

Standing Committee on Copyright and Related Rights

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STATEMENTS

compiled by the secretariat from statements submitted by participants

GENERAL STATEMENTS/ STATEMENTS ON MULTIPLE TOPICS

The CEBS Group. Poland is honoured to deliver the opening statement on behalf of the Central European and Baltic States group. We would like to express our gratitude to the Chair, Vice-Chairs, as well as Secretariat for their efforts invested in preparing this meeting and for the relevant documents that would enable further exchange of views on the SCCR topics. I would also like to thank the Secretariat for organizing an information meeting about the progress made in the process of elaboration of the Treaty on the Protection of Broadcasting Organizations. The discussion, which was organized in a hybrid mode, was very comprehensive and useful to ensure active engagement in the negotiations. We also thank for the valuable inputs and contributions from Member States, observers and NGOs available at the SCCR WIPO website. Let me also reiterate that the CEBS Group attaches great importance to the topic of protection of broadcasting organizations. We look forward to the discussions about new Revised Draft Text for the WIPO Broadcasting Organizations Treaty. To this end, we would like to thank the current SCCR Chair, Vice-Chair and the facilitators for their work done on the new document SCCR/43/3. We hope that the new revised text will be a good ground to achieve further progress in our negotiations and to reflect the current needs of broadcasting organizations and latest technological developments. Furthermore, the CEBS Group would like to express our readiness to constructively discuss the limitations and exceptions for libraries, archives and museums, as well as for educational and research institutions and for persons with other disabilities. We thank the African Group for a Draft Work Program on Exceptions and Limitations, which we need to further explore in order to set a future work on these agenda items. Let us remind and highlight also the existing international frameworks on the matter of limitations and exceptions. We think the current international legal framework already allows the Member States to adapt the national laws and provide necessary national exceptions and limitations hand in hand with ensuring adequate protection. We look forward to receiving further information from Member States, especially with regards to existing cross-border problems linked to specific uses of copyrighted works in the online cross-border environment. The CEBS Group also welcomes the concept of developing a toolkit on preservation. The CEBS Group notes the Information Session on the Music Streaming Market, which will be held during this session, based on a GRULAC initiative. The CEBS Group would also like to support the proposal of the delegations of Senegal and Congo to include the resale right in the agenda of the SCCR. We are committed to continue working on the topic of resale right on the basis of results from the Task Force. Finally, Mr. Chair, I would like to assure you of the constructive engagement of the CEBS Group in all discussions during this week with a view to achieve a realistic outcome.

The Kingdom of Eswatini. Congratulations on your election. The Kingdom of Eswatini appreciates the work that your committee continues to carry out in fulfilling its agenda and objectives. The delegation of Eswatini is pleased to take note and welcomes the information and studies that are shared to enlighten the discussions on the items on the agenda. More empirical information results in more robust and spirited discussions. Regarding the draft Broadcast Treaty current version, our view is that the new rights seem not to be justified nor their unbridled duration and the way the instrument seems to make exceptions and limitations ineffective is of concern. The scope of application would need to be substantially narrowed for it to be a balanced instrument. We must remain mindful that the instrument we envision remains within the appropriate confines of mitigating against the piracy offence and avoids unintended adverse consequences to a vibrant public domain. We align ourselves with the statement delivered on behalf of the Africa Group. Asia Pacific Broadcasting Union. ABU congratulates you Mr. Chairman and your vice Chair and ABU thank the Secretariat. Broadcast piracy in the Asia-Pacific region has reached epic proportions. Nearly every large broadcaster in the Asia-Pacific region has been a victim of broadcast piracy in some form or the other. The surge in increase in incidents of broadcast piracy is particularly visible in the post COVID-19 era as there has been demands for quality content and enhancement improvements in technologies which

facilitate broadcast piracy and signal theft. Broadcast piracy is particularly problematic for ABU members irrespective of the type (public or privately owned) or the size of the broadcasting organisation. For example, a broadcaster based in the remote Pacific Islands can suffer more due to the fact that they neither have the technical nor the legal expertise to combat broadcast piracy. Hence, broadcasting treaty to protect broadcast signal from piracy is an urgent need of the hour. In light of this, we call upon the Governments of all the regions to reaffirm the importance of the proposed broadcasting treaty by vocally expressing the need to convene a diplomatic conference as soon as possible.

The International Authors Forum general statement. The International Authors Forum (IAF) represents authors from the text, screenwriting and visual arts sectors and their interests in copyright. Its members are over 80 organisations representing well over 750,000 authors worldwide. IAF campaigns for authors in a variety of areas including fair contracts, remuneration rights and copyright issues. Article 27 of the Universal Declaration of Human Rights states that 'everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits'. Therefore, the ability of professional authors everywhere to make a living is vital if this participation in culture is to proliferate across the world. Article 27 further states that everyone 'has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he [or she] is the author'. Ultimately, it is authors' works is being considered in the matters discussed at the World Intellectual Property Organization (WIPO). There are individual authors whose rights are involved in all countries. Those rights must be given primary consideration to ensure the continued creation of the culture we value today. Authors must be rewarded for their contribution to society and maintain rights to control how their work is used.

In recent years, we have seen significant pressure to devalue copyright and the mechanisms by which authors are remunerated for their work. This has been argued on the basis that the author will be somehow rewarded otherwise, having gone unpaid for their work. Such measures are also proposed simply as an easy cost to cut without consideration for the consequences of not compensating the author. This comes when multiple studies and surveys from around the world have found that the earnings of authors are in significant decline. It is more important than ever that we recognise the impact these policies can have on authors and a nation's culture and find ways to ensure that the work of WIPO helps authors share in the global growth of creative industries in the digital age. Authors around the world play an essential role in ensuring the prosperity of their societies. This makes it imperative that they have a conducive environment in which to work, are valued for their diverse creations, retain the right to make a decent living from their work, and are supported by a robust copyright framework. Yet, numerous studies and surveys from countries across the world have found that the earnings of authors are in significant decline, despite international growth in the creative industries that make use of their works. There is an urgent need for a better understanding of the issues authors worldwide currently face when it comes to earning a creative living. In many countries, authors have seen an overall decline in their earnings in recent years. It is hoped that opportunities can be taken to reverse the decline in authors' incomes and better remuneration rights can be established that ensure authors' earnings reflect the way their work is enjoyed. Potential measures for this include rights such as the Public Lending Right (PLR), Artist's Resale Right, also known as *droit de suite*, and a remuneration right for online uses of work. Understanding the issue of authors' earnings will be an ongoing challenge, in many countries there are no in-depth studies on authors' earnings, and far more can be done to understand the international situation of the author. As the COVID-19 pandemic has an ongoing effect around the world there will be even more challenges to contend with. We hope the IAF study on authors' earnings will help to illustrate the need for action to ensure authors in every country can sustainably create and contribute to diverse cultures around the world. The IAF report, *Creating a Living: challenges for authors' incomes*, is available in English, French and Spanish. In the face of the COVID-19 pandemic authors earnings have struggled significantly through a huge range of opportunities to work, while society has continued to rely on the content that they have created. At this time, it is

more important than ever to consider ways to support creators around the world, it is good to see that this is being considered in areas such as Resale Right and Public Lending Right, which can both be important measures to reward and support the development of creators around the world. We hope that in these areas there will be a positive consideration given the unique position and opportunity of WIPO and this Committee to enable information finding and sharing on these subjects to better equip national governments.

KEI. KEI encourages the SCCR to include in its future work, the topics of unfair contracts, particularly as relates to Article 40 of the TRIPS Agreement, and the concerns expressed by libraries, educators, journalists and performers. In addition, the SCCR should focus on the management of metadata on copyrighted works, particularly as it relates to the attribution and management of rights, in the context of cross border uses and the topic of standards and interoperability of databases on metadata on works. And finally, the Committee should endorse the progressive implementation of the Africa Group work program on copyright limitations and exceptions.

AGENDA ITEM 5: PROTECTION OF BROADCASTING ORGANIZATIONS

The CEBS Group. The CEBS Group considers the topic of protection of broadcasting organizations as a main priority and as a central element of the SCCR. We appreciate the progress made on this matter in previous sessions. We are fully aware of the complex issues included in the draft Treaty on the Protection of Broadcasting Organizations. Given the rapidly evolving technologies and the digital environment, as well as the current challenges faced by the broadcasters, we believe that different types of transmissions of broadcasting organizations, especially those over computer networks, should enjoy international protection from acts of piracy. The CEBS Group would like to thank the current SCCR Chair, the SCCR Vice-Chairs, and the facilitators for their attempts to accommodate various positions, suggestions and comments of Member States and for preparing the new revised draft text of the Treaty by streamlining the previous proposal. We take a positive note of a new revised text, which can serve as a good basis for our further work. We remain committed to engage into in-depth discussions in order to reach a common understanding on the outstanding issues. Only a broad consensus between Member States on all relevant aspects of protection of the broadcasting organizations can lead us to completion of this work and tangible outcome with regards to the future meaningful Treaty. Following this, the CEBS Group looks forward to the constructive discussions at this session in order to find acceptable solutions and advance our work towards a reasonable Broadcasting Treaty.

The Delegation of the United Kingdom. Thank you Chair. As this is the first time that the United Kingdom has taken the floor during this session, we would like to congratulate you on your election and thank you, and the Vice-Chairs, for your guidance. The United Kingdom would also like to thank the facilitators on the second revised draft text, as well as the WIPO Secretariat in the organising and preparation of this session. The WIPO Treaty on the Protection for Broadcasting Organisations remains an important matter for the UK and we are keen to see a meaningful treaty concluded. International protection of broadcasters' rights is out of date. We consider it is essential that the treaty takes into account advances in the technology used in broadcasting so that it is fit for purpose in today's world and is also future-proofed. The United Kingdom believes that authorised retransmissions, catch-up and elements of on-demand require mandatory protection if the Treaty is to be meaningful. The UK is also aware that piracy increasingly takes the form of re-directing the signal to avoid, for example, pay walls. This form of piracy does not require the fixing of the signal (or copying of the content) and so article 7 does not appear to us to provide sufficient protection and this is an issue that we believe must be addressed going forward. However, whilst we do have some concerns, the UK welcomes the revised draft text which we believe provides further clarity. In particular, we believe the draft text clarifies that there is no overlapping of rights or perpetual copyright. The approach and the draft

text makes clear that it is the signal that is to be afforded protection and not the content. The content would, if appropriate still be available to users if the content was in the public domain or available via another means. We understand that the protection the text proposes to provide would simply prohibit the unauthorised fixation, retransmission (and we believe the redirection also needs to be covered) by unauthorised persons; i.e. unless a limitation or exception applies. We would congratulate and once again thank the facilitators on the revised draft and also for providing further explanations and clarifications; and we look forward to further discussions. Thank you Chair.

The Delegation of Canada. Thank you, Mr. Chair. Our congratulations to you on your shared-term election. We look forward to supporting and benefiting from your leadership during this session. Our thanks also to Mr. Dieng and Mr. Labody for their continued stewardship of our committees, to Deputy Director General Forbin and the Secretariat for their ongoing leadership and hard work, and to Mr. Lieder and Dr. Oira for their efforts on the revised draft treaty text. Mr. Chair, as you know, Canada believes that broadcast signal protection is an important tool to combat piracy. As demonstrated in this forum, we believe that there are many effective ways to provide such protection and achieve this goal. Accordingly, we think that the surest and most efficient way to achieve consensus as a committee on a draft treaty is to recognize that diversity and adopt a flexible approach to protection. As we have said before, Canada believes that an eventual treaty should be broad enough to encompass Member States with domestic regimes that have developed differently in light of their unique cultural and practical concerns and legal traditions – including systems like Canada's, which has a relatively limited retransmission right compared to some other Member States but also includes many other protections for broadcasters in copyright and beyond. These protections are variously based in our copyright law, broadcasting law, telecommunications law and criminal law. With that in mind, we thank all of our colleagues who contributed to the development of the revised draft text before us. We appreciate the efforts to solicit and address written suggestions, questions and comments from Member States and observers during the drafting process, including the feedback that our delegation gratefully provided. Although we need time to consider the revised draft text further, we find the further attempts to incorporate flexibility into the draft treaty to be encouraging and are looking forward to exploring and discussing the text in greater detail. Thank you again, Mr. Chair.

The Delegation of Canada. Thank you, Mr. Chair. Once again, our thanks as well to our colleagues who prepared this revised draft and their efforts to strengthen the draft treaty's flexibility for Member States with varying but effective forms of protection against broadcast signal piracy. We have appreciated hearing the perspectives of our partners today and the opportunity to share our own. In that spirit, we would appreciate clarification of several of the core issues in the draft text: First and foremost, we would like to understand the minimum requirements of "other adequate and effective protection" envisioned under Art. 10 in light of that article's references to protection under Arts. 6-9. For instance, could Contracting Parties that avail themselves of this option choose not to offer a right to authorize the retransmission of broadcasters' signals by entities acting primarily as signal retransmitters, provided that the Contracting Parties offer protection against such retransmissions in ways other than signal-based rights?; Second, we are curious to know why the protection in respect of pre-broadcast signals under Art. 9 seems to include protection against simultaneous retransmission to the public of pre-broadcast signals, if pre-broadcast signals are by definition not intended for direct or immediate reception by the public; Third, concerning the limitations and exceptions under Art. 11, we are interested to know more about the scope of Art. 11(1)(f) – namely, who the "access" referred to is for, what the purpose of such access must be and why there is a reference to "cable" specifically. We would appreciate any clarification that the drafters could provide on these issues now or later during an informal process. We have further questions and suggestions that could be more suitable for such a process. Thank you again, Mr. Chair.

Asociación Internacional de Radiodifusión (AIR-IAB). El pasado 11 de enero la OMPI publicó el “Segundo Proyecto Revisado de Texto del Tratado de la OMPI sobre los Organismos de Radiodifusión”, preparado por el presidente del SCCR en colaboración con el vicepresidente y otros facilitadores del proceso. Luego de un detenido análisis de dicho documento, hemos comprobado que el nuevo texto recoge en términos generales los principales derechos que, hace largo tiempo, viene reivindicando la AIR en pos de una protección efectiva y amplia contra los actos de piratería que padecen los radiodifusores, esto es: tanto la posibilidad de autorizar la fijación y la retransmisión alámbrica o inalámbrica de sus señales, como la facultad de prohibir la transmisión en diferido de los programas almacenados y el acceso a las señales anteriores a la emisión. Hemos advertido, asimismo, que el nuevo texto pretende limitar al máximo el número de variantes y declaraciones concertadas del proyecto de Tratado, lo cual también parece saludable en vistas de facilitar la etapa final de la negociación. Finalmente, comprendemos también que hay determinadas previsiones de este documento que buscan compatibilizar las provisiones del futuro Tratado con ciertas legislaciones internas que (si bien otorgan protección a los Organismos de Radiodifusión) regulan el asunto desde una perspectiva jurídica diferente. Desde la AIR celebramos también esta iniciativa y, especialmente, todo esfuerzo encaminado a alcanzar puntos de acuerdo que permitan sortear las diferencias que, en relación a este punto, se han expresado durante las negociaciones previas; siempre y cuando y bajo cualquier circunstancia: (i) se respeten en su integridad los derechos esenciales que concede el Tratado y (ii) tales derechos puedan ser ejercidos por los radiodifusores (sin importar la jurisdicción o ley aplicable) en forma efectiva, plena y sin condicionamientos de ninguna naturaleza. Dado pues este nuevo texto, y teniendo en especial consideración que el Tratado de Protección de los Organismos de Radiodifusión es, por lejos, el tema más maduro del Comité, consideramos que el objetivo de la presente reunión del SCCR debe centrarse en: - Asumir el compromiso de finalizar el borrador de Tratado durante el primer semestre del corriente año (convocando si fuera necesario reuniones adicionales/extraordinarias al efecto) y; - Recomendar a la Asamblea General que convoque a una Conferencia Diplomática para el año 2024.

Education International. I speak on behalf of Education International, the global federation of education unions with more than 32 million teachers and researchers. I am teacher myself and National Chairperson of the Universities Academic Staff Union in Kenya. We are here to share the perspectives of educators and researchers who need balanced copyright legislation to serve their public and human rights missions. During the pandemic, countries of all over the world increased the use of television to broadcast educational content. In my country, Kenya, TV broadcasts have helped millions of children to practice reading and literacy skills. We urge you to avoid imposing constraints on education and research systems that are already struggling. Exceptions and limitations to broadcasting protection are crucial to enable quality teaching and research with broadcasted materials.

The African Regional Intellectual Property Organization (ARIPO). Thank you, Mr. Chairman, for giving me this opportunity. The African Regional Intellectual Property Organization (ARIPO) congratulates you and the vice chairs for chairing this session. ARIPO appreciates the Secretariat for the excellent preparation of this meeting and the work done so far by this Committee which aims to make progress on the different items of the SCCR agenda. Mr. Chairman, ARIPO aligns itself with the African Group statement and looks forward to having constructive and fruitful engagements on all items of the agenda in this Committee. Mr. Chairman, on the protection of broadcasting organizations, ARIPO commends the work done by the team to come up with the second revised draft text for the WIPO Broadcasting Organizations Treaty. We take note that the draft text seeks to protect the Broadcasting Organizations and hope that this Committee will consider the draft text constructively to make progress in having an agreed text which will lead towards convening a diplomatic conference on Broadcasting Treaty. ARIPO looks forward to the presentation of the draft text to this

Committee. Mr. Chairman, may I once again thank you and your team for this opportunity you have given me, and I wish you well as you Chair this Committee to have fruitful deliberations.

Society of American Archivists (SAA). SAA has been following the multi-year discussions on a broadcasting treaty closely because broadcasts almost always provide the defining first records of major events, which archives must collect. In fact, we have made this kind of material part of our collections since the beginnings of audio/visual media. SAA, however, is deeply troubled by the latest draft text for three reasons. First, while we support prevention of signal piracy, the inclusion of a fixation right goes way beyond signal protection. Article 7 adds new layers on copyrighted works that will lock up content that archives must acquire, preserve, and make available to the extent permitted by the underlying copyrights. Second, the draft makes exceptions and limitations optional. New mandatory exclusive rights require balancing mandatory exceptions. Further, Article 11's suggested exceptions are too narrow to accommodate the work the world demands of archives. Finally, by not stating the duration of the new right, the draft text opens the door to a perpetual term and thus threatens the central mission of archives.

ELAPI. Muchas gracias, señor presidente, por concedernos el uso de la palabra. Agradecemos a la secretaría por los documentos, y por aceptar el estudio que hemos presentado desde ELAPI en conjunto con el Centro de Propiedad Intelectual de la Universidad Austral. De ese estudio podemos extraer: -la importancia de la protección eficaz que no ayuda solamente a las empresas titulares de las señales, sino fundamentalmente, al sustento de autoras y autores, dado que la protección redundante en una mejor remuneración. Se trata de tener un ecosistema fuerte que permita realizar a todos los que forman parte de la industria. -un tratado facilitaría acciones conjuntas contra la piratería y contra el uso no autorizado de obras y también de las señales como derecho conexo. Más cuando las nuevas tecnologías avanzan en la integración de canales de distribución de contenidos. -eliminaría distorsiones económicas y jurídicas que afectan a las distintas regiones. Estamos seguros que es necesario dar los pasos necesarios para obtener un acuerdo internacional que brinde protección a un sector cada vez más relevante en la difusión de obras protegidas por derechos de autor, sobre todo, porque -por ejemplo- el sector audiovisual en América Latina está integrado por un 37% de mujeres, con perspectivas de mayor participación y debemos accionar y tomar medidas para que todos los que forman parte de la cadena de derechos tengan su protección y su desarrollo. Entender una protección eficaz ayuda al desarrollo del derecho de autor y también a crear un ecosistema para ello. Este proyecto de tratado es un pilar para lograr ese desarrollo. Aprovechemos esta oportunidad para ofrecer toda nuestra cooperación académica para llevar adelante acciones concretas.

Fundación Karisma. Gracias señor presidente por darnos la palabra. Soy Carolina Botero de Fundación Karisma organización de la sociedad civil colombiana que tiene entre sus intereses la democratización del acceso a la cultura y el conocimiento., Sobre el segundo proyecto revisado del Tratado sobre Radiodifusión encontramos que la definición de organismo de radiodifusión ha evolucionado al punto que, en el actual texto, es claro que no se limita a dar derechos a medios de televisión tradicionales o a estaciones de radio. En términos del art 2 literal e) tanto una empresa de radiodifusión reconocida como una institución educativa que transmite un evento en su cuenta de facebook o una organización gubernamental que haga una transmisión en Youtube califican potencialmente como radiodifusores. Consideramos que esto genera confusión y muchos efectos secundarios nos preguntamos si esto se ha estudiado a fondo. Consideramos que el borrador no debe avanzar antes de realizarse un análisis de impacto a profundidad sobre lo que esto significa en un mundo donde es normal que cualquier persona usuaria de la red pueda hacer transmisiones.

Hiperderecho. Mi nombre es Lucía León, de la asociación Hiperderecho, organización de la sociedad civil basada en Perú. Queremos resaltar que el actual borrador del Tratado sobre

Radiodifusión presentado para esta sesión mantiene varios de los problemas señalados en otras ocasiones. La nueva capa de derechos que se crea excede ampliamente el objetivo de lucha contra la retransmisión no autorizada de señales. De hecho, los arts. 6, 7 y 8 del nuevo borrador otorgan derechos que no conectan directamente con el objetivo de lucha contra la piratería (como el derecho de fijación del art. 7). Estos derechos compiten con los derechos económicos de autores y artistas intérpretes o ejecutantes, e inclusive los superan. Por ejemplo, en el último borrador de texto, no hay un plazo específico, lo que hace que parezca que el derecho de la emisora es permanente. Por lo tanto, creemos que el tratado propuesto no debe avanzar sobre la base de esta segunda revisión.

KEI. KEI is opposed to the fixation right in the WIPO broadcast treaty. This would give broadcasters, including technology companies like YouTube or Facebook a perpetual intellectual property right in the fixation of transmissions even when the companies did not own, license or pay for content. The streaming company would get a right in the fixation even when the content is in the public domain, or the content has been infringed. It is not necessary to provide a fixation right, and the fixation right runs counter to the notion that this is signal-based treaty. The limitations and exceptions should not apply to the three-step test for specific exceptions, such as those found in the Rome Convention or the Berne Convention exceptions for education, news of the day, or quotations.

La Red en Defensa de los Derechos Dgitalos de México. Del actual proyecto de texto del Tratado sobre Radiodifusión queremos resaltar que no existe evidencia de que la creación de una nueva capa de derechos sea el mecanismo adecuado para la lucha contra la difusión no consentida de señales (o piratería, como le llaman también). Pero sí es evidente que se generará una maraña de derechos superpuestos que haría que sea más costoso, complejo y lento para los usuarios obtener permisos para usar el contenido transmitido e inclusive sería muy difícil comprender con quién deben negociar estos derechos. En cuanto a las excepciones agregadas en el artículo 11, nos llama la atención que se trate de una lista cerrada y, a su vez, sujeta a un test de 3 pasos. Esta no es una redacción común y es extremadamente limitada. Por lo tanto, consideramos que el tratado propuesto no debe avanzar sobre la base de esta segunda revisión, sino ser analizado a profundidad.

Fundación Vía Libre. Gracias señor presidente por darnos la palabra. Soy Beatriz Busaniche de Fundación Vía Libre de Argentina, Profesora en la Universidad de Buenos Aires y en la Maestría en Propiedad Intelectual de la Facultad Latinoamericana de Ciencias Sociales FLACSO. 1 Sobre el segundo proyecto revisado de texto del Tratado sobre Radiodifusión tenemos numerosas preguntas y dudas que nos inquietan: ¿Se ha analizado a fondo qué efecto tendría esta nueva capa de derechos sobre las plataformas que se basan en la circulación de contenidos creados por los propios usuarios?, ¿Qué sucederá cuando los usuarios tomen contenidos emitidos en una plataforma y los comenten en otra, una práctica habitual y deseable en el actual contexto? ¿Qué sucederá cuando se transmitan obras en dominio público o con licencias libres?, ¿Cuál es el impacto que tendrá la concesión de esta nueva capa de derechos sobre el discurso público, la libertad de expresión en internet, el derecho a la información y los derechos culturales?, ¿existen evaluaciones de impacto sobre esto? En las actuales condiciones, consideramos que el borrador del Tratado no está listo para avanzar y solicitamos sea enviado a sesiones informativas.

Intellectual Property Institute. "My name is Maja Bogataj Jančič, I speak in the name of Intellectual Property Institute, observer at WIPO and member of A2K coalition. We live in a time when humanity is facing enormous challenges: e.g. global health and climate challenges cross-border cooperation of individuals in education and research among other things is the key to solving these challenges in the future. Establishment of possible new intellectual property rights that protect private interests shall be drafted very carefully and taking into account various other rights, especially fundamental human rights. For the common progress of society, it is crucial

that international legislators establish balanced legislative frameworks. Copyright regime should not represent new obstacles and unnecessary walls on the way to solving global challenges. In more simpler and direct terms, this means: - new rights may be introduced only in cases and only to the extent that are absolutely necessary to achieve sustainable development that takes into account not only economic efficiency, but also social justice, taking into account the various interests affected. And - if it is a joint and agreed decision that such new rights are necessary to achieve sustainable development such new rights shall and must be balanced with harmonized and mandatory copyright exceptions and limitations to achieve common good and common progress. The latest draft of broadcasting treaty needs additional consideration and modification on both fronts.

Society of American Archivists (SAA) and the International Council on Archives (ICA). Try to think of a major event of the past 50 years—the fall of the Berlin Wall or the September 11 collapse of the Twin Towers or videos showing police inflicting excessive force on citizens—without the video images that came first from broadcasts. These audio-visual documents give substance and impact to history and society and can be emblematic of broad social changes. Archives by their very nature must be comprehensive in what we collect, preserve, and make accessible. To be authentic, archives must include evidential material in all information formats. That includes sound and video recordings. They are an essential part of the human record, and archivists must be able to work with them. For many decades, these most compelling records have come to the public first via broadcasting. For this reason, the International Council on Archives and the Society of American Archivists have been concerned that past discussions of the broadcasting treaty seem to reach beyond what is needed to combat signal piracy. New broadcaster rights, even those in the pared down January 2023 draft text, will have a significant negative impact on archivists and the people who depend on us for an accurate and full record of the past. The proposed new right may also impede the accountability that can come from recordings of sound and images. These are invaluable documents that connect society with its past. Both the public and the industry have a stake in ensuring that there are legal remedies for signal piracy, especially for the initial broadcasts of high-profile entertainment and sporting events. However, the many years of deliberation on modernizing protections for broadcasting organizations contain multiple examples of going beyond the core needs of broadcasting organizations. It is essential that any measures put in place to provide broadcaster signal protection do not add any further layers on existing copyright protections for content or extend that protection for more than just what is needed to deal with signal piracy. In that regard, the 11 January 2023 “Second Revised Draft Text for the WIPO Broadcasting Treaty” is particularly troubling because of its failure to state the term of protection raises the specter of an indefinite term. Especially problematic is Article 7, which gives broadcasting organizations an exclusive right of fixation. Notwithstanding the circular logic and sheer casuistry of the Article’s Explanatory note 7.03 about the right of fixation applying to “the very act of fixation,” these provisions open the door for broadcasters to obtain and exercise exclusive rights over actual content. Any suggestion that such fixation would only apply to the signal is readily betrayed by Explanatory Note 7.02’s reference to the value of the signal being in the programme material itself. At the least, an exclusive right to the fixation would create additional intricate layers for anyone seeking permission to use material that had been transmitted by a broadcaster, even public domain material. Because of the kind of uses that are of greatest concern to archivists and those whom we serve, we believe that Article 7 needs to be completely reconsidered to ensure that any exclusive right provided to the signal will not “bleed through” to the content of the broadcast. Archivists are pleased that this draft no longer contains reference to durations of the exclusive right for 20 or more years. However, the lack of any mention of the duration of a broadcasting organization’s exclusive right to the signal leaves open another door for Contracting Parties to enact terms that would severely complicate how archivists can respond to the legitimate public interest in content held in archives as cultural heritage assets. Businesses disappear with regularity, but archivists are called upon to preserve these one-time records in perpetuity. Thus, when taken together with the fundamentally ambiguous fixation right, the lack

of limitation to the very short duration necessary to protect against signal piracy will irresponsibly lock up program content. This will add immeasurably to the challenges archives already face in preserving and providing access to documents that are so important to society at large. For archivists and the people we serve, all of these problems are compounded by weak text on exceptions and limitations. Although the January draft's Preamble starts with the premise that the treaty desires to protect broadcasting organizations in a balanced manner, the failure to include mandatory exceptions and limitations undermines one of the most basic means by which intellectual property treaties can ensure balance. Merely asserting, as Explanatory Note 11.02 does, that balance is established by introducing the possibility of exceptions stretches believability. If the treaty really seeks balance, its creation of mandatory new exclusive rights needs to be balanced by mandatory exceptions and limitations. Furthermore, the scope of possible exceptions a Contracting Party may apply is overly narrow, considering the extent of cultural and civil content that currently is delivered by broadcasters. This is especially problematic when presented as the only options a Member State might consider. From the perspective of archives it is very concerning is that the only reference to an archives exception (Article 11, paragraph 1(e)) relates solely to preservation, when what our institutional mandates emphasize is the importance of being able to make archival content available. Furthermore, in a treaty that has been promoted as interested in "future-proofing" paragraph 1(d)'s referencing to scientific research does not even recognize the developments in text and data-mining, a particularly important use for assessing news content and understanding political and social change.

INNOVARTE. Gracias Señor Presidente, Junto con felicitarlo, así como agradecer a la Secretaria por el trabajo en la preparación de los documentos, en representación Innovarte ONG, organización de la sociedad civil, dedicada a la protección del interes público, la creatividad y el acceso al conocimiento, me permito hacer nuestros comentarios con relación a la propuesta de borrador para el tratado sobre los organismos de radiodifusión: Objeto del tratado. La definición del nuevo documento revisado del presidente, incluye dentro del objeto de protección las transmisiones realizadas por cable, por satélite, por redes informáticas y por cualquier otro medio. Por ello el concepto de "radiodifusión" de este tratado incluye a plataformas que son ya dominantes y escapa del mandato de la Asamblea General referido a Radiodifusores en sentido tradicional. La falta de practica internacional respecto a los nuevos derechos propuestos, que en su mayoría no existen en legislaciones nacionales, no permita evaluar adecuadamente sus efectos, especialmente de ser otorgada especialmente a plataformas digitales globales. Plataformas digitales globales como Google, Amazon, Spotiffy Facebook y otras multinacionales, ya han sido objeto de investigaciones e incluso condenas por abusos de posiciones dominantes en mercados digitales, como en el caso del Google search cases, o Android que impiden el desarrollo de nuevos servicios independientes, en perjuicios de consumidores , creadores y de los organismos tradicionales también. Estos nuevos derechos solo pueden aumentar el poder que tienen esas plataformas en perjuicio de radiodifusores , consumidores y creadores. Por ello pedimos se hagan consultas a las autoridades de la competencia asi como estudios por la secretaria de la OMPI, sobre los aspectos anticompetitivos que serán generados por las nuevas normas propuestas respecto de consumidores, creadores y organismos tradicionales. Sin perjuicio nos parece esencial limitar el alcance de este instrumentos a los organismos de radiodifusión en el sentido tradicional para que estos sean los beneficiarios. Excepciones y Limitaciones. Otro punto esencial es la revisión del articulo sobre excepciones para que incluya un listado de excepciones obligatorias que se haga cargo de las necesidades ya idenficadas por este Comité, particularmente para los intercambios transfronterizos de material para fines educacionales, bibliotecas, archivos y museos, personas con discapacidad, asi como otras actividades legítimas como usos privados, entre otros. Igualmente consideramos que este nuevo instrumento debe mantener el modelo de la convención de Roma y los ADPIC. Art 14 . los que dan libertad para la adopción de excepciones y limitaciones, excluyendo la aplicación de la regla de los tres pasos, que ha

resultado un estandard difícil de interpretar y un obstaculo para la adopción de las limitaciones necesarias para el bien público.

Association of Commercial Television and Video on Demand Services in Europe (ACT) and the European Broadcasting Union (EBU). European broadcasters, through the Association of Commercial Television and Video on Demand Services in Europe (ACT) and the European Broadcasting Union (EBU), which represent both commercial and public service broadcasters as well as video-on-services operators, welcome the continued commitment of WIPO Member States to finalize their work on the WIPO Broadcasting Organizations Treaty. Protecting broadcasting organizations from illegitimate actors has never been more important: global piracy significantly undermines the commercial value and exploitation of live and premium content. This content is a core pillar of media (re-)financing and remits, so they must be able to act quickly and efficiently to fight piracy worldwide. The adoption of a WIPO Broadcasting Organizations Treaty would harmonise the protection granted to broadcasting organizations by setting minimum standards internationally. It would be an effective anti-piracy instrument to protect programme-carrying signals on a global scale. As such, the Second Revised Draft Text for the WIPO Broadcasting Organizations Treaty (SCCR/43/3) is a balanced instrument aimed at protecting the programme-carrying signal. The amendments made to text allow for a common understanding of the scope of protection and take into account the various legal traditions to provide efficient tools to fight piracy, both on domestic and international levels. The signatories are of the opinion that the Second Revised Draft Text for the WIPO Broadcasting Organizations Treaty covers the principles necessary for the legal protection of programme-carrying signals; and, therefore, could serve as a basis for finalising the text of the WIPO Broadcasting Organizations Treaty in view of convening a Diplomatic Conference for the adoption of said treaty. In this context, they call upon WIPO Member States (i) to reach consensus on key outstanding issues – should it be necessary, to finalise the Second Revised Draft Text for the WIPO Broadcasting Organizations Treaty in dedicated meetings, and (ii) to recommend the WIPO General Assembly to convene a Diplomatic Conference for the adoption of the WIPO Broadcasting Organizations Treaty. ACT and EBU and their Members take this occasion to thank the facilitators and the WIPO Secretariat for their work, and they remain committed to support WIPO with their expertise and assistance to reach this goal.

International Council on Archives. I speak on behalf of the International Council on Archives, an organization dedicated to the preservation and use of the world's archival heritage. Archives preserve not just paper, but also sound and video recordings, many of which have come from broadcasters. Such documents convey the sounds and images that provide substance and impact to key events. From the perspective of archives and the public interest, the current version of the Broadcasting Treaty is badly flawed. If the goal is addressing signal piracy, the treaty must not add any further layers to existing copyright protections for content. Secondly, the absence of any term provision raises the spectre of perpetual copyright. Furthermore, while we appreciate the addition of an exception permitting preservation in archives, additional robust mandatory exceptions are needed to permit cultural heritage institutions to provide access to broadcast materials that are an essential part of the historical record.

Corporación Innovarte. Gracias Señor Presidente. Con relación al artículo 11 el actual borrador se aparta del modelo de excepciones y limitaciones en el Convenio de Roma y en los ADPIC, al sujetar a la regla de los tres pasos a las excepciones permitidas, ya sea en la lista de expresamente permitidas o de las que correspondan a aquellas permitidas para los derechos de autor. Ello llevara al absurdo que una excepción de cita, o uso privado, o uso de gobierno deba ser sujeta al test de la regla de los 3 pasos, afectando el interés público. Por otro lado la ausencia de limitaciones obligatorias como por ejemplo para educación, preservación u otras que tienen un componente transfronterizo, profundizará las problemáticas de falta de armonización que ya afecta esas actividades incluso sin considerar los nuevos derechos que propone el borrador de tratado. Finalmente con relación al artículo 3 que permite la reserva de

protección con relación a transmisiones por Internet, tenemos dudas respecto de su utilidad y efecto, ya que si bien un país toma la reserva, y sus habitantes o empresas pueden hacer retransmisiones de transmisiones exclusivamente por Internet, esas retransmisiones serán ilegales en países que no han tomado una reserva, perdiendo utilidad práctica la reserva.

COMMUNIA. COMMUNIA works to defend the public domain and in our opinion the proposed broadcast treaty is a threat to the public domain and usage rights. The current version of the draft treaty allows countries to protect broadcasters with exclusive rights without sufficient balance or consideration for the societal needs related with access to knowledge and information. Broadcast signals carry content that plays an essential informational, cultural and educational role in our society. It is therefore crucial to ensure that the rights-based model currently under discussion does not create an additional obstacle to education, research and the activities of cultural heritage institutions. Let us give you an example. We recently interviewed EU researchers to better understand the needs and challenges faced by them. A Swedish researcher told us that they use broadcasts as sources of scientific research. They research public discourse and they analyse mainly radio broadcasts and daily newspapers. With the current legal framework they already face considerable copyright-related obstacles. In their words “We really get into copyright issues and there it has been very messy”. So why make things harder for them? This treaty needs to get rid of fixation rights. It needs to protect broadcasted content that is in the public domain from being subject to a new layer of exclusive rights. It needs to mandate that the parties achieve a fair balance by means of exceptions, and it needs to have at least the same mandatory exceptions that we have in Berne and in the Marrakesh Treaty. And this is just a start. We count on you to make it right.

AGENDA ITEM 6 AND AGENDA ITEM 7: LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES, FOR EDUCATIONAL AND RESEARCH INSTITUTIONS AND FOR PERSONS WITH OTHER DISABILITIES

The CEBS Group. The CEBS Group acknowledges the fundamental role played by libraries, archives, and museums, as well as educational and research institutions, in social and cultural development of our society. It is also in the special interest of the CEBS Group that global copyright infrastructure will ensure access to works for the persons with disabilities in both analogue and digital frameworks. We recognize the work already done in various Member States, which have recently introduced exceptions and limitations in their national systems. We look forward to continuing discussions on this matter, as we find the evidence-based approach very important. We also welcome the possibility of exchange of best practices in this regards. This is very useful in context of reflecting efficient functioning of the limitations and exceptions at the national level within the framework of existing international treaties. We look forward to the presentations, related to preservation toolkit, an update on the research scoping study, as well as cross-border issues regarding specific uses of copyrighted work in the on-line cross-border environment in context of education and research. We perceive these issues as very important within the ongoing discussions. We thank the African Group for modifying their proposal for a draft work program on exceptions and limitations (SCCR/42/4 REV). The proposed direction of development of this document offer opportunity for further discussion. We await the possibility to further explore and discuss some of the proposed points, which could complement the evidence-based approach. We are also ready to engage in further discussions on matters related to the Toolkit on Preservation (SCCR/43/4) and we are looking forward to receiving more information about the progress made on the Scoping study on the practices and challenges of research institutions and research purposes in relation to copyright. As we have indicated previously, in our opinion the existing international legal framework related to limitations and exceptions already provides enough flexibility for adequate protection. Therefore, the CEBS Group believes that our work should still concentrate on exploring the already existing solutions within the framework of the existing international treaties supported by their

well-balanced implementation and by exchange of best practices, without the need for an internationally binding instrument.

International Council on Archives. I speak on behalf of the International Council on Archives, an organization dedicated to the preservation and use of the world's archival heritage. Concisely stated, "Archivists acquire, preserve, and make available records of enduring value." Preservation is obviously intrinsic to our fundamental mission. Thus, I am very grateful to the Secretariat for commissioning the Preservation toolkit. It is a valuable guide for nations wishing to amend their copyright laws to add or improve exceptions that permit preservation copying of cultural heritage materials. But it's not enough. Preservation is only part of our mission. Equally fundamental is providing access to our collections for research, learning, and personal enjoyment. It is absolutely pointless to preserve materials that cannot be used. I urge the Secretariat to commission a second toolkit to address responsible managed access, including across borders, to the preserved holdings of cultural heritage institutions. Many in the room view archivists and librarians as the ringleaders of a vast orgy of copyright infringement. That is not true. In fact, in many jurisdictions, archives and libraries are the trusted beneficiaries of copyright exceptions that permit them to make copies of their holdings for their researchers in accordance with certain conditions. Archives and libraries manage access responsibly. But not all nations have such exceptions. So even if we had two toolkits, they are an interim measure. Inconsistent copyright exceptions in national laws impede archives' ability to copy for preservation and provide access across borders. What is needed is an international treaty that sets out basic exceptions for archives and libraries to support both preservation and access to our holdings. Only WIPO can do this. WIPO's mission is to "lead the development of a balanced and effective international IP system." Limitations and exceptions are a fundamental component of a balanced copyright system. This Committee's role is to ensure that copyright works effectively internationally. The preservation toolkit is a great start. Let's keep going.

Society of American Archivists (SAA). Internationally consistent exceptions and limitations are essential to the work of all archivists. The members of the Society of American Archivists are responsible for billions of unique works, largely never-in-commerce but still restricted by copyright. Thus, SAA thanks the Africa Group for its proposed draft work program. The plan is eminently practical and elegantly calibrated. It balances Secretariat work on toolkits and technical assistance with consensus building by SCCR Member States toward an international instrument on exceptions and limitations. The proposal's strengths are: recognizing that a fair and balanced copyright system must advance public interest while supporting creativity; understanding that archives collections require cross-border work; making institutions the beneficiaries of exceptions; and presenting concrete and practical steps for SCCR's work. We keep hearing the mantra about the current international framework providing flexibility for each country to go its own way, but it makes no sense for content of archives or for an international body such as WIPO. It makes even less sense not that COVID and climate crises made clear that digital preservation and digital access is a global need. Last May Professor Crews warned SCCR ". . . if we do not move forward we will not be in the room It will be somebody else. It will be individuals within our own countries, other organisations, other influences . . . shaping the law." If someone else does it, ". . . we won't see ourselves and our interests and our concerns in the result. . . ." Therefore, SAA commends the Africa Group for identifying and promoting the correct outcome of the 2019 Regional Seminars and International Conference. Their work program supports the needs of archivists and the citizens we serve across the globe in the 21st century. SCCR should adopt it immediately.

ELAPI. Muchas gracias señor presidente por concedernos el uso de la palabra, agradecemos a la Secretaría por la elaboración del documento. El comité ha venido evaluando este tema desde el 2004, como es natural las dinámicas de la sociedad han cambiado. Hoy a la puerta del Derecho de Autor llaman otros temas de preponderancia para ser resueltos. El Derecho de Autor tiene una oportunidad de oro para responder a autores y autoras en la debida protección

de sus derechos. Hacemos eco de lo expresado en el SCCR42 en tanto se debe avanzar en una caja de herramientas sobre Limitaciones y Excepciones y no en un tratado internacional sobre el mismo, lo que infringiría la regla de los tres pasos y la soberanía de los países. Vemos con preocupación como es mal entendida la regla de los tres pasos, esta es una herramienta fundamental para la protección del ordenamiento jurídico autoral y se debe aplicar en todos los casos donde se piensen limitaciones y excepciones. Como sociedad civil latinoamericana nos ratificamos en nuestra postura de proteger el derecho de autor, que es el sustento de muchos autores y autoras en nuestra región, y no avanzar en instrumentos internacionales que lleven a que la excepción se vuelva la regla. Señor presidente, ELAPI enviará por intermedio de la secretaría un estudio sobre este punto y ofrece toda su cooperación académica a este comité, a los estados miembros, especialmente al GRULAC y demás observadores para darle al Derecho de Autor el valor que se merece.

The African Regional Intellectual Property Organization (ARIPO). Thank you, Mr. Chairman, we would like to commend you in the manner that you are chairing the Committee. On Exceptions and Limitations, The African Regional Intellectual Property Organization (ARIPO) appreciates the Committee work towards a fair and balanced copyright system that supports creativity and advances the public interest. Exceptions and limitations play an important role inter alia in the libraries, archives, research, and academic institutions to advance knowledge and skills for all persons. Africa is very rich in cultural heritage. Our heritage tells a story of who we are, and we are very proud of that. Preservation of cultural heritage is very important, and this was reflected in the discussions at the regional conference held in Nairobi, Kenya in 2019. The cultural heritage institutions can explore the cross-border cooperation, take advantage of the digital technology with due care and diligence considering the rights of all in the value chain. ARIPO appreciates and welcomes the work done by the African Group, Secretariat, and the authors to come up with the toolkit on preservation. The toolkit is an added value, as it provides guidance to our Member States to serve the public interest on safeguarding cultural heritage now and in future generations. ARIPO is of the view that, through this engagement Member States will be able to share best practices and learn from each other. We look forward to the presentation of the toolkit and work program. ARIPO encourages its Member States to contribute constructively on this item of agenda to make progress. Mr. Chairman, may I thank you for this opportunity you have given me, and I wish you well as you Chair this Committee to have fruitful deliberations.

Hiperderecho. La Propuesta del Grupo Africano proporciona un marco sólido para continuar avanzando sobre el trabajo ya realizado por el Comité en torno a las limitaciones y excepciones. Las excepciones son instrumentos fundamentales para el desarrollo de la educación, la investigación, la preservación del patrimonio y el acceso a la cultura para las personas y grupos más vulnerables. Esto es así, en especial, en los países del Sur Global, donde paradójicamente las disposiciones sobre excepciones al derecho de autor están menos desarrolladas, impactando en el acceso al conocimiento y la cultura en nuestros países. Apoyamos la aprobación de la propuesta del grupo Africano y sugerimos que sería beneficioso para el Comité establecer plazos específicos para las actividades que sean aprobadas, de manera similar a lo que se hizo para la implementación de los Planes de Acción sobre Limitaciones y Excepciones en 2019. Por último, y dada la evidente necesidad de realizar avances sustantivos en torno a la propuesta del Grupo Africano y otros temas relacionados con LyE para atender a amplios sectores de la población (especialmente del sur global), consideramos necesario ampliar los espacios de trabajo para esta agenda durante este año.

Fundación Karisma. Gracias señor presidente por darnos la palabra. Soy Viviana Rangel de Fundación Karisma de Colombia Entendemos que los tratados o instrumentos vinculantes son el camino necesario para lograr el equilibrio entre los derechos de autor, el derecho a la educación, los derechos culturales y el derecho de acceso a la información. Un equilibrio del derecho de autor con los derechos humanos. No obstante, nos alegra mucho que en la actual discusión sobre la Propuesta del Grupo Africano relativa a un proyecto de programa de trabajo

sobre excepciones y limitaciones, las posiciones de varios grupos se hayan movido hacia la construcción conjunta de principios, objetivos o textos modelo. Entendemos que esto podrá generar avances en la agenda. Dentro de estos instrumentos, resulta especialmente relevante para los países del Sur Global la concreción de textos modelo o normas tipo que puedan guiar de forma sólida las reformas legislativas que tanto necesitamos en nuestros países. En el evento de ayer sobre la importancia de las normas modelo, organizado por Knowledge Ecology International (KEI), se nombraron diferentes ejemplos que destacan la importancia de contar con normas tipo, incluyendo los resultados de la investigación realizada por Teresa Nobre para Education International en la que destaca el rol crucial que tuvo la Ley Modelo de Túnez en las disposiciones sobre excepciones y limitaciones para educación de las legislaciones de muchos países de África. Solicitamos que esto sea tomado especialmente en cuenta al momento de discutir la Propuesta del Grupo Africano.

Fundación Vía Libre. Gracias señor presidente por darnos la palabra. Desde Fundación Vía Libre nos interesa resaltar la situación de especial rezago de las leyes de Derecho de Autor Latinoamericanas en cuanto a la adopción de excepciones y limitaciones. Las organizaciones que integramos la Alianza de la Sociedad Civil Latinoamericana para el Acceso Justo al Conocimiento publicamos recientemente una nueva Base de datos con el análisis jurídico de casos que ilustran la falta de excepciones al derecho de autor en 19 países de Latinoamérica. A continuación brindamos algunos ejemplos ilustrativos de la situación de los 19 países Latinoamericanos analizados en esta base: • Sólo en 1 país de Latinoamérica las bibliotecas podrían brindar servicio de préstamo digital Controlado • Sólo 4 países de Latinoamérica prevén la posibilidad de que los archivos presten obras audiovisuales. • Solo en 3 países de Latinoamérica una biblioteca podría firmar acuerdos de intercambio con otras bibliotecas de la región para adquirir ejemplares de obras que no están disponibles en el mercado nacional. • Solo en 3 países de Latinoamérica es claramente legal que un docente publique un artículo en una plataforma que solo usa su clase. • Ningún país de Latinoamérica cuenta con flexibilidades para la investigación basada en datasets a partir de imágenes, audios o textos disponibles en internet, para el entrenamiento de algoritmos. Eso limita increíblemente las posibilidades de crear datasets adaptados al contexto de nuestros proyectos de investigación. Dicho esto, entendemos que la propuesta del Grupo Africano es un esquema de trabajo ideal para realizar avances en instrumentos que sienten las bases para impulsar las reformas que necesitamos en los países de Latinoamérica.

INNOVARTE INTERVENTION. Como lo demuestra el trabajo de este Comité desde el año 2004 La defensa de los derechos de autor y el cumplimiento de sus objetivos de promover la creatividad y diseminar las obras, y proteger los derechos humanos, requiere apropiadas y robustas excepciones y limitaciones en favor del interés público y del propio proceso creativo. Sin embargo, como también lo ha evidenciado los estudios, seminarios e intercambio de experiencias, el actual sistema de derechos de autor, a partir de los derechos de autor de la OMPI 1996 ha avanzado en la adopción de nuevos derechos para empresas y autores, o artistas, pero a descuido en clarificar los límites que son necesarios a nivel global o permisibles a nivel nacional. La falta de mandatos de adopción de excepciones para educación, bibliotecas, investigación afecta la efectividad y legitimidad a nivel global. En este contexto Felicitamos la propuesta del grupo africano que nos otorga un plan claro de acciones para avanzar en el cumplimiento de la agenda de excepciones propuesta en el año 2004 y el Mandato de la Asamblea General del año 2012, la propuesta del grupo africano nos alumbró el camino para nuevos éxitos como el alcanzado en Marrakech hace 10 años.

Intellectual Property Institute. Thank you chair. I speak in the name of Intellectual Property Institute, observer at WIPO and member of A2K coalition. The focus of my intervention is research - the driving force of social progress. The possibility of independent research is a fundamental human right It is also the foundation of the sovereignty of states especially today when big data and data analytic play such an important role in research and innovation.

Humanity is facing enormous challenges: e.g. climate change, global health challenges. The cooperation of individuals across national borders, and especially the cooperation of researchers and scientists, is key to solving these gigantic challenges. The establishment of a legal regime that will adequately encourage not only creators and investors in creative processes, but also researchers and scientists is therefore crucial. Researchers and scientists among other are responsible that new technologies and new methods for research are available for the common progress of society, It is crucial for international legislators, this is you, dear delegates, to establish appropriate legislative frameworks, that copyright regime will not represent obstacles and unnecessary walls on the way to solving the biggest global challenges. Harmonized exceptions and limitations for research are the key. Exception and limitations are not a tools to take away, but a way forward to design a balanced system that will work for common good. African proposal shows the right way forward.

Centrum Cyfrowe. Thank you, Chair. I speak for Centrum Cyfrowe, a civil society organisation based in Poland supporting openness and engagement in the digital world, supporting educators and researchers. The lack of an international instrument allowing for cross-border uses for education and research impacts daily practices of researchers all over the globe. Especially those interested in running their research in international partnerships. During our recent interviews with researchers in Poland they stressed the immense value of such collaborations, as: they provide access to international resources allowing to execute, otherwise impossible, comparisons in research using digital or online tools and; they allow to get the critical mass of research material when working on specific theme, with corpuses of work coming from different countries. The current challenges the researchers face are not abstract. To quote their words, quote: “no access to texts and data and no possibility to share it legally, a shady border between copyright and fair use, and regulations that are not understandable by non-legals”. End of quote. These constraints simply block the research work or put it in a grey zone. This Committee has the power to change the situation by reforming the existing framework so that it supports an enabling, harmonised cross-border environment for research. And we urge you to do so.

Society of American Archivists (SAA). For more than ten years, the Society of American Archivists (SAA) has been attending SCCR on behalf of thousands of American archivists who collectively curate billions of works that are prevented from being preserved and made available because of copyright. SAA has tried to help you understand that our unique circumstances require corrections to prevent copyright law from impeding the needs of global citizens for archival works in the digital age. SCCR’s continued stalemate on this problem suggests that WIPO either does not understand or chooses to ignore what a balanced copyright system means in today’s world. If the COVID-19 pandemic has shown us nothing else, it has confirmed the need and ubiquity for functioning in a digital world. Fortunately, the current SCCR agenda suggests that all may not be lost. SCCR43 provides Member States with two opportunities to chart a course returning to the public-benefit purpose of copyright. First, the *Toolkit on Preservation* (SCCR/43/4) outlines provisions that can adjust copyright law to facilitate digital preservation copying. Importantly, it also provides the methodology to fill the gap left by the *Toolkit’s* failure to address the need for cross-border access to preserved archival materials. Second, the Africa Group’s proposed work program on exceptions and limitations (SCCR/42/4 REV) provides specific steps for SCCR to address the many issues and tasks central to the recent expert studies commissioned by the Secretariat and the 2019 Regional Seminars and International Conference. Adopting the Africa Group’s work program, perhaps using the *Toolkit’s* statutory suggestions to focus discussions on an international instrument, would provide a way for WIPO to remain relevant and credible in a rapidly changing world. Time is of the essence. COVID-19 may be receding from view but it has demonstrated that, when faced with a threat to the mission of providing access to cultural knowledge, cultural heritage and education professionals must abandon traditional means and apply what the public expects as standard practice in the twenty-first century, namely using current technology to provide access.

That is because archivists know that their mission and credibility in the digital age is more important than making their 21st-century mandate fit within a copyright law designed for hardcopy and conventional postal mail. In other words, COVID-19 showed that, when faced with crises, conscientious and ethical professionals will act according to their societal mission. When the next crisis comes, they will not have the luxury to worry about whether SCCR has made any progress on the nearly two-decade effort to develop modern exceptions and limitations. These crises also make clear that the world cannot wait another five or ten years for SCCR to fulfill WIPO's distinct role as the only international body to authoritatively address the inherently cross-border dimensions of copyright policy for cultural heritage. It needs to act now on the 2012 General Assembly's mandate (WO/GA/41/14). At the May 2022 SCCR, Professor Crews emphasized the urgency for SCCR to take the lead: ". . . if we do not move forward we will not be in the room with the same people. It will be somebody else. It will be individuals within our own countries, other organisations, other influences inside of our countries shaping the law. It won't necessarily be you, it won't necessarily be me. . . . if something else does it, we won't see ourselves and our interests and our concerns in the result of that." Archives consist largely of unpublished works never intended for commerce, making our work on preservation especially urgent, given the multiple threats facing the world today. Now is the time for SCCR to demonstrate it can adapt to the modern world. Allowing archives to make preservation copies would have virtually no economic impact on the copyright system. This fact should give SCCR the space to take that first step in establishing good faith by contributing to global heritage through carefully tailored archival exceptions. If WIPO is unable to create an international instrument to provide the clarity that professionals require in today's technological world, who will? It is to SCCR that archivists look to balance exclusive rights with the public-interest missions of heritage institutions. Only SCCR can enable the kind of preservation and access to culture that today's interconnected world expects and deserves from us. But perhaps I am wrong about what WIPO is supposed to be. Maybe WIPO's mission is nothing more than to provide and protect a revenue stream to authors, creators, publishers, and distributors. If that is the case, then WIPO should just acknowledge that the largely never-in-commerce nature of archival materials means that the contents of the world's archives are entirely outside of copyright itself. If that is too radical a proposal, then WIPO should act now to acknowledge the negative impact that exclusive rights have on cultural heritage which is a human right. The world and the crises we face will not wait. Neither will archivists, librarians, and museum curators, nor the citizens we serve. We refuse to be left behind. Our mission mandates that we move ahead either with you or without you. If disastrous fires, catastrophic flooding, and wars are not enough to convince WIPO of the immediate need for preservation and digital-sharing exceptions for archives, then apparently nothing will. The result will be what archivists found ourselves doing, regardless of copyright, during the pandemic. We knew we could only fulfill our mission by digitally preserving for posterity the one-of-a-kind items that hold the history of all our shared civilizations, and we provided them digitally across borders. This is the twenty-first century. Citizens of every nation expect and deserve this kind of access to their own cultural heritage. If SCCR cannot find a way to acknowledge this basic human right to cultural heritage, then you will indeed be on your way to oblivion.

R3D. Señor presidente, gracias por la palabra. Desde R3D: Red en defensa de los derechos digitales de México abogamos por una agenda positiva de mayores excepciones y limitaciones. Las remociones de contenido en busca de la protección del derecho de autor afecta a diario otros derechos como la libertad de expresión al retirar expresiones legítimas que puedan interactuar con material protegido. Decenas de videos, podcast y otros materiales sin fines lucrativos que usan contenidos protegidos son removidos. Algo que las sociedades democráticas no se pueden permitir. Una agenda como la del Grupo Africano establece una ruta clara después de muchos años. Muchas gracias.

The European Writers' Council (EWC), founded in 1977, represents 160,000 writers in the book sector from 46 writers' associations in 31 EU-, EEA- and non-EU countries, publish in 31

languages in all genres, including educational and academic works. Their works are distributed globally. The EWC is the worldwide only federation representing solely writers' interest. As WIPO Observer, we have witnessed a worrying detachment of "work" and "author" in discussions and contributions in the latest SCCR meetings. Especially when it comes to limitations and exceptions for the use for State institutions, the central term of "author" hardly appears any more in contributions, although any limitation affects the author first and foremost, restricting his or her freedom of decision and his or her earning situation. There is wording of "cultural heritage", "flow of knowledge", "right of access to education"; but behind every single of these aspects, as the main resource, is an author. To draw attention to this development, please allow us to bring the value as well as the value chain from authors back to your attention: Authors in the book sector create texts at their own economic risk. They are not paid for their work, neither for research and writing time, nor according to pay per page, textual quality, or years of professional experience. Only the usage of the writers' work triggers a monetary participation from their own work, such as royalties in sales, in lending, or in licenses or levies. The basic principle is: every use must be appropriately remunerated. Limitations undermine this. With their unpaid work, writers provide the mental capital for a value chain of 138.35 billion US dollars worldwide in sales alone in trade market. Authors work support states to fulfil the educational mandate, it's the authors, who nurture the societies with knowledge, science, education, information, and cultural heritage. Authors' rights, copyright, and contract laws are the only safeguards for the economic, moral and personal rights of these nonpaid sources and resources. But for the past 20 years, authors' rights and copyright have been frequently restricted rather than strengthened. Limitations and exceptions, uncompensated or insufficiently compensated, are not counterbalanced by positive regulations, such as in contract law, but also not in social security or labour. States, that do not have any industrial or natural resources, shall protect the remaining resources all the more instead: and this is the mental capital, the intellectual assets of authors. The EWC therefore strongly calls for: In General: Protect your intellectual properties and mental capital. Build up a supporting contract law and authors' rights system first, explore the wide range of licensing. We appeal strongly to avoid more limitations or exceptions within an international binding legal instrument. On the context of the African proposal: (1) TDM is since years the basis for global monopolies to take advantage of authors' intellectual output without consent or documentation, to produce lucrative software that directly competes with authors. A binding instrument like a TDM exception, whether for non-commercial or commercial use, should therefore be rejected; even more important: existing TDM limitations should be swiftly reformed with remuneration-requiring conditions, and a consensus obligation (voluntary opt-in), while institutions that use TDM for research shall be encouraged to conclude collective and remunerated licenses, and fulfill the obligation of transparency of the works used for TDM. (2) The introduction of an "education exception" similar to Art 5 of the 2019/790 (EU) Directive should be approached by the 3-step-test, and negative effects of already existing limitations shall sufficiently be evaluated.

Canadian Copyright Institute (CCI). Thank you Mr. Chair, and congratulations on your very effective facilitation of SCCR's deliberations so far this session. Thanks also the DDG and her team in the Secretariat for their work in implementing this very practical and constructive approach to advancing the work of SCCR. Toolkits have great potential as part of the effort to share experience and best practices among members. And many thanks to the expert authors for their work on this toolkit in support of the essential and urgent work of preservation. I appreciate what they have accomplished so far, and their openness to reaction and discussion. My reaction is that the toolkit at this stage reflects the concerns and perspectives of preservation professionals and institutions more effectively than it reflects the concerns and perspective of copyright holders, and it needs to do both. In its advice to legislators it needs to offer clearer guidance on balancing those interests and perspectives, and a clearer line between preservation and access.

Society of American Archivists (SAA). The Society of American Archivists thanks the Secretariat for commissioning three experts to survey national laws with exceptions to support preservation copying of cultural heritage collections. The Toolkit for Preservation's statutory charts will enable national legislatures to immediately create laws supporting the urgent work of preservation. Its typologies also are a foundation for pursuing the 2012 General Assembly mandate for work on an international instrument that is essential to the cross-border preservation the world requires. Unfortunately, the Toolkit avoided the issue of making preserved works available. That makes obtaining funds for preservation extremely difficult, thus rendering such a narrow exception rather pointless. SCCR must provide a roadmap to close the access gap. If fires, floods, and earthquakes are not enough to show the urgency of preservation exceptions, then consider COVID's lesson. When traditional methods of access were shut down, heritage professionals had to act immediately and use modern technology to make copies for the public. To preclude a situation where those wanting to preserve their heritage do so in contravention to the law. Therefore, SCCR to look to preservation exceptions in pursuit of the 2012 General Assembly mandate. Thus, my question: We've heard a number of voices claiming that the simple 'possibility' to pass limitations and exceptions, such as for preservation, is enough. The toolkit may reinforce this laissez-faire approach. Because that is not enough for the current crises, what more might be needed to effect change?

Fundación Karisma. Leímos el estudio presentado por los expertos y creemos que es una excelente herramienta para que los estados aborden las excepciones para la preservación teniendo en cuenta los desafíos actuales. Queremos destacar la importancia de esta guía práctica recordar que la propuesta del Grupo Africano incluye no solo la preservación sino también el acceso a las obras preservadas como una prioridad para el SCCR. De acuerdo con la investigación realizada por la alianza Latino Americana de Acceso Justo que analiza con casos prácticos si determinadas acciones son posibles o no legalmente en las legislaciones de 19 países. Por ejemplo, encontramos que en 18 de los 19 países estudiados en América Latina, si una institución patrimonial quiere publicar en un repositorio online materiales de alto valor histórico para facilitar a los investigadores su acceso, no puede hacerlo porque es ilegal, incluso si el repositorio tiene salvaguardas para el acceso y por ejemplo exige autenticación para sus usuarios. Nos unimos entonces a la solicitud de Colombia, EIFL o el ICA para pedir que se complemente la guía con nuevas recomendaciones para el acceso al patrimonio preservado y por tanto nos interesa reiterar la consulta sobre si el siguiente paso será trabajar en el acceso e invitar a que un proceso de este tipo se facilite con una amplia participación. Una vez más felicitamos el trabajo realizado y esperamos que se dé continuidad al proceso.

R3D. Gracias, señor presidente. Soy Iván Martínez de la Red en defensa de los derechos digitales y participo en este espacio también en nombre de la Alianza de la Sociedad Civil Latinoamericana para el Acceso Justo al Conocimiento. Felicitamos a los profesores Pantalony, Crews y Sutton por su trabajo en la guía práctica sobre preservación. Esta herramienta muestra que la preservación debe entenderse en un contexto global convulsionado por conflictos y por el cambio climático y atender riesgos actuales y futuros. Nos parecen fundamentales las recomendaciones brindadas por las y los expertos respecto de contemplar la preservación preventiva de las obras, amparar la preservación de obras nacidas en formatos digitales, así como la colaboración transfronteriza entre instituciones para la preservación. En la reciente investigación realizada por nuestra Alianza para 19 países de América Latina, identificamos que, además de la insuficiencia de excepciones específicas para preservación, otro problema relacionado es que casi la totalidad de los países de América Latina carece de provisiones de obras huérfanas que complementen las excepciones de preservación. Por ejemplo, uno de los casos relevados por la Dra. Díaz muestra que solo 2 países de Latinoamérica prevén la posibilidad de digitalizar para preservar colecciones de fotografías tomadas por autores desconocidos. Este tipo de escenarios da cuenta de las barreras reales que enfrentan las instituciones de patrimonio en nuestro continente. A nivel mundial, existen algunas soluciones a este problema pero se limitan a jurisdicciones nacionales. La realidad es que en países del Sur

Global, el temor a enfrentar penas por violaciones al derecho de autor provoca que decenas de obras con una situación incierta se pierdan para siempre, o que se excluyan de los ciclos creativos. Igualmente, hay incertidumbre al buscar la aplicabilidad de una misma concepción de “obra huérfana” de país a país. Entendemos oportuno la complementación de esta Guía de preservación con recomendaciones u otra guía que aborde específicamente el tema de las obras huérfanas.

The International Authors Forum (IAF). The International Authors Forum (IAF) is thankful for the opportunity to submit its statement on the topic of Exceptions and Limitations for discussion at SCCR43. Authors want the widest possible lawful access to their works. Authors welcome libraries, archives and educational institutions as vital points of access to their works, but there must be a balance of access and reward to ensure that they can continue to create the works that are enjoyed. Research in the UK, *An economic analysis of education exceptions* (2012, PriceWaterhouseCooper), identified that many authors, particularly of educational works, would potentially stop creating these works due to declining remuneration if a licensing scheme was not in place to fairly reward them for their efforts. Recent cases in Canada have shown that the unregulated expansion of the educational exception in their Copyright Modernization Act (2012) has led to significant losses of income for Canadian authors: a likely unintended consequence but an unjust, detrimental effect on authors nonetheless, considering it is their work that is being used without compensation. In the context of the COVID-19 pandemic authors in many countries have suffered but have still made significant efforts to make their works accessible to users in these difficult times, conscious of the benefits their work can bring to so many people. The need to support authors is more urgent than ever and this should not be a time to weaken the rights of creators. In a webinar IAF hosted about exceptions and limitations we heard loud and clear messages that the creative industries need some certainty to invest in creators who take a significant risk in creating their work typically with no certainty of remuneration. We also heard how in some countries authors and publishing industries are struggling where there are poorly designed exceptions and limitations, in comparison to counties where copyright legislation is flexible and responsive to both enable use and pay authors. The panellists at this event made clear that overly broad exceptions and limitations can have a significantly negative impact. This discussion can be watched online and is important for considering the view of authors on this subject. Authors play an important role in rights to access education and culture, as the initial creators of the creative works that users around the world access. With their works forming the foundation of educational resources around the world, authors continue to create resources for people to learn throughout their lives. A good environment for authors ensures authors can create quality education, as well as inclusive education for their communities. It should not be the case that a country has to rely on the dominant creative industries of western countries for educational materials. Student should have some access to educational materials that reflect the diverse cultures and languages of the world and the student. Authors believe that existing provisions contain enough flexibility for countries represented at WIPO to continue to work towards national solutions, such as licensing frameworks, which can be developed according to local needs. Authors recognise that each country must aim to respond to its local needs. However, in no country are authors able to work and create effectively when they are entirely either denied remuneration or inadequately paid. While each country represented at WIPO has libraries, archives and educational institutions seeking to secure access to works, it must not be forgotten that there are authors in each of the WIPO Member State whose rights and property are affected. In many countries, there are already copyright provisions in place that establish licensing frameworks which enable access through libraries, archives and educational institutions while ensuring fair payment to authors and respect of their rights regarding their works. In *An economic analysis of education exceptions* (2012, PriceWaterhouseCooper) it was found that almost 25% of authors in the UK derived more than 60% of their income from secondary licensing income, while a 10% decline in authors' income would lead to a 20% drop in output. There is a clear case for fair licensing and collective management organisations as a means to efficiently ensure the balance of access to works and

reward to authors. IAF opposes any blanket expansion of copyright exceptions and limitations that would not properly consider the needs of authors and would prefer to see the work focused on ensuring authors can sustainably generate creative and educational works for readers. Instead of any such approach that would threaten the sustainability of authors' ability to create, where possible IAF would encourage consideration for positive solutions that can ensure the ability of authors to create looking at best practices with considerations for the digital environment.

STM. Thank you, Chair, for allowing STM to take the floor. STM is the International Association of Scientific, Technical and Medical Publishers. We would like to highlight the diversity of the many disciplines, regions, and nations that are actively publishing research today; and note that research is a global endeavor. STM's overall mission is to advance trusted research worldwide. Together with our member publishing houses, we work daily to serve society by developing standards and technology to ensure research is high quality, trustworthy, and accessible. We promote the contribution that publishers make to innovation, openness, and the sharing of knowledge and we are embracing change to support the growth and sustainability of the research ecosystem. STM's membership reflects the diversity of scientific publishing. It has over 140 members in 21 countries. STM members include learned societies, established players, university presses, private companies, and start-ups. We would like to emphasize how existing law, based in the three-step test and buttressed by responsible licensing practices, has provided the necessary flexibility for publishing houses to work with initiatives such as Research for Life to provide for equitable access to academic and professional content for the developing world; and to allow and encourage parties to voluntarily define, structure, and tailor access by way of licensing based on the reasonable needs of each in a given situation. The three-step test is a time-tested principle that permits Member States to implement limitations and exceptions at the national level with the salutary qualities of flexibility and the ability to capture local socioeconomic realities, all while maintaining the necessary guardrails to ensure authors maintain the appropriate share of their exclusive rights while users can avail themselves of the breathing room that exceptions and limitations provide. We look forward to continuing to engage constructively with Member States and other non-governmental organizations to further explain the work we're already doing to provide access to trusted content by way of licensing. Thank you, Chair. STM thanks the authors for their work on this document. I will echo some of the comments of my colleagues from IPA and ELAPI, and thank the authors for the feedback they have already provided on these points. We support the ability of libraries and cultural heritage institutions to digitize materials they hold in order to ensure their preservation. We recognize the challenges these institutions face, including the need to combat technological obsolescence or degradation of original copies. For these activities, we support the fashioning of limitations and exceptions in domestic law, provided that any exception respects the three-step test and is tightly drafted enough to uphold contractual freedom and does not conflate or broaden exceptions outside itself. We would like to raise a few issues for the Secretariat's and Member States' consideration for this toolkit in particular; and for future toolkits in this workstream.

- Firstly: we would like to highlight that right holders are a key stakeholder for these issues, and we would be delighted to have more collaboration and involvement in these processes.

R3D. Muchas gracias señor presidente, desde la Alianza de la Sociedad Civil Latinoamericana para el Acceso Justo al Conocimiento valoramos que lo discutido y nombrado finalmente como "excepciones y limitaciones" tiene como destino final garantizar otros derechos concurrentes al de autor como el derecho a la educación, a la cultura, al conocimiento e incluso otros que han quedado demostrados en numerosos instrumentos internacionales como del grupo de los derechos civiles y políticos. Inevitablemente el horizonte la discusión sobre cómo el derecho de autor colisiona con otros derechos será necesaria para encontrar balances y consensos, y la propuesta del Grupo Africano es un buen inicio para trazar una hoja de ruta concreta.

International Council on Archives. As a representative of the International Council on Archives, and a coalition partner with other cultural heritage organizations, I thank the African Group for its Draft Workplan (SCCR/42/4 Rev.). WIPO's mission is to "lead the development of a balanced and effective international IP system" that benefits all of society. Limitations and exceptions are a fundamental component of a balanced copyright system that provides reasonable access to works, and supports the creation of new works and the growth of knowledge and culture. Regrettably, the Limitations & Exceptions agenda has dragged on for many years. Any progress has been slow, and its glacial pace discouraging. Thus, the ICA supports the African Group's workplan which builds on earlier work, and proposes a range of concrete actions to move the agenda forward on various fronts. Particularly encouraging is the focus on overarching issues such as the need to address cross-border uses in the current global environment, understanding that digital is the norm. This document provides a solid basis for progress, and I urge its adoption and expeditious implementation.

COMMUNIA. COMMUNIA understands that this Committee is not ready to make a decision on how to positively affect copyright frameworks to actually protect the right to education and research. At the same time this Committee has been discussing this agenda item for 15 years. We believe that it is fair to say that the work undertaken by the Committee so far has not had much impact on the copyright provisions that frame how educators and researchers can have access to knowledge and information. The African Group proposal could change the course of action to make the work of the Committee more useful. We, thus, urge this Committee to use its best efforts to reach an agreement on how to move forward towards more positive and impactful outcomes, which in our opinion necessarily require this Committee to engage in drafting and discussing concrete problems and solutions and without prejudicing the outcome of these discussions.

COMMUNIA. We come here, year after year, to defend the rights of teachers and researchers. We support your discussions. We bring evidence. We talk to you, the person that was here before you and the person that will come after you. It's a massive effort. Yet, every year, we leave this room empty handed, with no binding instruments, no soft laws, nothing that could make a difference. Do know that we question if we should come back. The only reason why we persist is because we cannot stand talking with those researchers and teachers about the challenges they face when researching newspapers or showing Youtube videos in Zoom classes, and turn our backs on them. So today, I'll use the 1 minute that I have to let you hear from one of them, in the hope that this will be it, that these will be the words that will also make you stand for them. Jonas is a Senior Lecturer in Comparative Literature at the University of Gothenburg, in Sweden, and we interviewed him for our publication "Nobody puts research in a cage". Jonas is struggling because he cannot have remote access to the data sources he uses in his research and also because he cannot share his research results and underlying resources with colleagues for purposes of verification and validation of his research. In his words: We are studying book reviews in Swedish newspapers from 1906, 1956 and 2006. We want to train the computers to understand different expressions in their context. We also have a dream that feels more and more likely, insane at first but now maybe real? That is, to train a text corpus to identify what is a book review! To access material from 1956, we have to go to the National Library Lab in Stockholm. It is a small glass cage with three data terminals. You sit in the lab, annotate. Access to it costs SEK 70,000 the first year, and 35,000 in the following years. You are not allowed to take data in or out, all labs must be done in the cage. The transparency is non-existent. If someone wants to verify the results, they also have to buy the license for a lot of money. An incredible anxiety!

AGENDA ITEM 8: INFORMATION SESSION ON THE MUSIC STREAMING MARKET

AGENDA ITEM 9: OTHER MATTERS

Copyright in the Digital Environment

The Delegation of the United Kingdom. On behalf of the United Kingdom I would like to thank the Secretariat for organising the useful and engaging Information Session on Music Streaming and to the speakers for sharing their experience and expertise. A number of speakers mentioned the experience of the United Kingdom and I would like to briefly update the Committee on the work that we have been taking forward in this area. In 2021, following a Parliamentary inquiry into the economics of music streaming, the British Government launched a programme of work looking into music streaming and creator remuneration. As part of this work we have looked into issues relating to the remuneration of music creators and performers, and have commissioned independent research into the impacts of three potential legislative interventions: equitable remuneration, contractual adjustment mechanisms, and rights reversion. The research on contract adjustment and rights reversion was published in February 2023. The research on equitable remuneration is at an advanced stage and will be published soon. We will be using the findings of this research to help inform Ministers on options for the UK's future approach to remuneration in music streaming. The UK Intellectual Property Office has also set up two industry expert groups looking at issues relating to metadata and transparency. These groups, which include experts from across the industry, have been developing an agreement on metadata and a code of practice on transparency. Good accuracy and coverage of metadata is important to ensuring creators and performers are properly credited and paid. Industry has been working on an agreement which will set out good practice standards on the data that should accompany music tracks, the roles and responsibilities of different parties in providing this data, and plan to increasingly raise standards on metadata in the UK through education and support for technical solutions. Creators and artists have called for greater transparency to help make it easier for them to understand how they are remunerated and the basis for it, and to address information asymmetries in the industry. The transparency Code being developed by industry in the UK is still being discussed, but is likely to address issues related to contracting, supply chains, royalties, audits, licensing agreements with digital music services, and ongoing communication within the music industry. These documents, which are both developed by industry with support from the UK IPO, are in the final stages of development and we hope they will be agreed and published soon. Our work in this area has demonstrated to us the benefits of encouraging inclusive engagement from all parts of the industry in solving the different challenges. We don't think this is an area where one size fits all, but there is plenty that countries can learn from each other, and we are happy to discuss our own experiences with other Member States. We also support the work of WIPO for Creators to support and educate those in the industry to make the most of their rights and we encourage the participation of industry and Member States in that initiative. It is valuable to hear different perspectives on the approaches to remuneration around the world, and yesterday's information session was welcome. In future meetings we would also welcome discussion of other current issues in the digital area, including those affecting different sectors and cross-cutting issues such as the metaverse and artificial intelligence. Thank you Chair.

LATIN ARTIS. Latin Artis, en representación de los actores y demás artistas iberoamericanos del ámbito audiovisual, agradecemos el interés mostrado por este Comité en explorar la precaria situación a la que se enfrentan los artistas en relación con la explotación de sus interpretaciones en el entorno digital, perfectamente descrita por el GRULAC en su propuesta presentada a este Comité. Agradecemos igualmente el trabajo de la Secretaría, concretado en los cinco estudios encargados y realizados, sobre los servicios digitales de música y la situación de los artistas intérpretes o ejecutantes, así como en la esclarecedora sesión informativa celebrada en el día de ayer. Pero al mismo tiempo debemos recordar que el mandato de este mismo comité era el de acometer, en una segunda etapa, uno o varios estudios similares referidos al ámbito audiovisual. Latin Artis y sus miembros creen que ya ha

llegado el momento de abordar la situación de los actores y demás artistas del ámbito audiovisual, que se enfrentan a los mismos problemas que los cantantes y músicos, sin olvidar que los servicios digitales de difusión de contenidos audiovisuales tienen el mismo auge e impacto económico, si no superior, que los de la música. A tal efecto proponemos la realización de un estudio o análisis a este respecto, cuyas conclusiones puedan ser debatidas en el marco de una nueva sesión informativa, de formato similar a la de ayer, pero referida a los servicios digitales de difusión de contenidos audiovisuales. En uno y otro caso la conclusión va a ser idéntica: es absolutamente necesario encontrar fórmulas adecuadas que garanticen a los creadores el contenido económico de sus derechos en el entorno digital o, en otras palabras, fórmulas que garanticen al artista una participación justa en los rendimientos económicos derivados de la explotación digital de sus obras e interpretaciones. En este sentido es preciso recordar que el artículo 12.3 del Tratado de Beijing ofrece una solución que, debidamente implementada en las distintas legislaciones nacionales, ayudaría a lograr el objetivo perseguido. En suma, Latin Artis y sus miembros urgen a este Comité a continuar con el debate propuesto por el GRULAC, y esperamos que esta cuestión constituya un punto permanente e independiente en la agenda de este Comité.

ELAPI. Muchas gracias señor presidente por concedernos el uso de la palabra y agradecemos a la secretaría la elaboración del documento. Del mismo modo en que lo hicimos en el SCCR42, ELAPI reitera la necesidad de establecer como punto permanente de la agenda el tema de los derechos de autores y artistas en el entorno digital. La realidad de los contenidos en línea en el mercado del streaming hace necesaria la adopción de medidas concretas para entender la extensión de la dogmática jurídica del derecho de puesta a disposición y su relación con el fenómeno de la brecha de valor, que día a día se profundiza. Desde la ELAPI siempre estamos dispuestos a trabajar el tema en este comité con el afán de lograr acciones para mejorar la problemática descrita y los mecanismos de protección y remuneración de los autores y artistas como eslabones más débiles de la cadena de valor. Un ejemplo de esto último es el desarrollo de un derecho de remuneración, especialmente para el caso de los artistas.

KEI. This is a case where you have a highly decentralized group of authors and performers, on the one hand, and a highly concentrated ownership and control of labels and platforms on the other. At the heart of many complaints are concerns about transparency, meta data, and unfair contracts. In this regard, WIPO, acting at the global level, can provide an important counterbalance to the power of the labels and platforms, even when only a handful of governments have limited leverage acting on their own. It may be useful to review Article 40 of the TRIPS Agreement, on the "Control of anti-competitive practices in contractual licenses" which may be relevant to this discussion, including the obligations in the WTO agreement in Article 40.3 to "enter, upon request, into consultations with any other Member which has cause to believe that an intellectual property right owner that is a national or domiciliary of the Member to which the request for consultations has been addressed is undertaking practices in violation of the requesting Member's laws and regulations on the subject matter of this Section." On a different matter, KEI has proposed allowing consumers of streaming services to choose, at least in part, the methods of allocating royalty payments to authors, performers and producers, by opting into competing collection societies to distribute revenues. This is the so-called Blur-Banff model. The WIPO Chief Economist could also be asked to attend the next session of the SCCR to discuss, with member states, the types of analysis that could be undertaken or reviewed to shed light on the impact of the digital platforms on the incomes of artists and the distribution of income between countries.

AEPO-ARTIS. AEPO-ARTIS represents the European performers' collective management organisations that were set up by Musicians, Dancers and Actors to manage and defend their rights. Rights that often find their basis in a WIPO Treaty. I would like to start by thanking the Secretariat for the enormous work they have put in organising the information session that we

all could attend yesterday. Performers are grateful for the possibility given to them to share their experiences with you. With all the time that has been given to this topic, one would be tempted to forget that this item is still under 'other matters.' But for the hundreds of thousands of performers our members represent, this is not an 'other matter'. As the digital environment has become the primary source we all use to enjoy music, this digital environment has become their primary workspace. And we've been focussing on music today once more, but this dependence on a digital environment that does not offer a vital source of remuneration in return can be found also with our actors-performers. In the audiovisual sector, performers also face the reality of a practice where their exclusive rights are transferred to third parties as a result of a contractual relationship that is not built on equality. So, we thank the GRULAC for their proposal to include this topic as a separate item on the agenda and to instruct the WIPO Secretariat to make proposals, searching effective and fair solutions to secure performers' rights in the digital environment. We thank the CEBS, the African Group and the Asia and Pacific Group, Spain, Paraguay, Mexico, Brazil, Nigeria, Ecuador, the United Kingdom, Guatemala, Panama, Jamaica, Jordan, Côte d'Ivoire and the Dominican Republic in particular for their support to this demand. But, we should avoid to repeat the discussions we've had the last 7 years. Yesterday I heard the words 'urgent' and 'immediate' repeated over and over again. And I heard a wise man say that "It is wonderful to have long discussions and getting into the nitty-gritty, but that this only serves those who benefit from the status quo." And those are not the performers. So we need to move on. There is already a consensus here that the primary goal of the rights that WIPO has given to performers is to make sure that they are remunerated for their work. No to control the use of their work, but to ensure their fair remuneration. AEPO-ARTIS urges the countries present here today to admit that there is no longer a need to build a consensus and to commit to urgently and immediately start the work on translating this consensus into a concrete recommendation on, how to make the existing legal framework more effective, and in particular provide guidance on additional measures to guarantee that the Article 10 of the WPPT can work as a legal basis that effectively remunerates performers when their work is used online, that allow them to have a direct relationship with platforms through their own collective management organisations. We know that these demands put extra pressure on the already full agenda of this Standing Committee. But I hear there is a possibility to organise an additional standing committee. We support this idea because it would indeed create a possibility to give more topics the equal status of standing item.

Resale Right

The Delegation of Mexico. Señor Presidente, En este tema, México informa que a partir del 20 de enero de 2023 ya se cuenta con un esquema tarifario para el pago del derecho de participación por la reventa de obras de carácter plástico. Ahora nos corresponde llevar a cabo una implementación efectiva y demostrar que se no se afecta el mercado del arte. Sin duda, esto es parte de las políticas públicas en materia de cultura, en aras de ser incluyentes y no dejar a nadie atrás, y reafirmando la progresividad del derecho de autor, así como el respeto al mismo. Ante este Comité, damos evidencia de nuestra aportación, un granito de arena. Invitamos a que nos sumemos y lograr que esto se convierta en un gran beneficio para nuestros artistas plásticos y sus herederos.

Design and Artist's Copyright Society (DACS). Thank you to the Chair for the opportunity to make a statement on Artist's Resale Right at the SCCR 43, and thank you to the Chair and Secretariat for their work. Thank you also to Professor Sam Ricketson for his excellent presentation on the toolkit. DACS is a UK collective management organisation that represents the rights of visual artists and manages the Artist's Resale Right on their behalf in the UK. We support our colleagues in the visual arts arena, including ADAGP, CISAC, European Visual Artists (EVA) and others, in calling for the Artist's Resale Right to become an official agenda item. The UK adopted the Artist's Resale Right in 2006 and since that time DACS has paid over £120 million to visual artists and their heirs. In a recent survey of artists and heirs, 75% of artists

re-invest their royalties into their practice, and over half of artist's heirs use their royalties to store, preserve and archive artist's works. These activities enable art works to be displayed in museums and galleries, for the benefit of the public. We also know that artists in the UK are some of the lowest paid members of the creative industries, earning between £5-10,000 per year – far below the UK's average wage. Artist's Resale Right royalties are, therefore, a vital source of remuneration for artists that help them sustain their living and their practice. Again, we would like to express support for the Artist's Resale Right to become a permanent agenda item.

ARIPO. Thank you, Mr. Chairman, we commend you for your stewardship and leadership as you Chair this Committee. We thank Prof. Ricketson for a wonderful and insightful presentation on the toolkit on legal aspects of the Artist Resale Rights. The African Regional Intellectual Property Organization (ARIPO) reiterates its support on the proposal made by Senegal and Congo on Resale Rights. ARIPO encourages its Member States to support and contribute constructively to the proposal made by Senegal and Congo on Resale Rights. ARIPO further encourages its Member States who are yet to include the resale rights in their national legislations to do so and put in place or strengthen the institutional structures to administer the resale rights. Mr. Chairman, thank you for this opportunity you have given me, and I wish you well as you Chair this Committee to have fruitful deliberations.

ELAPI. Muchas gracias señor presidente por concedernos el uso de la palabra, agradecemos a la secretaría por los documentos como también al experto por la explicación. Desde ELAPI creemos firmemente que el derecho de participación en la reventa de las obras de único ejemplar es una herramienta de justicia económica, cultural y social, por cuanto permite a los autores y a la sociedad mantener el correspondiente equilibrio de derechos, en ocasión de la explotación económica de la obra en cuestión y, aún más relevante, salvaguarda el derecho de paternidad de ésta con su creador. En virtud de lo cual, lejos de perjudicar al mercado, consideramos que éste se vería beneficiado mediante el impulso de la actividad creativa. La implacable expansión del entorno digital, refuerza la necesidad de una armonización a nivel global respecto del reconocimiento de este derecho. Solo así, la creatividad y el arte podrán impulsarse, desarrollarse, comercializarse y distribuirse responsable y equitativamente. Además, para garantizar una correcta y transparente implementación de este derecho, es imprescindible que los sistemas aplicados sean ágiles y eficientes, tanto para recabar información, recaudar, fiscalizar y pagar esta remuneración a sus beneficiarios. Por todo esto consideramos que este punto sea tratado como punto permanente de la agenda de este comité. Desde la ELAPI, nos reiteramos a disposición para profundizar el tratamiento de este tema en este comité y de aquellas acciones tendientes a fortalecer y proteger el sistema de derechos de autor.

KEI. KEI supports the proposals for a treaty for an artist's resale right for physical works of art, based upon the earlier work by Professor Ricketson. KEI also welcomes Professor Ricketson's new toolkit on the Artist's Resale Royalty Right, SCCR/43/INF/2, which is designed to provide "national legislators with sample provisions that may provide a useful guide as to how an ARRR scheme might be legislated for and implemented, or an existing scheme modified, in Berne member states, having regard to the local legal traditions and practices of each state as well as to the framework of international obligations under Berne." KEI calls attention to a 124 page December 2013 report from the U.S. Copyright Office on the resale right, which included in a cover letter the recommendation that "We believe that Congress may want to consider a resale royalty, as well as a number of possible alternative or complementary options for supporting visual artists." Finally, perhaps the Committee could request WIPO's Chief Economist to comment on the economic impact of the Artist's Resale Royalty Right on artists' livelihoods, as well as on museums and auction houses.

Public Lending Right

The Delegation of Sierra Leone. Good morning or good afternoon, depending on where you are. As you know, Sierra Leone, Malawi, and Panama have championed the idea of a study to be undertaken by the SCCR to understand more about Public Lending Right (PLR). As such the co-sponsors have formally requested the SCCR to commission to WIPO a study to provide detailed information on Public Lending Rights (PLR) systems, their advantages and disadvantages, the different ways in which they may be implemented, and how countries can access the support and capacity building needed to take a PLR scheme forward, if they choose. At the 40th session of the SCCR, we presented the proposal and requested support from Committee members. The proposal enjoyed support from several Committee members and was deferred for discussion at this session at the last SCCR, mainly due to time and the limitations of hybrid working. During the intersessional period, the co-sponsors have been engaging with committee members bilaterally and in different group constellations. We have received positive feedback from several committee members and other stakeholders. Before turning to the proposal, the co-sponsors would like to clarify a few procedural and administrative points. First, we understand the SCCR has a large number of items under consideration on its agenda. As such, we do not wish or intend for PLR to be added as a substantive item for discussion, and we are not asking for work on a legal instrument or a treaty under this topic. Our core objective is for countries, particularly developing countries, to learn about PLR systems and their potential. The study is a standalone project that would be carried out by WIPO and presented to Member States when it is ready at a future SCCR- the study on theatres' directors rights was processed in the same manner. As such it would have a defined beginning and end and would therefore not risk overburdening the agenda of the SCCR. Therefore, the study will be just that – a self-contained study, focused on improving our knowledge of PLR. It is simply an information sharing exercise. Additionally, it is our understanding that the Secretariat has the resources available to undertake the study if requested by the Committee. We believe, given that many countries represented at WIPO do not currently have a Public Lending Right, it would be good to approach this in terms of sharing of neutral information and focused only on fact finding research. It would be important to conduct an extensive review on this as the diversity of Public Lending Rights systems around the world suggests a variety of strengths and weaknesses and important considerations of how it can reflect national needs and overcome divides in the international creative industries. We have seen there are different approaches that address how it can support creators in different ways and different approaches to funding. We would also like to highlight that we are not requesting a substantive discussion on the merits of PLR at this meeting, rather we are proposing a study on PLR as it would be useful to have more information from the study first in order to take an informed position. The discussion is on the procedural point of requesting the WIPO Secretariat to prepare a study/factual mapping of PLR/ to provide the Committee with more information about PLR. Therefore, supporting this request will not amount to having taken any substantive position on PLR. This proposal is not suggesting any normative work. It is not suggesting a long-term addition to the standing agenda as we would expect such a study to have a defined beginning and end with a presentation of information gathered to the nations represented at WIPO. We should consider the unique opportunity of SCCR as a forum to discuss timely substantive policy issues relevant to the stakeholders in Intellectual Property. This study would be a very useful opportunity for sharing and analysis of national experiences and discussion and consideration in this forum that brings together nations, experts and stakeholders in a spirit of collaborative work and transparency. Finally, it is important to stress that while our Delegation believes that PLR has a real potential as one form of remuneration scheme to improve the situation of authors in developing countries, we do not wish to prejudge the outcomes of the study. The study will be comprehensive and consider all aspects of PLR schemes, including their legal basis, funding, governance and administration. Mr Chair, PLR can be a serious boost to our creative industries as it helps maintain creativity and strengthen and promote local languages, traditions, and cultures. The study will provide factual information on how we can support our African creators, and truly many creators all around the world, our societies and economies need to incentivize and develop our creative sector. We hope that the study will show how PLR can be implemented

and how it can benefit local creators and bring in national revenue. This opportunity to share best practice and learn about potential opportunities to support more creators around the world should be taken. The flexibility and adaptability to local circumstances makes PLR a particularly good choice for us in developing countries seeking to support our poets, novelists, authors of academic books, and our libraries. As such, many African countries have expressed interest in PLR, including Malawi and Zanzibar that are actively working to implement PLR, and Burkina Faso, Ethiopia and Mozambique have an exclusive 'lending right' recognised in their copyright legislation. It is also included in ARIPO's Model Law on Copyright and Related Rights. Our core objective is for Committee members to learn about PLR in order to decide with facts in hand whether introducing PLR is a good idea or not. This Committee was established, more than 20 years ago, with a mandate to "consider emerging issues" in the field of copyright and related rights. A Study on Public Lending Right, which is generating interest all across the world, will contribute to fulfill this mandate. Mr. Chair, Committee Members, we kindly invite you to join us in our request to mandate the Secretariat to carry out the study, without further delay. Too many projects and discussions have been stopped or delayed due to the pandemic. However, since the Secretariat is in a position to undertake this study if requested by the Committee, it is our sincere hope that we can make progress on exploring the strengths and weaknesses of existing PLR schemes through a comparative fact-finding study. Thank you for your attention, we thank the co-sponsors, and we look forward to a fruitful discussion and forward movement on our proposal.

EWC. The EWC thanks WIPO for the opportunity to submit a statement related to the pending proposal prepared by the Republics of Sierra Leone, Panama, and Malawi and would like to respond to the Chair's invitation to make a comment and give input on possible next steps. We also refer to our submission to the proposal, contributed at the SCCR/41 and /42 meetings, available here (Statement 57) and here (page 26). The European Writers' Council continues to fully support this proposal for a WIPO planned PLR study. The EWC represents 160,000 writers in the book and text sector from 46 writers' and translators' organisations in 31 EU, EEA and non-EU countries, published worldwide, and also lend out globally in Libraries. The EWC is a member of the PLR International Steering Committee, and we support the given statement by PLR International. PLR implements the principle that 'every use must be remunerated' which is based on the Universal Declaration of Human Rights and by which writers and translators are entitled to receive remuneration from every use of their work. Moreover, we are convinced that PLR sustainably supports the mission of libraries as a third place, a physical space of encounter and social interaction, and access to knowledge and literature. A society that is committed to future generations of citizens, but also to intellectual sources, must today establish sustainably conceived and financed concepts that enable the authors of the works, as well as the readers of the works, both to create culture and to have access to it under fair and sustainable conditions. Remunerated PLR is the way forward. The EWC supports the core aims of the proposal, "... a WIPO-sponsored study to provide a more detailed information on the different ways in which PLR can be introduced, on limitations and solutions, and how we can access the support and capacity building (...) This study will answer the question of how countries are to identify which PLR approach is most appropriate to their needs?" The EWC endorses especially the points I-VII in the proposal SCCR/40/3/Rev.2. We encourage WIPO and its member states to proceed positively, and to initiate a WIPO conducted study to present a solid and wide-ranging report as a "handout" to support those nations that want to secure the state's educational mandate with an equitable method in the interest of authors, society, innovation, and preservation of future knowledge. The study should not lead to a legal instrument of any form. It should focus on PLR for printed works and focus on public libraries. As next steps, we propose for your reflection and consideration: Launching in-depth consultations with participation of all sector representatives in the book sector (authors, translators, visual artists, publishers, trade), the public library sector, collective management organisations and relevant governmental entities, with the specific look on PLR. OMCs and expert groups shall meet regularly over a certain period. This will reflect the diversity of experiences and consider the different regional

conditions; The results can be presented in the framework of an information session; regional seminars can of course also be considered at the request of interested countries; A further outcome can be a toolkit for PLR.

Fundación Vía Libre. Muchas gracias sr. presidente por la oportunidad de aportar sobre este tema central desde el punto de vista del desarrollo y el acceso al conocimiento. Argentina cuenta con una larga tradición bibliotecaria en toda su extensión geográfica. Además de las grandes instituciones radicadas en las capitales, en Argentina tenemos dos largas tradiciones: las bibliotecas escolares y las bibliotecas populares. Estas instituciones cuentan con magros recursos y cumplen una labor esencial en el acceso a la literatura, en la formación de un público lector y en el acceso a materiales educativos desde Ushuaia a La Quiaca. Estas instituciones dependen de las donaciones, del trabajo de voluntarios y las compras al por mayor que el Estado hace de libros para distribuir a esas colecciones. El préstamo público es una labor esencial de las bibliotecas, instituciones amparadas por el Pacto Internacional de Derechos Económicos, Sociales y Culturales y muy especialmente la Observación General Nro.17 que afirma que la propiedad intelectual no es equiparable a los Derechos Humanos mientras que el derecho de toda persona al acceso y participación en la cultura en instituciones culturales y bibliotecas si lo es. En especial, sobre el marco de Derechos Humanos, queremos solicitar una clarificación sobre la afirmación integrada en la propuesta de que 'Este derecho se basa en el principio de que todo uso entraña un pago, reconocido en la Declaración Universal de Derechos Humanos, según el cual los autores tienen derecho a percibir ingresos por todo uso que se haga de su obra'. En ninguna sección o artículo de los instrumentos internacionales de Derechos Humanos aparece tal afirmación. Un debate constructivo demanda una base conceptual rigurosa. Sr. Presidente, desde Fundación Vía Libre, junto con organizaciones colegas que hemos trabajado este tema en nuestro país sabemos que el préstamo público no daña los intereses de los autores, sino que los beneficia al construir un público lector. No existe evidencia de que un libro prestado suponga lucro cesante. Por eso, solicitamos que el tipo de sesgos que hemos identificado en la propuesta no se trasladen a un potencial estudio y se tengan presentes los estudios sobre Derechos Culturales, dando especial participación a la Relatoría de Derechos Culturales de Naciones Unidas, y se evalúe especialmente el impacto potencial de estas medidas en países latinoamericanos donde no forma parte de la política cultural. Muchas gracias. Fundación Vía,

ARIPO. Thank you, Mr. Chairman for giving me this opportunity. The African Regional Intellectual Property Organization (ARIPO) reiterates its support to the proposal made by the Government of Sierra Leone, Malawi, and Panama to have a study focused on "Public Lending Rights" (PLR). The study could investigate the reasons behind the slow uptake of the Public Lending Rights scheme or systems and proffer sustainable and suitable approach for ARIPO Member States, Africa, and the rest of the continents to consider establishing PLR schemes or systems. The study could also probe on which basis or approach the PLR should be introduced or improved for the countries who already have such a scheme. The study should take into consideration the different environments in the domestic and international frameworks and whether it has a significant benefit for socio-cultural support, equitable remunerations for rightsholders, promoting creativity, supporting linguistic, local culture and local writers, dissemination of information, and technological development. Mr. Chairman, it is worth noting that among the ARIPO Member States, Tanzania - Zanzibar has the Public Lending Right provisions under section 12 to 15, Part III of the Copyright (Procedures for Rent or Reproduction of Copyright Works) Regulations published in the Legal Supplement Part II to the Zanzibar Government Gazette Vol CXXVII, No. 6775C of 23rd September 2019, which provides for the PLR. The PLR scheme in Zanzibar currently applies to works written in the national language "Kiswahili". Malawi also has a provision on Public Lending Right in their Copyright Act of 2016 and has developed the implementing Regulations on Public Lending Rights. ARIPO assures its Member States, and Partners of its continued support towards the development and shaping the copyright and related rights systems in Africa. ARIPO will continue to support initiatives that are geared towards improving the livelihood of creators and rightsholders with the view to promoting balanced copyright systems

and shaping the intellectual property landscape as a whole that considers the interest of developing and least developed countries. ARIPO encourages its Member States to support and contribute constructively to the proposal made by the Government of Sierra Leone, Malawi, and Panama. Mr. Chairman, I thank you once again, and wish you well as you Chair this Committee to have fruitful deliberations.

FUIS. FUIS, La Federazione Unitaria Italiana Scrittori, is the most representative association of writers in Italy. It is also a member of the International Authors Forum, and supports its position. FUIS strongly supports the proposal for a study focussed on Public Lending Right in the Agenda and Future Work of the Standing Committee on Copyright and Related Rights of the World Intellectual Property Organisation put forward by Sierra Leone, Panama and Malawi. Indeed, FUIS would like to inform the committee that it will be undertaking its own study of PLR systems all over the world, in view of a possible reform of the Public Lending Right System in Italy by the Ministry of Culture, which FUIS will make publicly available. Public Lending Right is essential to supporting authors and to supporting readers in accessing the greatest diversity of work, especially in promoting writing in indigenous languages. Any and all information sharing, particularly the breadth and depth of information sharing that a study undertaken at the WIPO level would provide, is vital to ensuring the best interest of authors, to whom the rights discussed by this committee originally belong, are properly considered, which in turn will have a positive impact on the health of the industry for businesses, services and users alike.

ELAPI. Gracias señor presidente por concedernos el uso de la palabra, agradecemos a la secretaria la elaboración del documento, agradecemos a Sierra Leona, Panamá y Malawi por la propuesta, tal como hemos dicho en anteriores ocasiones, nuestra posición en este comité en relación al préstamo público, será siempre estar dispuestos a buscar alternativas de uso para aquellos que quieran acceder a contenido protegido en aras del acceso a la cultura y el conocimiento, siempre y cuando estos no perjudiquen los intereses legítimos de los autores y sus titulares y que estas prácticas sean equitativas tanto para autores como para quienes brindan estos servicios. El préstamo público por acceso digital, por ejemplo, crea retos tanto a niveles jurídico como tecnológico, los cuales los países miembros tienen que analizar sobre todo para que las bibliotecas y los centros de educación puedan acceder a tecnologías de control para el respeto del derecho de autor en el entorno digital como lo son los DRMs con el fin de hacer un control eficiente de las obras que se ponen a disposición para préstamo público, respetando los derechos exclusivos de los creadores. Desde ELAPI estaremos dispuestos a la creación y organización de mesas de trabajo conjuntas dentro de este comité, para así crear puentes y solventar de la mejor forma estos problemas que se presentan en estos escenarios y cooperar al real entendimiento del derecho de autor como derecho humano.

Rights of Theater Directors

ELAPI. Muchas gracias señor/a presidente/a por concedernos la palabra, por su intermedio nos dirigimos a este honorable comité en el punto de la agenda que se desarrolla. Desde la ELAPI, agradecemos la elaboración del documento sobre los derechos de los directores de teatro. En este sentido, al igual que en la sesión anterior, consideramos que, en el marco de este comité, debe continuar profundizándose en el análisis de la naturaleza de este derecho, con fines de concretar cuál es la mejor figura (derecho de autor o derecho conexo) para proteger los intereses de estos creativos y, en última instancia, unificar el criterio en todas las legislaciones de los estados miembros, pues si bien la diversidad en el tratamiento de la protección de esta actividad no impide de facto el intercambio transfronterizo, tampoco lo facilita. Desde ELAPI reiteremos nuestra consideración de que el régimen más adecuado, dadas características de la actividad creativa que se realiza, es el derecho de autor, en defecto de una regulación sui generis que refleje las particularidades de este rubro, pues su labor más se acerca a la realizada por los directores de obras audiovisuales que a la de los intérpretes y ejecutantes. Así mismo, como aporte al debate, consideramos que la fugacidad de la puesta en escena no debe ser óbice para protegerla como derecho de autor, pues en este rubro, el acto creativo, distintivo

y expresivo de la personalidad del autor existe y se produce con carácter previo e independiente a la fijación, siendo quizá entonces los límites a la ejecución de este derecho los que debieran ser debatidos en este honorable espacio. Por otro lado, cabe añadir que hoy día ya existe un nicho de mercado consistente en grabar representaciones teatrales, así como un público interesado en consumir dicho contenido, como es el caso de la experiencia argentina y la plataforma Teatrix. Con los nuevos espacios digitales que se están conformando, la necesidad de contar con un adecuado régimen de protección internacional para los directores de teatro, se torna cada vez más acuciante, por ello creemos que no debe descartarse del debate la posibilidad de elaborar un eventual tratado internacional específico. Desde ELAPI ofrecemos toda nuestra cooperación académica a este respecto.