creative industries. The Secretariat stated that the it had very limited time available and thus needed to at least concentrate its efforts on the issues raised by the relationship between archives and the International Copyright System and not to get lost in other issues which were very important to deal with, but not necessarily in the framework of WIPO, and not necessarily as a priority. The Secretariat stated that the intention was indeed to concentrate, at least in that initial stage, the analysis and to also collect experiences from those who were archivists and could help to clarify issues around the subject on creative cultural institutions. The Secretariat concluded that its focus was connected to the issue of copyright.

138. The Representative of the Society of American Archivists (SAA) stated that he thought what had been some of the driving force behind discussions raised by Civil Society and some of the delegations such as the African Group and GRULAC, in the entire topic of library and archive exceptions, had to do with a matter of looking for balance within the overall copyright system. The Representative noted that in that regard the difficulty that practicing archivists that he was familiar with in the ICA and SAA faced daily related to questions about preservation of things, some of which fitted within the category of materials that would be used by the creative industry and maybe were being requested by the creative industries, and sometimes generated by that especially if it was an archives from one of those companies themselves. He indicated that at the same time, there were all the other kinds of administrative documents and personal documents never intended for a market which fell under the same rubric because of the way the Berne Convention was written. The Representative stated that he would applaud ensuring that the study covered the relationship between the archives and the creative industries in that part and that the other part was not overlooked. He suggested that the report should be organized under six different pivot points or six different categories. The Representative indicated that the first category should be the type of archival collections that was referenced in what would be part of the focus. The second, the types of documents and the types of copyrighted works within those collections to cover the range of things from administrative to highly creative and artistic works. He stated that the third would be the types of activities that were necessary to accomplish the archival mission, preservation, dealing with technological protection measures and so forth and the fourth would be the ways that copyright either supported or inhibited those

functions and services. He noted that the fifth would be exceptions identified in the Crews studies and the very promising typologies the Committee expected to see address the intersection of copyright and archival functions. He stated the sixth as the implications of the digital environment for archive's operations. I would hope to see how this matrix of items would play out in different legal traditions. The Representative stressed that any credible studies of archives would discover what the Committee would do and corrections it would make available would support rather than undermine the creative industries. He informed the Committee that the statement that he had provided on the previous day and had emailed to the copyright email box contained basically the text of the six items.

## **AGENDA ITEM 6: EXCEPTIONS AND LIMITATIONS FOR EDUCATIONAL AND RESEARCH INSTITUTIONS AND FOR PERSONS WITH OTHER DISABILITIES**

139. The Chair opened Agenda Item 6 on exceptions and limitations for educational and research institutions and for persons with other disabilities. He welcomed Professor Yaniv Benhamou and highlighted that the Professor had given the Committee a Report on Copyright Practices and Challenges of Museums contained in document SCCR/37/6. The Chair opened the floor to Professor Benhamou to give his presentation.

140. Professor Yaniv Benhamou presented the WIPO report on copyright practices and challenges which can be found found at **(Thursday, November 29, 2018 Morning Session):** <https://www.wipo.int/webcasting/en/?event=SCCR/37#demand>

141. The Chair thanked Professor Benhamou for a comprehensive presentation on the various challenges that museums faced in relation to the copyright regime in the activities. The Chair opened the floor for comments and questions. .

142. The Delegation of the Islamic Republic of Iran highlighted there was no recommendation in document SCCR/37/6 but there were some recommendation during Professor Benhamou's presentation. The Delegation asked for clarification with regard to that inconsistency between the report and the presentation and on the basis for the recommendation.

143. The Chair pointed that in his view, Professor Benhamou had tried to summarize the takeaways that were reflected in the Executive Summary and thus were not recommendations. The Chair stated that those were not recommendations but just ideas and reflections for contemplated solutions.

144. The Delegation of the United States of American stated that it appreciated the presentation on copyright practices and challenges of museums and was carefully reviewing the information provided in the study. The Delegation stated that the United States of America recognized the role of museum services in meeting the essential information, education, research, economic, and cultural needs of the public. The Delegation noted that museums connected everyone to the understandings, whether cultural, artistic, historic, natural, scientific, that constituted people's heritage and were critical to the learning process. The Delegation pointed out that museums stimulated creativity and innovation as well as community and economic development. The Delegation stated that there were many types of museums, including art, history, natural history, ethnographic, aquariums, arboretums, botanical gardens, planetarium, science and technology centers, children's museums, zoological parks and that consequently the Committee was talking about a fairly wide variety and different types of collections contained in museums. The Delegation pointed out that museums could hold primary collections, steady collection, archival collections, and collections benefiting research and discovery, and in that way they were like libraries and archives. The Delegation stated that the Committee wanted to understand how copyright affects access to and the maintenance and management of those many types of collections as museums had distinct issues in spite of the

similarities to libraries and archives. The Delegation stated that given the diversity of museums, the types of collection, and the types of objects within collections, it would like to spend more time with the study and then suggest areas where the Committee could delve into a little more to further illuminate how and where limitations were working or nonexistence. The Delegation stated that while the range of museums in the study led the Committee to believe that the broadest possible profile was selected purposefully given the diversity and wondered if it was possible to draw specific conclusions from the number of museums surveyed, recognizing that there were 55,000 documented museums in 202 countries. The Delegation stated that it was premature at the time to make any conclusions and noted that it would have more to say at appropriate points in the discussion. The Delegation noted that the study could have data to analyze findings based on the type and genre of museum so as to better understand the degree of some of the disparity between the kinds of artifacts or materials found in collections and the impact copyright law could have on their care, communication, exhibition, and management. The Delegation observed that it would be useful for that data to be provided in some form. The Delegation stated that the study identified so many important issues that it looked forward to exploring in depth within the SCCR.

145. Professor Yaniv Benhamou stated in relation to the question of whether museums could be treated equally or whether they were concerned with copyright considerations that even museums that only held and possessed non-copyrighted work, for instance the scientific, history, or the aquarium, children museums, assuming they had no copyrighted artifacts, they could be considered with copyrighted works. He noted that that was because, either as user of copyrighted materials, even if they had non-copyrighted works, they would be willing to enrich their exhibitions surrounding the specimen or items with audio-visual works or other textual and photographic documents. Professor Benhamou added that if there were creators themselves, an aquarium or museum would be creating brochures or catalogs, and they were as creators also owning copyright. He stated that based on the interviews, the scientific, history, and other museums were very happy to be heard and they had mentioned that they were concerned with copyright either as users or creators. Professor Benhamou stated that there was a need to take into account all the museums. He noted that in relation to the question of how to deal with solutions equally, all the museums were concerned with that.

146. The Representative of the International Council of Museums (ICOM) stated that the ICOM wished to remain positive and constructive in its support of ongoing work concerning museums and copyright. The Representative noted that ICOM, however, did have underlying issues concerning the methodology of the study. The Representative stated that ICOM first concern was that it found that the study had overlooked an analysis of collections. The Representative stated that museums collected a vast array of objects and materials that transcended the most complex forms of media but the study, however, did not break down the analysis by genre of collection, mapped against genre of copyright-protected work, nor did it provide an analysis of the type of collection by purpose, whether primary collection, study collection, archival collection, collection of research material, et cetera. The Representative stressed that a full breakdown was necessary to understand the depth and scope of impact that copyright could pose as a challenge to museums in maintaining, managing, and providing access to such disparate collections. The Representative stated that ICOM's second concern was that there were broad statements in the study, particularly in the Executive Summary that constituted generalizations and findings in the study that appeared to contradict the 2015 Museum Study also commissioned by the Secretariat. The Representative stated that one example rested in the findings about museum practices and the display right. The Representative stated that other examples of contradictions included findings on orphan works and copyright status of works in collections. The Representative pointed out that at a minimum, contradictory findings of both museum studies needed to be reconciled so that members of the SCCR could find research on the subject useful. The Representative stated that ICOM's third concern related to whether that study was quantitatively relevant. The Representative stated that past

experiences in surveying museums about practices dictated that many refuse to answer questions for fear of reprisal and noted that that was particularly true when surveying copyright issues. The Representative stated that it was unclear how many survey questionnaires were distributed for the study and what rate of return was received on the survey questions. The Representative stated that quantitative relevancy was also judged by the size of the overall sample available, which in that case was 55,000 museums worldwide according to the statistics in the 2018 Study. The Representative stated that it was therefore questionable whether 37 interviews represented a quantitatively relevant sample. The Representative stated that notwithstanding those concerns ICOM remained committed positively to the work that was undertaken in the Committee and to ensuring that Members were provided with a foundational understanding of the work museums of museums and the challenges posed by copyright. The Representative stressed that ICOM remained a partner that cause.

147. The Delegation of Morocco, speaking on behalf of the African Group expressed interest in the question of methodology. The Group highlighted that to conduct a study, one could adopt different approaches and noted that one could chose a descriptive approach, an analytical approach or an analytical critical approach. The Group pointed out that with the critical approach, one assumed that one would provide conclusions and recommendations. The Group stated that what they had seen in Professor Benhamou's study was that he had tried to provide some recommendations and highlighted that the Committee had earlier adopted an Action Plan without prejudging any results. The Group wondered if it was advisable at that stage to make any sort of recommendations to the Committee. The Group stated that if that was so then the Committee would invite all of the experts who were going to conduct studies to do so, including Dr. Crews because the Committee had seen a descriptive analytical study that did not prejudice the results of the work of the Committee and did not lead to any conclusion on the previous day. The Group stated that the Committee should adhere to the methodology without arriving at recommendations.

148. The Secretariat pointed out that the questions raised by the Delegation of Morocco and the Delegation of the Islamic Republic of Iran covered the same subject, perhaps, from different angles and noted that they seemed to be very pertinent issues. The Secretariat stated that it was interpreting very faithfully the overall spirit of the Committee and confirmed that the Secretariat had not wanted to ask its experts who accepted to conduct the studies to make recommendations. The Secretariat stated that that was something that was intentionally done in order not to prejudge the outcomes of the Committee's work. The Secretariat stated that the Committee was at the beginning of the process, which was one with a very pragmatic approach. The Secretariat stated that Member States understood that by asking the practitioners, museums, the people who were confronted day in and day out with the problems, how they react because they were not legal people. The Secretariat pointed out that in in some of the interviews Professor Benhamou had to explain the context in which he was asking the questions. The Secretariat stated that it had had the same type of complexity or issues when it had interviews with people from archives. The Secretariat stated that these were not people that dealt with the issues constantly, but it had been able through the experts to see what their concerns were. The Secretariat reiterated that at that stage, it was trying to offer the Committee, thanks to the studies, a maximum of visibility of information that would allow delegates to inform their work in the Committee. The Secretariat stated that it evoked the idea of typology to cover other subjects and not only the subject of libraries, but also subjects related to museums, archives, and also that of education. The Secretariat stated that the study for education was underway but it was behind in some of the other areas because it had to do some preliminary work. The Secretariat stated that before it began work on typology, Secretariat had to settle some details some of which delegates heard about from Dr. Crews on the previous day. The Secretariat assured the Committee that it was in a process, an iterative or cyclical process and at that point did not want to assume ideas. The Secretariat stated that it would look at the typology and look at everything that would be done during 2019. The

Secretariat opined that what Professor Benhamou would want to do as a researcher, was to provide the Committee with the fruit of his reflective processes and stated that the study would obviously not include any recommendations, at least not intentionally.

149. The Representative of the Library Copyright Alliance (LCA) asked for clarification on how much of the surveys were conducted in developing countries and what Professor Benhamou could can you tell the Committee about copyright related issues related to museums in developing countries.

150. Professor Yaniv Benhamou noted that the questions on the diversity of museums, diversity for geographical location and as previously asked by diversity for the type of collections were important. He pointed out that he tried with a methodology to have a good sample that might represent the diversity of all museums. He stated that specifically about the regions considering the figures, there was for instance for Africa, fewer museums, two of them and two from the Caribbean. He stated that the study had 11 museums from Asia Pacific and Middle East. Professor Benhamou stated that the study tried to have as many museums as possible and the figures were in the report. He wondered if the question required him to read the percentage of the museums to the Committee or it was asking to know if the samples were sufficient or not.

151. The Representative of the Library Copyright Alliance (LCA) stated that it was obviously helpful with the numbers and noted that it was more the second part of the question that needed clarification. The Representative wondered particularly about the extent to which the experiences with the copyright system in the subset of museums in developing countries differed with the museums in the developed world. The Representative raised questions about what the status of exceptions in those developing countries were and how they were able to function. The Representative inquired about whether the museums were able to engage in preservation activities and all the different kinds of things Professor Benhamou talked about. The Representative expressed concern about the issue of the ability of museums in developing countries to function and wanted clarification on whether they had adequate exceptions.

152. Professor Yaniv Benhamou stated that based on his knowledge and experience and also on the interviews, what he understood was that there were very few exceptions provided some emerging or least developed countries, and when they were provided, they were either not well understood or just not used. Professor Benhamou confirmed that he had to from the beginning of the questionnaire explain why he was writing a report, what copyright was even and tried to see to what extent they would benefit from exceptions if any existed. He reiterated that a few countries had some exceptions but they apparently did not benefit or were not used that much.

153. The Delegation of the European Union and its Member States stated that it had taken note with great interest of Professor Benhamou's findings, in particular the lack of awareness and the lack of clarity as with regard to the working and functioning of exceptions in practice as identified by Professor Benhamou. The Delegation reiterated that the existing international framework allowed national legislators that wished to do so to provide for meaningful exceptions. The Delegation wished to highlight the European Law in that regard and also give an outlook as to the future because reference was made to the ongoing negotiations on the proposal for interactive copyright in the digital market and also exceptions for museums. The Delegation informed the Committee that in the European Union the prevailing Information Society Directive included a provision that allowed Member States of the European Union to introduce exceptions and limitations to the reproduction right, in regard to specific acts of reproduction made by publicly accessible libraries, educational establishments, or museums, or by archives which were not for direct or indirect economic or commercial advantage. The Delegation stated that the European Union Legal Framework furthermore at the time allowed Member States to include an exception to the reproduction right, the right of communication to

the public, and the right of making available for the purpose of research or private study, dedicated terminals on the premises of publicly accessible library, educational establishments, museums, and archives. The Delegation stated that from September 2016, the European Union had started discussing a proposal for Directive on Copyright in what was called the digital single market that contains two new provisions that also benefit museums. The Delegation stated that one would allow digital preservation and thanks to that new provision, all cultural heritage institutions including museums in the European Union would be allowed to produce a copy for preservation purposes of the heritage in their collections no matter the technology used, and increased preservation rights. The Delegation noted that that would be beneficial for the survival of those cultural heritage institutions and cultural heritage and allow citizens to engage with it for longer periods of time. The Delegation stated that the European Union also had a new provision on commerce works that was introduced because cultural heritage institutions held in their collections work with great value that could not be found in commercial channels, and therefore were key in disseminating these works. The Delegation pointed out that that would aid in the European Union's goal to facilitate for museums the sharing of those kinds of works with the public by addressing the problem by transaction costs. The Delegation noted that at that point in time the discussions were still ongoing and would most likely be finished in the near future. The Delegation stated that the co-legislators, the European Parliament, and the Council were together with the Commission holding what was called the **Trilook Talks** at that point and noted that it was in the stages of negotiations but that was just an outlook. The Delegation stated that another topic discussed in that pending context was the possible extension of the scope of an exception for text and data mining which was in the proposal for scientific research and also to cultural heritage institutions such as museums. The Delegation stated that it had taken note that one of the findings of Professor Benhamou's study was that exceptions were generally available, be it specific or general, for museums and that one of the concerns or the obstacles on relying on them was, lack of awareness and also maybe sometimes a lack of acceptance when consent and authorization of the rightsholders were used. The Delegation stated that it did not think that the conclusions or recommendations drawn by Professor Benhamou as some had referred to was judging the work of this Committee and noted that that was probably because it shared the view. Professor Benhamou stated that they seem more natural conclusion of the findings that exceptions were present but there were problems with the replication in practice. The Delegation reiterated its belief against the background of the study that a meaningful way forward eventually was or would be to have guidance and exchanges of best practices.

154. The Representative of the Society of American Archivists (SAA) observed that in the context of the referenced 2015 study of some 55,000 museums around the world. The Representative pointed out that it was responsible for a music, musical instrument and musical composition museum but the only point in the report made some sense was that it focused only on art museums and that was apparent from the first line of the fifth word of the Executive Summary. The Representative stated that in that context there was a certain amount of coherence in the recommendations and they did not strike the Representative as terribly unusual. The Representative noted that one thing that did strike raised a question was the reference on footnote 14 on page 12, which was or offered a characterization of so-called non-copyrighted materials and had listed the last of those as staff correspondence. The Representative reiterated her observation during the discussion on archive study, that administrative correspondence could contain copyrightable expression even if it was not marketable expression in many cases. The Representative noted that there was a market factor that came into play and contrary to the issue raised in pages 29 and 30 that there was seldom any disputes about certain information. The Representative stated that a significant percentage staff time was spent researching copyright permission requests that came from scholars who had used the museum's collections on a range of relatively more creative and lesser creative works. The Representative pointed out that in each instance what happened was that the legal departments or publishers had said that they considered those things to be

copyrighted works and often times they were staff correspondence. The Representative suggested that those publishers were pursuing those issues and wanted the museum to attest as to who the owners were and whether the museum had the rights and could assign those rights et cetera because they thought that there could be copyright disputes. The Representative wanted clarification on how the experience of the museum could be reconciled with the observations made by the Professor on staff correspondence.

155. Professor Yaniv Benhamou stated that the comment gave him the opportunity to clarify the question of staff correspondence and the potentially possible copyright protection. He stated that when in that footnote the study referred to non-copyrighted materials and included staff correspondence, that was obviously dependent on the level of originality required in each jurisdiction. He noted that some of them would have a high level of originality to lead the staff correspondence to a copyright protection while other jurisdictions would have a high level of originality and lead to non-copyrighted work. Professor Benhamou stated that it had to be clarified that that there could be two types of staff correspondence, one type that could be considered as copyright protected due to the degree of originality and another was staff correspondence with lower degree of originality without copyright protection. He stated that when he referred to the possible disputes of internal staff correspondence, that was in regards to staff correspondence with sufficient degree of originality to be impacted by copyright under an application legislation. He stated that most jurisdictions for staff correspondence provided an assignment, either automatically or by virtue of law, for instance for work made for higher or for automatic assignment in most European Union legislations so that at the end, staff correspondence should not be an issue even though they were copyright protected.

156. The Representative of the International Council on Archives (ICA) stated that many museums contained archival collections and Professor Benhamou had noted briefly in a couple of places in his report that museums had archival holdings but did not address their importance in supporting the role of museums as research institutions. The Representative stated that Professor Benhamou had claimed that staff correspondence was not copyrightable and she found that to be an extraordinary claim. The Representative stated that as she understood it, material was original as long as it was not copied from somebody else and noted that she had written in her career many highly original and very creative memos. The Representative reiterated that the special nature of archival material posed particular copyright challenges for which exceptions were needed. The Representative questioned why the research function of museums and the importance of their archival holdings and support thereof were not more fully addressed.

157. The Chair stated that Professor Benhamou did not make a categorical statement that it was not copyrightable. He stated that the clarification was that it depended on treatment of functionality in different parts of the world.

158. The Secretariat stated that the research function of archives for museums was covered partially, but it was not the main aim of that study. The Secretariat stated that the Committee had to ask itself what exactly it was looking for. The Secretariat pointed out that it could not be exhaustive in a single report in such a short time period available. The Secretariat stated that its experts had other jobs that they were carrying on in parallel and they had given a lot of their time to question as many museums as they could around the world. The Secretariat stated that the study was not a thesis and it did not intend to cover all possible aspects of museums but to highlight one aspect with regard to research functions of a museum and it could not have been adequately covered and it could be possible to have an update on that. The Secretariat stated that the report was not set in and it would be happy as would the author to add to it in the future. The Secretariat stated that it was willing to receive as many contributions as would be sent to the Secretariat in order to enrich the material that it already received for the report.

159. The Representative of the International Publishers Association (IPA) stated that museums and publishers in many parts of the world were in co-publishing agreements and like museums, publishers were very often both users and originators of creative works and publications. The Representative stated that the IPA noted in particular the frequent references to Association of Art Museum Director's Guidelines for the use of copyrighted materials and works of art by art museums, and assumed that those guidelines in the United States of America did not have the force of law but represented an honest attempt by museum directors to define what uses could reasonably be made under fair use in the United States of America. The Representative stated that publishers in many parts of the world had similar guidelines referred to as permission guidelines for reuse of materials in other publications. The Representative stated that IPA believed that guidelines were useful as long as they were voluntary and nonbinding. The Representative noted that the apparent need for guidelines in particular in the United States of America and other jurisdictions with flexible exceptions and judge-made law demonstrated to the Committee that fair use on its own was an insufficient and vague concept to be applied in uniform and consistent ways. The Representative noted that very often the reproduction and creation of catalogs also had commercial ends. The Representative stated that in that regard, the IPA welcomed with a sense of reassured relief the concluding remark of the research paper, "We have not identified any exception that would ambiguously allow museums to commercialize high-quality merchandise and merchandizing of protected work." The Representative stated that IPA was in full agreement that no exceptions should have in fact been found and they would turn exceptions into business models and replace exclusive rights subsisting in creative works as the rule.

160. The Representative of the Health and Environment Program (HEP) noted that there were only two bodies which were represented and gave responses from Africa and wondered what the criteria for selecting the sample for the study was. The Representative stated that Africa only accounted for one per cent of trade globally and most of that was within South Africa. She wondered why Central African institutions had not been represented. She wanted clarification on what she termed as indifference and wondered whether other people had decided or were going to speak for the developing countries even when the countries were present. The Representative stated that the observers from Africa were at the Committee because they wanted to give a voice to their authors who were marginalized and could not even attend such conferences because of the expense of travel and living costs. The Representative stated that there were a number of works which were being pirated in Africa and others which were located in basements and museums or had been taken out of Africa and could be found in museums around the world but whose creators were unknown. The Representative stated that very often one could go into museums and find works whose authors or creators had not given permission for them to be there. She wished to use the opportunity to raise the issue on behalf of HEP and its partners and on behalf of the people of Cameroon. The Representative asked for clarification on why there were only two African countries selected for the study and what the objective or subjective criteria was. The Representative wished to find out why there exceptions in general in 50 out of the 191 countries that were WIPO Member States. She wondered why the Nordic countries had and other European countries had exceptions but Africa did not. The Representative stated that Professor Benhamou had mentioned moral rights in his presentation of his study but had talking really about heritage rights or professional rights which were not the same as moral rights and noted that moral rights were less tangible, and heritage rights could actually be legislated for. The Representative wondered why Professor Benhamou had set aside many rights and had not dealt with them in his presentation.

161. The Chair stated that the study did not cover moral rights.

162. The Secretariat stated that it was able to answer the question and was comfortable in doing so because it did research and looked through the responses coming in from African museums and sent dozens of letters out to various African museums and tried by every means



possible to have as many interviews as it could but only two museums responded. The Secretariat stated that if the Representative was able to help the Secretariat by raising awareness among African museums so that they participated when the Secretariat had that kind of questionnaire, which it tried to do at a global level she was encouraged to do so. The Secretariat requested that the Representative could raise awareness in the museum in countries and constituencies so that they actually came back to the Secretariat with answers and gave their position, tell about their concerns, because the Secretariat needed her to help as she was present at the SCCR discussions to get in contact with the museums. The Secretariat stated that it was not able to move from country to country to speak to all the museum directors individually, the Representative when she went home could through her contacts speak with them. The Secretariat stated that the delegate of the European Union indicated quite correctly that within one of these institutions all in the Committee were very interested in the subject and were available to share best practices, but that it was not the responsibility of WIPO to do that. The Secretariat pointed out that it saw that certain countries did not use exceptions and limitations, even though they were perfectly legal and compatible with international treaties that they had signed up to, and that the Secretariat was always ready to work on tools in order to share the knowledge and raise awareness among them of those provisions that perhaps they were not aware of so that that they could use them as a means.

163. Professor Yaniv Benhamou stated noted the importance of the comment on the diversity of geographical location and the diversity of various copyright because moral rights were indeed relevant for museums, and as mentioned in the presentation and in the study, moral rights were treated, did not identify specific concern with respect to moral rights. He pointed out that he had previously mentioned to what extent it was important to be respected and stated that he found based on the interviews, that museums were very careful when it came to moral rights and they tried to deal with those rights very carefully and to respect to the extent possible or to respect fully moral rights. Professor Benhamou noted that he had mentioned that the studies mainly focused on economic rights but reiterated that moral rights were dealt with as well.

164. The Representative of Communia noted that in the Executive Summary it was written that few difficulties were reported in relation to the copyright status of digital copies of related works. The Representative stated that that finding was unexpected to Communia since in the European Union, the national laws provided different legal treatments of faithful reproductions of works in the public domain, and that fragmentation of laws had created legal uncertainty and cross-boarder problems which they had been trying to solve for a long time. The Representative stated that the difficulties were such that in the prevailing copyright reform there had been discussions towards the need to clarify that faithful reproductions of works in the public domain should not be subject to copyright or related right in order to protect the public domain status of original works. The Representative raised a question as to whether any of Professor Benhamou's interviewees reported any similar concerns. The Representative asked for clarification with respect to the photo shooting by visitors. He noted that Professor Benhamou had said that that was permitted by most of the museums that were interviewed and stated that that was not his personal experience in Portugal. The Representative stated that he had gone to see a retrospective of the work of Cardozo, a Portuguese modernist painter that died in 1918 and there were specific signs on the museum forbidding photos. The Representative noted that when he had approached the museum staff to understand the reason for the prohibition, he was informed that it was because the family of the painter had requested them to do so. The Representative asked for clarification on whether similar issues of families requesting those types of prohibitions had been reported to the interviews.

165. The Representative of the International Federation of Library Associations and Institutions (IFLA) asked for clarification on whether Professor Benhamou had any digital research reveal anything about the adequacy of the exceptions that already existed for cross-border activities given that many museums had a strong work with partners around the world including the

existence of ICOM. The Representative asked if it was not controversial in a global context in which everything for commercial purposes had to be licensed. He stated that it was surprising to that that came up as a particular area of study. The Representative suggested that the terms of reference for that study should be reviewed in order to understand that particular choice as the study could not look at everything. The Representative stated that ICOM was willing to offer any support that could be offered to determine that and to help the Committee identify the most useful areas of practice.

166. Professor Yaniv Benhamou stressed that the first issue raised by the Representative for Communia was an extremely complex one because many jurisdictions provided various treatment in terms of copyright protection to digital copies faithfully done or not. He stated that in terms of court decisions and prevailing legislation he had identified three decisions from the United States of America and China that were conflicting. Professor Benhamou informed that in the United States of America decision, faithful copies digitally made had been deemed as non-copyrighted work while in China two decisions decided the opposite. He stated that interviewees from museums that had extensive archival databases and extreme reach database of works had raised concerns of that even though they had license with rightholders. He noted interviewees expressed that in terms of the digitization of entire works they did not want the rightholders to potentially terminate the license as that raised questions with regards to the invested resources. Professor Benhamou stated that with respect to photo shooting his 37 interviewees from museums indicated that they tried not to prohibit photo shooting because they thought that was part of the promotion of museums and part of the experience for visitors but sometimes restricted photo shooting because of rightholders' restriction. Professor Benhamou stated that the interviewees also mentioned that comfort of visitors could inform such a restriction when there were too many visitors in large museums so that visitors were not embarrassed with selfie sticks. Professor Benhamou pointed out the issue of the adequacy of exceptions for lending had not been specifically addressed and noted that it was an important issue due to the diversity fragmentation of rights. Professor Benhamou stated that though the study was not an exhaustive one it tried to be as broad as possible to bring as much clarity as possible of museums. He stated that the study needed to at least mention the question of commercial purposes in particular because it was difficult to distinguish between commercial purposes and non-commercial purposes for a museum. He noted that that distinction could be relevant for some exceptions when they came into being because most of exceptions addressed to museums were limited to non-commercial purposes. He stated that what he was saying was contemplated solution and not a recommendation. He noted that the Committee could further explore a best practices and guidelines to specifically define notions such as commercial purpose. Professor Benhamou reiterated that it was important to deal with or at least mention what was meant by commercial purpose.

167. The Chair stated that the section's discussions had attracted a lot of comments and views. He hoped that the Secretariat would take them into account as the Committee moved the topic forward. He informed the Committee that the following day would start with sharing the film by the ABC Consortium. He noted that it was a 6-minute film that highlighted a capacity-building work that was being undertaken in Mexico from the perspective of publishers as well as the beneficiaries and authorized entities.

#### **AGENDA ITEM 7: OTHER MATTERS**

168. The Chair opened Agenda Item 7, Other Matters. He announced that the Committee would address topics of the artist's resale royalty right and the strengthening of the protection of rights. The Chair opened the floor to the Secretariat to introduce, Task Force on the Artist's Resale Royalty Right, document SCCR/37/5.

169. The Secretariat pointed out that at the Twenty-Seventh Session of the SCCR, several

Delegations had indicated their interest in adding an item dedicated to the artist resale right to the agenda of the SCCR. The initial proposal at that session was put forward by the Delegations of Congo and Senegal. The Secretariat noted that since the Twenty-Eighth Session of the SCCR, several side events had also taken place and had been organized under the leadership of several nongovernmental organizations to raise awareness about the artist's resale right. The Secretariat stated that the Delegations of Senegal and Congo had submitted the proposal contained in document SCCR/31/5, for the inclusion of the topic on the agenda of the SCCR at the Thirty-First Session of the SCCR. The Secretariat noted that at the request of Member States some steps had also been completed. A study on the economic impact of the artist's resale rights on market had been coauthored by Kathryn Graddy and Mrs. Joelle Farchy. The Secretariat stated that the study had been presented at the SCCR, and it had provided important information to the Member States, especially by showing that there was no evidence that the artist's resale right had any negative impact on the competitiveness of art markets. The Secretariat pointed out that on April 28, 2017 a conference on the artists' resale rights and the art market was organized at WIPO with the participation of a wide array of experts and well-known visual artists from all regions. The conference was also an important event, which provided significant information to the Member States. The Secretariat recalled that at the Thirty-Sixth Session of the SCCR, the Committee had agreed to set up a task force of members and stakeholders to report back to the Committee on the practical elements of the artist's resale royalty rights. The Secretariat informed that the first meeting of the task force was expected to take place in Geneva on December 13, 2018. The Secretariat referred to the, Task Force on the Artist's Resale Royalty Right, document SCCR/37/5 and stated that it presented the modalities and provides a report on the composition of the work and the scope of the task force. The Secretariat stated that experts had been selected representing different categories of stakeholders involved with the right with one representative from authors, one representative from galleries, one representative from a collective management organization, one academic, one lawyer, and one representative from an auction house. The Secretariat noted that there would be a representative of the SCCR Chair as well as the two SCCR Vice Chairs and Member States were going to be represent in the task force by regional group coordinators who would be invited to participate as observers to the work of the task force. The Secretariat stressed that where necessary, the task force would be encouraged to consult additional experts on an ad hoc basis to obtain their views in order to complete the report. The Secretariat stated that the mandate of the task force was to address the essential elements of an artist's royalty right system, which were common to most laws and which would include, in particular, topics, listed in document SCCR/37/5. The topics included the basis of the right; the works covered by the right; the determination of the rate; the mode of collection and distribution; the transactions covered by the right; the persons who may claim the right; the management of the right; liability for payment; information about resales; and any other matter which the task force might deem appropriate to address.

170. The Chair opened the floor to group coordinators, followed by Member States and observers.

171. The Delegation of Lithuania speaking on behalf of the CEBS endorsed the proposal and stated that it was highly relevant to the Committee's mandate. The Group was pleased that the task force would be convening to examine a very topical issue for the CEBS group and looked forward to the presentation of its work and its findings at the following session.

172. The Delegation of Morocco speaking on behalf of the African Group stressed that the Committee should not lose sight of the fact that the resale right would allow visual artists to be fairly remunerated for their works. The Group thanked the Secretariat for the preparation of document SCCR/37/5 and stated that the working modalities and the composition of the group was a good basis for future work and debate on the issue. The Group stated that the issue of resale right should be a priority item on the agenda of the committee.

173. The Delegation of the European Union thanked the Delegations of Senegal and Congo for their proposal to include the resale right (*droit de suite*) in the agenda and stated that it was an important issue. The Delegation pointed out that the resale right had formed part of the European Union's legal framework for more than a decade, and there was dedicated legislation applicable in all its 28 Member States. The Delegation stated that the European Union strongly supported the discussion on the resale right at the SCCR and looked forward to hearing from the task force members and experts, about the practical elements of the artist's resale right, as concluded at the previous session. The Delegation pointed out that the proposal to include the topic in the agenda of the SCCR went back to SCCR 27 and was tabled at SCCR 31 and stated that the resale right, consequently, should be given priority over any other topic, should the SCCR agenda be expanded to cover additional items in the future. The Delegation urged all delegations to support the proposal of Senegal and Congo and to accept the inclusion of the resale right as a self-standing item in the agenda of the SCCR.

174. The Delegation of Senegal aligned itself with the statement made by Morocco on behalf of the African Group. The Delegation thanked the Chair for his professionalism and the Secretariat for drafting document SCCR/37/5, on the composition and the modalities of work and scope of the task force in implementation of the decision taken by the SCCR. The Delegation stated that the pertinence of the proposal was timelier than ever, given that it was to fill an existing gap in the international legal system under the principles of reciprocity at work in certain countries. The Delegation noted that studies by the Secretariat which the SCCR had corroborated showed the problems with the implementation of the resale right, in those areas where it existed. The Delegation stated that most Member States acknowledged that the author's resale right was key to ensure equitable remuneration of artists wherever their works were sold and to establish a balance between the artists and those who traded in their works so that they could have fair remuneration and maintain a permanent link with their works, something that was particularly important in an era of globalization. The Delegation pointed out that there had been studies from Professors Farchy and Graddy on the implications of the author's resale right that indicated there had been no negative impact demonstrated on the art market. The Delegation stated that the Congo/Senegal joint proposal on author's resale rights had the support of most of the delegations of the SCCR and the support was increasing as discussions continued. The Delegation stressed that the Committee, therefore, needed to make progress. The Delegation stated that the author's resale right should be made a standing agenda item at the SCCR to show the importance of the issue. The Delegation thanked all the delegations for their growing support for the issue.

175. The Delegation of Kenya aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. The Delegation stated that the resale right was important because it sought to reward creators of arts whose works were being exploited elsewhere in the world. The Delegation endorsed having an international normative order in that creative sector. The Delegation informed the Committee that Kenya, in furtherance of that goal, had amended its Copyright Act to incorporate the artist's resale right. The amendment bill was awaiting approval by the Kenyan Senate before it could be presented to the president in order for it to become an enforceable law. The Delegation asked all the participants to support the creative journey.

176. The Delegation of Malawi aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. The Delegation stated that the Government of Malawi had taken notice of the importance of the issue and had, therefore, introduced resale right provisions in the Act of 2016. The Delegation stated that it would support conclusions to discussions that would enable the Committee to have a legal and international legally binding instrument that would ensure that the artist's resale rights were recognized worldwide. The Delegation noted the importance of the issue and welcomed the composition and scope of the

task force that would address practical elements of the artist's resale rights system. The Delegation looked forward to the outcome of the task force's deliberations.

177. The Delegation of the Russian Federation stated its support for the proposal to include the artist's resale right in the agenda of the SCCR. The Delegation stated that the Russian Federation already had some experience in that issue in its legislation as the Russian Federation implemented that in its legislation a number of years before for artists. The Delegation stated that the Member States had been talking about artists who created their own works which could be resold in a tangible format and not any kind of performance artists.

178. The Delegation of Botswana aligned itself with the statement made by the Delegation of Morocco on behalf of the Africa Group. This Delegation stated that they supported the proposal made by the Delegations of Senegal and Congo for the artist's resale right to be included in the agenda of the SCCR. The Delegation stated that Botswana was in the process of considering inclusion of the resale right in its Copyright and Related Rights law, which was under review. The Delegation thanked the Secretariat for the establishment and composition of the task force, its scope, and modalities of work, and looked forward to the report of the work of the task force.

179. The Delegation of El Salvador speaking on behalf of GRULAC thanked the Secretariat for presenting information on the task force and its modalities and scope of the work. The Delegation also thanked the Delegations of Senegal and Congo for their proposal and the African Group for proposing that the item be a standing agenda item of the SCCR. The Delegation stated that broadcasting had made significant progress, and, therefore, as a standing agenda item, the Committee would have to deal with it again at the following session before the General Assembly. The Delegation suggested that the Committee could leave the decision about whether to include that as a standing agenda item of the Committee to a future session and not decide it at the time.

The Delegation of Japan pointed out that many countries did not have the resale right in their national legislation, and stated that some did not have it in the digital system either. The Delegation stressed that the research, particularly on implementation and performance regarding resale right or mechanism would be important and useful for the Committee with regards to the objective analysis of the issue. The Delegation noted that the opinion of a wide range of stakeholders should be collected and reiterated that the objective of the task force should be limited to research findings and not to make policy recommendations or implementation or design a specific system. The Delegation expressed belief that the study conducted by the task force would be useful for the better understanding of the resale right. The Delegation suggested that the task force should research the necessity and tolerance of the resale right as well as the practical issues such as the justification for tying the resale benefit to the artist and the reasons why only visual artworks are given a special right compared with other types of work. The Delegation stated that the task force needed to consider the possibility of only positive impact but also the negative impact in other countries than the United Kingdom. The Delegation stated its belief that the task force needed to take into account other approaches and measures from the viewpoint of the artist. The Delegation hoped that the issues it had raised would be discussed. The Delegation reiterated that priority should be given to the protection of broadcasting organizations at that moment and stated that the Committee should focus on the existing agenda and discuss the other issues as other matters.

180. The Delegation of Argentina aligned itself with the statement made by the Delegation of El Salvador's on behalf of GRULAC and hoped for good outcomes from the task force. The Delegation thanked the Secretariat for document SCCR/37/5. The Delegation noted that the issue of cross-border artist's resale right was vital and could not be dealt with at an internal level or domestic level. The Delegation stated that many artists saw their art moving around the world very intensively, and they needed to have a right to these resale rights or royalties for the

sale of their work abroad, something many of them were missing out on. The Delegation aligned itself with the view that the topic was very relevant and needed to be included in the agenda of the Committee. The Delegation hoped that the issue could be dealt with at the international level for artists to benefit from international sales of their works.

181. The Delegation of Gabon aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. The Delegation was pleased that the Committee was continuing discussions on the proposal by the Delegations of Senegal and Congo on having the artist's resale right included as a standing agenda item on the SCCR. The Delegation was pleased with the progress made and stated that the artist's resale right needed to become a universal. The Delegation stated that it had taken note of document SCCR/37/5 on the task force on the artist resale royalty right, and was pleased that the experts selected would interact with stakeholders so that they could deal with the issue looking at it from their various different perspectives and to share a common understanding of the stakes involved in the right. The Delegation looked forward with interest to the first outcomes from the task force.

182. The Delegation of Brazil noted that the topic of resale rights was important as it aimed to ensure that artists were properly and fairly remunerated. The Delegation pointed out that it was the reason why the right was in the legislation of Brazil and of many other countries at the SCCR. The Delegation stated that the results of the task force result would provide another opportunity for the Committee to further learn from other countries' experiences. The Delegation noted that the cross-border aspects of the resale rights was particularly important. The Delegation expressed confidence document SCCR/37/5 would provide solid basis for discussions. The Delegation stated that both the resale right and the copyright in the digital environment items deserved their own specific agenda item noting that unpacking them from other issues would allow for a more focused discussion. The Delegation pointed out that that was not to affect the allocation of time for other issues, such as broadcasting, which had been mentioned by those gaining momentum. The Delegation hoped that the issue could go into a diplomatic conference and reiterated that having each of them as a specific agenda item would be helpful for the discussions.

183. The Delegation of the United States of America aligned with the statements made by the Delegations of Japan and El Salvador and reiterated that it was not in a position to support making the artist's resale right a standing agenda item at the SCCR at the time. The Delegation stated that it, however, supported the continuing of a robust and informed discussion of the resale royalty right under the Other Matters agenda. The Delegation aligned itself with the Delegation of Japan that the task force was best suited as a fact-finding body. The Delegation noted that it was particularly keen on the idea of focusing on the practical elements of an artist's resale right as it was implemented throughout the world. The Delegation stated that the concerns made by the Delegation of Senegal and Congo necessitated a broader discussion on the copyright of visual arts. The Delegation noted that that was to afford artists the attribution for and enforcement of their rights in works, including in the digital environment. The Delegation pointed out that it could be helpful to consider other models by which visual artists could benefit from the value created by their works and noted that royalties for copies of images in both domestic and foreign markets were an important source of remuneration for visual artists around the world. The Delegation stated that some visual artists had expressed concern about their inability to enjoy royalties collected by reproduction rights organizations for the use of their works abroad. The Delegation stated that it, therefore, saw benefit in having a conversation about how the principle of national treatment and reciprocity applied to the collection and distribution of royalties for those works of visual art and to identify problems and recommended solutions to facilitate the payment of visual artists for the use of their works in foreign markets.

184. The Delegation of South Africa aligned itself with the statement made by the Delegation of Morocco on behalf of the Africa Group and expressed support for the proposal from the

Delegations of Senegal and Congo to include the resale royalty right on the agenda of the SCCR. The Delegation endorsed the establishment of the task force to address the essential elements of an artist's resale right system. The Delegation informed the Committee that South Africa was undertaking copyright reforms in reviewing its Copyright Act and looked to include the artist's resale royalty right in its national laws.

185. The Delegation of Burkina Faso expressed support for the proposal by the Delegations of Senegal and Congo to include the artist resale right as a permanent agenda item of the SCCR. The Delegation noted that the philosophy of artist's rights was that artists had the right to the income from their work. The Delegation stated that that included the resale of their works.

186. The Delegation of France reiterated that 80 countries already recognized the right, and, therefore, it was time for it to become global. The Delegation noted that the Committee was only two years away from the centennial of the creation of that right.

187. The Delegation of Cote d'Ivoire aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. The Delegation stated that Cote d'Ivoire had the artist's resale royalty right in its legislation and pointed out that artists should receive royalties from those who speculate in their art around the world.

188. The Representative of the International Confederation of Societies of Authors and Composers (CISAC) endorsed the initiative of the Committee to create a task force of experts to discuss and report on the practical elements of the artist's resale right. The Representative pointed out that the brainstorm exercise could bring added value to the discussions in the Committee and could shed more light on the different aspects of the issue. The Representative stated that the work of the task force would complement the findings of two iterative studies that had been presented to the Committee in the last years, namely the study of Professor Ricketson presented at the Thirty-First Sessions in November 2016, that provided valuable insight on the resale right from a legal point of view, and the study that the Committee commissioned to Professor Farchy and Professor Graddy. The latter study which was presented the previous year in Plenary showed that there was no evidence that the resale right had a relevant impact on artists' market prices or sales volumes of their works. The Representative stated that CISAC was confident that the analysis of the practical elements carried out by the task force, together with the findings of the two studies mentioned, would encourage Member States to start substantive discussions on the proposal of the Delegations of Senegal and Congo towards a meaningful outcome for the sake of the visual arts community, a fragile community that represented the creativity and the cultural heritage of countries around the world at the next sessions.

189. The Representative of the International Authors Forum (IAF) thanked Member States who had supported the resale royalty right or droit de suite, in particular, the Delegations of Senegal and Congo for their proposal to include artist's resale royalty right as a standing item on the future agenda of the SCCR. The Representative applauded the Member States who had supported the establishment of the task force on resale royalty right and the Secretariat for its work. The Representative hoped to have an opportunity to feed into the work of the task force through the expertise of IAF membership who managed, supported, or hoped to establish the right in their countries. The Representative stated that it was important that artists in all countries could benefit from the resale of their creations, and noted that an international artist's resale right would ensure that in every country artist's creativity was respected and encouraged. The Representative expressed disappointment at the statement made by the Delegation of the United States of America which expressed doubts and noted that the artist resale right had seen progress around the world, including in the United States of America where there was bipartisan support for the American Royalties Too Act, which would introduce resale right. The Representative hoped that Member States would support the progress made.

190. The Representative of Federazione Unitaria Italiana Scrittori (FUIS) stated that FUIS was made up of emerging as well as contemporary artists whose works were sold all over the world. The Representative welcomed the initiative to implement artist's resale rights worldwide where the right did not yet exist, especially in countries such as the United States of America and China, where most of the sales or regional works of art took place. The Representative noted that the step was to harmonize the right in Europe and other countries concerning the meaningful threshold on which resale rights should be applied. The Representative pointed out that at the time that was from country to country and stated that having the threshold for each country would extend the artist rights to young artists who, generally speaking, did not benefit from the right since their works were sold at lower prices. The Representative stated that it was economically damaging to the artists of any nationality and to the art market as a whole for artists not to receive royalty payments on their works that were sold. The Representative stated that it made the production of artworks unsustainable if there was no continued investment in the source of those works of the artists after initial sale. The Representative stated that as the art market became more global, such impact would limit the local art, cultural diversity, and the production of cultural heritage.

The Representative of the Knowledge Ecology International, Inc. (KEI) endorsed the idea that there should be work on a treaty for artist's resale right as it related to physical works of art. The Representative noted that the proposed members of the task force included stakeholders that came from areas, including people that worked in fine art and stated that it was important for them to ask whether that should be extended to things one could copy. The Representative noted that that raised a lot more complexity in the issue and stated that the work should be focused on physical works in art otherwise, it was unlikely to achieve consensus and be a manageable project because it was much more controversial to apply that. The Representative stated that there were places The Committee might want to apply the right in the area of works that could be copied but stated that it was not an area that was as compelling of a story as far as a treaty instrument or any kind of harmonization was concerned.

191. The Representative of the African Union of Broadcasting (AUB) aligned with the statement of the Delegation of Morocco on behalf of the African Group. The Representative pointed out that broadcasters were great consumers of artistic creations, and the resale right was a question of fairness and would ensure a permanent link between an artist and their works and also would allow artists to live from their work

192. The Representative of the African Intellectual Property Organization (OAPI) was delighted to see the issue of resale rights become a permanent agenda item of the SCCR and hoped that that would allow the Committee to extend the right to an international level. The Representative noted that the resale right was already recognized in Annex 7 of the Bangui Agreement and in the national legislation of most of the Member States subscribing to that agreement. The Representative stated that OAPI gave the right the greatest importance and expressed the belief that it was logical and desirable that resale rights should be on the agenda of WIPO. The Representative stated that OAPI would work with regional representatives. The Representative stated that resale rights did not know about borders, and that could only work if the protection was afforded at a multilevel.

193. The Representative of the Health and Environment Program (HEP) expressed support for the proposal and stated that the group of experts selected for the taskforce would be well equipped to discuss the issue and to explain it to stakeholders and to Member States and to make clear how far the rights could be protected.

194. The Chair summarized that part of the discussions noting that there was a very strong interest on the part of a very substantial number of Member States to see that the issue is



placed on the on the agenda as well as views from a considerable number of Member States who said they needed time or that it was not the appropriate time. He stated that the Committee had no consensus at that point of time on whether to make the issue a standing item on the agenda. The Chair noted that there was work ahead that was already been outlined by the Secretariat in the form of the task force. He enjoined the Committee to look forward to having the task force present its views on the when it met on December 13, 2018 and at the following SCCR. He urge everyone to continue discussions on the topic intersessionally. The Chair opened the item within the agenda item which was the topic of the strengthening of protection for theater directors' rights at the international level. He noted that the matter had been proposed by the Delegation of the Russian Federation a couple of meetings before and referred to the proposal, Modalities of a Study on the Protection of Theater Directors' Rights, document SCCR/37/3, which had been prepared by the Secretariat. The Chair opened the floor to the Secretariat to introduce the document.

195. The Secretariat pointed out that at the Thirty-Fifth Session of the SCCR in November, 2017, the Delegation of the Russian Federation had submitted a Proposal on the part of the Russian Federation to Strengthening the Protection of Theater Directors' Rights at the International Level, document SCCR/35/8. The Secretariat pointed out that the proposal was discussed and the Committee had asked the Secretariat to undertake a study of the rights of theater directors and to present the results of their work at the Thirty-Seventh Session of the Committee. The Secretariat stated that its proposal was found in document SCCR/37/3 and informed the Committee that it had identified two authors, Professor Ysolde Gendreau and Professor Anton Sergo who had agreed to work with the Secretariat on that project. The Secretariat informed the Committee that Professor Gendreau was Canadian, with a doctorate in law and a member of the Bar of Quebec. She taught international property law and unfair competition at the Faculty of Law, University of Montreal. The Secretariat notes that she had a number of publications both in Canada and abroad and her publications were principally on copyright from a comparative and international perspective. The Secretariat informed the Committee that Professor Anton Sergo was a national of the Russian Federation, and a graduate of Moscow State Academy of Law, with a doctorate in law and held the UNESCO Chair in Copyright and Other Intellectual Property Rights. He was an associate professor of the Faculty of Copyright and Related Rights at the Russian State Academy of Intellectual Property Institute and was the author of numerous publications in that area. The Secretariat proposed that the study would include a survey on the copyright for theater directors in different countries of the world and would particularly seek to define the international legal framework that applied to the rights of theater directors to define the scope, the activities, the inheritance rights and use examples from different Member States of WIPO. It would also seek to have a list of appropriate laws concerning the rights of theater directors and the granting of legal rights, including the protection of the theater performances. The Secretariat stated that the study would look at the rights of theater directors by looking at a sample of cases and seek to interpret the different systems in existence and to evaluate in-depth what the possible international protection system will be. An intermediate report on the progress of the work would be submitted to the Committee in April of 2019 and the completed study would be submitted to the Committee at its Thirty-Ninth Session in October of 2019.

196. The Chair opened the floor to group coordinators, followed by Member States and observers.

197. The Delegation of Kazakhstan speaking on behalf of the Group of Central Asian, Caucasus and Eastern European Countries (CACEEC) welcomed the work of the Committee on the proposal of the Delegation of the Russian Federation for strengthening the rights of theater directors and research with regard to national legislation and practice to ensure the protection and enforcement of rights of theater directors. The Group supported the proposed modalities of the study and stated that the issue of the protection of theater directors' right was important, not

only for theater directors themselves but for a large group of people within the theater world with regard to quality of performances and also the intellectual property rights of those working in the theater. The Group hoped that that was just the first step towards considerable work by the Committee on the issue.

198. The Delegation of Canada speaking on behalf of Group B stated that the Group was unsure of a need for a multilateral approach on the issue. The Delegation stated that the Group could, nevertheless, support a study on the matter, as proposed in document SCCR/37/3, including with a view to better define how the issue was handled nationally by Member States. The Delegation noted that Group B members could have additional views on the issue.

199. The Delegation of Senegal endorsed the activities proposed under the agenda item. The Delegation stated the modalities of the study appeared to be appropriate in as far as they could assist the Committee to understand the question.

200. The Delegation of the European Union stated that it had noted the proposal and the presentation at the previous. The Delegation stated that it had listened, with interest, to the presentation of the modalities of a study on the topic as presented at the ongoing session and expressed the Delegation's willingness to engage in the preliminary discussions.

201. The Delegation of the Russian Federation thanked the Secretariat for the preparation of the document on its proposal for the protection of theater directors. The Delegation expressed appreciation for the observations made by Member States and thanked those who had welcomed the initiative. The Delegation pointed out that it had given explanations regarding its proposal at the previous session of the Committee in which it had described the situation in a very detailed manner. The Delegation stated that the introduction of document SCCR/37/3 would allow the Committee to study the issue in as complete a manner as possible, both from the point of view of Intellectual Property and from that of practice in different Member States. The Delegation stated that the topic would allow the Committee to deal with problems encountered at the time by theater directors who saw that their work was copied by other theaters without their being able to benefit from any protection. The Delegation stressed that it was an extremely important issue which needed to be raised at the international level taking into account the practice in Member States to deal with the issue and the manner in which the protection was accorded. The Delegation hoped that the Committee's work would reach positive conclusions.

202. The Chair stated that the work program ahead had been endorsed by the Committee. He consequently asked the Secretariat to continue along the pathway that was outlined. The Chair stated that the Committee looked forward to hearing the interim report from the Secretariat at the following SCCR.

203. The Chair opened the floor to Professor Benhamou to show the work of the Accessible Books Consortium.

204. The Secretariat stated that it would show a short video, set in Mexico about one of the key activities of the Accessible Books Consortium (ABC) which was a public/private partnership led by WIPO. The Secretariat informed the Committee that ABC included all the key civil society organizations that had a stake in the production of accessible book production including organizations that represented people with print disabilities, such as the World Blind Union, libraries for the blind; standards bodies and organizations representing authors, publishers and collective management organizations, including the International Publishers Association and the International Authors Forum. The Secretariat stated that the ABC sought to implement the Marrakesh Treaty at a practical level through three main activities, and the first was the ABC global book service, which was a database and book exchange service of over 415,000 titles in

76 languages located at WIPO and had 46 authorized entities that had joined at the time. The second activity was training and technical assistance in developing countries in the latest accessible book production techniques. The Secretariat noted that the previous videos that had been shown at the SCCR about ABC had focused on ABC's capacity building projects, primarily in India and Argentina, by which it provided training and funding for the production of educational books and national languages in accessible forms. The Secretariat stated that the day's video would focus on ABC's third main activity, which was accessible publishing. The Secretariat stated that the ABC promoted the objective of born accessible publishing, which meant that when a book was released on the market, the same product could be read by both sighted persons and visually impaired persons without the need for a third party to intervene to adapt the work to make it accessible for people who were blind or visually impaired. The Secretariat informed the Committee that ABC had a charter of accessible publishing with eight high level aspirational principles, which it encourage publishers to sign towards the aim of born accessible publishing. The Secretariat stated that the video focused on one publisher's evolution towards accessible publishing, and thanked the government of Mexico for its support and assistance in the making of the video, which had been made a year earlier, in December 2017. The Secretariat thanked the International Publishers Association (IPA) for their support and in particular Hugo Setzer who was the subject of the video and the president-elect of the IPA. The Secretariat informed the Committee that Hugo could not be present at session.

205. The Chair stated that the video was very touching. He opened the floor to Member States and observers for comments.

206. The Delegation of Mexico applauded the Accessible Books Consortium, ABC, for preparing the video that showed the Committee the commitment and the way in which Mexican publishing houses were working to meet the needs of people with print disabilities. The Delegation stated that it was an area where there was no doubt that there would be an impact by the Marrakesh Treaty. The Delegation reiterated its commitment to the treaty and stated that the government of Mexico had been working on a mechanism to identify and accredit the authorities in the treaty. The Delegation informed the Committee that Mexico was committed to giving effect to the instrument which had come into force in September 2016. The Delegation hoped that the Committee would continue to make progress on accessible books for persons with visual disabilities. The Delegation stated that the video was because December 13, was the international day of the visually impaired.

207. The Delegation of Botswana congratulated the Secretariat and the Accessible Books Consortium (ABC) for the continued work in supporting conventional books into accessible formats and Mexico for the project. The Delegation pointed out that it was continued prove that efforts put to the adoption of the Marrakesh Treaty was worthwhile and stated that the Marrakesh Treaty was a gift to part of the society that had always been ignored. The Delegation noted that as one of the beneficiaries of the ABC support, Botswana had seen an increase in the need for accessible books format in the country. The Delegation stated that it had witnessed the joy that flooded the faces of visually impaired learners, when they held devices that they did not have before and thanked WIPO, the ABC and the Republic of Korea for supporting Botswana in that endeavor.

208. The Representative of the International Publishers Association (IPA) stated that the video was current in terms of the message that came across and apologized for the absence of Hugo Setzer who had to attend the Guadalajara Book Fair which was the most important Hispanic book fair in the world. The Representative stated that the IPA was very proud of the part that it was playing in trying to allay the book famine that was talked about during the discussions around Marrakesh and that the IPA had undertaken a concerted push to encourage all of its members and all publishers, globally, to both sign the ABC charter as a symbolic act and to

move towards having all future titles born accessible. The Representative noted that if the IPA could achieve that it would have taken a major step. The Representative informed the Committee that IPA had a very engaged group of stakeholders working together with WIPO to push the ABC agenda along. The Representative also noted that IPA's vice president-elect had signed the April agreement to start adding Arabic books in a more concerted way, during the week. The Representative stated that IPA's focus on the area would only increase with Hugo as president-elect. The Representative point out that there was going to be an ABC international excellence awards for publishers at the London Book Fair where there would be two awards for publishers and other organizations doing a great job for the visually impaired.

209. The Chair thanked the relevant parties involved for their work in the area and stated that the Committee looked forward to further updates from them in the future. He opened the subsequent item within the agenda item which was the analysis of copyright related to the digital environment. The Chair highlighted that the Secretariat had a proposed study, Proposed Modalities of a Study on the Protection of Theatre Directors' Rights, document SCCR/37/3 and noted that the idea was to see whether that would be relevant to that item under the agenda. He opened the floor to the Secretariat to give a presentation on that after which the floor would be opened to Regional Coordinators followed by members and observers for comments.

210. The Secretariat noted that the topic of the analysis of copyright related to the digital environment was introduced by a proposal of GRULAC in December 2015 under document SCCR/31/4 in which it was highlighted that a more embracing analyses regarding the issues covered by the document was necessary. The Secretariat pointed out that a digital environment on copyright legislation had been adopted between 2006 and 2016 in the framework of that proposal after preliminary discussion of SCCR 33 and was presented one year later, at SCCR 35 in October 2017. The Secretariat stated that at that session, the written summary of the brainstorming exercise convened by WIPO was also presented. The Secretariat noted that at the previous session in May 2018, as a follow-up to those initial steps, the Committee had welcomed the proposal of Brazil that a further study focused on digital musical services should be undertaken and had requested the Secretariat to promote the modalities at the following session. The Committee had also left open the possibility to request studies covering other areas such as audio visual and literary sectors in the future. The Secretariat stated that for the ongoing session, it had presented, Modalities of a Study on Digital Music Services, document SCCR/37/4 for the Committee's consideration. The Secretariat stated that the modalities encompassed the analysis of the impact of the increase in digital musical services and it would cover several topics such as chain of rights and contemporary licensing practices including collective management, the issue of value chain and distribution of incomes among different stakeholders and mechanism for gathering data on the usage of music and for reporting the distribution of royalties, including transparency matters. The Secretariat pointed out that the document had put forward a number of preparatory steps, the first one being a preliminary collection of data, including through gathering publicly available information on a voluntary basis, from all stakeholders involved in the music sector. The Secretariat suggested the deadline of December 31, 2018 that the Committee should allow it to start the work as soon as feasible and stressed that further inputs would be welcomed even after that line. The Secretariat stated that full interaction with stakeholders was foreseen throughout the process and informed the Committee that the scoping study would be presented in the context of an international conference, likely to be held during the following biennium. The Secretariat stated that it would keep updating the Committee on the status of the ongoing work at each session of the SCCR during the period.

211. The Delegation of El Salvador speaking on behalf of GRULAC thanked the Secretariat for introducing the document on modalities for the scoping study on digital environment and stated that the results of the study would be useful for the Committee. The Group stated that its proposal tackled one of the main issues related to copyright, how no adapt laws developed in

the previous century to changing environment. GRULAC pointed out that the study agreed on in the previous session intended to investigate aspects of the new world and to deepen the understanding of the musical market and stated that a fact-based discussion was essential for the Committee to address the issue in a manner that allowed it to find solutions that would properly meet the needs of the stakeholders of copyright and related rights. The Group noted that the discussion on copyright in the digital environment had been ongoing for many sessions and many documents had been circulated and stated that it was thus important that the issue should continue to be discussed in a proper manner with enough time allocated for its debate. GRULAC proposed the item in the future.

212. The Delegation of Lithuania speaking on behalf of the CEBS Group stated that it attached importance to issues related to copyright protection in the digital environment in principle. The CEBS Group asked for clarification on how the proposed study correlated with the proposal of Brazil submitted to CDIP in document CDIP/22/15 and how to address in the modalities of the issues of an intended duplication. The Group stated that it was hesitant as to whether the conference was the best format to discuss the study. The Group proposed that at the outset, the results of the study had to be thoroughly discussed by the SCCR after which the Committee could decide if outcomes of the study were solid enough for presenting them to the wide public at the conference. The Group noted that it would be in favor of the nonbinding language as regards the organization of the conference and the modalities.

213. The Delegation of Morocco speaking on behalf of African Group noted the importance of the subject to provide adequate protection for copyright in the digital environment and thanked GRULAC for its proposal and the Secretariat for drafting document SCCR/37/4 on the modalities of a scoping study on digital music. The Group expressed willingness to participate in the discussions and noted that it should have more time on the agenda. The Group looked forward to future discussions.

214. The Delegation of the European Union and its Member States reiterated that the issue of copyright in digital environment merited discussion in order to ensure that copyright could be more implemented and played its role in the digital era. The Delegation highlight that they were potentially very wide topics, not always clearly defined and not only related to copyright. The Delegation stated that for the work on the topics to be further pursued, it was necessary to first clearly determine the concrete subject of the Committee's conversation and thanked Brazil for the proposal for possible study on digital musical services and had listened with interest to the presentation of the modalities of such a study during the session. The Delegation aligned itself with the comment of the CEBS Group in relation to the presentation of the study results.

215. The Delegation of Brazil reiterated that GRULAC had presented a proposal of discussions on issues and new challenges relating to copyright in the face of the new service and technological developments in the digital environments and stated that the key motivation was to ensure that the fruits of the online environment were fully enjoyed by those at the core of the corporate system, namely performers whose legitimate demand for a fair remuneration for the use of the works needed to be addressed by the international community. The Delegation stated that there were, however, practical matters specific to the digital environment that could hinder the attainment of such goal and noted that the digital environment was borderless by nature and the copyright system was based on border laws. The Delegation stated that it included the fundamental issue of the fair remuneration of authors in the digital environment. The Delegation pointed out that that many formats for ensuring the adequate remuneration of works in the digital environment were debated in the world but a common point was the necessity of providing additional information to rightsholders on the value chain related to the use of copyrighted works. The Delegation noted that considering those aspects, the previous SCCR session agreed that a study should be undertaken with the focus on the digital musical service. The Delegation stated that there was a concrete need to develop a common

understanding of the aspects involved with the management and remuneration of copyright in the digital environment and welcomed the proposed modalities contained in document SCCR/37/4. The Delegation stated that the Secretariat had the expertise and the proper dialogue with the many different stakeholders required for the implementation of the study according to the proposed methodology and noted that the scope also focused on the main aspects and that the Secretariat reached a delicate balance in the text. The Delegation stated that the pool of experts with different background would ensure that the different legal systems would be properly addressed. The Delegation proposed that the Secretariat should provide a longer period of time for collection of data extending it to February or March. The Delegation stated that while it would certainly like to have the study available sooner rather than later, it was far more important to have a solid and well-grounded study underpinned by hard data. The Delegation looked forward to hearing comments from other delegations and cautioned against micromanagement of the work of the Secretariat and the experts employed in the study. In response to the CEBS Group's question regarding the audio visual study approved by the CDIP, the Delegation stated that the study before the Committee touched on the music industry, while the CDIP project was about the audio visual industry in Latin America only and noted that they had different subjects as well as different regional scope. The Delegation stressed that whereas, the study that it hoped would be approved at the session would focus on the global market, the other would focus on creators, intermediaries and the use of copyright works and were under the different elements of music value chain. The Delegation stated that the flow and the use of works could be useful for addressing potential bottlenecks and gaps and pointed out that authors and intermediaries could use such information to understand how the rights were being fulfilled. The Delegation reiterated that it was a marketplace issue in which players had different bargaining power. The Delegation noted that artists intermediaries and platforms negotiated among themselves the use and the remuneration of copyright work and transparency could be used as a valuable tool to increase market efficiency. The Delegation stated that the ultimate goal was to provide an enabling environment in which creativity could bloom and spread worldwide without any friction to contractual liberties. The Delegation noted that the topics would continue to be explored to find common understanding among Member States and to provide legitimate demands on society. The Delegation reiterated that a specific agenda item for the topic should be granted in future SCCR sessions.

216. The Delegation of the United States of America stated that the proposal for modalities of a study in the digital music services area would provide useful information to enhance the substantive discussion of that important topic. The Delegation pointed out that productive exchanges were best facilitated when there was focus on all of the players in the music services sector, and was pleased that the scoping study did just that. The Delegation noted the statement by the Delegation of Brazil and stated that the emphasis on contractual freedom was also important to the United States. The Delegation proposed that the language of the final phrase, beginning with "share the overall revenues" should be changed to more neutral and balanced view and suggested that the language could be "gain a deeper understanding of the revenues generated by music digital services, with respect to all participants in the music creative sector". The Delegation looked forward to the results of the study to enhance the discussion.

217. The Delegation of Argentina stated that the modalities presented by the Secretariat would be useful towards a better understanding of the problems encountered with distribution. The Delegation supported the continuity of the issue in the Committee's debates and hoped that it would spend more time on the important matter in the future.

218. The Delegation of the Dominican Republic aligned itself with the statement made by the Delegation of El Salvador on behalf of GRULAC. The Delegation –stated that the issue was of great importance, and the Committee needed the appropriate amount of time to debate it. The

Delegation pointed out that that in relation to the reality that new technologies need to allow a fair remuneration for all of those in the digital environment the Committee needed to discuss the issue in depth and reach a common understanding.

219. The Representative of LATIN ARTISTS stated that it recognized the difficulties of artists in relation to the use of their creations in the digital environment which had been properly described by GRULAC as it was presented to the Committee. The Representative thanked the Secretariat for the scope proposed for the undertaking of the study on digital music services and stated that in the second phase, a similar study should be undertaken in the visual area, where actors had the same problem as musicians and digital services for the dissemination of audio visual productions had the same impact as music services. The Representative stated that it was absolutely necessary to find an appropriate formula, which guaranteed the economic rights of artists in the digital environment, one that allowed artists a fair participation in the economic benefits of their creations and noted that such formula was found in the Beijing, particularly in Articles 12, 13. The Representative stated that the existing contractual agreements were only valid when there was an equilibrium between the negotiating parties, and it is very rare. The Representative noted that that was only the case for stars in the world of theater and music and that normally, the creator, the artist was very much the underdog in such negotiations. The Representative expressed willingness to assist the Secretariat and to provide any information which could assist in the preparation of the study, with the hope that they could initiate a debate which could not be delayed further. The Representative noted that three years had passed since the GRULAC proposal and stated that artists needed solutions and every day that passed when they could not participate fairly in the economic benefits of their performances was an irrecoverable loss for them. The Representative stated that the issue should be a permanent agenda item for the Committee.

220. The Representative of the International Federation of Library Associations and Institutions (IFLA) welcomed the documents that set out the modalities of a study on digital music services following the proposal of the delegation of Brazil. The Representative looked forward to the results and hoped that it would be possible to extend the work to other sectors such as literary works. The Representative thanked the Secretariat for having shared the terms of reference for the study including the methodology and the scope and stated that it was a valuable and welcomed precedent. The Representative proposed that in addition to the topic value chain, the distribution of royalties, collective management, which would focus on the share of the overall revenues generated by music digital services received by each stakeholder, the Committee should include the share of non-distributed royalties. The Representative noted that that would bring value to the scope and a better understanding of distribution of royalties in the digital music sector and it would also apply to any further look at written works. The Representative stated that another interesting approach would be to explore how royalties were distributed from a geographical perspective, as well as the distribution among artists, in order to understand any potential inequalities created by existing systems.

221. The Representative of the Ibero-Latin-American Federation of Performers (FILAIE) stated that FILAIE was concerned and hopeful about the work of WIPO for the establishment of their rights in the digital environment. The Representative noted that FILAIE had participated and collaborated on the studies undertaken by the Committee in order to create a balance between the market and the digital environment and on the proposal by the Delegation of Brazil. The Representative stated it had 13 per cent of the -- it had gone from 13 per cent analog productions to only 5 per cent for digital productions. The Representative stated that they participated with the fair remuneration recognized in the Rome Treaty but with streaming and online radio, musicians did not receive anything. The Representative stated that only well-known artists had negotiating power to obtain a royalty. The Representative stated that the survival of artists in the digital environment was in danger and stressed that it was necessary to protect them and to place the issue on the permanent agenda of the Committee as proposed by

the Delegation of Brazil. The Representative stated that with regards to the scope of the study and the legal measures proposed, that the right to the remuneration of the creation when the artist waives their rights. The Representative reassured delegations who had any doubts that FILAIE as a representative of music artists did not intend to interfere in the market. The Representative stated that in some markets like Spain, it was growing like the rest of the European Union. The Representative expressed support for the request made by Brazil that the issue should be included on the agenda and for GRULAC's proposal and noted that it was urgent to recognize the right to remuneration for artists.

222. The Representative of the International Confederation of Societies of Authors and Composers (CISAC) welcomed the proposal of the Delegation of Brazil to undertake a study focused on digital music services. The Representative stated that at that time, CISAC's greater priority was the value gap, namely the imbalance that existed in the digital market between the weak position of creators and the strong power of those who exploited their works and commercially benefitted from that exploitation. The Representative stated that the study should analyze the best way possible to address the topic by a global perspective. The Representative stated that that in line with the conclusion of the brainstorming exercise presented at the Thirty-Fourth Session, the topic of the value gap should be addressed by analyzing the impact both from a legal and economic point of view, of the rules on liability of technical and intermediaries, the safe harbor regime. The Representative pointed to a study of the economic analysis of safe harbor provisions by Stan Leibowitz of the University of Texas at Dallas commissioned by CISAC and published earlier that year and stated that it was the most detailed examination of how copyright owners had been damaged by the safe harbor laws in copyright rules.

223. The Representative of INSTITUTO AUTORE stated that the digital environment should not affect the content or the copyright and noted that a number of legal decisions and resolutions, internationally and nationally, which recognized the right to public communication, internet, had actually deprived rightsholders of their copyright when the public discussion had been on platforms other than the original as established in those treaties administered by WIPO. The Representative stated that the Secretariat must clarify the concept of public communication of the internet, any provision of services. It should not be in conflict with the international norms.

224. The Representative of Federazione Unitaria Italiana Scrittori (FUIS) welcomed the modalities of a study on digital music services and in particular, that it included consultation with all stakeholders, including authors. Neglected but vital grip and consultations and is happy to offer those in the digital sector. The earnings potential which has suffered thanks to the global digital technology and the framework to account for changes and the way users access copyright protected works and it's therefore vital that others as originators of copyright protected works are taken into consideration when undertaking work to assure that the professional can be sustained. There must be an integral part of the development of systems that will ensure that they are paid fairly. They look forward to further studies in other fields of professional ownership, including the text and the visual sectors.

225. The Chair noted that there were two aspects of the study, on digital music services on which there were specific comments on elements. The first was a proposal by a Member State to adjust the scope on revenues to a phrase along the lines of gain a deeper understanding of the revenues generated by music digital services with respect to all participants in the music creative sector. The Chair stated that the other proposal was to consider the international conference as the Committee went along with the study. The Chair wished to hear views on whether any of the Member States had any objections if those two were to be adjusted in that way. He stated that the Secretariat would take guidance from the Committee on those two elements. The Chair noted that the Delegation of Brazil had made a point that the initial fact finding of data should be pushed back by a couple of months in order for more data to come in



so there it would be more comprehensive but not too long because the Committee did not want to delay that. The Chair stated that the Committee could give it a fair February or March dealing and noted that that was usually a period where all of members would be planning the year and holidays and had time with their families and noted that the proposal was to push back by about three months maybe to the end of --. The Chair wished to hear if there were any violent objections to those adjustments and stated that if there were not any then the Secretariat would take guidance from the views canvass and the Committee would proceed along the lines that they had explained.

226. The Chair stated that the Secretariat would incorporate those comments and noted that it would be good for the Secretariat to give the Committee an update on the process so it could be abreast on the data gathering and on any other matters that could be useful for the Committee to consider. The Chair wished to take the opportunity to make some general comments about the session. He stated that the Committee found itself in the unusual situation where it was about to discuss the Chair's summary at 11 something on a Friday which was unusual for the Committee. That had not happened for many years. He noted that there were a number of studies of which professors could not join the Committee or for which the discussions were much shorter. He noted that there was also an expectation for more reactions from Member States on some of the agenda items. The Chair noted that a number of the Member States had proposed an open discussion on the regional seminars. He stated that the Secretariat had the administrative capabilities and it had already been involved in planning for the regional seminars and reiterated the caution by the Delegation of Brazil that the Committee should not micromanage that process but allow the Secretariat to --. The Chair stated that those who had very passionate views and wanted to express them -- especially for the observers about the modalities and who should -- you know, what -- how it should be organized and all of that, should give their views to the Secretariat in black and white or in an email or whatever way so that it could take that into account. He pointed out that the Secretariat was working with different Member States to sort out the dates and that they would be announced in due course because the Secretariat had to start making arrangements for the many logistical items and reiterated that members should give their views to the Secretariat so that it could factor them it started planning. The Chair stated that there was quite a lot of work during the session and noted that the Committee had started to bring all the proposals in the Broadcasting Treaty into one text. He stated that the Committee had to provide a recommendation at the following SCCR to the General Assembly on how to take that process forward. The Chair noted that there had been momentum on that for a few rounds and encouraged the Committee to give April the best chance to have a good discussion. He pointed out that there should be work in between, rather than just wait for the Committee to meet in April and discuss on the support. He noted that by the time the Committee met in April, it could pick up the pace again and refresh itself on the technical issues. The Chair stated that I would say if there's any member who wants to start discussing these matters, I encourage you to do that. I remain at your disposal if you feel I can be involved in that in any way. I would like to encourage the members who are very passionate to continue to work and to -- and to get discussions going on this matter. The Chair stated that the Secretariat needed inputs from stakeholders concerning the action plans and encouraged that members who could help in that information gathering process including those who had pointed out that they wished to see more for some of the studies to reach out to their stakeholders. He noted that the stakeholders had a lot of things to handle and for them to understand that the process was important when they saw a request for inputs from the Secretariat. He pointed out that sometimes a word from Member States would be very useful and stated that the appeal also applied to the observers as well. The Chair encouraged the Committee to help the Secretariat to get that process into session, and to get people understanding that the action plans turned a lot of open data that could be collected and stated that the Secretariat would reach out to some of the Committee members to ask for that.

227. On the summary of the Chair, the Chair stated that it reflected his views as the Chair on

the results of the Thirty-Seventh Session, and that in consequence, it would not need to be subject to approval by the Committee.

228. The Secretariat read the summary of the Chair which stated that the Chair's summary tried to reflect as accurately as possible a record of what had happened during that meeting.

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

229. 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 closing statements

230. The Delegation of El Salvador, speaking on behalf of GRULAC thanked the Chair for his leadership and the Secretariat for its excellent work, both in the preparations and for the documents provided for the basis of deliberations. The Group noted that the Committee appeared to have made progress on broadcasting and thanked all the delegations who made contributions, particularly the Delegations of Argentina and the United States of America for submitting textual proposals. The Group stated that it was great to have a single document that brought together all the positions. The Group hoped to continue work in a constructive spirit at the following session so that the Committee could give effect to the decision of the recent General Assembly on the subject. The Group stated that on exceptions and limitations, it was grateful for the excellent presentation on topologies and the teaching institutions that were being worked at and for the study on museums and looked forward with great interest to the final results to be submitted at the next session. The Group thanked the Secretariat for the update on the status of the other studies and activities which were underway. The Group stated that those studies and activities would produce excellent results and would be of great value in the Committee's discussions. The Group was pleased to see the adoption of the modalities proposed for the study on music in the digital environment, and the theater directors' rights. The Group noted that the results of those studies would contribute meaningful information that would facilitate discussions in the Committee. The Group looked forward to the results of the task force on artists' resale rights as a topic to which it attached great importance. The Group wished to use the opportunity to recognize the work done by the ABC consortium and thanked it for keeping the Committee updated. The Group thanked the delegations and the regional groups for their constructive attitude at the session and for their valuable contributions to the discussions throughout. The Group thanked the interpreters and the conference services.

231. The Delegation of Lithuania, speaking on behalf of the CEBS group expressed appreciation for the Chair's skillful guidance of the session and thanked the vice chairs as well as the Secretariat, the interpreters and the conference services for ensuring excellent working conditions. The Group expressed appreciation for the in-depth discussions on basis of Member States' textual proposals on protection of broadcasting organizations, which were incorporated in the text of the Chair for further discussion at the following session. The Group hoped that the Committee would progress to the treaty that would respond to the contemporary technological developments in that area. The CEBS group noted that it listened with interest to the discussion on limitation and exceptions, paying particular attention to presented studies and typologies on libraries, archives and museums and expresses willingness to continue the engagement on implementation of work plans on the issue that were agreed upon at SCCR 36. The Group thanked the observers for their active participation and for sharing their views which were and would continue to be taken into account while considering Member States' positions in order to ensure well-balanced protection of copyright and related rights which would incorporate necessary national provisions on exceptions and limitations and at the same time, does not undermine the intense efforts to create. The Group looked forward to another productive session in the spring, on the standing agenda items, as well as on other issues while we have a special interest and the rights.

232. The Delegation of Indonesia, speaking on behalf of the Asia and Pacific Group thanked the Chair for his leadership in guiding the meeting towards a successful conclusion and the Vice Chairs, Member States and regional groups for their contributions and constructive spirit. The Group noted the continued progress made in the Broadcasting Treaty, as reflected in the Revised Consolidated Text on Definitions, Object of Protection, Rights to be Granted and Other Issues, document SCCR/37/8 looked forward to continued discussions to clarify various issues towards a common understanding, especially on the definitions of data protection and rights to be granted and other issues. The Group wished to use the opportunity to commend the Secretariat for the excellent work done, not only for the preparation of the meeting but the work in progressing the implementation of the action plans on exceptions and limitations. The Group thanked the Deputy Director General for her presentation of the implementation of the exceptions and limitations. The Group stated that it was excited to participate in the regional meetings on exceptions and limitations in the Asia and Pacific and reiterated that the regional meetings in 2019 as agreed under the action plans at the SCCR 36 featured as an important component of the Committee's work. The Group looked forward to the regional meeting where all stakeholders from policymakers, right holders, beneficiaries and practitioners would be afforded the opportunity to analyze the situation of libraries, archives and museums as well as educational and research institutions and areas for action with respect to the limitations and the exceptions regime and the specificities of the region. The Group noted that the regional perspective could later enrich the discussions at the exceptions and limitations conference and expressed its belief that the Secretariat in consultation with Member States would come to decisions on the regional activity that would be best for everyone. The Group looked forward to receiving more information from the Secretariat, intersessionally, considering that the Committee would not meet until April 2019. The Group welcomed all the progress on the way forward on the other matters including the task force on resale right and the study on theater directors' rights and digital music services. The Group thanked the conference centers and the interpreters whose work allowed for a smooth and productive meeting and affirmed its commitment to the work of the Committee.

233. The Delegation of Morocco, speaking on behalf of the African Group applauded the Chair for his leadership and the Secretariat and the Vice Chairs for the roles they played. The Group thanked Professor Crews and Professor Benhamou for their contributions through their presentations of their studies. The Group stated that the African Group attached great importance to the success of the Committee's work and noted that that explained the Group's active participation including its great contributions during the informals. The Group stated that significant progress had been made in the work of the Committee though it was not up to speed as it had hoped. The pointed out that the adoption of the Beijing Treaty and the Marrakesh Treaty at the Committee was proof that hard work could lead to great achievements. The Group hoped that the Committee would achieve a treaty on the protection of broadcasting organizations. The Group stated that it attached great importance to exceptions and limitations and noted that it had welcomed the two plans of action, which were a means not an end to achieving the aims of the Committee. The Group wished to take the opportunity to remind all the parts of the Committee of their contribution to the WIPO Development Agenda and noted that a number of committees had not submitted their reports on that as at the previous General Assembly except for the Intergovernmental Committee which was the only committee that submitted its report on its contribution to the implementation of the Development Agenda. The Group called on other committees to submit reports on their work in that respect. The Group expressed its willingness to participate in and to contribute in an open and positive way because it was confident that real progress could be achieved. The Group thanked the interpretation services all the Delegations who enriched the debates.

234. The Delegation of China thanked the Chair for his diligent work and the Vice Chairs, the Deputy Director General, the conference service as well as the interpreters for their hard work. Our thanks also go to the regional coordinators and their tireless efforts. The Delegation also

thanked the professors for their presentations and noted that all that contributed to the Committee's discussions on several topics. The Delegation expressed willingness to continue to participate in discussions in the future in a very constructive way.

235. The Delegation of Canada, speaking on behalf of Group B thanked the Chair for his able and wise guidance through the session of the SCCR and the Secretariat for its hard work prior to and during the SCCR. The Group thanked the interpreters and the conference service for their professionalism and availability. The Group welcomed the outcome of the technical discussions on the broadcasting organizations and applauded the level of engagement of Member States in those discussions. The Group noted that document SCCR/37/8 was a cherished document and did not necessarily reflect any agreement among Member States. Group B stated that the document was useful as it consolidated proposals into a single document and provided a good basis for further discussions. The Group welcomed the presentations regarding the studies and the typologies in relationship to limitations and exceptions, as well as other presentations, and wished to thank their respective authors. The Group stated that the Committee could count on its full support and constructive spirit to continue the fruitful discussions that were taking place in the framework of the Committee.

236. The Delegation of the European Union thanked the Chair, the Vice Chairs, the Secretariat, and the interpreters for their efforts in successfully conducting the discussions carried out in the Committee and expressed willingness to engage constructively. The Delegation stated that the discussions on the treaty for the protection of broadcasting organizations were of great importance to the European Union and its Member States. The Delegation wished to take the opportunity to thank the Delegations of Argentina and the United States of America for their respective proposals on the deferred transmissions contained in document SCCR/37/2 and on the scope and the implementation of lights contained in document SCCR/37/7. The Delegation stated that the discussions and the explanations were of great value and looked forward to further understand the aims and the ideas behind the respective proposals. The Delegation pointed out that it was a good starting point for the continuation of those discussions at the following session and stated it remained fully committed to finalizing a treaty provided that it reflected the realities and the developments of the 21<sup>st</sup> century. The Delegation looked forward to making further progress on certain essential issues. The Delegation stated that the presentations given by Dr. Crew and Dr. Benhamou highlighted the work currently carried out on the two agenda items for exceptions and limitations. The Delegation stated that it remained committed to fruitful discussions and to engage constructively in the work as set out in the Committee's action plans. The Delegation reiterated that a meaningful outcome of the Committee's work in the field of exceptions and limitations could be guidance to Member States regarding the best practices and taking advantage of the flexibility of the international copyright legal framework to adopt, maintain, or update national exceptions that adequately respond to local needs and traditions. The Delegation was pleased that there was support for the artists' suite in the standing committee.

237. The Delegation of the Philippines pointed out that the Committee's work on the draft Broadcasting Treaty managed to stay true to the direction given by the 2018 WIPO General Assemblies. The Delegation stated that while gaps persisted and important policy questions lingered, it remained optimistic in the Committee's collective ability to move its shared interests forward. The Delegation noted that some 20 years had passed since the Committee began norm setting discussions on the intellectual property landscape for broadcasting organizations, not long after the Philippines hosted the WIPO world symposium on broadcasting, new communication technologies and intellectual property in Manila in 1997. The Delegation stated that squarely within that remit was striking a balance among the diversity of views and it hoped that the following SCCR session would profit from the same level of positive engagement, demonstrated at the SCCR 37 as the Committee reflected on an appropriate recommendation regarding the convening of a diplomatic conference. The Delegation stated that it found much value in the studies undertaken on the matter of limitations and exceptions for educational

institutions, libraries, archives and museums and acknowledged the continuing challenges of diffusing knowledge, preserving legacies, and protecting national patrimonies in an international setting. The Delegation pointed out that while the intellectual property code of the Philippines already provided for copyright limitations, and recognized the benefits of fair use, earnest efforts to further enhance clarity at the global station could add certainty and predictability to national activities, naturally entrusted with the pursuit of the public good. The Delegation welcomed discussions on the issues of resale rights, the digital environment, and theater directors' rights and noted that the allocation of time for those important topics along with other crucial ones could be a point of funding. The Delegation thanked the Secretariat, the interpreters and the administrative services for their usual indispensability in ensuring the success of the meeting.

238. The Chair thanked the regional coordinators for their hard work in making sure that the many cats in the room were herded together, at least in a somewhat similar direction. He expressed his thanks to the conference services, and the interpreters for their facilitation of the system that allowed work to be done with multi-voices and multi languages and the smooth running of presentations. The Chair thanked the Member States particularly those who had tabled proposals and those who had stepped up to involve themselves beyond the call of national positions during the discussions on different agenda items. The Chair stated that without that spirit of constructive and collaborative engagement the Committee would not have the results achieved at each round. He thanked the observers for enriching the discussions with their passion and their views from the ground level whether from industry or civil society or other parts of the ecosystem. The Chair thanked the Vice Chairs for their essential work that kept the process going and expressed his thanks to the Secretariat. The Chair closed the meeting.

## **ANNEXE/ANNEX**

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

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

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

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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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