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Standing Committee on Copyright and Related Rights

Thirty-Eighth Session
Geneva, April 1 to 5, 2019

REPORT

adopted by the Committee

1. The Standing Committee on Copyright and Related Rights (hereinafter referred to as the “Committee”, or the “SCCR”) held its thirty-eighth session in Geneva, from April 1 to 5, 2019.
2. The following Member States of the World Intellectual Property Organization (WIPO) and/or members of the Bern Union for the Protection of Literary and Artistic Works were represented in the meeting: Algeria, Angola, Argentina, Armenia, Australia, Austria, Bahamas, Bangladesh, Barbados, Belarus, Belize, Bhutan, Bolivia (Plurinational State of), Botswana, Brazil, Brunei Darussalam, Burkina Faso, Cambodia, Cameroon, Canada, Chile, China, Colombia, Congo, Côte D'ivoire, Croatia, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, France, Gabon, Gambia, Germany, Ghana, Greece, Holy See, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Italy, Jamaica, Japan, Kenya, Kuwait, Kyrgyzstan, Latvia, Liberia, Libya, Malaysia, Malta, Marshall Islands, Mexico, Monaco, Montenegro, Morocco, Mozambique, Myanmar, Nepal, Netherlands, Nicaragua, Nigeria, Oman, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Senegal, Seychelles, Singapore, Slovakia, South Africa, Spain, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, United Republic of Tanzania, Delegation of United States of America, Uruguay, Viet Nam and Zimbabwe (107).
3. The European Union (EU) participated in the meeting in a member capacity.
4. The following Intergovernmental Organizations (IGOs) took part in the meeting in an observer capacity: African Regional Intellectual Property Organization (ARIPO), African Union (AU), Eurasian Economic Commission (EEC),¹ South Centre (SC), West African Economic and Monetary Union (WAEMU), Telecommunication Union (ITU) and World Trade Organization (WTO) (7).
5. The following non-governmental organizations (NGOs) took part in the meeting in an observer capacity: African Library and Information Associations and Institutions (AfLIA), Alianza de Radiodifusores Iberoamericanos para la Propiedad Intelectual (ARIPI), Asia-Pacific Broadcasting Union (ABU), Asociación Argentina de Intérpretes (AADI), Association for the International Collective Management of Audiovisual Works (AGICOA), Association of Commercial Television in Europe (ACT), Association of European Performers' Organizations (AEPO-ARTIS), British Copyright Council (BCC), Canadian Copyright Institute (CCI), Canadian Federation of Library Associations (CFLA), Center for Information Policy Research (CIPR), Central and Eastern European Copyright Alliance (CEECA), Coalición por el Acceso Legal a la Cultura (CALC), Communia, Conector Foundation, Co-ordinating Council of Audiovisual Archives Associations (CCAAA), Copyright Research and Information Center (CRIC), Corporación Latinoamericana de Investigación de la Propiedad Intelectual para el Desarrollo, Corporación Innovarte), Education International (EI), Electronic Information for Librarians (eIFL.net), European Broadcasting Union (EBU), European Federation of Joint Management Societies, of Producers for Private Audiovisual, Copying (EUROCOPYA), European Law Students' Association (ELSA International), European Publishers Council (EPC), European University Association (EUA), Federazione Unitaria Italiana Scrittori (FUIS), Health and Environment Program (HEP), Ibero-Latin-American Federation of Performers (FILAIE), Instituto de Derecho de Autor (Instituto Autor), Intellectual Property Center (IPC), International Association for the Protection of Intellectual Property (AIPPI), International Association of Broadcasting (IAB), International Authors Forum (IAF), International Confederation of Music Publishers (ICMP), International Confederation of Societies of Authors and Composers (CISAC), International Council of Museums (ICOM), International Council on Archives (ICA), International Federation of Actors (FIA), International Federation of Film Producers Associations (FIAPF), International Federation of Journalists (IFJ), International Federation of Library Associations and Institutions (IFLA), International Federation of Musicians (FIM), International

Federation of Reproduction Rights Organizations (IFRRO), International Federation of Translators (FIT), International Publishers Association (IPA), International Society for the Development of Intellectual Property (ADALPI), International Trademark Association (INTA), International Video Federation (IVF), Karisma Foundation, Knowledge Ecology International Inc. (KEI), Latín Artis, Library Copyright Alliance (LCA), Max Planck Institute for Innovation and Competition (MPI), Medicines Patent Pool (MPP), Motion Picture Association (MPA), National Library of Sweden (NLS), North American Broadcasters Association (NABA), Program on Information Justice and Intellectual Property (PIJIP), Scottish Council on Archives (SCA), Société portugaise d'auteurs (SPA), Society of American Archivists (SAA), The Confederation of European Business (BusinessEurope), The Japan Commercial Broadcasters Association (JBA), Union Network International - Media and Entertainment (UNI-MEI) and World Association of Newspapers (WAN) (66).

AGENDA ITEM 1: OPENING OF THE SESSION

6. The Director General welcomed the delegations to the Thirty-Eighth session and stated that it was the previous Committee meeting prior to the 2019 Assembly. As such, the Committee given the mandate to propose and formulate any recommendations for the Assembly. The Director General reiterated the Committee's focus on the Agenda and discussions on a number of issues with much emphasis on copyright. Addressing other challenges faced by the Committee, the Chair indicated that much progress had been made on the issue of broadcasting particularly in the last six months. Members were urged to actively participate in deliberations to arrive at pragmatic solutions in the collective interests of all Member States while conforming to the international framework for copyright and related rights. Though progress had been made in the areas of exceptions and limitations and other related topics, delegates were to focus on distribution of knowledge; libraries and digital framework, protection of authors and author rights in the 21st Century. Further discussions were to begin on resale rights, digital environment and the rights of theater directors.

AGENDA ITEM 2: ELECTION OF OFFICERS

7. The Director General commended the works of the outgoing officers including the Chair from Singapore and Vice-Chairs from Poland and Senegal. Based on recommendations submitted by the coordinators, Mr. Daren Tang of Singapore was elected as Chair and Mr. Peter Labody of Hungary and Mr. Abdoul Aziz Dieng of Senegal as Vice-Chairs through a general consensus. Their appointments were to last for the subsequent sessions of the SCCR until work by the Standing Committee began. Elected officers were invited to preside over the meeting.

8. Acknowledging their re-election, the Chair thanked the Committee for their vote of confidence and reiterated that they were committed to serve until SCCR 42. The Chair stated that Mr. Peter Labody's was to continue the work of the former Vice-Chair, Mr. Karol Koscinsky. The Chair asked delegates to support them and pledged their continued commitment to guide discussions in an open, transparent, fair, professional manner as had been done in the previous sessions. The Chair noted the many corporate issues on assuming the position of Chair during the thirty-fourth session of the SCCR. One of the pertinent issues identified was IP related concerns, an issue which affects the lives of people in various sectors. The Chair mentioned that the work of the Committee was imperative to address those challenges and urged members to be committed to the agenda.

AGENDA ITEM 3: ADOPTION OF THE AGENDA OF THE THIRTY-EIGHTH SESSION

9. The Chair proposed that the Committee continue its work as underlined in the draft agenda outlined in document SCCR/31/1Prov. On the allocation of time, the Chair proposed that allocation from previous meetings should be adopted. In view of that, suggested schedule

In the interest of efficiency, the Chair advised that some sessions may not have coffee breaks, however, members could leave proceedings intermittently for breaks while proceedings were still in session. The Committee was invited to adopt the Draft Agenda for the meeting as outlined in Document S CCR/38/1 Prov.

AGENDA ITEM 4: ACCREDITATION OF NEW NON-GOVERNMENTAL ORGANIZATION

10. Under the accreditation of new NGOs, the Chair indicated that the Secretariat had received several new requests for accreditation. The Committee was invited to approve the representations in document SCCR/31 of three non-governmental organizations namely PLR International (PLRI), Radyo Televizyon Yayincilari Meslek Birliđi (RATEM), and the Design and Artists Copyright Society (DACS). With no objections or comments from the Member States the Committee approved their accreditation.

AGENDA ITEM 5: ADOPTION OF THE REPORT OF THE THIRTY-SEVENTH SESSION OF THE SCCR

11. The Chair opened Agenda Item 5, the adoption of the report of the thirty-seventh session of the SCCR. The adoption of the report of the thirty-seventh Session of the Standing Committee contained in SCCR/37/9 Prov. was discussed. Delegations were hereby invited to send comments or corrections to the English version accessible online to copyright.mail@wipo.int. The comments should be sent to the Secretariat by the May 1, 2019 in order to allow the timely production of the final report before the following session. Without any objections, the Committee was invited to approve the draft report of the thirty-seventh session of the SCCR after which it was adopted.

12. The Secretariat informed the delegates about the side events and made other announcements. Members were advised to visit the SCCR website for all other details.

AGENDA ITEM 6: OPENING STATEMENTS

13. The Chair opened the floor for introductory general statements.

14. The Delegation of Indonesia speaking on behalf of the Asia and Pacific Group expressed its support of the agenda and program of work which reflected a more balanced treatment of all issues facing the Committee. Highlighting the most critical issues of importance to Member States, namely protection of broadcasting organizations, limitations and exceptions for libraries, archives, educational and research institutions and for persons with other disabilities, it indicated that those issues were of great concern. It believed that under the Chair's leadership, more progress would be made in addressing those pertinent issues. The Asia and Pacific Group indicated that it was necessary to refer to the 2012 General Assembly guidance to the SCCR on the work plan on the issues raised in relation to the broadcasting treaty data mining, the importance of correlation of intellectual property rights to broadcasting as a developmental issue which required careful balancing. Though some members of the Group hold a different position based on national policies, it noted that most members wanted a finalization of a balanced treaty on the protection of broadcasting organizations based on the mandate of the 2007 General Assembly to provide protection on the signal-based approach for cablecasting and broadcasting organizations in the traditional sense. For the Group, exceptions and limitations were of critical importance for the collective development of societies. The draft action plans were a good basis for further consideration in the Committee, to make progress on those very important issues and to reaffirm its commitment to remain constructively engaged in the activities of the action plans. The Group looked forward to the discussion on the situations of libraries, archives, museums and educational and research institutions. The Group recognized the important new issues and thanked the Secretariat for the proposed modalities

on the study on artist's resale rights, copyright and digital environment and the theater director's rights. It indicated that it would make interventions under those items and would continue to proactively participate in the discussions of the Committee.

15. The Delegation of Uganda speaking on behalf of the African Group reiterated the importance of the Committee. The African Group noted that over the years, the SCCR had contributed to the progressive development of the international copyright system for protection of copyright and related rights in a more harmonized and transparent manner. The Group indicated that the SCCR was critical today given the impact of digital technology and the ever-evolving global information networks on copyright and related rights as well as shifting social and economic expectations by users and right holders respectively. Interests of Member States and other stakeholders remained diverse though SCCR's Agenda had expanded over the years. It underscored the need for the Committee to continue to have a balanced work program for all copyright and related issues brought by the Member States for consideration. It stressed the importance of the proposed international instrument of limitations and exceptions for libraries, archives, museums and educational and research for persons with other disabilities. It advocated for a balanced copyright system secured by a social contract between right holders and users, as it was essential for its promotion of culture, science, and education for sustainable development. The Group renewed the call for the Committee to ensure all outstanding activities under the action plans on the Agenda aimed at fulfilling the mandate of the 2012 WIPO General Assembly to deliver an international instrument in whatever form. It also looked forward to the presentations and discussions of the typologies, libraries, archives, museums and educational institutions and the update studies on persons with other disabilities. The Group reaffirmed its support for conclusion of the negotiations and its support for enhancing the rights of broadcasting and cablecasting organizations in response to signal piracy on communications platforms through which broadcast was made. It advised that the Committee finalize on a signal-based approach discussions objective, scope, object of protection for broadcasting organizations and cablecasting organizations in a traditional sense in accordance with the 2007 WIPO General Assembly mandate. It stated that it was ready to support a final negotiated treaty on broadcasting organizations that guarantees the rights of broadcasters. It reiterated its strong support for the proposal submitted by the Delegations of Senegal and Congo to reassert the work on the Committee. The Group also looked forward to the briefing on the initial steps taken on the task force on artist related rights as well as all other issues raised, and encouraged all members to contribute to the directions given during the 2010 WIPO General Assembly and implored the SCCR to heed that decision. The African Group stated that it was committed to engage constructively in all discussions in the hopes of achieving mutually acceptable outcomes.

16. The Delegation of Guatemala speaking on behalf of the Latin American and Caribbean Countries Group (GRULAC) acknowledged the Chair for his leadership. GRULAC indicated that the work of the Standing Committee was crucial to its work. Its objective was to advocate for programs on the protection of broadcasting organizations, limitations and exceptions for libraries and archives, limitations and exceptions for educational and research institutions and for persons with other disabilities as well as reiterated its position on its proposal on copyright with emphasis on the digital environment. That it hoped to achieve through continued dialogue and respecting the interests of all Member States. It reiterated its position to analyze issues on copyright in the digital environment and hold continued discussions on the protection of broadcasting organizations through the implementation of a copyright system and assess a topology analysis for libraries and educational institutions and museums. The Delegation was also keenly interested on the status of digital services in music as outlined in document SCCR/37/4 Rev. It was hopeful that they could make headway and develop meaningful outcomes through continued participation and efforts.

17. The Delegation of Croatia speaking on behalf of the Group of Central European and Baltic States (CEBS) commended the efforts of WIPO to develop the international copyright and

intellectual rights system. The CEBS Group commended the work of SCCR in the area on a draft treaty on the protection of broadcasting organizations and also for the decision to research into the issue of protecting theater director rights. The Group thanked the Secretariat for the excellent cooperation with the regional group. It hoped that progress would be made through active dialogue.

18. The Delegation of China stressed the importance of the SCCR's work and deliberations on broadcasting organizations as well as exceptions and limitations, which were urgent issues. The Delegation hoped that a consensus would be reached through tolerance and inclusiveness. The Delegation noted that the broadcasting organizations treaty had become the longest standing matter in the WIPO discussions and advised the Committee to avoid lengthy discussions to make way for a Diplomatic Conference. It thanked the Secretariat for its efforts and recommended the use of inclusive perspective to address to achieve consensus on key issues.

19. The Delegation of Canada speaking on behalf of Group B attached importance to the negotiation of a treaty on the protection of broadcasting organizations. For that treaty to be relevant, the Committee needed to consider a broad range of stakeholder views as well as reflect on technological developments, relevant fields and appropriate protection. The Delegation stated that those were important considerations for Group B. In that regard, Group B believed that Member States had to work towards a practical and meaningful solution. It added that the significant economic value of broadcasting helped to clarify a number of technical issues and promoted enhanced understanding of the respective positions of Member States. On exceptions and limitations, Group B endorsed the discussions held at SCCR 37 on the action plan on libraries, archives and museums and the associated work on the typology and study of libraries and museums respectively. It recognized that the action plans sought to understand the underlying issues and hoped for continued engagement. Group B also assured the Committee of its continued support.

20. The Delegation of the European Union stressed that it was crucial that the broadcasting treaty identified technological realities of the 21st century as it affected the corresponding, current and future needs of broadcasting organizations. The Delegation hoped that Committee could make headway on definitions, object of protection, rights to be granted and other issues, which had been further consolidated by the Chair in Document SCCR/37/8. It reiterated the need for a broad consensus so that the treaty could provide broadcasting organizations with adequate and effective protection. The Delegation stated that it supported the Committee's action plan on limitations and exceptions contained in document SCCR/36/7 through SCCR 39. It added that the action plans would serve as good basis for deepening the understanding of the challenges faced by libraries, archives and museums and research institutions and other persons with other disabilities and would serve as a useful framework for subsequent measures. However, it was of the view that the existing international copyright framework empowered WIPO Member States to introduce, maintain and update limitations and exceptions in the national legislation that could meaningfully respond to local needs and traditions while continuing to ensure that copyright rewarded creativity. It observed that the Committee's work involved understanding the issues, suggesting various existing possible solutions and flexibilities in the framework of the international treaties and did not need additional legally binding instruments in that area. Possible outcomes could include provision of guidance on implementation of international treaties in national laws. The Delegation supported the proposal by the Delegations of Senegal and Congo from SCCR 27 to include the artist resale right in the agenda of the Committee.

21. The Delegation of Bolivia stated that on March 12 it had ratified the Marrakesh Treaty on the rights for people that were blind, visually impaired or print disabled. The Delegation

believed that copyright could be subject to exceptions and limitations, which led to the existence of a fairer world where published work was easily accessible to all. The Delegation reiterated its commitment to the principles in the treaty as protection of copyright was essential to ensure productivity, promote creativity and achieve a proper balance. Balanced progress and discussions were necessary on the protection of broadcasting organizations, exceptions and limitations for libraries and archive, educational institutions for persons with disabilities and on copyright in the digital environment.

22. The Delegation of Tunisia aligned itself with the statement made by the Delegation of Uganda on behalf of the African Group. The Delegation acknowledged the progress on the protection of broadcasting organizations while achieving a balanced approach in protecting those organizations and the concerns of developing countries. On expectations and limitations, the Delegation stressed the need to strengthen human resources, improve access to teaching and knowledge tools, copyright exceptions for archives and access to information. It also supported the proposal by the Delegations of Senegal and Congo to put resale right on the future agendas of the SCCR sessions.

23. The Delegation of India suggested that in view of the rapidly evolving broadcast industry and increasing digital media, broadcasting should cover all types of broadcast, irrespective of platform or medium, including the Internet. The Delegation added that the protection under the proposed treaty should not be limited to traditional broadcasters only but should include broadcasting over the Internet. However, it was in support of the signal-based transmission approach and pledged its support for the early finalization of a balanced treaty for the protection of broadcasting organizations. The Delegation resolved to work towards factoring concerns and interests of all Member States on the fundamental issues to make the draft text more balanced and acceptable.

24. The Delegation from Brazil hoped that the Committee would engage in constructive debates and made substantive progress on the issues raised. The Delegation outlined Brazil's vision of the fundamental role of Intellectual Property and its objective to promote a vibrant economy through improved legal framework and increase in protection and dissemination of creativity and knowledge. It stated that the existence of IP rights in legislation required a functioning IP system and effective enforcement of the rights. The Delegation observed that enforcement provided legal certainty to right holders, essential for investments and job creation. It pledged to ensure that sanctions on infringement of IP rights would be enforced. The Delegation hoped to strengthen respect for IP rights through educational reforms. The Delegation fully shared the objective of combating signal piracy to prevent economic losses and championed for an update to the convention in view of recent developments. The Delegation hoped that the Committee would arrive at final negotiations to convene a Diplomatic Conference in the near future.

25. The Delegation of Singapore aligned itself with the statement made by the Delegation of Indonesia on behalf of the Asia and Pacific Group. It affirmed the importance of copyright and related rights in supporting creators and encouraging the production and enjoyment of creative works for the benefit of society. Its focus was on the basis of relevant discussions where advanced technologies presented members with opportunities and challenges while learning from each other's experiences and insights. In view of that, the Delegation shared updates on its copyright reform efforts. Singapore's copyright review report which outlined its policy direction on copyright and the basis for future legislative amendments was released earlier that year after extensive consultation processes with various stakeholders. The report was aimed at supporting creators in the utilization of creative works in the digital age. That would help make interventions and share proposed changes, considerations and aims to the Committee's discussions. It would also set the pace for discussions on limitations and exceptions during the regional seminar for the Asia – Pacific region on April 29 and April 30 2019.

26. The Delegation of Algeria stressed the importance of the items to be discussed in the SCCR and assured the Committee of its commitment in constructive deliberations. There was a possibility of convening a Diplomatic Conference before the adoption of a treaty on the protection of broadcasting organizations. Focus on technical aspects of the objectives, the specific scope, the object of the protection to achieve normative solutions which would make it possible to achieve a balance between the protection of broadcasting organizations back to a single-based approach and the protection of the positive effects of technological progress were critical. The Delegation believed that on the issue of exceptions and limitations, a working plan would help the committee arrive at appropriate legal instruments according to the 2012 General Assembly discussion.

AGENDA ITEM 6: PROTECTION OF BROADCASTING ORGANIZATIONS

27. The Chair opened Agenda Item 6 on the issue of the protection of broadcasting organizations. Document SCCR/37/8 which contained the Chair's revised consolidated text on definitions, objective protection, rights to be granted and other issues reflected the consideration of the results of the discussions held at the previous SCCR meeting. Through proposals submitted by members in previous sessions, further progress was expected on discussions in that regard, to reach a unanimous position and make recommendations to the General Assembly.

28. The Delegation of Croatia speaking on behalf of the CEBS Group stated that it considered the protection of broadcasting organizations an essential element of SCCR 38 as per discussions at the SCCR 37. The Delegation indicated its awareness of the latest technological developments and protection of transmissions from possible acts of piracy. That particularly referred to transmissions of traditional broadcasting organizations over computer networks such as simultaneous transmissions. The Delegation sought for a common understanding on the issues such as definitions, object of protection, rights to be granted and other issues as contained in the document SCCR/37/8. Only a broad consensus on what kind of protection would be granted to the broadcasting organizations could result in convening a Diplomatic Conference and having a meaningful International Treaty.

29. The Delegation of Indonesia speaking on behalf of the Asia Pacific Group, reiterated its earlier submissions on the need for balance in intellectual property and broadcasting and the need for the finalization of a balanced treaty on the protection of broadcasting organizations and its related issues irrespective of different positions of members. The Group hoped that agreements could be reached on the key aspects of the protection of broadcasting organizations in particular on definitions, object of protection and rights to be granted.

30. The Delegation of Canada speaking on behalf of Group B reaffirmed the importance of updating the international legal framework on the protection of the broadcasting organizations with a view to better reflect the current reality faced by those organizations. The importance of reaching mutual agreements on the objective specific scope and protection of the treaty upon which the 2007 General Assembly's mandate conditions the convening of a conference on the matter was very crucial. Group B assured the Committee of its commitment to enhance and consolidate the mutual understanding of the various technical elements of the text under SCCR/37/8. Group B advocated for mutual technical understanding of the reality faced by broadcasting organizations and its related issues to develop a meaningful, relevant treaty text. Group B looked forward to discussions on the Chair's text including submissions by the Delegations of Argentina and the Delegation of United States of America. It indicated commitment to technical discussions, which would reflect the interests of Member States and of their stakeholders.

31. The Delegation of the European Union hoped that further progress would be made

through mutually beneficial agreements on the main elements of a possible future treaty, which could lead to the convening of a Diplomatic Conference. The Delegation called for in-depth discussions on the text as consolidated by the Chair and for exploring possible solutions. It expected that the treaty would reflect the technological developments of the 21st century. Transmissions over computer networks such as simultaneous transmissions warranted international protections from acts of piracy. Great importance to the adequate catalog of rights remained a crucial factor for protection for broadcasting organizations against acts of piracy. The Delegation suggested that examples set by recent treaties such as the Beijing Treaty should serve as a framework together with substantive efforts made in previous sessions for successful outcomes.

32. The Delegation of India decided to adapt the definition of broadcasting to encompass all types of broadcasts, irrespective of the platform or medium, including Internet. Thus, protection available under the proposed treaty should be irrespective of the medium. Among other things, it argued that the scope should include rebroadcasting and should not be limited to traditional broadcasters but also include those over the Internet. It registered its support for the signal-based transmission approach and the early finalization of a balanced treaty for the protection of broadcasting organizations.

33. The Delegation of the Islamic Republic of Iran stressed on the need for international cooperation through bilateral interactions and the utilization of international organizations. It acknowledged SCCR's work on addressing copyright related issues, which has led to the creation of the instrument contributing to the international IP system. The Delegation advocated for continued inclusiveness and transparency and called for a constructive and positive approach in the negotiations to facilitate fulfillment of the objective of the discussions based on the Committee's mandate and reset the decision. Creating a balanced system for the legitimate interests of all parties and stakeholders in society was necessary for the IP system. Importance needed to be given to potential additional cost for the public in access to broadcasted content in developing countries by drafting an unbalanced treaty for the protection of broadcasting organizations. It cautioned the Committee to avoid the creation of rights that would have unintended adverse effects and cause misuse by some entities to restrict the right of the public to access information. It maintained that the scope of the treaty should be confined to the protection of broadcasting organizations in the traditional sense and definitions contained in the instrument should ensure legal certainty and drafted to suit all to avoid different interpretations and diverse understanding. On means of implementation, each state reserved the right to develop its appropriate legislation based on its needs, traditions, priorities and development requirements. Domestic law should not violate the basic principle of the international IP framework and the obligations of the Member States, however, there was no single model for development of the domestic law. Redrafting of the language was necessary to respect different legal systems and to provide flexibility on means of implementation on the national level. The Delegation looked forward to advancing the right towards developing an adequate and effective legal instrument on signal-based approach.

34. The Delegation of Argentina hoped that the Committee would make substantive progress on the draft treaty as well as other related matters. The Delegation also stressed the need for the instrument to take into account new ways of broadcast delivery and accessibility to the public. It indicated the need for new digital technologies which facilitated access to quality content makes it possible to adapt the distribution of that content to ways better suited to the requirements of the public and facilitate reception in the most diverse places and circumstances. The Delegation indicated that the past work of broadcasters as well as analogue and terrestrial radio and television had been on an equal footing due to cable and satellite but also systems through digitalization and broadband were geared for digital TV, high-definition television, television on demand and wireless and the public could determine how and when to use the content carrying signal. The Delegation noted that with time, catch up services would be available on multiple devices. The traditional and exclusive push mechanism was combined

with pull methods while the user was to a large extent in control, obliging the organizations to be more competitive. However, the adaptation of the holders of the signal, it did not fit into the existing framework of protection. That created imbalance where the efforts and investments were by third parties. That was a major challenge on the issue of deferred transmissions. The Delegation proposed that the problem should be tackled through the proper definition of signal, including the new ways of transmission, which were with the object of protection. If broadcasters had authorization and prohibition rights on the use of signal, it would appear that the mechanism would be easy to design. If that was the case, why was it difficult to look at the necessary consensus, because the link between those modes of transmission with the original signal had to be clear in the proposal because the only right to be provided by the treaty that would make sense was if the object correct of protection was clearly determined. The Delegation believed that there was still a way to provide responses as to services provided by the broadcaster within the protection that was provided by the treaty. If the answer was yes, then there be would no obstacles on the horizon. The Delegation hoped that the Committee would take steps towards a Diplomatic Conference that would give radiobroadcasters the same opportunities as other right holders.

35. The Delegation of the Republic of Korea thanked the Secretariat for its effort in the preparation and organization of the SCCR. The Delegation commended the Committee for the production of the consolidated text on the protection of broadcasting organizations. It pledged its commitment to discussions on the draft treaty along with Member States.

36. The Delegation of the United States of America observed the complexities of the issue and commended the Committee for efforts to help clarify the legal and technical issues, focus on the fundamental questions and bridge the gap between differing legal traditions. The Delegation urged that the protection of broadcasting organizations should be based on a single exclusive right where the broadcaster controls the retransmission of the broadcast signal to the public. That the Delegation believed would be the most feasible way to address the core problem of signal piracy while achieving consensus internationally. With reference to a proposal submitted by the Delegation during the previous session of the SCCR, it stated the need for flexibility on how the right could be granted and allow Member States with divergent national systems to provide effective protection to broadcasters through a combination of rights. Member States would provide broadcasters with an exclusive right in the signal but each country would have access to delineate the borders of that right provided they adequately supplement it through enforceable copyright and related rights. Expression of interest by delegates on the feasibility of the proposal submitted proved helpful. The conversations helped in developing new ideas to make necessary clarifications in the proposal particularly on how language would provide meaningful protection for broadcasters in all countries and to avoid loopholes that could be taken advantage of by would-be infringers.

37. The Delegation of Canada speaking on behalf of Group B reaffirmed the need to find practical and meaningful solutions while at the same time remaining faithful to the mandate from the 2007 General Assembly and welcomed the proposals of the Delegations of the Delegation of United States of America and Argentina in the hopes of building a shared understanding of a complex technical issue and seek common ground in those discussions. To reach consensus, Member States should be afforded some flexibility to choose the appropriate domestic policy measures to implement decisions on protection. The Delegation observed that though fundamental differences were reflected in the current draft text, a general consensus would be reached through continued engagement of all parties.

38. The Delegation of Egypt looked forward to a fruitful session with the hopes of convening a Diplomatic Conference on the protection of broadcasting organizations that took a balanced approach and that took into account the concerns of developing and least developing countries.

39. The Delegation of Japan noted that the means for distributing in respect to distribution of works had been a diverse part of network technology particularly with services by broadcasting organizations and also webcasters coupled with its growing popularity. However, it maintained that broadcast conducted by traditional broadcasting organizations would continue to have an important role for the dissemination of works. The Delegation indicated that broadcasting organizations perform very crucial roles and advocated for the international protection of broadcast. The Delegation hoped that the discussion would entail the protection of broadcasts conducted by the traditional broadcasting organizations based on the mandate for the purpose of the reduction of the treaty. It added that the scope of protection and the right to be granted were under discussion. The Delegation indicated that there were some cases in which traditional broadcasting organizations and the webcasters delivered the same program by the Internet on demand services. The Delegation suggested that the Committee should take note of the rationale behind the differentiation and the treaty. Looking at the difference the copyright system and the difference of the current service among members, the Delegation believed that providing a flexible approach for the protection of Internet transmission was favorable for early adoption of the treaty.

40. The Delegation of Kenya aligned itself with the statement made by the Delegation of Uganda on behalf of the African Group vis-a-vis broadcasting organizations on the importance on broadcasting as a tool of culture of social and economic development. The Delegation observed that the text forms a compromise document as a basis for making progression towards the adoption of a new treaty and the essence of revising the rights of broadcasting organizations which remained in the 1961 Rome Convention. Though it agreed with proposals from the Delegations of Argentina and the Delegation of United States of America and the Chair's text, it advocated for a broader right of a retransmission, which addressed signal piracy on all platforms. Signal piracy continued to be one of the greatest menaces on the continent that needed to be curbed.

41. The Representative of the African Regional Intellectual Property Organization (ARIPO) commended the Chair and Vice-Chairs for their reelection and thanked the Secretariat for their work and aim to make progress on the different items of the SCCR Agenda. The Representative looked forward to holding constructive and fruitful engagements on all issues to be discussed in in SCCR with an underlying focus on submissions made by the African Group on the protection of broadcasting organizations. It welcomed the proposal by the Delegations of Argentina and appreciated the amendments on the proposal from the Delegation of the Delegation of United States of America. The Delegation also hoped for progress towards the convening of a Diplomatic Conference on broadcasting treaty.

42. The Representative of the Japan Commercial Broadcasters Association (JBA) stated that the issue of the rights of fixation, reproduction were necessary to protect broadcasting signals in a digital era. It was hopeful that Member States could agree on a good solution through collaborative efforts. The Representative suggested that due to time constraints, convening an extra session could be useful for further discussions by the Member States to reach consensus on the recommendations to the General Assembly.

43. The Representative of Program on Information Justice and Intellectual Property (PIJIP) stated that since the alternative text from SCCR/35/12 was removed, the limitations and exceptions clause in the consolidated text had become more restrictive than the Rome Convention which permitted four specific areas of exceptions for related rights irrespective of the protection and copyright law, whereas the new treaty would permit exceptions only if they were of the same kind as existed in copyright law. The result would appear to be for example that a country could not adopt a copyright exception specifically for broadcast which was exactly what the Rome Convention would allow. The Representative pointed out some loopholes in the Rome Convention was that it did not make any provision for libraries, archives and museums or

for persons with disabilities which were critical topics of the current SCCR agenda. The Committee was urged to reconsider its decision to make the limitations and exceptions provisions more restrictive than the Rome Convention, inclusion of mandatory exceptions and meeting those goals.

44. The Representative of Library Copyright Alliance (LCA) advised that the issue of limitations and exceptions should not be overlooked on the propagation of the broadcast treaty. It reiterated PIJIP's assertions as the current draft constituted weaker exceptions than the Rome Convention and urged the Committee to pay critical attention to the matter of exceptions and limitations and make provisions that would be at par with the Rome Convention.

45. The Representative of Copyright Research and Information Center (CRIC) recalled discussions on the issue on the protection of broadcasting organizations lasting for almost twenty years. It acknowledged the momentum of Member States in establishing the broadcasting treaty. Though it identified some outstanding issues, it pointed out the need to go ahead with the Diplomatic Conference citing the successful experience such as WCT, WIPD, Marrakesh Treaty shows. It mentioned that to be able to hold the Diplomatic Conference, the Committee had to agree on the fundamental objectives, scope and objective protection according to 2007 General Assembly mandate. The Representative believed that it would not be difficult to resolve outstanding issues by means of providing optional solutions.

46. The Representative from the International Association for the Protection of Intellectual Property (AIPPI) stated that were great opportunities for radio and television today and also great challenges. The Representative indicated that audiences always looked for content and it was important that broadcasting organizations met those calls and ensured easy accessibility of content in a convenient manner. The Representative noted that its greatest challenge had to do with the policy of content and signal theft, which had become prevalent through the Internet and influence from telecommunications industries. The Representative pointed out that those occurrences were not isolated acts but were on the rise based on the utilization by some international organizations and benefiting unjustly without the authorization of the rights holders. It suggested that those issues should be coordinated at the international level through the adoption of treaties.

47. The Representative of Electronic Information for Libraries (eIFL.net) focused on the creation of a new layer of post-fixation rights affecting access to content. It advised that libraries must pay attention as it places an additional barrier on accessing knowledge with emphasis on accessibility of content in the public domain or freely licensed by the rights owner though there were related consequences. The Representative cited an example of the effects of broadcast materials subject to such multiple layers of rights. A large library in Europe wanted to publish a sound recording from the archive that was originally broadcast in the 1950s. The recording bass taken from a rebroadcast in the 1980s. All of the performers' rights had expired and the author's heirs waived fees on the basis of the cultural importance of the work. The library paid the broadcast organization around 101,000 dollars for permission to use the recording because the signal protection also applied to the retransmission. For many libraries, such costs were out of the question. As a result, the public would be deprived of access to broadcast content for social, educational and public interest reasons and cause more legislation issues. It suggested that to avoid that, the treaty must have robust mandatory and future protections for any post-fixation rights and entreated delegates to consider the cost to the taxpayer and society in negotiation processes as raised by the Delegation of India.

48. The Representative of Education International (EI) raised concerns on inadequate discussions on exceptions and limitations that form user rights. The Representative suggested a positive proposal to revive the alternative text contained in the revised text SCCR/36/6 on definitions, object of protection, right to be granted and other issues and advised that the list of

exceptions and SCCR/36/6 should be mandatory and include provisions protecting governments' ability to pass further limitations and exceptions as an establishment of other international agreements. It hoped that the concerns of teachers and researchers would be taken into account.

49. The Representative from Knowledge Ecology International Inc. (KEI) raised points on the broadcasting treaty negotiation in relation to substance and process. It was concerned about the unbalanced term of protection, which implied post rights and thus involved rights on copyrighted content. The Representative sighted that provisions made on limitations and exceptions were insufficient to maintain existing freedom to use content for information, news, documentary preservation and education. It added that there was no satisfying language to protect public domain works or works training license by creators. It noted that the list of ever-expanding definition of beneficiaries which included traditional and non-traditional broadcasters was threatening copyright owners, performers, consumers and many, many small and local providers of content. Streaming on demand was not the future as it was present in many Member States, which was outlined in an agreed statement from previous SCCR that included deferred transmission. The Representative was concerned with who would pay the rights of those terms that would only benefit large Internet companies. The Representative pushed for more transparency to foster participation especially by public interest organizations.

50. The Representative of International Federation of Library Associations and Institutions (IFLA) was of the view that efforts to protect broadcast signals against piracy were not intended to harm the public interest activities of libraries and archives that held major collections for the public good. The Representative referred to the UNESCO 1980 recommendation on the safeguarding and preservation of movie images through the annual celebration of the world visual heritage on the role and preservation in giving access. However, the IFLA warned that without a mandatory list of limitations and exceptions and the scope for Member States to choose to go further, as well as protection of openly licensed works of the public domain, harm was inevitable. In view of that, IFLA supported the recommendations put forward by the Representative of India, Library Copyright Alliance (LCA), Education International (EI) among others.

51. The Representative of the Association of Commercial Television in Europe (ACT) suggested that negotiations should endeavor to guarantee broadcasters meaningful protection at the international level against the piracy of their signals, which was long overdue. Broadcasters were the forefront of high-quality content on the protection, coproduction and distribution level and functioning in a heavily-regulated environment that guaranteed it ensured quality, safety and choice in the media landscape. The Representative advised that the negotiated treaty should be future proof and guarantee that broadcasters can rely on strong exclusive rights and on an independent protection. The precondition for a meaningful outcome and an additional special session would be needed to further streamline the text. The Representative stated that the existing text on including the language proposed by the Delegation of Argentina constituted a good basis for finalizing the drafts on all outstanding issues, which would allow the Committee to recommend the WIPO Assembly to convene a Diplomatic Conference.

52. The Representative of the Alianza de Radiodifusores Iberoamericanos para la Propiedad Intelectual (ARIP) hoped that as discussions had progressed, the Committee could make a recommendation to the General Assembly to convene a Diplomatic Conference. The Representative reported that the only substantial item which needed to be addressed was the scope of underlying signals to be protected. ARIP strongly recommended that the Committee adopt the approach outlined by the Delegation of Argentina and contained in SCCR/37/2. The Representative reported that the general rule should be Option 1 of the section of the rights to be granted. n. Broadcasting organizations needed a minimum amount of protection, protection of traditional transmissions, simultaneous transmissions et cetera. The Representative

highlighted Paragraph 2 of the section on the object of protection in the treaty adding that it was the signal in accordance with the mandatory received from the 2007 General Assembly. To be able to exercise independent rights, the Representative stated that they could not exercise a copyright granted under certain circumstances when there was no copyright in relation to programs which were not protected, referring to the transmission of NFL and NBA and UFC games, the FIFA woman's World Cup et cetera. The Representative stressed that their submissions with respect to the treaty was on the exercise of rights related to the signal, not the exercise of copyright or related transmission of the content of the signal and cautioned that those two should not be interchanged

53. The Representative of the National Association of Broadcasters (NAB) believed that a general consensus on the protection of broadcasting organizations would help alleviate the ever-growing piracy of broadcast signals which was easy and cheap in the digital era and causing more damage. The Representative suggested that a new broadcaster treaty must be meaningful in the current complex technological environment in which broadcasters operated. It also needed to preserve the basic longstanding framework for international treaty regarding critical cooperation such as limitations and exceptions, TPMs and others. The Representative added that the treaty should be flexible so long as protection was in fact adequate and effective.

54. The Chair welcomed back the Committee to the plenary and announced that informal discussions went well. The Chair indicated that progress had been made on substantive textual discussions at a very technical level and commended all members for their collaborative efforts to reach common grounds based on issues raised. The Chair added that the Committee reviewed the entire revised consolidated text that was proposed by the Chair. Issues addressed at the previous round of SCCR 38 included textual and substantive discussions as to the areas of conceptual differences. The main differences revolved around two areas: the issue of deferred transmissions and the extent to which if at all deferred transmission had to be included within the scope of the draft treaty and the proposal by one country to suggest a notification mechanism by which countries can perhaps notify or declare or some other way, right, to share that there may be a flexible way of implementing the obligations of the treaty insofar as the rights were concerned. Revisions were to be made to the Chair's consolidated text on the context of language for progress of negotiations. Inter-sessional deliberations by people and various stakeholders who had very strong interests on various issues would form discussions before the following round of proposed revisions begin in the hopes of arriving at a general consensus. The draft Chair's consolidated text would be circulated by the Secretariat.

AGENDA ITEM 7: LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES
AGENDA ITEM 8: LIMITATIONS AND EXCEPTIONS FOR EDUCATIONAL AND RESEARCH INSTITUTIONS AND FOR PERSONS WITH OTHER DISABILITIES

55. The Chair opened Agenda item 7 on libraries and archives and Agenda Item 8 on education and research institutions and persons with other disabilities. The Chair indicated that though the items and its related issues were to be discussed in terms of order, some might change due to the schedule of experts who were to join for some discussions. Updates on the implementation of the action plans on those items would be presented by the Secretariat and followed by presentation and discussion of document SCCR/38/3 entitled Revised Scoping Study on Access to Copyright Protected Works by Persons with Disabilities. Presentations and discussions on document SCCR/38/9 and other related items would also take place.

56. The Delegation of Indonesia speaking on behalf of the Asia and Pacific Group explained that in order to promote science, culture and education a balanced copyright system was essential. Limitations and exceptions had an important role to play of which the actualization in many developing countries was often handpicked due to lack of relevant research material. The Asia and Pacific Group noted the progress achieved on the subjects which was reflected in the

Chair's chart, document SCCR/34/5. The Asia and Pacific group believed that the regional seminars as agreed under the action plan at SCCR 36 were an important component of the work of the Committee. The Group looked forward to the regional seminar scheduled for April in Singapore which would enable all participants the opportunity to analyze the situation of libraries, archives and museums as well as educational and research institutions and areas for action with respect to the limitations and exceptions regime and the specificities of the region. The Group hoped that all Member States would engage constructively in the session on the issues of exceptions and limitations based on refaced discussions and new inputs so that we were able to continue to make progress on those issues.

57. The Delegation of Uganda speaking on behalf of the African Group indicated that exceptions and limitations have been integral to the international copyright making reference to The Berne Convention, WPPT, the WIPO Copyright Treaty and the Beijing Treaty, that extended copyright protection to the digital environment. Limitations and exceptions had played an important role historically in balancing the rights of creators and legitimate interests of the public to access copyrighted works. A balanced copyright system ensured progress and sustainable development of societies by incentivizing creators and through dissemination of knowledge and culture and for scientific research. Authors, researchers and publishers as well as the public needed access to copyrighted works. The copyright system must accommodate aspects of public interest in order to promote progress and encourage growth. Copyright limitations and exceptions were also equally important for both countries. Developing countries were no longer mere recipients of knowledge but also contribute to knowledge, including traditional knowledge, historical records and archives. Despite the international copyright system providing a framework to foster the public's access to copyrighted works, access to works across national borders had been a challenge for many educational and research institutions, archives, museums and for persons with other disabilities. Various WIPO studies had observed that the international copyright system had left significant flexibility to national authorities in incorporating exceptions and limitations in their national laws. That had resulted in unfavorable and disparate treatment of limitations and exceptions which have created barriers in accessibility. The environment and new communication technologies provided much improvement due to capacity to ease accession, production, alteration, transfer as well as exploitation of copyrighted works without regard to geographical boundaries. Limitations and exceptions applicable in the analog era did not fit properly in the digital era. That had been exacerbated by emergence of new roles creating more barriers to access. Corresponding effort at the international level to consider how to balance those new rights and measures with no limitations and exceptions which existed in the analog era has been low. The WIPO Development Agenda directs WIPO to initiate discussions of how within WIPO's mandate to accelerate access to knowledge. The African Group noted the 2012 WIPO General Assembly stated that it looked forward to fruitful and constructive discussions of outstanding reports and typologies on libraries and archives and education and research institutions as well as updated studies on limitations and exceptions for persons with other disabilities.

58. The Delegation of Croatia speaking on behalf of the CEBS Group noted the importance of libraries, archives and museums in the social and cultural development of our societies. CEBS Group pointed out the work undertaken under the action plan for limitations and exceptions for libraries and museums and looked forward to the progress report at the session. Issues that were of paramount importance to CEBS included progress on the national systems of different Member States, detailed information on typologies of existing legislative regimes (as evidence-based approach was very important), progress report on the work pursuant to the action plan, educational and research institutions and persons with other disabilities in order to learn more on different typologies of existing legislative mechanism for the implementation of limitations and exceptions. CEBS believed that there was enough flexibility to address potential gaps in national laws under the current international legal framework without the need for an internationally binding instrument.

59. The Delegation of Guatemala speaking on behalf of GRULAC reiterated its earlier opening statement on the topic of limitations and exceptions. GRULAC called for practical discussions to reach agreements which were essential in building a copyright system to promote a balance between rightsholders and collective management societies. GRULAC also looked forward to progress report on the typology of museums and educational institutions and music in the digital environment. GRULAC also considered the availability of documents in Spanish as essential for its group to contribute constructively to discussions.

60. The Delegation of Canada speaking on behalf of Group B reaffirmed its position on the importance libraries and archives play in cultural and social development. Studies presented during previous sessions of that Committee showed that several Member States have established the national exception and national regimes. Those regimes work well and respond to national interests in accordance with the current international framework and advocated for the ongoing development including SCCR 37 in November 2018 on the action plan on libraries, archives and museums. Group B believed that the action plan outlined in document SCCR/36/7 provided a practical way for the Committee to continue its work on those issues and looked forward to the progress report and continued engagement on such discussions. On educational research institutions and persons with other disabilities, Group B supported the exchange of experiences in that Committee with regard to limitations and exceptions for educational and research institutions. Studies discussed in previous sessions of the Committee report that several Member States had implemented domestic limitations and exceptions for education and research institutions which were feasible and reflect both national context as well as current international legal framework. Group B also supported the development of an action plan on limitations and exceptions for education, research institutions and persons with other disabilities. Group B pointed out the lack of consensus in that Committee around normative work for educational and research institutions and stated that it looked forward to progress report and enhanced mutual understanding of that issue.

61. The Delegation of China believed that limitations and exceptions in protection were very useful for the education of societies and equal access to the benefits of the education and conducive balance between the copyright holders and the public.

62. The Delegation of the European Union believed that libraries, archives and museums played a crucial role in dissemination of knowledge information and culture along with the preservation of our history. The Delegation attached importance to the support of educational and research institutions and for people with disabilities within the existing international copyright framework. The Delegation appreciated the Committee's work as set out in the action plans on limitations and exceptions through SCCR 39 contained in document SCCR/36/7. On expectations, it looked forward to learning more about the ongoing work on the typologies of existing legislative and other debated education and research institutions as well as the museums and libraries. The European Union was equally interested in the presentation of an interim report on the study on digital matters in the area of education and research institutions, preliminary presentation of a background paper, typology for archives and the presentation of the updated study on persons with other disabilities. The Delegation recalled that it supported an approach which focuses on the ways in which limitations and exceptions function efficiently within the framework of existing international Treaties. That could be achieved through a focus on a thorough and systematic understanding of problems faced by libraries, archives, educational and research institutions and persons with other disabilities against their needs. In view of that, full consideration to the solutions available to WIPO Member States including those provided by innovation in relevant markets and those available on other current international framework would be given. Based on that position, the Delegation of the European Union could not support work towards legally binding instruments at the international level or any preparations in that regard. The Delegation suggested for best practice and guidance regarding the national implementation of the international treaties.

63. The Delegation of the Holy See acknowledged the Chair's leadership and commended the Secretariat for work conducted including the studies and typologies prepared by that session. The Delegation noted that the copyright system had to continue to play its essential role of incentivizing and should take into account the broader interest of society such as education, research, access to information and creative content. The Catholic church had centuries of experience of running institutions, open to everyone offering quality education operating as a cultural act to many societies. Education had a fundamental role in helping people to discover their talents and potential and in effect serve mankind. Every individual has a responsibility to contribute to society. Promoting the quality and the accessibility of education worldwide should be a priority for all Member States and on the issue of limitations and exceptions were definitely a key issue to take into account. Commitment had to be oriented towards building a more united and peaceful world through the integral formation of future generations. The Delegation looked forward to the presentation of Professor Daniel Seng related to application and the limitations and exceptions regime to educational and research institutions. The Delegation announced that the international community had decided to assign the financial resources needed for lifelong learning opportunities that helped them to acquire the knowledge and skills needed to exploit opportunities and to participate in the society with respect to the 2030 agenda. That measure had been taken in a bid to ensure that all persons have access to integral human development. The Delegation added that the action plan proposed by the Chair reflected a constructive and useful approach of that very important matter.

64. The Delegation of the Islamic Republic of Iran noted that exceptions and limitations occupy a unique position in the global IP system with emphasis on the copyright system. The importance of having an effective, balanced and contributing limitations and exceptions regime as a part of the copyright system for the benefit of both rightsholders and the general public interest was very well-known. The Delegation raised concerns on the challenges faced by the Committee in fulfilling its mandates on exceptions and limitations. It held that contrary to the views of some Delegations that the work of the Committee on limitations and exceptions was not intended to reach a common ground among Member States but to share best practices, its view was that the Committee was mandated to create a legal framework for exceptions and limitations. Referring to the principle of good faith in international law (where states were bound to fulfill in good faith the obligation assumed by them under previous agreement and decisions) it was agreed that the SCCR would continue discussions to work towards an appropriate international legal instrument or instruments in whatever form with the target to submit recommendations on exceptions and limitations for subject matters on the General Assembly by the SCCR 38. The Delegation expressed worry at the delay to have not been able to make such recommendations so far. It supported the need for the Committee to break the closed circle of studies and discussions on limitations and exceptions. The Delegation suggested that rules should be crystallized in the form of a legally binding instrument. The Delegation looked forward to the implementation of the actions contained in the action plan as well as the organization of regional seminar and international conference.

65. The Delegation of Brazil aligned itself with the statement made by the Delegation of Guatemala on behalf of GRULAC. The Delegation reaffirmed that it valued the excellent contribution of creators and authors to the progress of both knowledge and education through intellectual work that benefits society as a whole. It believed that a copyright system that was balanced and took into account the legitimate interests of rightsholders was permissible and targeted exceptions and limitations coupled with copyright protection played an important role in the attainment of the right to education and access to knowledge. A balanced system encouraged and rewarded creative intellectual work as the main social purpose of protection of copyright and related rights while safeguarding the public policy objectives of spreading knowledge to society. The balance between rightsholders and users of copyrighted works as well as on creators promoted creativity and cultural industries and ensured access to protected

material creating a virtual cycle. The advance in spreading digital technologies further underlined the necessity that the legal framework of protection kept pace with those technological developments. That also applied to the limitations and exceptions for libraries, archives, educational and research institutions and persons with other disabilities due to the astonishing changes brought by the digital environment and the new dynamics generated by that. It added that debates in WIPO could provide Member States and stakeholders with legal clarity regarding the national implementation of exceptions and limitations, which were crucial for the transboundary users by libraries, museums and archives. It indicated that the regional seminars would provide a valuable opportunity for exploring regional needs and constraints regarding the use of exceptions and limitations. The Delegation hoped that the Committee would work closely to fulfill the 2012 General Assembly mandate and aim at providing concrete answers to the issues faced by governments and stakeholders and that required a balanced participation of all stakeholders to hold an inclusive debate. The regional meeting in Latin America and Caribbean scheduled for July in the Dominican Republic was essential to hold further discussions and create suitable incentives for creation and production of works to harmonize with the promotion of knowledge. The Delegation added that limitations and exceptions were essential to the attainment of the right to education without prejudice on the contrary to the benefit of the copyright system.

66. The Delegation of United States of America indicated that limitations and exceptions were a critical component of an effective copyright system necessary for people to access work to preserve and facilitate use of our cultural and scientific expressions. The Delegation looked forward to the presentations on the updated studies and typologies. Based on findings from a recent government survey, U.S. libraries, museums, historical society and archives and scientific institutions held over 13 billion items in their collections from furniture to photos and sheet music to soil samples. Libraries held 92% of the U.S. photographic records, museums hold 96% of unbound sheets such as letters, artwork, notes and other documents. Recorded sound and moving image items findings showed constituted less than .2% each. For the Delegation, strengthening the stewardship, conservation and preservation of America's collections had been and continues to be a high strategic priority. The survey titled Protecting America's Collections resulting from the heritage health information survey was available at www.ims.gov. As the SCCR was considering those new materials, the Delegation highlighted that it believed in a fruitful approach to the subject matter of limitations and exceptions which focused on high level objectives and principles as put forward in documents SCCR/26/8 and SCCR/27/8. That approach took into account the aspiration of recognizing and facilitating the achievement of important goals for limitations and exceptions in the areas under discussion while preserving Member States' ability to tailor domestic limitations and exceptions to their own cultural and socioeconomic circumstances.

67. The Delegation of Singapore aligned itself with the statement made by the Delegation of Indonesia on behalf of the Asia and Pacific group stating that any copyright system should strive to achieve a balance between the interests of the different stakeholders involved which should be examined in light of the technological and market developments that changed the way creative works were created, distributed and consumed. While the new rights and enforcement mechanisms must not overreach, equally new limitations and exceptions must be calibrated with the appropriate safeguards to ensure that rightsholders' legitimate interests were not unreasonably prejudiced. The Delegation shared one the fundamental principles that guided its recently completed copyright review. It proposed legislative amendments that pertained to exceptions to be discussed by the Committee by citing examples. It suggested a proposal that would allow such institutions in Singapore to make multiple electronic backup copies of works in physically separate locations so as to minimize damages, loss and theft. In that same instance, backup copies could not be used to increase the total number of copies that may be accessed by the public within that institution at any one time. In a bid to keep up with current pedagogical approaches, proposed changes would create a new purpose-based education exception for

online works that were accessible without the need for payment at the time of access, such as certain publications, blogs, videos or photos. However, the exception could also be circumscribed as implicated rights and other conditions. The Delegation suggested that those elements be considered as part of its national reform efforts and lend itself to the typology. It looked forward to partaking in finding common ground among the Member States on those topics and to exploring how limitations and exceptions may be implemented in a sustainable manner that was both compliant with existing international obligations and responsive to emerging norms and practices. The Delegation looked forward to discussing those norms and topics at the upcoming regional seminar in Singapore.

68. The Delegation of Botswana aligned itself to the statement made by the Delegation of Uganda on behalf of the African Group. The Delegation stated that the topic of limitations and exceptions remained a key agenda item for that committee because limitations and exceptions were an important part of the copyright system to ensure an effective and balanced system that benefits both the rightsholders and the public. Limitations and exceptions were essential for continued creativity, access to and exchange of information and knowledge, and necessary to facilitate the work of libraries, archives and museums and research institutions and enable access to copyright protected works by persons with other disabilities. It advocated for a copyright system that provided the necessary balance without losing focus of the main objective of the copyright system itself. The Delegation hoped that various deliberations would enable members in reflecting on the best approaches in addressing limitations and exceptions to copyright protection at an international basis.

69. The Delegation of Indonesia observed that the achievement of the objective of the copyright system was very important if there was a balance the implementation of the copyright system. The Delegation added that the achievement of the exceptions and limitations system was closely related to the debt of any IP regime. It added that targeted permissible use without prejudice to the legitimate interests of others and creators were important to incentivize the progress of useful arts and science as well as its dissemination. However, it expressed concern over the inability for members to reach mutually beneficial agreements on the matter though the SCCR was mandated to continue to substantively discuss the issues of exceptions and limitations to find a common ground for normative work towards establishing an effective international legal system to facilitate the lawful exercise of limitations and exceptions as per the 2012 General Assembly mandate. The Delegation highlighted that the agreed language of the SCCR mentioned working towards an appropriate international legal instrument or instruments whether model law, joint recommendations, treaty and/or other forms. The Delegation would not oppose high level objectives and principles on the topics of limitations and exceptions for high libraries and archives for education and research institutions and for persons with other disabilities.

70. The Delegation of India indicated that the right to education and access of information were key elements for advancement in the promotion of culture, science and education. The limitations and exceptions for libraries and archives and for educational and research institutions and for persons with other disabilities were of critical importance for all individuals as well as development of society. The Delegation added that attainment of right to education and access to knowledge to all should be the guiding principles for on the premise of exceptions and limitations. It urged the Committee to work towards an international instrument in the true spirit of multilateral cooperation.

71. The Delegation of Argentina commended the Secretariat for the seminars and workshops scheduled for that year. The Delegation indicated that achievements in the studies and the typologies were a good basis to draw up a list of problems. Though most of them had been addressed, it was concerned that some members might still focus on those typologies. For example, educating users about exceptions and limitations in good practices that reflected those uses that were possible under existing legislation together with the clarification of things

that appeared to be very basic but were still difficult to manage. For example, with the concept of work, it mentioned that most libraries, museums and archives did not hold works so they did not fall under copyright protection and as such do not need exceptions. The Delegation pointed out that avoiding those discussions would hinder the progress towards an international document because the cross-border aspects appear in the typologies but also in the practice of institutions. It recalled that the Delegation of Argentina had submitted SCCR/33/4, which highlighted the cross-border problems of the use of exceptions and limitations because copyright was above all territorial in nature and in the digital environment. That had proven to become an obstacle because they were unavailable and there were no coordinating mechanisms. The exhaustion of rights for distance learning were without solution or lending by libraries when that involved cross country through digital media for licensing of contents of periodicals which had effects in the country where the work was used. Note only the effects outlined to the contract, but others. The Delegation added that legal instruments to provide legal certainty and defend the rights of users with individuals or institutions were important. It advocated for deliberations on the principle of territoriality in the 21st century and principle of territoriality in the digital environment as regards limitations and exceptions. Because exceptions and limitations did not have to harm the author or unreasonably affect the owner of the work, that required a new approach to those problems.

72. The Delegation of Ecuador reiterated that it recognized the value of archives and libraries to the culture of social development and the role played by access to education. The Delegation proposed a balanced copyright system that takes into account the legitimate interests of rightsholders' and public interest in achieving social, scientific and cultural progress. It stressed for the need for international normative provisions, which were harmonized on exceptions and limitations. The digital environment had given rise to a series of changes within the copyright system and particularly to the group of users dealing with strategic content. On that premise, efforts have begun to enact laws as there was still a great diversity of legal provisions that created difficulties for libraries, archives and museums in carrying out activities for the common good. The Delegation noted that the work of that Committee on those aspects had been very relevant and helpful and contributed to identify the problems facing libraries, archives and museums. It acknowledged the Secretariat's work and urged it to continue to update the information provided in document SCCR/34/5 entitled visual framework for limitations and exceptions, libraries and archives submitted by the Chair at the thirty-fourth session in May 2017 with the result of the typology studies, exchanges of experience, regional seminars and conferences. The Delegation urged that plans of action outlined in document SCCR/34/7 be fully implemented and advocated for a consolidated document for text-based discussions.

73. The Delegation of Senegal highlighted the relevance of copyright. The Delegation noted that Africa had many great writers but find it difficult to live from the profits they can gain from their writing. It added that though authors or writers may be acknowledged for their works by educational establishments, they rarely received any remuneration. The Delegation stated that balance should not only be established between the rights of copyright holders and the public interest but also creators. The Delegation pledged to make further contributions during the African Regional Conference on limitations and exceptions.

74. The Delegation of South Africa aligned itself with the statement made by the Delegation of Uganda on behalf of the African Group. The Delegation announced that South Africa had embarked on a process to amend its copyright law on the relevance for a balanced copyright system. It indicated that limitations and exceptions played a critical role in the dissemination and diversion of knowledge stressing that holistic human development could only be achieved when education and information were easily accessible to the public but safeguard the measures that were intended to achieve that. The Delegation stated that South Africa was cognizant of the important role that libraries, archives, museums, educational and research

institutions play in providing access to information. That it believed contributed to innovation and creativity and striking an appropriate balance of rights of creators of works and legitimate interest of the public to access copyright works. The Delegation stressed that it was essential to contribute positively to make education, knowledge and information accessible to all our citizens including persons with disabilities in view of the evolving digital space.

75. The Delegation of Malaysia aligned itself with the statement made by the Delegation of Indonesia on behalf of the Asia and Pacific Group on the topic of limitations and exceptions. The Delegation looked forward to the presentations on the studies and typologies by the experts. It was certain that the upcoming regional meetings would be an opportunity for all stakeholders from the region to exchange views, share ideas and gather feedback on specificities and trends of copyright, exceptions and limitations in the Asia-Pacific Region. Discussions would contribute to better understanding on issues such as cross-border uses of materials and the effects and impacts of the digital environment as well as identifying areas for action. The Delegation announced that various stakeholders in Malaysia had been actively engaged on the role of copyright system on furthering access to knowledge and attainment of quality education. The Delegation said it was poised through the Sustainable Development Goals (SDGs) to ensure that knowledge and education reached furthest first by providing incentives for the creation of works and on other the hand promoting access to those works.

76. The Delegation of Kenya aligned itself with the statement made by the Delegation of Uganda on behalf of the African Group. The Delegation recognized the importance of exceptions and limitations in mitigating the rigors of copyright, exclusive rights that operate as libraries, archives as well as research and educational institutions alongside persons with other disabilities. It pointed out that effective exceptions and limitations had become more urgent as the world migrates from analog to digital environment and bridging the gap across borders would be an integral part of the process. The Delegation stated that Kenya was assessing whether that goal could be achieved by independent international instruments on exceptions and limitations or through the existing international instruments. It added that it awaited the outcome of the African Regional Consultation meetings in a bid to take a substantive position informed by the experiences of other African states.

77. The Representative of the African Regional Intellectual Property Organization (ARIPO) affirmed its position on the basis of the African Group's statement. The Representative stated that it supported the action plans on limitations and exceptions, which had a systematic approach to yield results that, would benefit the national, regional and international level. The Representative expressed keen interest on presentations of the study brought forward. ARIPO welcomed the typology, which set the roadmap on exceptions and limitations and looked forward towards the Africa Regional Meeting on limitations and exceptions scheduled for June 2019.

78. The Representative of the Library Copyright Alliance (LCA) stated that the European Union was completing a multi-year process to harmonize some of its copyright exceptions including for preservation by cultural heritage institutions, precisely because of the cross-border problem. The Representative stated that the European Union seemed to think that the cross-border problem that existed within the European Union did not exist outside of the European Union and wondered if the European Union's position was based on the notion that citizens of Europe have no need to access cultural, historical and scientific information from outside of the European Union. The Representative was confident that European researchers in all fields disagreed. The Representative stated that they understood the importance of preserving cultural heritage and scientific knowledge around the world and the importance of need to access that information to conduct the research as no region of the world has a monopoly on knowledge. The Representative added that we live in an interdependent world where we all need access to the best and most complete information possible.

79. The Representative of International Federation of Libraries Associations and Institutions (IFLA) indicated its active engagement in discussions about exceptions and limitations for libraries. It was therefore with great enthusiasm and gratitude that they noted Mr. Francis Gurry's remarks on Monday indicating that progress was anticipated on the issue of limitations and exceptions. IFLA had engaged librarians from various regions of the world and focused conversations about the ways in which current copyright regimes could be improved to facilitate their public service work. Those conversations coupled with the comprehensive studies the SCCR commissioned to Professor Kenneth Crews have formed the basis. It commended Member States and Secretariat for approving and organizing the three regional seminars that would provide fresh opportunities for practitioners in the field to be heard. Librarians were proud to be trusted guardians of and guides to the print and digital record comprising our global information system. IFLA indicated its commitment to embrace new possibilities to work across borders to meet user's needs. IFLA urged Member States and the Committee to listen to the reasonable concerns of library practitioners in all regions of the world and to take appropriate action to facilitate our professional commitment to reserve and make knowledge accessible to all.

80. The Delegation of Mexico added that promotion of creativity, strengthening copyright and encouraging cultural development and scientific developments were crucial in contributing to the dissemination of culture both regionally and internationally. The Delegation also indicated that collective rights were an integral part of copyright and they should be analyzed as part of a series of interrelated issues. They also added that those rights should include all communities who were involved or have been involved in the creation of works, which exist nationally and/or internationally. Issues of civil law, commercial law and other legal issues were of great concern and they hoped that workshops to be held on those issues would expand the horizon of protected rights. Among other things, it hoped that those discussions would encourage access to the results of scientific research together with copyright and related rights. An analysis of the efforts made in creativity and dissemination also have to be considered.

81. The Representative of Communia highlighted its objective to protect and strengthen the public domain and users' rights. Communia stated that there was a minimum set of access and user rights that should be defined by public rules since they were justified by public interest. It warned that if copyright laws do not grant the education and research communities and persons with disabilities the same level of protection that was granted to right holders and defer to private agreements the regulations of all users of copyrighted materials, they perpetuate an imbalanced power structure. That it believed can undermine a public policy decision. Private agreements were important in any market but they should co-exist with and not replace exceptions. It advised that agreements were not appropriate to harmonize the legal framework for users of copyrighted works because the terms and conditions of licenses vary widely. As such, they were not available for every material in every country. Communia revealed that there were countless copyrighted works in existence and a large majority of creators were not interested in licensing their works. It added that it was impossible to offer many false solutions to users to private agreements only. To have a new set of rules that were applied uniformly by every Member State and have a cross-border effect an international law was required. The ongoing reform in the European Union should be to understand agreement on minimum standards while still taking into account local specificities.

82. The Representative of the International Publishers Association (IPA) suggested that instead of repeating positions on the proposals submitted, delegates should consider how to combine policy ideas with pragmatism to achieve collective goals. The Representative spoke on the need for a united front which it had witnessed through their deliberations and their desire for a better world, characterized by the educational opportunity, social mobility, progress for enlightened society, an economy built on knowledge, learning and research and a global community built on cultural exchange between nations. The IPA urged all members to engage

authors and publishers in their countries on developing smarter generations, understanding how educational books were written and made, processed of matching content to the educational outcomes, the considerable development that goes into the developing digital resources and accessibility of books. It added that though exceptions and limitations may be necessary in special cases, they do not encourage the creation of new work. IPA suggested that understanding authors and publishers was essential in formulating an agreement for the purposes of preservation and future of such issues.

83. The Representative from *Corporación Innovarte* reiterated the importance of limitations and exceptions to copyright in a bid to protect the interests of authors and for protecting government policies which were essential for countries, such as integrating people with disabilities and offering a cultural protection to museum, libraries and archives among other things. It stated that the status has shown that the system was insufficient to meet the challenges of cross-border use to plug the gaps in respect of digital use in many countries' laws. It hoped that the regional meetings would be structured in such a way as to help build consensus and reconcile major differences on the current state of laws and reconcile those laws with the exceptions and limitations to reach an international agreement in accordance with the mandate received from the General Assembly five years ago. It added that the integration of persons with disabilities had recorded some improvement by virtue of the Marrakesh Treaty. The Delegation indicated that there was the need to find a quick solution to the challenges faced by people with other types of disabilities.

84. The Representative of the International Federation of Journalists (IFJ) made reference to assertions by various representatives on the need to close the knowledge gap and insisted that the way to close the knowledge gap was fully for professional dedicated creators in every country but not to import works from the north at a lower price. The IFJ shared the sentiments of purchasing legal textbooks and its high prices. However, it added that that should not dictate its approach. The IFJ announced its full support for libraries and archives. It also added that it supports an exception for archiving purposes and libraries that makes accessibility of works easy to the public and a conduit involved in a form of publishing. It stressed that the solution must be collective management of rights and payment to the journalists and the other authors in every country expressing the cultures they live and work.

85. The Representative of Charisma Foundation stated that they had shown a keen interest in monitoring and following up the discussions in that Committee on the need to have an international copyright system that was better balanced. The Representative indicated that through their work, they had witnessed several situations that illustrate the need to put the protection of public interest on an equal footing with the protection of creators of copyright. It indicated that in some regions in Columbia, the penetration of Internet was phenomenal and where traditional communications tend to be virtually inexistent as well with few libraries and not many bookshops which poses difficulties for people getting access to knowledge in those regions. It added that people had found creative ways of creating knowledge, gaining access and communicating it. It stated that those mediums violate copyright while meeting the desperate needs of the public due to limitations of accessing knowledge. The Representative suggested that a better balance between the public need and individual copyright would be beneficial not only to those types of communities but to society in order to show to creators and human rights advocates and participate and contribute to that discussion. Progress has been made on the plans of action. Further, it expressed keen interest in the results of those studies and typology studies to be undertaken. It hoped for a clear and balanced discussion which would contribute to better understanding among all the parties involved whatever their interests.

86. The Representative of the Society of American Archivists (SAA) speaking on behalf of the SAA and the International Council on Archives (ICA) stated that archives were where the past helped the present create the future by preserving literary, pictorial, audio, video and

electronic stories. Those documents, it indicated, were mostly unique and not accessible beyond the marketplace. The Representative outlined the role of archivists in as far as selecting, acquiring and preserving material for a considerable number of years and making it available for use. Those functions, it stressed, were limited by copyright on the basis of making work available, making copies and some very limited distributions. The Representative added that those were not done for commercial purposes, stating that copyright was only one specialization that archivists needed but few were trained as lawyers. Nonetheless, it stated its mandate together with the ICA to work diligently to inform their members about copyright and the need to respect the law. It added that training was not sufficient for archivists to understand the copyright details of every Member State as inquiries were received from various countries. Another hindrance was that many users could not afford to travel to examine documents in person and copyright often prevented them from sharing electronically. It indicated archivists support for a balanced copyright environment. However, it mentioned that there was the need for a functional system to achieve that objective. It reiterated the need for WIPO to establish broad standards for exceptions and limitations that recognized the noncommercial work of archives to preserve and make available global heritage. The Representative commended WIPO for its work in facilitating the production of the archives background paper.

87. The Representative of International Federation of Reproduction Rights Organizations (IFFRO) stated that appropriate exceptions and limitations could be introduced in national legislation under current international legal instruments. The Representative documented in a number of WIPO studies including both Kenneth Cruz's typology on libraries and Professor Seng's report on education, which have introduced exceptions for uses in educational and research institutions, libraries and archives. That meant that legislators can use the current copyright system to meet their needs. The addition of new exceptions for digital users' text and data mining in certain countries shows how flexible the current system was. IFFRO was committed to developing solutions that would meet users' demands. IFFRO expressed its support to share the many examples across the world of right holders working with educational institutions, to develop licenses may it be in Zambia with Universities and/or in the Caribbean on a cross-border licensing solutions. It revealed that it favors an outcome from the SCCR discussions on exceptions and limitations, which includes the exchange of information and practices that offering of demand driven WIPO technical assistance program to which we would offer to contribute and government cooperation.

88. The Representative of Education International (EI) was hopeful that substantive progress would be made towards fulfilling the SCCR 2012 mandate on normative work. It revealed that teachers and researchers were not able to make fair use of creative works for teaching and learning and hoped that WIPO as a specialized UN agency would make sure that Sustainable Development Goals (SDGs) become a reality for all. The Representative suggested that commitment to the SDGs should inspire the Committee to move the normative work while also fill the specific legal gaps that could only be addressed by international instruments. The EI proved to be a firm advocate for a balanced instrument. It stated that education and research institutions have moved to the digital age where collaboration and exchange across borders was an integral part of teaching and learning. Unfortunately, current laws did not facilitate that development but create barriers for modern teaching and learning. Universities engage in cross-border collaborative teaching classes but could not exchange resources with colleagues and students on distance learning programs and could not access the work they needed for studies. As calls for normative work increase, specific challenges of various jurisdictions should provide a basis for global consensus in formulating policies.

89. The Delegation of Electronic Information for Libraries (EIFL) reiterated Mr. Francis Gurry's remarks on the importance of libraries for humanity and the need for solutions in the globalized digital world. The Delegation commended the European Union on the recent adoption by the European Parliament of the Digital Single Market Directive. The Delegation

added that cultural heritage institutions benefitted from new mandatory exceptions for preservation and text and data mining across all European Union Member States and those exceptions were protected from override by contract terms and TPMs. For example, a library in Poland could cooperate in a preservation project with a library in Lithuania sharing socially valuable research material. It looked forward to extensive discussions on the EU Directive and largely on copyright issues in a cross-border situation.

90. The Representative of the Knowledge Ecology International Inc. (KEI) suggested that the SCCR increase its ambitions on access to knowledge, making it more political and challenging thereby more worthy of the investment of time and attention by political leaders. In that regard, the Representative requested that WIPO consider a way of structuring work around a high level access to knowledge treaty organized in the following ways: The foundation would be a high level agreement that would be modified over time with possible agreed statements on issues like relevance or of application of the three-step test for both general and particular exceptions. That high-level agreement it indicated would then have a former relationship to three types of agreements similar to the way the WTO works or some elements of the Berne Convention. There would be agreements that were first mandatory and binding, binding but optional such as the annex to the Berne and finally nonbinding protocols. Examples of possible mandatory and binding agreements would be on quotations and news of the day, both mandatory exceptions of the Berne and the elements of Marrakesh Treaty, while also including archiving and preservation with support from authors groups. Examples of optional binding agreements be something on access to orphan copyrighted works or regarding augmented training and certification videos with computer generated captions for deaf people. An example of a possible non-binding product protocol might be on text and data mining. It is open to discussion where some of the topics on education and library could be placed in this structure.

91. The Representative of International Council of Museums (ICOM) made reference to a revised museum study which was posted on the SCCR site on March 28 prior to that session. ICOM was happy that a number of suggestions made by ICOM had been integrated in the executive summary and methodology sections of the report. Consequently, it looked forward to Professor Benhamu presentation on museum typology. ICOM indicated that the regional seminars were imperative so as to engage with museum professionals working with cultural heritage collections on managing copyright matters, preservation and accessibility. That it said was paramount though not all materials in collections were copyright protected, several were. ICOM said that copyright issues become magnified when materials and collections were integrated and reproduced in digital form for the purposes of expressing and disseminating knowledge. That was the scope of collections issue that ICOM has raised previously. We look forward to members' participation at regional seminars.

92. The Representative International Federation of Musicians (IFM) warned that the Committee faced a certain paradox towards a new context for exceptions and limitations and new framework for exceptions and limitations whereas people were not in a position to fully benefit from the rights conferred under the WPPT. It reported that the European Parliament had adopted a directive on the recognition of the rights of performers to appropriate and proportional remuneration. The situation of performers was so disastrous that it was necessary to make explicit mention in European legislation of how far present contractual practice was unbalanced and take action to correct the situation. IFM appealed to the Committee to pay as much attention to exceptions and limitations and to the remuneration of creators in the world of music.

93. The Representative of the Center for Information Policy Research (CIPR) of the school of Information Studies at the University of Wisconsin-Milwaukee revealed that as an educator and scholar for over 25 years, observations proved that while the limitations and exceptions for libraries, archives, museums may reside in separate provisions of domestic copyright law from those for education and other research, the goal of the information workers in those entities was

the same, the forwarding of knowledge among their stakeholders. In research institutions such as the University of Wisconsin-Milwaukee, educators operate in a classroom that's truly global. CIPR revealed that scholars and students interact in the space of knowledge, discovery and dissemination that spans the globe as well. The Representative added that school faculty cooperate with scholars in over a dozen countries in Europe, Latin America, Asia and North America with students residing in 16 countries on four continents. It added that opportunities of current digital research and learning communities require a system of limitations and exceptions for libraries and archives, museums, education and research institutions which must accommodate the seamless flow of information in non-commercial settings across the borders of the world, an accommodation that should not be compromised by license provisions or TPMs. CIPR noted that in the digital age, the work of libraries, archives, museums, education and research institutions converges as those entities share core functions impacted by copyright such as discovering, acquiring, preserving, organizing, curating, diffusing and disseminating knowledge and learning. CIPR reaffirmed its support on various deliberations in upcoming SCCR sessions that forward that work within a balanced system of limitations and exceptions for all relevant stakeholders. Thank you very much, Mr. Chairman.

94. The Delegation of Ecuador reiterated comments made by the nongovernmental Organizations on the need to provide for persons with disabilities. The Delegation stated that Ecuador's legislation has normative framework of exceptions and limitations for those persons. That it believed would solve problems of access to information, education and knowledge by those people. The Delegation also added that an adoption of the Mutis Mutandi, under the Marrakesh Treaty would be a solution.

95. The Secretariat presented a report on recent developments regarding the action plan adopted in May of the previous year outlined in document SCCR/36/7. It presented different deliverables the previous November. For the thirty-eighth session, additional documents were presented for the session. The first part of the action plan refers to the libraries, archives and museums and the first item was the development of a typology on libraries. In that regard, the Committee announced that Professor Kenneth Crews would present his typology in document SCCR/38/4. The second item of the action plan focuses on the study on archives, scoping study on archives i.e. the background paper on archives and copyright presented by Professor Sutton in document SCCR/38/7. The third item outlines the ongoing scoping study on museums. The revised report on copyright practices and challenges of museums prepared by Professor Yaniv Benhamou in document SCCR/38/6 was available. The second part of the action plan outlined the educational and research institutions, the first item was the typology on education and Professor Daniel Seng delivered his typology in document SCCR/38/4. A second deliverable under that action plan was a study on education and digital issues. The Committee also presented an interim report on practices and challenges of educational and research institutions in relation to online distance education and research activities prepared by Ms. Monika Torres and Professor Raquel Xalabarder and that was in document SCCR/38/9. Regarding persons with other disabilities the Committee presented two deliverables as follows: the revised scoping study on access to copyright protected works by persons with disabilities prepared by Professor Ncube and Professor Reed which were in document SCCR/38/3 and the second deliverable in the form of a side event on technology and accessibility that would be held in room 0.107 at 1 p.m. Meetings had been arranged for further discussions on regional seminars to be held at Singapore, Nairobi and Santa Domingo. The Committee announced that the international conference had been scheduled for October 17 and 18 of that year.

96. The Chair thanked the Secretariat for the detailed updates. The Chair indicated that the action plans would be implemented over the following few months. Professors Caroline Ncube and Professor Blake Reed were invited to make their presentation on the revised scoping study on access to copyright protected works by persons with disabilities which can be found at **(Wednesday, April 3, 2019 Morning Session):**

<https://www.wipo.int/webcasting/en/?event=SCCR/38#demand>

97. After their presentations, the Chair opened the floor for questions with regard to the presentation made by Professor Reed and Professor Ncube.

98. The Delegation of Uganda speaking on behalf of the African Group commended Professor Reed and Professor Ncube and their able team for the impressive work. The Delegation indicated that the document would be an important reference point in subsequent years when trying to understand the laws on which those institutions which service access for people with disabilities can rely on in order to carry out their activities. It was encouraging that over half of the states that have been covered, 96 in number have provisions indicating that that was already a relative consensual area of law. It indicated its support for clear exceptions and limitations allow for the provision of access format works for people with other disabilities and it was actually becoming common practice. The Delegation added that it had researched other countries which have ratified or acceded to the Marrakesh Treaty and noted that they had already extended Marrakesh provisions to people with other disabilities. He also observed that a number of countries allow for cross-border use, import and export which implies that foundations for a possible new instrument or extension of the Marrakesh Treaty were already in practice. The Delegation queried if the team during their studies had encountered challenges on access to information as they believed they would face issues at national levels and cross-border. The African Group also queried the team on their thoughts on people with other disabilities on being currently underserved, overserved or well served by the market and the implications of a lack of exceptions and limitations framework. It also sought for clarifications on the export and import provisions and the extent to which those were similar to those seen in the Marrakesh Treaty as well as any evidence of exceptions and limitations for people with other disabilities in compliance with the three-step test that was already according to the Berne Convention.

99. Professor Ncube indicated that they encountered multiple challenges with finding information for the purposes of the study. Per the report shared, she listed countries who were unable to analyze or assess their copyright legislation because of a language barrier and in other instances we were not able to find an English version in tabular representation of their findings.

100. Responding to the second question on whether people with other disabilities were underserved by markets, Professor Reed mentioned that it was an empirical question that depends on the market, set of disabilities and the type of work. However, all things being equal, people with other disabilities based on combination of disabilities and types of works may be underserved by markets. On the issue of prevalence, for example, of uncaptioned and undescribed video, there was still fairly significant gaps in captioning where there was a mandate under disability law for the captioning of some types of content. That was attributed to the proliferation of user-generated content on platforms like YouTube. In that regard, significant as the gaps in captioning were the gaps in the availability of remediation like audio description were much greater. The quantity of audio described content was quite small. On the subject of cognitive and intellectual disabilities and remediated works, there were significant gaps.

101. Professor Ncube responded to the third question related to import and export provisions by referring to the report at page 22, where import and export provisions were outlined. The report provided that 13 Member States that have express provisions. Those 13 Member States expressly provide that import and export provisions apply to the disability related exceptions and limitations. Professor Ncube reported that many other Member States implied that although without an express provision. In relation to making comments on provisions in relation to those found in Member States implementing Marrakesh, she indicated that she would have made submissions if the analysis was extended in that matter. However, the team would make further probes and revert to the Delegation of Uganda.

102. The Delegation of Senegal commended the team and indicated that it was extremely useful in their line of work and with respect to the Marrakesh Treaty. The Delegation probed if the team had any idea as to the limitations or constraints that African countries have that were standing in the way of their adoption of provisions that benefit persons with disabilities. It also inquired if the team had any knowledge of the impediments and what prevents them from doing so as some countries had provisions and others had insufficient provisions.

103. Professor Ncube stated that the Member States themselves would be best placed to address that question. However, she added that through informal consultations with some Member States indicated that they would prefer to procedurally first come up with amendments or provisions in their own copyright legislation that aligns them to the Marrakesh Treaty before they proceed. Some of the difficulties or challenges that were evident may be the procedure that a particular Member State wished to follow prior to doing that. On the aspect of policy or national priority, they believed that Member States were in charge of that.

104. The Delegation of the Islamic Republic of Iran lauded the professors for the impressive study and comprehensive presentation. The Delegation expressed delight that Member States were addressing the issue of limitations and exceptions in their national legislation as well as the rapid trend in accession to the Marrakesh Treaty internationally. Based on the findings and conclusion of that study, having in mind the specific needs of the people with other disabilities, the Delegation probed the potential extension of the Marrakesh Treaty to include other disabilities. He also inquired whether or not the other disabilities require specific international legally binding instrument as he believed that provisions could be made under the Marrakesh Treaty to include such persons.

105. The Chair interjected that though it was a great question, it was a question to be deliberated by Committee Members not the team as it pertains to the normative agenda. The Delegation of the Islamic Republic of Iran stated that it was a decision to be taken by Member States, though the team could share their views and evaluations based on the study and findings, which were undertaken. The Chair rephrased the question to what potential was there for the domestic legislation to extend beyond the Marrakesh Treaty type of limitations and exceptions for other disabilities as their conversations were at a national level.

106. Professor Reed stated that given the range of implementations of the Marrakesh Treaty, that there was a lot of latitude to extend both general and specific provisions in national legislation to other disabilities and issues pertaining to other categories of works and the study was replete with examples of different ways to go about that. He did not state an exact opinion on the right approach but suffice to say there were many different possible ways to approach that.

107. Professor Ncube added that Member States who were keen to see how that has been approached were advised to revert to the full study document as it showed each Member State and pointed to the statutory provision which has been structured by each and every single Member State that does have those exceptions and limitations.

108. The Delegation of Brazil appreciated the work undertaken by the team in making its findings. According to the study, 50% of people in the world have a disability. Member States and United Nations convened the Convention on the Rights of Persons with Disabilities to afford them rights and privileges and in Brazil that Convention was ratified to have that constitutional status. The Delegation sought to know how the copyright system could support people with disabilities as the goal was to ensure the sustainability and efficiency of the system in the long run. Referring to its submission on incentives for creation and production of works and its relation with the promotion of knowledge, the Delegation stated that the Marrakesh Treaty was a very good example because it clearly demonstrates the flexibility of the international

framework and how it can be adapted to special needs. It added that the obligations created under the Marrakesh Treaty would allow for adaptation of a legal framework to encompass the obligations contained in the Treaty for persons with disabilities. The Delegation indicated that they were actively working with publishers and Association of Persons with Disabilities to strike the right balance that lets everyone be happy and creates the legal certainty necessary for the authorized entities to discharge their responsibilities. As Member States have been invited to mention some legislation that might not be included in the study, the Brazil law was mentioned on the inclusion of persons with disabilities. That was law No. 13146 from 2015 which contains some interesting aspects on copyrighted works that may be worth taking a look at later. The Delegation probed if the team through their research encountered any cross-border kind of exceptions in legislation perhaps like members of the European Union might have aspect of that or other countries, which have a close relationship and similar language.

109. Professor Reed indicated how much they appreciate the raising of the issues around national disability law, that may be organically enacted or in response, in the implementation of the CRPD. They added that that was a question they tried to get at in the initial surveys that were submitted to the Member States and they struggled to get information on that as it was an area that's not explored just because of the breadth and complexity in that iteration of the study but the interaction between copyright, exceptions and limitations like those implementing the Marrakesh Treaty and national disability law that was pursuing the spirit or the letter of that CRPD, there were some really significant interactions there and not only where there were specific copyright provisions in the national disability law, as Brazil just mentioned, but just where there were some implicit interactions between the disability law and the copyright law. He added that as conversations were in session, it hoped for more information about relevant provisions of national disability law, particularly those that include specific references to copyright and general interactions, for example, in the Delegation of United States of America between the Americans with Disabilities Act and provisions of fair use.

110. The Delegation of Botswana added that they would incorporate other necessary provisions in view of the submissions made as the study had been conducted at a time where a wholistic review was necessary. The Delegation added that Botswana had begun stakeholder engagements on a national level in order to address various needs. As the study focused on responses by the Member States and analysis of laws of Member States, it stated that they were very curious in terms of implementation of the limitations and exceptions and if those countries with such legislations encounter any hindrances when it comes to implementation as those provisions were necessary even if they may not be used. The Delegation asked the team if they needed any case law as there might have been some hindrances that users may have come across in trying to implement some of the limitations and exceptions.

111. Responding to questions with reference to difficulties of Member States in the implementation of legislation and provisions relating to disability, in the revised version of the study, Professor Ncube indicated that it did not have direct interaction with all Member States and that was independent research. She added that it did not have in-depth discussions with Member States on challenges in implementation. Nonetheless, she identified some loopholes. However, a comprehensive search of case law with regard to implementation of those provisions was not conducted. Professor Ncube believed that there no evidence of case law on the African continent dealing with information of disability related exceptions and limitations.

112. Addressing Brazil's questions, Professor Reed added that one practical difficulty that they identified was the utilization of the cross-border provisions of the Marrakesh Treaty by organizations in exchanging works. He hoped that the study would eventually overcome was understanding the nature and the peculiarities of the import and export provisions in other Member States. He added that it was important for Member States to understand their national laws as well as those of other Member States and the implications of export and import with

those countries. It hoped that the study would help to identify a clear picture of the import and export provisions.

113. The Delegation of Tunisia probed the capacity of developing countries and how the provisions included in the Marrakesh Treaty can be utilized effectively by Member States. The Delegation pointed out the importance of focusing on that point in order to highlight the differences that may exist among least developing countries, developing countries and industrial countries. That was to say the capacity and capability to utilize in full the limitations and to benefit from all the requirements contained in the Marrakesh Treaty. The Delegation indicated that the best utilization of those capacities that were existing and available in accordance with the Marrakesh Treaty would enhance human capacity and capacity building as well as all matters related to legal aspects and also to logistical aspects and technical aspects. The Delegation also sought to know the possibility of preparing model laws and the extent to which the preparation of model laws and rules can be considered.

114. Professor Reed indicated that though it did not draft model laws immediately, it could discuss possibilities with the SCCR in that regard. On implementation of the Marrakesh Treaty, they stated that the study does not purport to make sort of evaluative judgments about the different models for implementing Marrakesh which were to some extent empirical questions and a lot of the implementation has been relatively recent. That empirical analysis it mentioned might be difficult to conduct. He also suggested that some models that were extrapolated on in the study could be used as reference points. There was also really important Member States' specific context that has to be considered to the point on the difference between developing and more established countries. He added that analyzing examples, considering local circumstances and then considering the broader issue of disability policy and how each Member State approaches that could help in the implementation of Marrakesh.

115. The Delegation of Uganda inquired if the team analyzed other copyright related laws that may affect access for people, persons with disabilities in relation to the broadcast sector.

116. Professor Reed pointed that beyond the specific context of provisions related to disability they did not engage in a broader inquiry except perhaps to the extent that some of the general provisions on fair use, and so forth that intersect with those broader issues. They cited that when you were dealing with video and accessibility of video, there would be overlaps, which the Delegation of United States of America would routinely run into intersection with telecommunication and media law. He pointed by way of an example that telecommunication regulators grapple with copyright issues in the context of regulatory proceedings. Though he mentioned that it was largely beyond the scope of the study, they were open for extensive discussions for future versions of the study.

117. The Representative of the Knowledge Ecology International (KEI) applauded WIPO and experts for comprehensive efforts. KEI stated that the advancement of technology helped highlight the complexities of some issues. KEI added that he had held discussions with one of the authors of the studies about the issue with reference to the original Marrakesh Treaty draft proposal and SCCR document 18.5. KEI cited Article 50 paragraph B which was designed to extend the Marrakesh provisions to other disabilities which was incorporated in early drafting of the World Blind Union document. That document refers to an Indian lawyer who was unable to walk and the challenges such persons faced with visiting libraries as well as other challenges and concerns with the idea of something that excluded anyone that didn't fit like the same problems that people that were blind or had visual disabilities had. KEI also referred to the issue where the Motion Picture Association wanted to remove other disabilities and the agreement of going to the Diplomatic Conference was contingent on the idea that it disappeared from that draft, but there always was an implied promise it would come back and that institution would not drop deaf people or other kinds of disabilities. KEI suggested that the

the authors of the report should reflect upon that 18.5 paragraph B, initial formulation which eventually was not taken up in Marrakesh, whether something like that was sort of adequate language or would it require something more nuanced to cover the range of disabilities discussed and some of the apparent challenges.

118. Professor Reed reiterated the impact of the proposal in a document being referred to which was basically to take the provisions of Marrakesh and extend them with fairly brief language to other disabilities beyond print disabilities. He added that that included deafness, hard-of-hearing, intellectual disabilities and so forth while potentially extending to other types of copyrighted works, audiovisual works and pictographical sculptural works. On one hand, in terms of facilitating access that would open the door for some activities that were conducted in the same way that the sort of authorized entity model under Marrakesh Treaty works, so where there were situations where third parties adding captions to videos could be exported to other countries etc.. He indicated that such an addition as a substantive matter would enable that sort of activity. He also urged members to attend events on the use of Artificial Intelligence, machine learning and other complicated accessibility technologies that were aimed at doing accessibility at scale were a little bit more ephemeral in nature that contemplate accessibility sort of as a service. He mentioned that the mechanics of Marrakesh were drawn in a particular way that would leave open some questions even if extended to other disabilities or other types of works in the way that was described by KEI about whether some of those more advanced technologies could be deployed consistent with those provisions.

119. The Chair welcomed members on further discussions on limitations and exceptions in respect to libraries and archives. The Chair introduced Professor Raquel Xalabarder from the Universitat Oberta de Catalunya to present the Interim Report on Practices and Challenges in Relation to Online Distance Education and Research Activities, reflected in document SCCR/38/9 which was prepared by Professor Xalabarder and Ms. Monica Torres. Professor Raquel Xalabarder presented the Interim Report on Practices and Challenges in Relation to Online Distance Education and Research Activities which can be found at **(Wednesday, April 3, 2019 Afternoon Session):**

<https://www.wipo.int/webcasting/en/?event=SCCR/38#demand>

120. The Chair opened the floor to questions with regard to the presentation made by Professor Raquel Xalabarder.

121. The Delegation of Argentina made an inquiry in relation to CMOs. It stated that there was a reciprocity agreement which means that the work was used only in the country where the university was and reproduction would be allowed in another country on the premise that the second country has completed an agreement with the first country.

122. Professor Xalabarder stated that it was not entirely the case though there were reciprocity agreements between CMOs, but that was for the repertoire that they have. She stated that when the management organization draws up a list of what it has and the other bodies with which it has agreements, the license was normally for the territory of the country where the CMO was established. She added that the solution being suggested by IFFRO and the RROs was precisely to overcome the second part, the territorial aspect that it operates only one territory. Reciprocity agreements, of course, broaden the catalog or the repository of works but they do not necessarily extend the territorial scope. She stated that the disagreement or the so-called fiction would not take into account the license given by the management body with where the educational institution was established. Emphasis would be on accessibility for students through the Internet. She added that the solution being adopted would all be initiated by the reproduction rights organizations. As a novelty to innovation as compared to territorial, the traditional territorial management.

123. The Delegation of Argentina asked further questions regarding other countries where

customs have the obligation of putting in open access place in the works that were financed in one country. Though it added that the work was published and repositories were publishing, it wanted to ascertain the status of accessibility through the Internet. The Delegation also asked if the repository could be extended to other territories, if authors have a contract with the publishing house as it was one of the requirements from the repository. It also inquired if there were any ideas on resolving the problem of the use of the Article in another territory which might be considered a violation of the publishing.

124. Professor Xalabarder indicated that the solution would be to distinguish between a possible contractual violation or infringement and an infringement of copyright for doing something in the territory, like the Spanish legislation that says that the results of investigations, results of research funded by state money should be in open access repositories. That she said was bound by time factor, which can be done through a traditional publisher. She added that the two items were not incompatible. Citing an example, she stated that if an author signs a contract with a publisher and he infringes it, within the time limits, and publishes it on those platforms or in repositories in his institution, it would be difficult to solve such an issue. Notwithstanding, in principle, those platforms or rather those laws establish a space to permit both things to be done. There can be more or less a commercial publication and open access option of making it accessible as the research was funded by public funds. She added that the publishing sector was making more and more efforts to create databases, thus, contribute more cross references as well as include other contents, text, and data mining. She also indicated that publishers were doing investments by offering more services than through the traditional publications. She called for open access repositories plus commercial products by publishers, which offered a service where the repositories don't.

125. The Delegation of Argentina asked if recordings of teaching lessons would work if they were made available and possible challenges to be faced.

126. Professor Xalabarder responded that though those were not audiovisual works, they could be referred to as that as some audio video recordings were protected by copyright which one would have to obtain a license. Another issue to consider was the image rights of the teacher or professor. Assuming he allows and agrees to it, which of them owns teaching outputs, would it be the teacher, professor or academic institution? She observed that there was no uniform solution across different countries or within a country across different universities. Public and private institutions may be dealing with largely different copyright outputs produced by their academic staff. That would depend largely on the sensibility and the copyright policies of each institution. In that regard, if the teaching institution feels that the professor or teacher agrees to it, he as author and performer and his image rights on cop of copyright can post it online free and open to the public. As a result, anyone would be able to download, link, or use that content for further use. That was basically the effort that open educational resources were focusing on. One of the challenges for open educational resources was precisely that they need to, they wanted to subject that content to open licensing, creative commons licensing to allow further transformation and reutilization distribution and communication to the public. Once there was content that was open posted on an open repository and under a creative common license, it allows for further teaching and research uses. That poses a challenge as well as an advantage. She added that it would still have to face copyright in addition to image rights, but it would very much depend on the policy, the copyright policy of each institution.

127. The Delegation of Belize sought to find out if there was a common policy shared by the countries who chose to entrench in their laws the use of 10 percent of any published work which may be copied by or on behalf of an educational establishment as 5 percent was provided quarterly by the various collectors.

128. Professor Xalabarder was of the view that it was not a policy as the percentage was used in the blanket licensed offered by collecting societies and not so related to a percentage in the statutory exception or limitations. Though she did not provide specific details, she believed that sometimes limitations and exceptions tend to deal with number of pages or percentages.

129. The Delegation of Singapore reiterated one of the challenges was the legal uncertainty on the subject. The Delegation added that with their experience with the copyright review one of the areas of uncertainty that they identified was the relationship between a full exception and a statutory licensing solution. It added that stakeholders request for clarification on the relationship between those provisions because in certain jurisdictions with full exceptions, those may be applicable to educational uses. The Delegation pointed that in such situations there might be reliance on the full exception instead of using the statutory licensing provisions. It added that in both cases the applicable use may relate to an educational purpose. In view of that, it considered if it was desirable to actually legislatively specify the relationship between those, between a full exception and statutory licensing solution and sought for views and thoughts on what the relationship should be.

130. Professor Xalabarder mentioned that the scope of limitations and exceptions extends to broad uses authorized by the statute and the type of authorization if done for free or in exchange of remuneration as well as statutory licensing and nonvoluntary licensing. It was basically an exception and limitation that authorizes those uses that were subject to a remuneration that was managed by a collecting society. She explained that though countries deal with that in a different manner, she believed there was room for free exempted uses, exempted in the sense of authorized by law without any remuneration and uses that were authorized by law but subject to remuneration. She indicated that provisions could be made for both under national laws. Though that largely depends on the culture, economic circumstances and market, the national legislature should make provisions as per the specific needs of a particular country. She cited that in Spain, there was an exemption for free for teaching uses in schools and remunerated licensing exception, which was the statutory licensing for the use of publications by universities. That did not mean that universities could not do quotations or other exempted teaching uses, but there was a lot of teaching uses by the university of publications that get subject to statutory licensing, authorized by law but remunerated. Statutory licensing or nonvoluntary licensing helps the development of collective management of that right because then it was also easier for the collecting society. They do not need to require mandates from their copyright owners because that was already a statutory authorized. That creates some perks in addition to remuneration.

131. The Deputy Director General urged Member States to provide more information for the purposes of the research material. The DDG inquired what the most important thing in the order of priorities when tackling the issue with respect to the following areas: the symmetry between situations that had been seen in different countries through the research, those which were sufficiently broad reaching limitations and exceptions with collective management organizations under exceptions and those countries, the law of which tends to pass over the whole matter in silence. She inquired if the symmetry or lack of symmetry between situations in individual countries was the most important thing to be dealt with. She also asked if there was a specific use of the subject which was more important with the use relating to the providers of online technology which implies a cross-border element to the procedure and there by changes the nature of the exercise.

132. Professor Xaxablader stated that the issue of territoriality of copyright and licensing that affects not only online teaching but also other online uses as well as other exception or limitation that was going to be applicable online. She suggested that the solution should encompass education and teaching research uses but solve the problem of applicable territoriality, which was a very transversal issue. Reiterating the challenges of limitations, exceptions and licensing she mentioned some issues encountered in academic research. She

added that limitations and exceptions were very important for the copyright system to achieve its functions. As such, there was the need to be careful with designing and securing good limitations and exceptions in the copyright laws. Particular attention ought to be shown by considering the circumstances of each country and how each exception would be applied as seen in cited examples. There may be entrenched provisions of limitations and exceptions in copyright law which gives authorization for teaching purposes subject to remuneration but there may be no managing society or body to manage the remuneration or vice versa. Professor Xalabarder cited that there may be an exception that was limited or restricted to which the university would want to comply with copyright law and ask for a license for that but there was no collecting society, difficulties in finding authors of works or locating the owner. Per observations, she stated that there was no room for both as the Berne Convention indicates that limitations and exceptions for teaching and research purposes were fundamental. However, she stated to make them effective, the circumstances of each country ought to be considered to create the right balance. Per the study, it was noticed that in some countries, where the circumstances were not even collective licensing, sometimes direct individual licensing exists, they didn't give much importance to what the exempted scope was, for teaching or research because licensing was available for very many different of works. That among other things such as accessing culture and transmitting knowledge posed various challenges though it was fundamental for our following generations to be able to create and further create. She was of the view that the copyright system as a whole cannot be afforded whether statutory licensing, statutory limitations and exceptions as functional available licensing in the market does not provide a solution for online teaching. She expressed worry as a lasting solution had not been found for the past 20 years.

133. The Delegation of the European Union noted with keen interest conclusions highlighted in Professor Xalabarder's submissions that pointed to issues in relation to legal uncertainty about the extent of the exempted uses in management systems; that was the uses covered by the exception or limitation in online environments and insufficient licensing possibilities and the general lack of awareness and respect for copyright by the beneficiaries that may play a role in that regard. The European Union also referred to its legislation on the issue of educational, the need for an exception or limitation for the illustration for teaching. The European Union issuing a disclaimer pointed out that in the recent proposal for a directive on copyright in the digital single market, the directive had not been formally adopted but recently voted in the European Parliament. That directive, the DSM directive as we call it colloquially does indeed contain a new mandatory exception for illustration for teaching and the effort that was made here, it was important to recall that it was based on a situation on the premise of the new law that there was previously an optional exception that was in fact in place in all the Member States but to a different extent and under different conditions. The need for legislative action was triggered by the fact that in some Member States, it was unclear if and to what extent the provision applies in the online environment. In view of that, the new exception aims at clarifying that. Nonetheless, that exception was mandatory, but it comes with a very important condition attached. The European Union may provide that the new exception does not apply or applies as regards specific uses or types of works such as material that was primarily Internet intended for the market or sheet music to the extent that suitable licenses authorizing the acts covered by the exception and covering the needs and specificities of establishments were easily available on the market. It contained a condition that no suitable licenses were available which was based on a fundamental consideration that was underlying the whole directive to respect the fundamental role that licensing and the investment of publishers can play in many regards particularly to the educational market. As a last step, building on various conditions, requirements and safeguards, that exception also contains a legal fiction that applies throughout the European Union. The Delegation of the European Union indicated that that mechanism, a legal fiction which was a very particular legislative technique that was typical for the European Union legislation within the internal market was one of the added values for Member States of the European Union. Speaking on the direction by the European Union to incorporate that

internally but not in the international legal or international copyright framework, the delegation stated that the European Union's actions within its borders should be not compared or mixed with discussions at the international level because the European Union action in that area was premised and should be considered through the primary prism and objective of the regional integration project that the European Union was. The Delegation of the European Union added that the degree of harmonization achieved in the new law was related to the objective of the European Union as included in the governing treaties, which was to establish an internal market. That objective and the treaties require the union to adopt measures with the aim of establishing or ensuring the functioning of the internal market and the need to ensure consistency between copyright words as the function of the European Union single market was a requirement that was constantly referred to. For example, by the Court of Justice of the European Union when fulfilling its mandate to assure the interpretation of a mandate of European treaties. It stressed that the reference to the Court of Justice was very important as the European Union was a legal system that was more similar to a super national or federal system without being a federal entity than an intergovernmental setting. It revealed that Member States of the European Union were bound by collective obligations to the treaties, bound by secondary legislation like the new directive adopted through specific procedures set out in the treaties; to which the Member States were voluntarily subscribed in forming the Union or acceding to it. When points of European Union law of dispute emerge in international courts, the latter courts would consult the European Court of Justice, which would assure consistency within the European Union. In addition, the European Union commission has been mandated to take legal action against Member States that infringe European Union law. There was a procedure that leads to process in front of the Court of Justice to take action against Member States and impose fines. That mechanism of judicial redress was very important and a very visible element of a system of legal integration that was extraordinary and extends beyond the international stage. Therefore, it considered it not appropriate to compare the level of harmonization achieved at the European Union level to the international level. In view of that explanation, the European Union believed there was no contradiction between the harmonization effort conducted internally and the international stage. The level of harmonization of limitations and exceptions even within the European Union was limited constraint by the objective to assure the internal market. Without the existence of common rules and a high level of harmonization, there was no full harmonization even within the European Union.

134. The Representative of Communia made reference to the idea that the technical solutions were unfit for online uses citing the two possible solutions that have been presented to overcome territoriality. One solution that was being practiced by some rights-holders was with respect to licenses where they define rules that allow to have some cross-border effects. However, it was mentioned that licenses do not exist for all types of works and every territory. As per the Report, licenses cannot solve the issue of online uses for educational purposes as a stand-alone. The Representative inquired of any other mechanisms suitable to address that issue as where territorial solutions were unfit there was the need to find solutions beyond territories and look at areas of international law. Reference was made to the European Union, which found a solution of limiting the use to one country by way of a legal fiction rather than all the other countries where the works were being used within the European Union that may not be applicable for all other countries. For example, students from Delegation of United States of America or Singapore undertaking an online course of a European Union institution, that legal fiction would not be accepted by Singapore and the Delegation of United States of America. For solutions like that to have an impact in all the online territory, the Representative asked for the types of mechanisms that were needed. It also asked if the concerns of students can be addressed as well as some students on exchange programs were not able to access materials of the educational institutions. That different cross-border problem that were mentioned by students were also indicated by teachers. COMMUNIA advised that the study coordinated by Professor Xalabarder for the European Union should be replicated in that international context though it involves a lot of surveys, it suggested a broadening of the scope of the current study.

135. Professor Xalabarder explained that the broadening of the scope would very much depend on WIPO. Issuing a disclaimer, she pointed out the study was only based on academics and not libraries. On the issue of adopting the European Union solution, she believed it was feasible. Europe was ready to do that because more or less there was a more harmonized background and that was why they had adopted the Article 5 mandatory exception and limitation. That harmonized basis she indicated does not exist on an international level and would make it more difficult to balance. However, she cautioned that universities and teachers were going to end up making such uses regardless of what the copyright laws states, as they were more concerned with teaching than copyright. Though she stressed that teaching was very important, nonetheless she did not think it would be feasible to adopt IFFRO's licensing strategy. From an academic point of view, she noted that there was not much of a difference. She also added that sometimes international instruments (such as Article 10(1) and (2) and national laws that do not use the whole flexibility that the Berne Convention allows for and hence may not offer right solutions for some of the pertinent problems. She was of the view that solutions would be on national basis, legislators adopting right limitations and exceptions as per the needs of their countries. She also urged members to provide ideas in helping universities, teachers and libraries and the academic community. She explained that national laws pose a challenge of students accessing works, the problem of DRM, TPM and contractual terms that were incoherent with exempted statutory exempted uses.

136. The Representative of the International Publishers Association (IPA) aligned itself with the comments made by the European Union reiterating points on how European Union law works and the special legal environment that creates for cross-border licensing and copyright harmonization. The Representative stressed that the issue of territorial solutions was very critical. The Representative stated that as publishers and people who work with authors, creating local product was important to meet local need. He noted that whilst it supports cross-border licensing and publishing, it was important to ensure that the world was not filled with uniform content. He was pleased for the chance to provide further insights in the ongoing discussion. It revealed that the report highlights much of the challenges the publishers face in a bid to make marketplaces work better. The Representative reiterated that if the problems were improved, digital technologies could create new opportunities for education. It added that researchers benefit from two decades of investment in platforms and publishing formats. That it said was a digital licensing business free of constraint from familiar formats as many publishers were embracing those models while readers can have access to an article, chapter or any other bespoke content for their need. With collective licensing, that becomes possible with the best books available for a few cents per page. Digital was enabling publishers to democratize learning by making terms around the work. The Representative disclosed that they were working with UNICEF to provide a curriculum and resources to alleviate the education crisis affecting displaced and refugee children and young people. He stressed that books were essential to teaching, research, and improving the standard of life. He stressed that if the purpose of copyright was to encourage learning, collective efforts were necessary to achieve that objective in the digital world. The Representative indicated that it he was ready to help people with licensing and show them how publishing markets can work effectively.

137. The Representative of Education International (EI) spoke on the notion that teachers did not value the importance of copyright. EI expressed that teachers would love to be able to work without fear of engaging in crime while working in a bid to fulfill their public missions. The Representative reiterated the problems outlined in the study with reference to the unavailability of limitations and exceptions and that licenses did not work for many of the teachers. EI outlined other challenges including limitation of scope, bureaucracy as well as cross border issues for teachers in accessing content and collaboration. In view of that, the Representative suggested that it would be important to develop a global guideline for teachers to serve as a tool for their work. She observed that the research currently focuses on higher education and

research. The EI represents teachers in K-12 in primary school and secondary school, was certain that many teachers would be interested in participating and sharing their problems and its interrelation to the study. That it believed that would help in understanding which digital actions teachers regularly carry out and what obstacles they face, how they overcome that and provide possible solutions that were guided by teachers and can help decision makers better understand how to overcome those challenges.

138. Professor Xalabarder acknowledged Education International (EI) in providing requisite information. Certainly, she agreed that not all teachers were concerned about copyright as copyright laws were complex especially for online users. She proposed that the current statutory scenario for teaching was not fit to allow the development of online teaching, academic platforms and uses. She suggested that solutions should be developed through copyright law and licensing and should not be limited to exceptions. She cautioned the IPA that though there was a lot of licensing, individual licensing done by producers and publishers, vigilance should be exercised so as not to distract the importance of dealing with limitations and exceptions. Professor Xalabarder cited the Berne Convention provision that teaching and research purposes require an adequate exception and limitations in our copyright laws. The optimal solution should not be a license of all related areas. If teaching and research becomes a fully licensed environment, it would defeat the purposes of teaching and research and undermine the essence of the copyright law. She added that though substantive efforts were being made, it was necessary to ensure effective easy to use, easy to enforce protected against DRM interference or TPM interference were granted in copyright laws in favor of teaching and research. Though there was no room for both, a balance of those proponents would be ideal.

139. The Representative of the Center for Information Policy Research (CIPR) revealed that CIPR with over 25,000 students has an online course platform that every course was populated into. Thus, whether the course was face-to-face or online, there was some content that was made available that falls under the online category. Given the reality of education, does it seem it helpful going forward to consider rather than a bifurcated approach to a provision to face-to-face teaching versus online teaching, that reality did not really exist in education anymore. It added that it should not exist in the copyright law anymore that we have one education provision that deals with whether you were in a face-to-face or virtual classroom or you have students that were both capacities in the same class.

140. Professor Xalabarder reiterated that there would be no distinction between face-to-face learning or other varied ways of education. She was of the assertion that the reason behind an exception and a limitation for teaching and research purposes was the same. Notwithstanding, she noted the importance of the risk or the sensibility also, but the risk of downstream infringing uses of digital means of exploitation were very different from analogue uses. She believed that if licensing solutions, exceptions and limitations to cover all the photocopying and reprographic for analogue teaching and research uses were identified, then other kind of solutions for online teaching and research can be identified. In different context and with different risks in hand, that ought to be taken into account but she added that there should be no distinction between one and another.

141. The Representative of the International Federation of Library Associations and Institutions (IFLA) noted the response to Singapore's question indicating that there must be a difference between remunerated and non-remunerated uses. As institutions that stand upwards of 30 billion a year on buying and licensing content, it was clear that libraries were making a major financial contribution to the creative economy. As has been underlined, basic nonprejudicial educational uses should be a question of rights, not of handouts. IFLA added that while there may be worries about the enforcement of laws internationally, the challenge was not one of excessive limitations and exceptions in the online world but one of their absence or lack. On the basis of some provisions being highly debated, IFLA probed for an in-depth explanation to those assertions and to what extent was that discouraging countries from using the full

opportunities that Berne may make available?

142. Professor Xalabarder indicated that there was a lot to consider on both sides of the negotiating table; a middle ground and on the other hand, copyright owners (authors, artists, publishers and producers). There was a sensitivity towards digital means of exploitation and down streaming infringing uses. Sometimes, that creates conflicts because by being so careful and protective of the rights, they end up missing opportunities of further revenues and licensing that could benefit them. On the other hand, she added that it was frustrating for academic institutions to be denied of their core mandate of teaching and spreading research because of different acts of exploitation that talk about different means but do not talk about classrooms. That shows that limitations and exceptions do not benefit us any longer. That leads to legislation that were not used. She cited the 2001 Teach Act in the U.S.A. She probed if the exception and limitation in the Article was still being used or used as fair use guidelines in that approach. Sometimes, we end up with very complicated legislative solutions that do not benefit either party. She cited the example of Berne and Article 10, which provides a clear example. She suggested that flexible technological solutions were the way forward.

143. The Representative of Knowledge Ecology Inc. (KEI) asked Professor Xalabarder on her thoughts of the utility for education of the appendix to the Berne Convention and whether or not it was up to date with technology.

144. Professor Xalabarder referred to studies developed by WIPO in 2009 on territorial scope of limitations and exceptions in different territories. She expressed worry as those issues had not been addressed since then making reference to the Berne appendix has very rarely been enacted by the Member States when ratifying the convention. She indicated that there had rarely been instances where individuals have requested for a license to make a translation of that book or contents, which were not available in their home country for teaching or research purposes. She mentioned that she would look into the specific language of it. She added that if it did not refer to technologies, it would be perfectly viable on the online world. In fact, one of the things that was considered in the study was considering whether Article 10(1) of the Berne Convention covers all levels of teaching, the appendix was very clear on covering adult and life-long learning teaching. In that sense that also opens up possibilities. As to technological endurance and availability for the online world, if it did not see performance, it would go through the same problems in national laws. If the language was as general as Article 10(1), of course it would endure and apply to new technologies such as online uses.

145. The Chair invited Professor Kenneth Crews to present the methodology taken in the preparation of the typologies on libraries and archives.

146. Professor Kenneth Crews presented the methodology taken in the preparation of the typologies on libraries and archives which can be found at **(Wednesday, April 3, 2019 Afternoon Session):**

<https://www.wipo.int/webcasting/en/?event=SCCR/38#demand>

147. The Chair invited Professor Dave Sutton to present his background paper on archives and copyright.

148. Professor Sutton presented his background paper on archives and copyright which can be found at **(Thursday, April 4, 2019 Morning Session):**

<https://www.wipo.int/webcasting/en/?event=SCCR/38#demand>

149. The Chair opened the floor to questions with regard to the presentation made by Professor Sutton.

150. The Delegation of Islamic Republic of Iran acknowledged Professor Sutton for a detailed report and invaluable information contained therein. The Delegation highlighted the importance of archives in the maintenance of the cultural production and the unique position that archives occupies in the life of the societies as presented by Professor Sutton. The Delegation inquired of the main differences with regards to the challenges faced by the broad categories (born digital archives and traditional format archives) of archives were facing in conducting their duties to maintain the cultural products.

151. Professor Sutton explained that the extent to which archivists have become used to working with born digital archives varies from country to country where works have just begun and not entirely so in other countries. Reiterating his statement, he mentioned that many archivists in countries which may have developed an experience in working practice in introducing born digital archives into the collection would say that the principles of archival practice were exactly the same on clearing copyrights for born digital archives as well as the principles for clearing copyright in respect of correspondence which was born digital. He added that there were additional complications which come into play when analyzing correspondence collections, when archives begin to collect email correspondence, typically email was collected in the form of a thread which means once again, within the thread there were multiple copyright holders. One may be looking for the headline author at the top of an email. However, one might think that every other creator within the email thread would have to have their copyright cleared before the email would be made available to the public. Due to the way that electronic email collections were being held and stored, there were many cases where archivists have looked at the copyright complexities to do with email collections and set them aside. There were important email collections waiting in important repositories around the world not yet available to the public while archivists try to establish how they would deal with the copyright complexities within that particular collection. Born digital types of material were introducing new challenges, but the fundamental approach that archivists were taking remains the same. The born digital archives were regarded as a specific format, the ways of clearing copyright within that format were actually the same as they were in traditional analogue materials.

152. The Delegation of Brazil indicated that the presentation elucidates some important aspects of the importance of archives for us. The Delegation made reference to the fire outbreak that gutted Brazil's national museum leading to the loss of archival materials, not only older out of copyright protection works but for instance recordings of indigenous chants which were still under copyright protection in Brazil. The Delegation indicated that the presentation outlined a lot of those challenges in an effort to reconstruct the national museum collection. Due to the loss of those materials, it indicated that it had to find out from other countries if they had duplicated copies of rare books et cetera which was a complex and long-term process. It was underlining the importance that we have at a clear framework for the activities of archives. The Delegation reiterated the issue of orphan works and shared the story of Beta goods, a Brazilian Diplomat, one of the very few diplomats that was at the San Francisco conference in 1945 which created the United Nations. As one of the few women present, she had an active participation in trying to reach consensus on the proposal to bring equality between men and women, which was now in the United Nations charter. She actually signed the United Nations charter on behalf of the Brazilian government, but while she was there, she wrote numerous correspondence about the experience, how the works were being developed, et cetera, all of those correspondences were in the national museum which was gutted by fire. Since she did not have any children or heir apparent, Brazil had found it very difficult to find the actual owners of the copyright involved with her correspondence which despite not having commercial value was under copyright protection in Brazil. That example cited by the delegation was a clear illustration of some of the challenges that copyright works may pose. Most of her correspondence were lost because the archives did not have the legal certainty to make a copy for that. They would be liable under the copyright protection and they did not know -- they didn't know if there was any heir. That states very well some of those challenges the work here that WIPO could try to identify some of the common concerns and identify ways to advance and

provide legal certainty, not only the case of works but also in other preservation activities through archives.

153. Professor Sutton stated that the background paper was written comparatively rapidly as there was not much time to highlight as many examples as we might have liked. He added that the examples cited by Brazil exemplify in excellent form some of the particular challenges outlined in the presentation. He added that those examples would be noted as strong backup reasons to buttress certain points indicated in the research.

154. The Chair urged the delegates from Brazil to share more examples and experiences with Professor Sutton in order to enrich the paper. That helps to enrich the work of the consultants and share your national experiences as a community and helps us to be more informed about that important topic.

155. The Delegation of Mexico stated that Mexico was keen in protecting their culture through archives because what they have in archives mainly, it was examples of earlier precolonial cultures. The Delegation spoke on collective rights and the ownership of rights. It added that several places and museums in Mexico reflect the cultural heritage of the country. However, it added that a major issue had to do with protection, dissemination and what that represents. The Delegation added that if the information was passed through digital media, which was going to be happening in the future and was already happening on several platforms in Mexico, the issue with the respect of copyright inevitably comes up. It stated that identifying who the rights holder were can help in accessing authorization for the lawful use of the work being digitalized. However, it cautioned that one might end up changing the nature of a piece in a museum when it becomes digitalized. It added that a work that has no author or such did not mean that there was not a rightsholder because often it was the community, Indigenous community, usually, Mexico, collectively. Though it pointed that there was a conflict between the dissemination and the right to protect, it stressed that the major issue had to do with the identification of the rightsholder. Those were the main issues presented by the Delegation.

156. Professor Sutton mentioned that the question of how to identify the right holders was a challenge in wide areas of archival practices. He indicated that the research focused more on a person as a creator. He added that the notion that collectives and communities and indigenous groups may collectively own pieces of cultural heritage was something which was beyond his area of expertise as such it was not included in the background paper. Professor Sutton pointed that it was reinforcement with respect to the difficulties, which were inherent in tracing archival copyright holders because the values which exists within archives, which were indisputable were not primarily financial values, therefore, the normal reasons for people to register their copyright membership don't apply in the case of archives. Though he could not give direct advice on the particular problem, Professor Sutton mentioned that it broadens the range of examples of difficulties faced on the matter of identifying ownership of archival copyright.

157. The Delegation of the United States of America made reference to a recent study it shared on a survey of America's collections and the results from the heritage health information survey as it contains significant information about the challenges of preservation for materials and those that were digitalized and require that as well. The Delegation sought for more insight on the state of archival collections in museums and libraries as the research pointed out that those types of collections could exist in a variety of institutions.

158. Professor Sutton stated that the extent to which libraries and museums operate as archival collecting institutions varies enormously from country to country. He cited that in China and Japan, the literary museum was a fundamental part of the way that cultural creation archives were made available to the public. For example, those were traditions, which were

immensely rich and very important ways of accessing archives in the countries. In the areas of cultural creation, making reference to his field of literary archives, he mentioned that the principle collector of the archives would be the national library, not the archives. The background paper highlighted that that was the case in very many countries in South America for example, the national Library of Argentina, the National Library of Uruguay, the national Library of Chile, the National Library of Venezuela, all of those were libraries that have archival collections which fundamentally reflect the Cultural Heritage of their country and a request division of responsibility between the national archives and the national library was fundamental to the way that things work in the collecting policies in those countries. Professor Sutton referred to work conducted in African countries together with his colleagues on developing collections of Cultural Heritage. He revealed that in Namibia and Cameroon, they have embarked on building archival collections but taken the decision in the case of those two countries that it would be the national archives rather than the national library that would take the lead. By contrast, in Jamaica, a recent decision has seen the national library decide to take the lead in bringing some Jamaican Cultural Heritage papers from the Delegation of United States of America to Jamaica and establishing them in the Jamaican collection. In many countries, where the two principle collecting institutions were the national archives and the national library there was a balance of collecting practice between those two institutions. Ideally, there were collective policy document distinguishing the two works of the two institutions but there was no general international rule. He noted that in some countries, it was the national library that plays the leading role for cultural creation archives, and in other countries it may be the national archives. Professor Sutton explained that archives have to be regarded as documents which were made publicly available through archival institutions, but also through library institutions and also through museum institutions.

159. The Delegation of the European Union reaffirmed that the European Union was mindful of those important issues and have been giving careful consideration to them, and may be a good example in that regard was the European Union directive 2012/28 for the orphan works that contains an exception to copyright for certain users of public, cultural, educational institutions of works that's been identified as orphan works following a diligent search of the right holders. The Delegation added that the publicly accessible libraries, educational establishments, museum, archive, heritage, institutions, public service broadcasters, and the work covers the print sector, cinematic, audiovisual works, phonograms, works that were embedded, incorporated in other works and non-published works. Based on that legislation, the Delegation indicated that it had experiences to share.

160. The Representative of the Library Copyright Alliance (LCA) acknowledged Professor Sutton on the study on the impact of copyright on archives. In particular, they found the explanation of the cross-border copyright challenges of split collections particularly compelling. It also acknowledged the European Union's attempt to explain why the legal framework of the Union justified the use of an international instrument to achieve the harmonization necessary to permit cross-border activities by of heritage institutions within the European Union. However, the explanation did not address the inadequacy of national law to eliminate the copyright barriers to cross-border activities. If national law was inadequate to eliminate the cross-border copyright barriers to cross-border activities between two European Union Member States national law was just as inadequate to eliminate the copyright barriers to cross-border activities outside of the European Union. The Representative added that the discussion of the extensive cross-border activities of archives with preservation and research underscores the need for instrument concerning exceptions and limitations for libraries, archives and museum.

161. The Representative of the Society of American Archivists (SAA) added that as a society dealing with institutional archives of associations and other things of that nature, the paper shows a high concentration of coverage and explanation of issues by talking about correspondence and especially literary correspondence. Dealing with material that is kind of at

the center of the copyright industries, if you would, or what really seems to be very much the core of a lot of people's concerns were typically about copyright being designed to protect authors to create new innovative works. The Representative indicated that the lists of institutions where archives were found on page 6 and 7 in the report and somewhat in the bulleted list included some of those kinds of dreary, boring institutional archives listed thereof that was archives, national governments, archive, it archives of science. That was not to say that on a regular basis, researchers did not find those things useful. SAA asked how much weight carries over to institutional records on the context of literary authors.

162. Professor Sutton noted that correspondence collections were drawn out because they give a very stark and sharp illustration of copyright difficulties. Professor Sutton attributed that to the level of area of expertise in institutional documents. He added that correspondence was chosen as it draws out the copyright issues in particular. He explained that within institutional archives on the matter of correspondence that exists within institutional archives on letters created by a person writing in their professional capacity, the copyright belongs to the institution and consequently the copyright was much easier to clear. Professor Sutton agreed with SAA's assertion that correspondence collections were individual works and not exclusively literary by any means and the correspondence of politicians and public figures presents similar ranges of copyright challenges. Amongst institutional papers and institutional collections of correspondence, the situation was sometimes less sharp because the copyright clearance can be achieved through the institution rather than by having to track through hundreds and even thousands of individuals.

163. Based on the presentation and further deliberations, the Chair acknowledged Professor Sutton for a comprehensive presentation and discussion. The Chair believed that would contribute greatly beyond the preliminary works conducted.

164. The Chair invited Professor Kenneth Crews to present on the typology analysis of libraries with reference to archives.

165. Professor Kenneth Crews presented on the typology analysis of libraries with reference to archives which can be found at **(Thursday, April 4, 2019 Morning Session):**
<https://www.wipo.int/webcasting/en/?event=SCCR/38#demand>

166. The Chair opened the floor questions with regard to the presentation made by Professor Kenneth Crews.

167. The Delegation of the Islamic Republic of Iran revealed that they were not certain what the typology was, how would it look like and how it enriches the discussion but after the efforts made by Professor Crews, they gained an understanding of the added value and benefits of the developing the typology. The Delegation sought for clarification on the objectives outlined regarding the main unresolved issue based on the efforts made.

168. Professor Crews noted that the use of digital technologies was very important as many statutes were written in ways that were unclear on whether digital technologies can be used. He indicated that there were examples of how if the subject that a statute on any of those issues should include the use of digital technologies, it would not be clear where each one of our countries was going to go with that concept. In another aspect was the statutes for preservation. In statutes requesting copies for private study and research, there was a huge variation in the way countries have chosen to address confirming the proper purpose of the use. Was it simply a matter that the user of the library can request the copy for research and study and then under whatever standards in the statute the library can provide the service? Or as was the case in some countries, was there a requirement for documentation? Elaborate documentation about that request and maintaining records of that request? Or was it one that simply requires a user

to state that that was my purpose or as it exists in the law of my country, was it that the library has no, sir knowledge that it was for any other purpose. There was no formal process to confirm that particular use. Professor Crews sighted another example on the role of licensing more specifically, the role of contracts to be able to waive whatever the opportunity or the right may be that the library has under any of those exceptions. Assuming the library under your law has the ability to make copies for preservation or research can a contract with the rightsholder waive that right? He observed that the new legislation directive from the European Union includes that concept and using it to protect the interests of the right holders. On the other hand, it was to protect the exception. At the same time, we have to look at it closely and realize that sometimes one rule did not serve all purposes in the world of archives, there were agreements for deposit of collections that includes some limitations and restrictions on how at least temporarily that collection may be used. Then also in the European Union, the notion of making works available on dedicated terminals, there was a clause that says unless or excluded, prohibited, that unless subject to license terms that may prohibit that use. There was a mixed set of rules and the more the issues were viewed in detail, the more careful and precise and effective we can be.

169. The Delegation of Argentina highlighted the different interests to take into account in the legislative processes of the study and sought insights on interests and digital format. The Delegation asked if there was any legislation that would consider (the publishing sector link to books and the link to protocols, especially the journals, and neither the authors of the books or the authors of the journal documents or periodicals, periodical publications) those two types of contents differently at the time of establishing a regulation. The second question was on the issue of the digital format, or other subscriptions with the digital form mats, the legal regiment system was usually a licensed, an exhaustion of the knowledge of rights, for books, per se, temperature situation where the library has its materials it changes radically. They sought to find out if any legislation has made a special reference to those contracts of licenses via subscription and if there was a system which considers which clauses could be abusive in the contracts, specifically regarding exercising the rights of librarians or users.

170. Professor Kenneth Crews noted that as lawmakers to ascertain which of the issues outlined in the typologies were of great importance in addressing issues in their respective countries and how that can be achieved collectively. He noted that the task would be different as a collective. He pointed out that if there was a likelihood of an international instrument being drafted, would it be one by WIPO where there would be to a certain set of parameters, generally identifying critical issues, and then allowing the member countries to fill in the details from there, or there would be more deliberations on some of those points in greater detail. That he believed those typologies can help support. On the question of contracting and licensing, some examples were cited for example copies for research and study. Those he added could be addressed a little bit differently when talking about copying of longer works, such as a book, or other long work, or copying a short work, either just a piece of that book or an essay or an article, a shorter work. He added that there were examples that allow one and did not allow the other or maybe allow both, but under slightly different circumstances. The question of licensing it added was difficult as one could not get an easy and clear answer. The statutes that do address contracts and licensing, were frankly not very detailed, that they would say that a licensed or contract to the contrary was not enforceable. It did not give any parameters about what type of licensing might actually survive that kind of test. He suggested that there was the need to learn from each other on the implementation of some of those issues.

171. The Representative of the Knowledge Ecology International (KEI) noted that they didn't cite anything on the study that dealt with excessive pricing issues with reference to the Berne Convention on developing countries that has provisions allowing countries when prices were considered unaffordable, out of line of what was normal for countries to use compulsory licenses, and it was a complicated provision in the appendix. The Delegation pointed that it was

an essential element which needs to be included in the study to aid in discussions. The Delegation asked for Professor Crews to reflect on the assertion where few believe that there was a sufficient understanding of the appendix among countries that benefit from the appendix and if it might be appropriate for WIPO to consider preparing some materials which would explain what the appendix does, relevance as a lot of emphasis was on educational institutions, research, but also probably libraries as it might be valued to countries that were of potential beneficiaries.

172. Responding to comments, Professor Crews recalled that in previous studies It was reflected that countries that did address the Berne appendix or in some cases, some countries, they have enacted statutes that reflect the specifics of the Berne appendix had been highlighted. He added that his studies largely focused on the statutes that were explicitly specifically applicable to libraries. Thus, original studies with the raw data were directly driven by the contents of the typologies and those analogies were an outgrowth of that data. Therefore, if a national law did not make mention in a library context of an issue such as pricing, then it was not reflected in the data because it did not exist in the statutes. That did not mean that as a collective working with your legislature or law-making bodies couldn't consider that. However, it had not come up in that context of actual statutory analysis. He observed that there were some indirect ways, Berne Convention, the appendix, issues about the three-step test and the interests of right holders, so on, that could imply something about pricing, which he had not cited in the law and therefore did not carry through.

173. The Representative of CFLE speaking on behalf of the Scottish Council on Archives spoke on the European Union's orphan work exception as a potential model for Orphan Works legislation. The Representative added that less than 50 Cultural Heritage institutions have used the European Union orphan work exceptions. CFLE also revealed that they had registered fewer than 6,000 orphan workers on the European Union IPO orphan work database. That it indicated combination of some of the worst examples of approaches to right clearance. Cultural Heritage institutions have high transaction costs for diligent search bar before using the exception of the legal certain tip after using the exception in a situation when an orphan rightsholder should reappear. The Representative asked whether the typology would include orphan works, explicitly or implicitly and if that was the case, whether issues identified in existing legislation, like the European Union legislation, United Kingdom legislation, for example, high transactions costs could be captured in column 4 for elements for ongoing consideration.

174. Professor Crews acknowledged that there were many different views about the Orphan Works legislation from the European Union as well as orphan work legislation that exists in a modest number of countries in the world. He added that there was the need to appreciate that scope more sometimes if it functions or not. He also indicated that Orphan Works would be included. He revealed that he would build on the excellent work of Professor Sutton and others to explore the possibilities of Orphan Works, especially that context to develop typology (similar typologies for the work of archives). He pointed that archives were not the only organizations faced with orphan work issues but also publishers, libraries, educators and authors.

175. The Representative of CFLE underscored the report's strategy in providing a basis for analyzing relevant issues in the library context. The Representative cited that in Canada, as well as other countries, the majority of acquisitions by academic, educational institutions were now digital. It sought to find out why there was little mention about the effect of digital only access on library exceptions. For example, the practice of technological protection measures and the contractual override of statutory library exceptions such as fair use and dealing and licensing agreements.

176. Professor Crews stated that the issue of contract override as mentioned a little bit here,

and one reason why an issue does not get the tremendous amount of attention in that work, either in the previous report or in the typology was largely because it may not be getting a tremendous amount of attention in the statutes. Due to the fact that the typologies were based on the statutes one can identify some topics that ought to be added to the list of issues for consideration or ought to be given more attention. Those issues raised would be included for a more robust discussion. The report highlights different ways and techniques countries have addressed technological protection measures in an effort to protect the exceptions. Getting into detail far beyond what's in the typology but it was one of those issues where it can be treated as a column four issue as relevant and worthy and important to address. However, Professor Crews observed that countries have addressed it in very different ways. He also added that that issue did not get a lot of attention because it could be summed up in very few words. For instance, the choice of digital technologies and the application in the exercise of the exceptions should never be interpreted to mean that it was therefore relatively unimportant. That, he believed should be a priority concern for future legislation.

177. The Delegation of the International Federation of Library Associations and Institutions (IFLA) pointed that the typology was a great tool for national policymaking. IFLA probed on the possibility and benefits from combining the documents to help legislators draft simpler and more coherent copyright legislation covering the needs ever Cultural Heritage institutions, libraries, archives and museums.

178. Professor Crews stated that as third-world countries observe what WIPO as a community would do with those typologies and the other information, reports, studies, statutory analysis, other data that was coming in, ultimately if the group produces some kind of instrument, other resource, to help guide the future of development with those relevant exceptions, it would be imperative to consolidate concepts, to coordinate it across different areas of similar interests, different types of cultural institutions. He added that it would be important to make some decisions about which of the detailed points were of highest priority, and which of the detailed elements of the typologies were not to be included in the guidance or instruments, but which ones would really help direct law making. Professor Crews expressed that harmonization was important in International Copyright Law stating that one of the objectives of international agreements, treaties, other instruments, was to achieve some degree of harmonization of the law for predictability, other benefits of law making across our different countries. That he mentioned would become more essential as issues of cross-border transfers were discussed which was possible citing the model of the Marrakesh Treaty particularly in a context where two countries have become parties to the treaty and therefore have similar, if not even identical laws on relevant points. He suggested that as a community in developing instruments, to what extent would certain detailed concepts be incorporated and address them across different kinds of cultural institutions, educational institutions. With that being said, would it go in a certain direction? That would help to shape the law on that issue to progress in a direction that was productive, useful, practical, respects the interests of right holders, authors, publishers, libraries, the public, museum, education and other players and provide guidance to ease the way of law making in various capitals. He added that discussions needed to begin around priority elements for the shaping of the relevant law.

179. The Delegation of the International Federation of Journalists (IFJ) referred to the assertion that if an archive makes a copy of a work available to the user, it was that user's responsibility to determine whether they're allowed to use the work further for example in a book. IFJ believed that that gets to the heart of issues raised for legislation and archives and libraries in an online world. IFJ also pointed out that responses to Iran sounded like a strong claim that the archive was a mere intermediary, a library, an archive makes work available online to the global public, acting as a publisher, the European Union was notoriously recognizing that such making available should be remunerated through collective management in the case of commercial social media intermediaries. It reiterated the laws of certain countries, including that of Great Britain referred to access on dedicated terminals as a way of

addressing the issue. Line bracer and archive also come under pressure to go beyond the dedicated terminals or on the premises of requirements. The IFJ sought to find out how the Committee can deal with that contradiction, as there was pressure from an archive to become a publisher. It also asked if a library or archive should make works available to individual users, perhaps be obliged to educate them about the uses that they can make of the works.

180. Professor Kenneth Crews pointed out that the reality that members were faced with were The many different types of contexts and organizations; about various groups, players, individuals and interested parties, and defined as author, publisher, library, archives, there was a use of shorthand that seizes to remind that that really whoever under any of those labels, there was sharing of interest in all of those identities and in all of those interests simultaneously. That as authors creating new works, there was the need for an interest in their own authorship as some people were very protective of words or vice versa. Either way, he noted that it was an expression of the interests of the author of the work. Publishers were interested in finding the best works and sharing them. Authors would want publishers who would think in that direction. Libraries were interested in collecting, disseminating and sharing information. In order for someone to be a good author and for another to be a good publisher, having access to material was very important. As the traditional role of the library, the archive, it has been more of that intermediary law and often still fulfills that role. It was also the role of the library or archive to provide for that access under whatever circumstances that work. Sometimes meaning coming to the institution and viewing it solely on the premises, and for other types of works, under other types of the circumstances, allowing broader access to that work. He reiterated some submissions he made in his presentation on the diversity of works as the interests of an author were varied on works produced. The interests of library archives vary with respect to certain types of works. The interests of the publisher were also very different. A publisher benefits from not only the rights of copyright ownership but simultaneously in some cases the greatest beneficiary of the exceptions that allow for certain limited uses, fair dealing, fair use, and that allow for certain act to access, use and obtain the works for purposes of with downstream appropriate use using those works in publications and then allowing works published to be further distributed and made available so that their value was achieved not only in economic terms, but intellectual terms as well. Professor Crews stated that though there was a shorthand of categories and labels, it was important to note that all members benefit from those provisions and it would be prudent to adopt a good provision that would give rights to libraries and downstream users on certain things that would be beneficial to the public. He also observed that good statutes also help that libraries or any other user know what the limits were and, therefore, when one needs to reach out to the rightsholders, so every exercise of an opportunity under an exception was a reminder to respect, adhere to and understand where one's opportunities ends and when one needs to contact rightsholders.

181. The Chair invited Professor Daniel Seng to present on the typology analysis of libraries with reference to archives.

182. Professor Daniel Seng presented the preliminary report on typology on education which can be found at **(Thursday, April 4, 2019 Afternoon Session):**
<https://www.wipo.int/webcasting/en/?event=SCCR/38#demand>

183. The Chair opened the floor for questions with regard to the presentation made by Professor Daniel Seng.

184. The Delegation of Argentina noted that one of the issues being discussed within the Committee at that moment was the possible normative solution for limitations and exceptions. The Delegation added that the focus had been mainly on good practices followed by some universities that provided materials to students as part of a specific program or specific course. That was done through Moodle platforms or other virtual platforms where materials could be

used in a Professor's classes. Those good practices were implemented by universities in collaboration with students and professors and also included academic sanctions. Those materials were available under a licensing contract as they had signed an agreement with the relevant collective management organization. When the university made material available to students, it indicated that they had to act in good faith vis-a-vis the material received. That was an attempt to prevent situations where the student became a distributor of content, without any consideration for the rights of third parties. Those practices made students liable in the event of any infringement by suspension or other academic sanctions. The Delegation asked if such good practices had been witnessed and whether applying that kind of sanction against a student who does not act in good faith would be appropriate and effective. They also asked if there a better solution of addressing the conflict between the right to education and the right to copyright protection.

185. Professor Daniel Seng stated that as an educator, he faced those issues with students as they replicated copy materials. He indicated that good practices would be enforced if instructors adhered to that. One example of good practices adopted in his institution, it was to indicate that the materials were licensed by the education institution. he pointed out that that measure cautioned students on the consequences of infringement as they were not supposed to redistribute or recirculate materials in question. Another strategy they had adopted was the personalization of student's copy with their names printed on the materials. If those materials were redistributed, then those students would be held responsible. Printing on each page of the material made it difficult for students to embark on large-scale dissemination. He also revealed that instructors also had a critical role to play. As a humanities and computer science scholar, he looked for materials with as few copyright encumbrances as possible for use and for redistribution. The concept of open access which was now popular amongst universities around the world was an arrangement in which universities could collaborate to provide each other with access to their own repositories which were generally unencumbered for instructional purposes. He was certain that those good practices could go a long way towards addressing some of the excellent considerations that had been discussed in terms of finding the balance between the needs of the right-holders and the needs of instruction.

186. The Delegation of the Islamic Republic of Iran asked if elements on the fourth column of the typology, elements for ongoing consideration were the main definitions in the current legal framework which required more norm-setting but not necessarily internationally. The Delegation wanted to know whether it was correct to say that those were the deficiencies in the current legal framework or not.

187. Professor Daniel Seng noted that that depended on the jurisprudence in question. He cited that Australia's copyright law was the longest in the world and it was comprehensive because of its ability to deal with that myriad of issues mentioned in the column. He stated that due to its comprehensiveness, he believed there was no gap in Australia's copyright law. On the contrary, he added that that was relatively different in other Member States as those issues did not have easy ways of being resolved in the copyright laws of other Member States. He cited the instance of indirect liability and stated that in many Member States jurisprudence, the concept of secondary or intermediary liability was not even recognized. Though that took a different dimension, it was necessary for the issue of the liability of educational institutions, and the third parties who helped them conduct or effect distance learning and on-line courses. Whether or not those were gaps or whether or not those were issues that needed to be resolved at a higher level, depended on how Member States wished to approach that, because it was possible to observe them as gaps but also as stages in the development of the copyright laws of the Member States. It was a question of prioritization of what really mattered. So if the issue was that the Member State in question had to focus on enabling access by educational institutions to the materials in question, then on-line courses and distance learning were of secondary importance because they were founded upon the fact that there was easy access by the educational research institutions to the materials in question. Through that explanation, he

believed that he highlighted why the issues or elements in the fourth category fall into shades of gray.

188. The Representative of Corporacion Innovarte stated that it was an excellent idea to use those instruments as control mechanisms. The Representative indicated that it did not see any reflection of the economic capacity or the level of economic development of a given country. However, they noted that the economic capacity of the country and the level of development of the country would affect its ability to pay for a license. On that premise, they asked if those areas should be taken into account in international instruments, as provided in the Berne Convention, for example, where there were particular flexibilities for developing countries, and if an approach like that for companies would be relevant and appropriate for international instruments. The Representative asked what were the issues that had been identified or could be identified as being legitimate interests for educational activity but to which may not yet be included in the statutory provisions which consideration had been given to.

189. The Chair stated that, among other things, the countries social economic status would be taken into account by policymakers.

190. Professor Daniel Seng indicated that he made reference to that on page 10 of the presentation in relation to the affordability of the license, so that was for moldable copy reproductions. Throughout the entire fourth column, there were discussions on remuneration. That posed a difficult question on the balance between whether limitations and exceptions were truly free, or whether there were some economic cost implications. For instance, a levy on the materials or levy on the reproductive, reprographic equipment. The elements of cost and economic issues were embedded in that, but, as pointed out, the ambit of that was not to engage on an evaluation of the provisions based on the socioeconomic status of Member States. On the issue of whether or not there were types of activities not covered by the limitations and exceptions, he suggested that a broad formulation of enabling use for teaching purposes as in Article 10.2 of the Berne Convention, given its broadest possible interpretation it covered everything. He pointed out that during the Stockholm conference, delegates arrived at the conclusion as it was drafted intentionally with the widest possible scope; but as Professor Crews also mentioned, having a provision that wide afforded no guidance whatsoever in terms of the execution and implementation of details. What were the types of users, which would fall within educational activities or research purposes, additional issues such as what happened if the beneficiary in question had a sightline in providing for profit correspondence instruction or distance learning? Could that beneficiary still qualify for the limitation and exception in the laws in question? He explained that to that extent, there would be always variations or permutations on education. All that complexity made education such a fascinating subject to study, as education and research which were almost antithesis of each other represented the same spectrum of learning from its inception to its creation of new knowledge, from its various forms of delivery to its various forms of reception and assessment. Professor Seng noted that it was very nebulous and flexible, but at the same time it had been very dynamic to stay in touch with the various innovations and ways of understanding how the human mind worked, studied and learned, with advancements in technology and a better understanding of the brain. He stated that it would be difficult to draft a provision which covered everything and afforded no gaps whatsoever as education knows no limits. He added that people were limited in essence to their imagination as to what forms education could entail. He mentioned that it was possible to have a very broad overarching provision that deals with all types of educational activities in the domestic copyright legislation. He believed that it was important to have clearly delineated, technology-neutral specific provisions in the Member States' legislation that did specifically deal with special types of education activities which the Member State had prioritized for its own purposes. He also suggested that as long as some of the cardinal rules of good drafting were adhered to, for instance, technological neutrality (no need to lock a provision into a certain type of delivery mechanisms, don't lock yourself into a specific type of educational mode of

instruction) the provision should be better able to withstand the vicissitudes and permutations of time and of instruction.

191. The Representative of Communia asked for clarification on the differences between the elements and the criteria to put certain elements in the third column and not in the fourth column. Communia added that it had some issues concerning interpretation. The Representative cited that the limited copy reproduction was indicated in the third and fourth columns as well as the unavailability of licenses, which was outlined in both columns for those rights. Communia believed that the third column would be for common elements, and the fourth for open issues but they appeared in both columns. COMMUNIA also stated that the issue of availability of licenses was not common which it be lived should be outlined in the fourth column and not the third. The other issue raised was the private or personal use. In the private or personal use, the study (in the third column) indicated that the copy must be destroyed within 30 days. The Representative revealed that it was not aware of such limitation in Europe and suggested that it should be outlined as an open issue or implementation detail in the fourth column. It also asked on the reason for certain rights being mentioned as being primary or secondary rather than primary. On the topic of access by institutions, communication and performance rights were highlighted as secondary rights. Communia suggested that they should be incorporated as primary rights.

192. Professor Daniel Seng explained the issue of differentiating between elements of statutory limitations, exceptions and elements for ongoing consideration. He added that the approach adopted was based on the high or low quasi consensus without being mathematically precise about what was consensus. He stated that since there were a limited number of non-significant illustrations of that particular approach that was used for the limitation and exception, and it would be outlined under elements of statutory limitations and exceptions. That rationale was so as to confirm that there was consensus by at least some Member States for the elements of the statutory limitations and exceptions in the third column. He pointed out that those elements were not mere figments but drawn from 204 pieces of legislation and 1723 provisions that were examined for the earlier paper. There were Member States, that had a 30-day limitation as well as Member States who had particular restriction requirements on limitations and exceptions. He explained that many of those elements of statutory limitations and exceptions in the third column were major concerns but there was not enough consensus as there were pockets of consistency particularly since there were Member States that liked to copy similar concepts from copyright legislation of other Member States. That explains the distinction between the third and fourth columns. That was both mathematical and conceptual, thus the elements of ongoing consideration in the fourth column tended to be more open-ended. On the issue of availability of licenses, there were Member States who did not have such a provision in their laws. Though other Member States had such provisions in their laws, he concluded that there were enough linguistic qualifiers that might still require further elaboration and discussion particularly in terms of the tricky nuanced linguistic twists associated with the statutory provisions themselves. On the subject of licenses, an important issue raised was the intersection of limitations and exceptions with the terms of a license and what measures to undertake. In other words, the license underprovided for an extension to limitation and exception but overprovided in terms of the same limitation and exception which was a major concern for education institutions. He explained that he was ready to clarify some of the nuances raised where necessary.

193. The Representative of Education International (EI) posed a question on the library typology relating to the harmonization of exceptions for predictability and cross-border transfers and its effect on education and research. EI believed that typology would be a good way to use in the regions or member organizations, and asked how could EI engage with them on the major challenges and how to overcome them.

194. Professor Daniel Seng noted that harmonization maybe one of the hardest questions to

address for education limitations and exceptions for a variety of reasons. He shared some of his limited and unstudied perspectives. On the concept of student, if you moved away from the traditional concept of a student who was a person who was formally enrolled in an educational institution. So would a student encompass for instance an adult learner, vocational who wanted to go for upgrading. Moving on to that issue of the beneficiary, who were the so-called educational institutions and research centers that qualified for the limitation or exception. There were Member States who adopted a list of all approved schools and institutions that qualified for the limitation and exception. There were some that adopted a broad brush approach that said that if those institutions were schools or universities, they would fall within that classification, others drew distinctions between private schools and public schools or private/public schools or hybrid schools, there were others called education support institutions, like tuition centers and vocational training centers. To achieve harmonization, without going to anything else, required that there be consensus on fundamentally those two points. Who was the producer of the knowledge and who was the recipient of the knowledge. That question posed challenges as it called for a lot of consensus among the delegations themselves as to how you think, as to whether perceptions of who or what qualified as an educational institution was consistently what another Member State would think qualified as a educational institution, because the public interest element for the education and research limitation and exception was very strong. However, as it was public interest, that may vary from Member State to Member State. All those variations had to be addressed at the outset at the very fundamental level, without even descending into the operational details, like for instance whether that was a primary right or secondary right because conceptually it needed to be established which institutions qualified and which did not. It was difficult already for an individual Member State, but to think about how it was applied at a global level, to make it possible for cross-border licensing to take place called for a high level of consensus at the very basic level; what was an educational institution/research institution, and who was a student. In fact, even on that definition of a beneficiary, some Member States did not include within the definition of educational institution a research institution, because some research institutions were for profit or were commercially driven while others were public. It was important, however, to see the typology as a way to jump-start the discussion, as it was now documented and what some of the commonalities of pockets of consensus developed in the Member States' copyright legislation. On the point about what things were primary or secondary, again, that was all consensus driven, because consensus was how most of the Member States tended to do things, but far fewer Member States did things some other way. Professor Seng noted that it was important to learn from each other and try to understand each other's limitations and priorities and policy considerations.

195. The Chair invited Professor Yaniv Benhamou to present on the typology of museums.

196. Professor Yaniv Benhamou presented on the typology of museums which can be found at **(Thursday, April 4, 2019 Afternoon Session):**
<https://www.wipo.int/webcasting/en/?event=SCCR/38#demand>

197. The Chair opened the floor for questions with regard to the presentation made by Professor Yaniv Benhamou.

198. The Delegation of Brazil noted that discussions on that presentation had been held previously at the previous session of the SCCR. The Delegation observed that a critical concern that needed to be tackled by the SCCR and at national level was legal uncertainty. It added that that would provide legal clarity to the museums or to the users, to the authors and the right-holders as well. Though various Member States were championing various agendas, the Delegation believed that it was imperative for the SCCR to reflect on ways to provide more legal certainty and clarity in the implementation of their responsibilities. The Delegation asked if there were areas where the need for legal clarity was critical in areas such as the indication of

digital uses by museums, general trends and specific difficulties in digitizing and giving access to their collections.

199. Professor Yaniv Benhamou reiterated that the need for legal certainty was imperative and urged all Member States to contribute towards such efforts. In countries where there were general exceptions for museums, interviewees indicated that they had legal uncertainty, whether they were aware if specific use were under an exception or not, and they were happy to benefit from the broad general exceptions unlike very limited specific exceptions. Notwithstanding all that legal uncertainty remained. The most frequent ongoing consideration or legal uncertainty mentioned by the interviewees were selfies, photo shooting in the premises when the users were uploading their photographs on social media. He noted that there were issues when the artist was unhappy to be on social media and asked for a take down. On the issue of specific difficulties when digitizing and giving access to their collections, he explained that that did not border on legal uncertainty, but the issue of best practices. For databases, such as archival databases or on-line collections, they were particular on the best practices of other museums and shared templates and ideas as some museums had more practices and resources than others. Professor Benhamou believed that discussions on on-line databases, information display, type of data displayed (all data or some information around the copyright works), terms of use and online contractual terms were areas that should be explored.

200. The Delegation of the Islamic Republic of Iran commended Professor Benhamou for his invaluable contribution on the update version of the study as well as the in-depth introduction to typology of museums and how it would contribute to progressive discussions during the Regional Seminar. The Delegation probed on the purposes of the typologies and the point to isolate the nuances and specific differences among the statutes and therefore the possibilities for drafting statutes or international instrument. It stated that those purposes were extensive according to the mandate of the Committee to discuss those agenda items. The Delegation sought for more clarity on how the typology could serve those purposes.

201. The Chair explained that that was an area to be addressed by the Committee.

202. Professor Benhamou noted that it was necessary to ascertain how the typology would be used practically by drafting a hypothetical statute for Member States.

203. The Delegation of Mexico inquired if it was possible to determine the limitations to copyrights and how the distinction was made between the two points. The Delegation added that making works available was essential to ease accessibility. It proposed that museums could be placed on the most appropriate platform, it expressed worry on when those works were used beyond the examples cited, for cultural uses or knowledge enhancement for people. The Delegation indicated the problem that arose as a result of misuse of work made accessible to the public. The Delegation inquired on possible measures to protect works from misuse based on the authorship and the cultural perspective.

204. Professor Benhamou noted some options including the possibilities that were found in few jurisdictions for making available on-line would be to have a restricted quality of the image, for instance, or technical protection measure, so that the work would be available for the users in order to benefit from the cultural heritage but not to misuse or to reuse the work. Another option presented on the issue of misuse was to protect the beneficiaries such as cultural institutions, archive, museums and libraries would have to be the safe harbor for instance or a limited liability though that was very difficult due to the Internet.

205. The Representative of Program on Information Justice and Intellectual Property (PIJIP) stated that Professor Seng's study did a slightly more consistent job than maybe some of the others, noting when an open clause, for example, extending to all works under the exception was one of the pockets of consensus that one can find. The Representative asked if before the

regional meetings, each of the parties could be encouraged to use some consistency within the framing of that issue. On the work of the Committee, it would be extremely interesting to identify those pockets that lacked key attributes that some of the studies have noted would be useful for education, for instance, in Professor Seng's study the lack of a right to communication as being a key barrier to distance on-line learning.

206. The Secretariat noted that those topics would be discussed in some of the regional seminars. The Secretariat pointed out that both the studies and typologies that had arisen from them had been created on the basis of existing and factual elements. It noted that the third column had as its main purpose to establish a list but not necessarily to bring together the elements. It added that the idea was not to draw some consensual elements from the third column. It noted that that was not the purpose of the third nor the fourth column to mention specifically dissension. The Secretariat revealed that experts made emphasis on the fourth column that they were able to see a rise during their studies and the typology which were not necessarily opposing elements. Nonetheless, consensual elements could be looked at.

207. The Representative of the International Council of Museums (ICOM) inquired if during the course of interviews with museums the issue of rights and source of metadata ever came up with respect to placing materials from collections on-line, and whether or not any of the museums mentioned that they were developing rights and source metadata systems for the purpose of identifying the authors and the sources in public space.

208. Professor Benhamou revealed that he heard that issue only once with a large museum, that was working on right and sources for metadata. That was surprising as they stated that they had that as practice but none of the other museums mentioned it or was aware it could be useful for other museums. He believed that was an area where museums could definitely share best practices on in a bid for museums to go online.

209. The Representative of The International Federation of Reproduction Rights Organization (IFFRO) made some observations on the exceptions for catalogs and accessibility to the public as there was not really a difference to publishers. IFFRO inquired of the extent of which how many exceptions existed alongside existing licensing markets, offered by publishers.

210. Professor Benhamou revealed that in the various jurisdictions that were observed, some of them limited the catalogs exception only to museums, and that could be interpreted in several jurisdictions as limited to the sales within the museum premises. That raised the question when there was a joint partnership with publishers. He believed that that was the case for catalog exhibition catalogs, and in that type of publishing, that raises the question whether the publisher was doing commercial activity while the museums might have more advertisement or permissible nature activity, and therefore in some jurisdictions that might be prohibited or at least museums might not benefit from that exception. Though that was evident in some jurisdictions, he added that there were other jurisdictions perfectly fine and broad enough to cover that joint mentorship with publishers.

AGENDA ITEM 9: OTHER MATTERS

Digital Environment

211. The Chair opened the floor on the discussions pertaining to the proposal of a study on digital music services that had been requested by the Committee. Updates were presented on the status of the study.

212. The Deputy Director General noted that with relation to the analysis of copyright related to the digital environment contained in document SCCR/31/4, in May 2018, the Committee had

welcomed the proposal of the Delegation of Brazil that an initial study be undertaken focused on digital music services and requested the Secretariat to present the modalities of the study which were discussed and approved with minor amendments during the previous SCCR.

213. The Secretariat provided some background on the agenda item introduced by GRULAC in September 2015 and contained in document SCCR/31/4, which among other elements, highlighted that a more embracing analysis regarding the issue was necessary. As initial steps, the Secretariat had prepared a scoping study on the impact of the digital environment for copyright legislation adopted between 2006 and 2016 and had organized a brainstorming exercise in May 2018 whose results were presented to the Committee. As already mentioned, the SCCR requested to prepare modalities of a study on digital music services on the basis of a proposal by the Delegation of Brazil and identified the music sector as the first area to be covered the Committee, leaving opened the possibility for further studies covering other areas such as audiovisual and literary sectors. During the previous session of the SCCR, the Committee had discussed the modalities of a study on music digital services contained in document SCCR/37/4 and which was approved with some amendments. It was discussed that the final international conference to present the results of the study would be organized subject to further consideration. Among the amendments put forward, the Committee had also agreed to extend the deadline to submit on a voluntary basis relevant information to be taken into account in the preparation of the study from December 31, 2018 to March 31, 2019. The Secretariat revealed that it had received contributions from eight observers, representing various stakeholders in the music sector and from one Member State. The Secretariat took the opportunity to thank each contributor for some very useful and rich submissions. Considering the compelling relevance of the matter at stake, the clear interests expressed by many members of the Committee, it encouraged all interested parties, both Member States and observers, to engage proactively in that process, including by sending submissions after the deadline. In accordance with the modalities, before moving to specific issues such as the chain of rights and the value chain, the Secretariat added that the scoping study would start by attempting to provide a novel description of the online music market and main business models that were emerging around the world. That preliminary introduction was going to be prepared on the basis of publicly available information, voluntary submissions to the Secretariat and exchanges between the Secretariat and stakeholders. The Secretariat stated its objective to present the preliminary part of the report, for the Committee's consideration, at the following session of the SCCR.

214. The Chair opened the floor for discussions on that topic.

215. The Delegation of Croatia speaking on behalf of CEBS recognized the importance of discussions on the digital environment. CEBS aligned itself with the Delegation of Brazil's proposal for the study on musical digital services. It added that it found it and those on rights, licenses, practices, collective management very pertinent.

216. The Delegation of Uganda speaking on behalf of the African Group acknowledged the Secretariat for preparing a presentation of the report concerning an update on the study on copyright protection for the music industry in the digital environment. The African Group recalled that in 1998, there was an establishment to consider certain matters and emerging issues in the field, and the impact of digital technology and global information networks on copyright and related rights. For the African Group, it was a no brainer that the Committee among other issues, should include that issue on its work program for future sessions. The Group acknowledged GRULAC for submitting the proposal for analysis of copyright protection in the digital environment as well as the Delegation of Brazil for submitting the proposal specifically on the study for protection of copyright for music in the digital environment.

217. The Delegation of Brazil revealed that the issue of creators of protected works in the digital environment was a matter of interesting discussions with particular regard to the recent

approval of the U.S. music modernization act. Notably, it reiterated the single market discussion within the European Union, which was generating positive conclusions. The Delegation was happy that that issue was being tackled by many jurisdictions. It noted that the fair remuneration of authors in the digital environment was one of the fundamental issues. There were many formats for ensuring the adequate remuneration, but the common point was to provide additional information to rightholders on the value chain related to the use of their copyrighted works. The Delegation reiterated that transparency was important as it allowed for negotiations among themselves and other stakeholders and parties in the digital environment to negotiate mutually beneficial contracts and also be able to find better ways to use the work so that users were also benefiting by enabling broader availability of works. The Delegation observed a concrete need to develop a common understanding on the studies presented. Regarding the other areas highlighted in document SCCR/37/4/ Rev. and adopted by the Committee at the previous session, it noted that the initial copyright study would be very useful and pushed for more clarity on the timeline regarding the other three areas that were under the scope session of the document.

218. The Delegation of Senegal aligned itself with the statement made by the Delegation of Uganda on behalf of the African Group and shared its support for the proposal.

219. The Delegation of Argentina declared that it was important to examine the universal criteria for defining repositories simplifying the way it was managed. It noted that having minimal rights and minimum rightholders which complicated the life of countries that did not have a platform and that often were users of other people's platforms. The Delegation explained that better and simpler management procedures were realized when information managed collectively was then disseminated. The criteria applied was not always uniform and it was very difficult to get ahold of information at the moment. Though there were a number of challenges in terms of protection of copyright in the digital environment, it offered many opportunities. The Delegation urged members to analyze the underlying principles in the digital market in order to protect the rights of and foster the work of creators and performance.

220. The Delegation of Botswana aligned itself with the statement made by the Delegation of Uganda on behalf of the African Group. The Delegation expressed support for the topic to be included in the work of the Committee.

221. The Delegation of the European Union reaffirmed its stance that the issue of copyright in the digital environment merited attention and discussion in order to ensure that copyright could be more efficiently protected in the digital era. In that regard, the Delegation of the European Union thanked the Delegation of Brazil for the interesting proposal for a possible study on digital music services and looked forward to further updates.

222. The Representative of the African Regional Intellectual Property Organization (ARIPO) aligned itself with the statements made by the Delegation of Uganda on behalf of the African Group. It acknowledged the analysis of copyright on the digital environment. ARIPO reaffirmed that the digital environment offered new opportunities for growth and undertaking of the study on digital music services was evidence-based information that added value to the Committee's work.

223. The Representative of the International Federation of Library Associations and Institutions (IFLA) recalled the introduction of the document setting up the modalities on the study on musical services followed the proposal of GRULAC at the previous SCCR. IFLA noted the importance of discussions underlining the complexities that often reigned in the digital world with copyright laws and cross-border issues. IFLA expressed the need to focus on the interests of creators and public interest users, not to be confused with those of intermediaries and looked forward to the results of the study. IFLA urged for the need to consider other sectors not limited

to musical works. It urged members to provide relevant insights. It revealed that the work of the authors interest project in Australia was currently providing some fascinating insights on that subject and hoped it would be possible to explore that at during the following meeting.

224. The Representative of the Ibero-Latin American Federation of Performers and Artists (FILAIE) stressed that there was the need to make movement on other parts almost simultaneously. Citing the Delegation of Brazil's submissions, it noted the best way to deal with the issue should be to look at the whole value chain, the chain of rights and the mechanisms for the exchange of data, which operated in music in the digital environment. The report on the music market between 2008 and 2018 showed that there had been a record increase in income of 10% and that was a lot of money involved. Streaming services accounted for 47% of the total amount of income. The music industry was beginning to change in terms of its income but performers and artists were seeing their income dropping and there was a problem with lack of transparency and information on the online programs that tended to add the figures relating to income that performers receive and that needed to be taken seriously. FILAIE thought it should be a standing item on the Agenda so that enough time could be devoted to it. Licenses, mechanisms for exchange of information, value chain and the business model all need to be looked at together.

225. The Representative of Latin Artis speaking on behalf of actors and other Spanish-speaking artists expressed appreciation for considering its position as a result of the use of performances in the Digital Environment which was described perfectly by GRULAC. It suggested that the proposal should be carried out in accordance with the mandate of the Committee so as to carry studies on the audiovisual environment in the future. Latin Artis expressed that actors and other performers were facing the same problems as musicians as well as dissemination services. It added that it was essential that guarantees were given to performers and creators so that they received remuneration in the Digital Environment. That would mean providing a framework that would give them a fair share of the financial profits that were gained from the use of their performances and creations. The Representative cited the Beijing Treaty, which offered a solution in Article 12, noting that it would help in achieving the SCCR objectives if applied properly in various national laws. It advised that it was not necessary for reinventing the wheel, as there were good examples in the existing framework.

226. The Representative of the Asociación Argentina de Intérpretes (AADI) elaborated on the remuneration problems that artists and performers faced in the digital environment. Even if streaming and public communication were expected to provide performers and artists with meaningful remuneration it was not the case. AADI stated that it was essential that the status be carried out and that existing solutions in national laws be brought forward to address that issue. International components which protected the remuneration of performers and artists needed to be handled internationally as it affected the creativity of artists and performers in the digital environment. It was not a technology issue, and artist rights should be respected as they had been in the past by producers and users. AADI urged for collaborative efforts to remedy the injustice of performers and artists not receiving remuneration for the use of their work and stressed the need for remuneration in the digital environment.

227. The Representative of the International Confederation of Societies of Authors and Composers (CISAC) welcomed the proposal from the Delegation of Brazil to undertake a study on the digital music services. In line with the communication of the brainstorming exercise introduced at the thirty-fourth session, CISAC underlined the importance of analyzing the digital impact of the rules on liability of Internet platforms, which exploited creative works. The Representative noted that the recent adoption of the copyright directive was an important step forward in the right direction. It believed that the future work of the Committee would be inspired by the recent developments in the European Union.

228. The Representative of International Authors Forum (IAF) stated that creative works had

become widely used in the digital environment and thanked Member States who acknowledged the importance to foster the work and remuneration of creators. It commended efforts of a thorough investigation into the value chain of works used online and considered in the scope of the study and looked forward to the analysis of the study.

Resale Right (droit de suite)

229. The Chair recalled the discussions on the topic of resale rights during the thirty- sixth session of the SCCR held in May 2018 when the Committee agreed that it would set up a task force to look at practices and share insights on the practical issues involved in the resale right. The first meeting of that task force was held in December 2018 in Geneva.

230. The Secretariat shared some information on the participants of the task force and the Member States, which participated in the meeting including a university from Australia, a representative of artists from Mexico, the director general of the collective management organization from France, a lawyer and representative of fine arts from Geneva, amongst others who took part in the meeting. The representatives from the SCCR included the Chair, and the two Vice-Chairs and the group coordinators; the Delegation of Senegal represented the African Group, the Delegation of Croatia represented CEBS, Croatia, the Delegation of Chile represented GRULAC, the Delegation of United States of America represented Group B. As regards the proceedings, the mandate of the task force was not to address and solve the political issues raised by the artist resale right but to rather consider the practical issues of that right. To that end, experts from different angles and different interests were invited in order to enrich the discussions and to try to find some common ground for that project as well as to enrich the SCCR. At the outset of the meeting, there was a professor who gave a presentation on the international legal framework applicable to the artists resale rights. That was followed by a presentation from the perspective of the auction houses regarding the points to be taken into consideration when regulating on the artist resale right. Also, there was a presentation on the essential points of the European and French systems of the artist resale right. Those presentations were followed by a day-long discussion on the essential elements of the artist resale right as listed in document SCCR/37/5. First of all, the works covered by the right, the determination of the artist resale right, the modes of collection and distribution, the management of the right, the liability for the payment, the transactions to be covered. The first meeting of the task force aimed at getting the participants to know each other and to also prepare the ground of the work for the task force. The task force identified the limited number of key issues for further consideration and analysis. First of all, to provide further information on how the artist resale right was implemented and the impact on those activities. Further, to provide factual, economic information on how the artists resale right would impact the price of first sales from artists at the beginning of their career, to address the categories of certain special works to be possibly covered such as manuscript, digital works as well as the implications of their possible exclusion, to analyze the structure of the protection in national laws, and whether laws should be open ended with further items to be added through regulations, to analyze the various rates provided in legislations and tapering scales, to look at the burden of the payment of the right and also to provide examples of categories of the artist resale right countries where auction houses were charging the sellers and analyze the consequences of each option. There was also a discussion on how to provide more in-depth information on the various ways that the rights were managed in Australia and France, which had the most developed systems of protection and modes of collection and distribution, including as regards the management of the right for cross-border transactions. Also, to identify legislative examples where individual management of the artist resale right was provided by law, and also where collective management was made mandatory. To analyze the consequences of both sides of the management, to assess the economic implications of the right on the import of artworks, and also finally to further consider management cost issues, including issues of quality of the information provided for the implementation of the right and how to ensure report tracking. All

those issues were connected to the enforcement of the artist resale right. The Secretariat noted that it was a work in progress as other topics could be suggested to members of the task force and representatives from regional groups. Members of the task force had already agreed to work in subgroups on specific topics identified. The Secretariat expected that the task force would continue its work in 2019 and an updated report would be provided during SCCR 39.

231. The Chair opened the floor for comments by group coordinators, Member States and observers.

232. The Delegation of Uganda speaking on behalf of the African Group reaffirmed its support for the longstanding proposal of the Delegations of Congo and Senegal to include the artist resale right as a standing agenda item on the future work of the SCCR. The African Group indicated that the importance of the Committee's work it could not be overemphasized on the basis of opinion expressed by Member States and other stakeholders, as well as other rightholders and users of the copyright system. It acknowledged the progress made since the submission of the proposal during SCCR 31 and acknowledged Member States and other stakeholders who engaged in the proposal. The report of previous SCCR sessions indicated that there was overwhelming support for the proposal from the broad section of Member States. It revealed that the task force had started analyzing the issues put to it and was hopeful that its work would contribute to clarifying issues for Member States and other stakeholders. It also looked forward to the updated report that would enable the Committee to make substantive decisions. The African Group pointed out that the artist resale right in the Berne Convention was an optional provision as such protection was only guaranteed to countries that offered that reciprocal protection. Given the optional nature of resale royalty right, regimes by nearly half of the membership recognized it, but there was a need for the resale royalty right to be mandatory. The African Group supported that the resale right proposal be included on the agenda of the SCCR for the following reasons: first, to ensure that more artists receive fair remuneration for their creation and improve fairness for artists across the globalized market regardless of where they live or where their work was sold; second, to ensure equity by aligning the rights of visual artists with those of other creators by allowing artists, including indigenous artists to receive additional compensation from sales on their original work; third the issue of exclusive rights. Even if that did not provide guarantee of reward or continued income, at least it implied the prospect of receiving some share of the proceeds for the exploitation of their work if it was with the public recognition and demand. That right did not take away from the reproduction right which would only be beneficial to the struggling rightsholder; fourth, the implementation of the WIPO study on the economic implications and artist resale right. The African Group indicated that the artist resale right, was a royalty system and not predicted or paid by governments. The African Group added that it saw a strong case for the Committee to approve the inclusion of the artist resale right on the future work of the Committee and expressed that it remained pragmatic and would continue to engage on that issue constructively.

233. The Delegation of Croatia speaking on behalf of the CEBS Group thanked the Delegations of Congo and Senegal for opening such an important topic as the resale right at international level, in particular as part of the SCCR Agenda. The Group reaffirmed its commitment and support for discussions on that matter.

234. The Delegation of the European Union expressed support for the Delegations of Senegal and Congo for the proposal to include the resale right in the agenda and reiterated the importance to the resale right, which has formed part of the European Union's legal framework for more than a decade. The Delegation reaffirmed its commitment to provide dedicated legislation applicable that reflected complex experiences to draw from. It recalled the proposal to include the topic in the agenda at SCCR 27 and was tabled at SCCR 31. For that reason, the Delegation believed that priority had to be given to the resale right over any other topic should the SCCR Agenda be expanded to cover additional items of the future. It urged all delegations to support the proposal from the Delegations of Senegal and Congo to accept the inclusion of

the resale right as a self-standing item on the agenda of the SCCR.

235. The Delegation of Argentina noted that it was very much in agreement with that topic and requested that it was outlined in the studies.

236. The Delegation of Senegal explained that the resale right was the need to associate the artist with the success of his work. It noted that artists should receive remuneration through the resale right. It noted that about ten years ago, when authors sold 10,000 to 20,000 copies, they did not get much above the first sale rights, which was a copyright issue. It suggested that in the rights of the original author or artist, there should have a permanent link as those that copyright established between the author and his work. The implementation of the resale right in the era of globalization was very crucial and needed to be taken into account in the future as it remained the longest standing topic on SCCR Agenda. It noted that more than 80 countries had adopted or incorporated resale right in their legislation. The Delegation urged the Secretariat to provide sufficient resources for the task force to enable them to intensify their work.

237. The Delegation of Gabon aligned itself with the statement made by the Delegation of Uganda on behalf of the African Group. It expressed its support for the agenda item especially towards the economic impact of the resale right. Gabon was one of the countries which had adopted the resale right in its copyright legislation. The art market was one of international speculation and had been a key point of the discussions of the Committee and needed an international rule to govern it. Putting the artist at the forefront of those market flows, it propounded for the establishment of a task force to work on that with the Secretariat for the presentation of the preliminary report. It emphasized that to achieve best possible outcomes, it was imperative to outline it as a separate and priority agenda item of the SCCR.

238. The Delegation of Botswana aligned itself with the statement made by the Delegation of Uganda on behalf of the African Group. The Delegation added that it supported the proposal made by the Delegations of Senegal and Congo for the inclusion of the topic of resale right and on the agenda of the SCCR presented to the Committee the previous year. As had been discussed, the value of an artist's work multiplies over time and that benefited those that truly sold their works more than the artists themselves. The Delegation stated that presentations had also shown that the resale right brought adverse effect on the market. As a result, a good number of WIPO Member States either had resale right or they had thought about including it. It cautioned that resale right could no longer be left to reciprocity, but it was time for a harmonized approach and that could only be achieved if the SCCR included that discussion of resale right on the main agenda. The Delegation suggested that the issue of resale right should be prioritized and stated that it had the evident support of the European Union.

239. The Delegation of Ghana aligned itself with the statement made by the Delegation of Uganda on behalf of the African Group in support of the proposal by the Delegations of Congo and Senegal for the addition of the resale royalty right to be included as a standing agenda item of the SCCR, noting its importance. It acknowledged the work of the Secretariat and expressed keen interest on the report of the task force.

240. The Delegation of Brazil expressed its support on the topic of resale rights in that Committee as it believed it was closely related to the topic of the digital environment in the sense it properly rewarded authors and creators for their work. It called for the resale right and digital environment to become a specific agenda item on the agenda of that Committee. That it believed would allow more focus on those recurring issues.

241. The Delegation of Gambia aligned itself with the statement made by the Delegation of Uganda on behalf of the African Group and stated its support for the proposal submitted by the

Delegations of Congo and Senegal to include the resale right on the SCCR agenda. It noted the full implementation of the economic community of the states, which allowed for freedom of movement of recent services within the sub region, which it believed, would allow for ease in labor markets. It urged members to support the labor market in order to improve the availability and solve other economic challenges.

242. The Delegation of Morocco aligned itself with the statement made by the Delegation of Uganda on behalf of the African Group. The Delegation was aware of the importance of the resale royalty right and the reestablishing of the balance between the economic situation of authors of arts and other creators who were able to benefit from the use of their works and therefore worked on the encouragement of creativity on visual arts to enable those artists to be remunerated in the best way from the resale of their works. The Delegation referred to the study made by professors in previous SCCR sessions, a major highlight which was that the resale right had no negative impact on the aftermarket. The current international rules on resale right that were highlighted in the Berne Convention, were an optional opt-in. The Delegation believed that the artist resale right had to be included as a standing agenda item of the SCCR.

243. The Delegation of Côte D'Ivoire aligned itself with the statement made by the Delegation of Uganda on behalf of the African Group. It stated that the resale right was included in Côte d'Ivoire's legislation and proposed that it should become a standing agenda item of the SCCR. It noted that in Africa and other countries in general, it was within the informal, unregulated mass market, and therefore the solution on the economic aspects of the resale royalty right was one that should establish a permanence between the artist and the work. It was essential because the traceability of works was a huge challenge there were certain countries such as France, which were recognizing the returning of cultural goods, which were taken out of our nations in the colonial period. The Delegation believed that in the same way, links had been made between the artist and the work and it needed full recognition that international law, through an international legally binding instrument so that there would be no further injustice in the art market with regard to the original author receiving the benefits of the work. The Delegation believed that it would encourage creativity among artists. It called for good will and a positive approach from all party's void of egoistical concerns as the contribution of all and a good working of the international system was indispensable. Therefore, the recognition, at an international level, of the resale right would permit other advantages to artists, visual artists, graphic artists, plastic artists, and would not have a negative impact on the international art market but would improve traceability, which should be dealt with as a separate agenda item as well as the digital environment.

244. The Delegation of Japan noted that it did not have the artist resale right in its national legislation. Therefore, it believed the discussion on the artist resale right and its mechanisms may be useful to underline and discuss objectively. It added that the opinion of the stakeholders, the expert task force would be helpful for a deeper understanding. The Delegation noted some important points: the kind of transactions to be subjected to the artist of resale price, the right to understand the timeline, the governing law, the nationality of the seller, the location of the work, the residence of the buyer were important issues for the international transaction. It noted that that was important for understanding the practical aspect of the artist resale right for further discussion. Notwithstanding, from the point of the protection of artist, the artist resale right, was not the only measure to protect artists under the copyright system as a protection system or other measures besides the artist resale right should be considered. The Delegation reiterated that priority should be given to the protection of broadcasting organizations as it had been a long-standing issue and cautioned that introduction of new topics as a standing item may reduce the time for the discussions on the existing agenda, especially broadcasting authority.

245. The Delegation of Tunisia aligned itself with the statement made by the Delegation of Uganda on behalf of the African Group and reiterated its support for the proposal tabled by the

Delegations of Senegal and Congo to the effect that the resale right be a standing item on the agenda. The Delegation was one of the countries that had included the resale royalty right in its national legislation, dealing with literary, artistic works and related rights. It organized a seminar in cooperation with WIPO in 2017, which dealt precisely with the issue of the resale right and at that seminar, artists and various stakeholders in the international art market were present. The Delegation believed that the resale royalty right would give reasonable remuneration to both graphic and plastic artists for their original work, create more opportunities and promote growth in the art market.

246. The Delegation of United States of America commended the efforts of the Secretariat on update of the work of the resale royalty right task force, which drew on the diverse national law and practices in that regard. The Delegation highlighted that the resale royalty right had been the subject of discussion in the United States of America. It added that in 2013, its copyright office issued a revision of the earlier report, *droit de suite*, the artist resale royalty right. It stated that, as stated by the Delegation of Japan, it was not among the WIPO Member States, which had implemented the *droit de suite* at the domestic level. The Delegation of United States of America affirmed its interest in the topic and called for substantive discussions. Nonetheless, owing to other pressing matters before the Committee, it was not able to support the inclusion of the resale right as a standing Agenda Item.

247. The Delegation of Kenya aligned itself with statement made by the Delegation of Uganda on behalf of the African Group. The Delegation attached great importance to the resale right because it was an expression of the spirit and the soul of the artist in Kenya. That was reflected in the fact that Kenya was now amending its copyright law in order to incorporate that particular right. The Delegation was convinced that the works of artists could be fairly, optimally exploited across the world if they were anchored on an international instrument. That would create a fair global architecture in which creators of such artistic works were adequately protected and remunerated. The hierarchy maintained that the international community was better served from the known before it was to the unknown solutions. It was on that account that the Delegation wished to thank the Delegations of Senegal and Congo for their proposals on that matter and expressed its unwavering support to that end. Additionally, the Delegation thanked the Secretariat for organizing the task force and hoped that whatever resolutions were made would assist that Committee in formulating the way forward.

248. The Representative of the African Regional Intellectual Property Organization (ARIPO) aligned itself with the statement made by the Delegation of Uganda on behalf of the African Group. It supported the proposal made by the Delegations of Senegal and Congo on the resale right and encouraged the ARIPO Member States to support and contribute constructively to the proposal to include the resale right in their national legislations and put in place or strengthen the institutional structures to look at the resale rights.

249. The International Federation of Actors (FIA) underscored the fact that the traditional copyright system, which was strongly based on exclusive rights did not guarantee creatives their economic benefits, allowing them to live from their creative work. That was because there was a great lack of proportion between their negotiating power and the negotiating power of the producers that hired them. In most of the cases, unless artists were strongly collectively represented or had sufficient professional standing to have influence, which was not always the case, those rules were yielded on a permanent basis. The Representative noted that the industry seemed to want to concentrate the rights in the house of producers to use the work. It was essential to think about mechanisms, which would guarantee the viability of the cultural industries which allowed members to live from it. The Beijing Treaty had been a step forward because it provided the framework for the transfer of rights and limited unfair and unacceptable contractual practices and ensured that value was equitably shared. It urged members of WIPO to take the necessary steps to ensure a more equitable copyright and as far as the Beijing

Treaty was concerned, to ratify it while making the most possible use of Article 12, Paragraph 2 so that it no longer faced that question of business as usual for artists and performers. For them, business as usual, really meant the rights being abused. Their only contractual right was for them to agree to sign a contract unilaterally imposed by visual audiovisual producer.

250. The International Federation of Journalists (IFJ) strongly supported the call originating from the Delegations of Congo and Senegal for the artist resale right to be included on that Committee's agenda. It thanked the Committee for the report of the work of the task force and looked forward to that work continuing in parallel with and in support of the work of that Committee. He noted that it had heard the calls advocating for balance, and as a writer and particularly as an editor, he had a strong attachment to words having clear meaning. The Representative stated that as that was the first proposal in many years to support creators and creativity, the work had been unbalanced and adoption of that item would be a step to balancing it. The international nature of the art market made that an issue on which an international instrument was absolutely necessary, and work had to proceed as rapidly as feasible, and delay would deprive artists of the rewards they deserved. The IFJ associated itself with the IFA statement on unfair contracts and imbalanced negotiating power.

251. - The International Author Forum (IAF) thanked the Member States who had supported the resale royalty right, particularly the Delegations of Senegal and Congo, for the proposal to include the resale royalty right as a standing item on the future agenda of the SCCR. The Representative thanked all the Member States who supported the statement of the African Group on the international importance of the resale right as how the resale right could support artists as a matter of international fairness and balance. He supported the work of the task force through the expertise of members who managed, supported, hoped to establish the right in their country. It noted that resale royalty right could give a fair contribution from the global art market to the community of the creators and it was important that artists in all countries could benefit from the resale of their creations as in every country artist creation was respected and encouraged. The Representative supported the comments of the delegations regarding the importance of adding that issue on the agenda.

Rights of Theater Directors

252. The last topic under Agenda Item 9 on other items was the proposal from the Delegation of the Russian Federation on the strengthening and protection of the rights of theater directors at the international level. That proposal was submitted by the Delegation of the Russian Federation during the thirty-fifth session of the SCCR and was contained in document SCCR/35/8. During the thirty-sixth Session of the SCCR, the Committee asked the Secretariat to launch a study on the protection of theater director rights and the modalities were presented in the previous SCCR in November. Document SCCR/37/3 contained some elements of the initial work undertaken by the Secretariat.

253. The Secretariat indicated that following the approval of the modalities by the Committee last November, the secretariat launched the study with Professor Ysolde Gendreau from the University of Montreal and Professor Sergo from the Russian State Academy of Intellectual Property of Moscow. A pragmatic approach has been adopted. That study needed to contain concrete examples that should enable Members States to better understand the legal issues that theater directors were confronted in various countries. It was also agreed that the authors would study geographically diverse contexts. A presentation on the first reflections on the subject was proposed.

254. The Chair invited the Director of the Russian State Academy of Intellectual Property and the two professors to make their presentation.

255. The Director of the Russian State Academy of Intellectual Property, Professor Gendreau and Professor Sergo made a presentation on the legal issues theater directors were confronted with in various countries which can be found at **(Friday, April 5, 2019 Morning Session):** <https://www.wipo.int/webcasting/en/?event=SCCR/38#demand>

256. The Chair opened the floor to questions with regard to the presentation made by The Director of the Russian State Academy of Intellectual Property and Deputy Director of the Copyright Department.

257. The Delegation of Senegal noted that Russia was a country with a great theatrical tradition and advised that members were very attentive about the legal issues surrounding the theater practices. It stated Article 6.2 of the Senegalese law read as follows: Intellectual creations of a literary or artistic nature shall be considered works of the mind within the meaning of the present Law, in particular: dramatic works and other works intended for stage presentation and productions thereof. That meant that stage directors were protected by copyright under the Senegalese law. In legislations of other Francophone African countries, they had the same approach and stage directors were protected under copyright. In particular, it should be noted, in the implementation of that law, there was the issue of big rights and little rights which did not actually work in practice. In France, for instance, major works, have greater rights and go through collective rights management. However, it noted that in Senegal, it does not work like that. Through the collective measurement of rights. However, the principle could be excluded. For instance, in a recent example of opera, produced in Senegal, proposed that system of collective management of rights, but unfortunately, it did not work. Though the modalities were different, the principle of the right was not in question. The Delegation asked what issues prevented countries from giving theater directors copyright protection so that they can have remuneration for the use of their works.

258. The Delegation of Canada noted that the situation was that there were places where the stage directors were protected as performers and a reason for the Delegation of the Russian Federation's request for a study as there were different options right now around the world. The Delegation noted that it was necessary to see why in some countries they protect stage directors as through performer's rights. That would help to appreciate what may be the obstacles to protect as an author and would ensure countries with different approaches were excluded. Once all their views and observations were identified, then the interest in having a form of protection can be established. The Delegation expressed that it was not opposed to the idea of protecting stage directors through author's right. It believed that would be a means to reflect the various options that existed and to make sure that if a decision was made with respect to protecting stage directors as authors, that people would know that other options were existing and that that would involve changing the law in some countries from a performer rights status to an author's rights status.

259. The Delegation of Argentina noted that there were countries where the definition of work was very broad. Notwithstanding, the basic request was originality. Based on that premise, would they actually need additional protection if the director can demonstrate that his work, his creation was original and that could be included and what elements need to be included to demonstrate that and consider that copyright without having a new national or international regimen for stage directors.

260. The Director of the Russian State Academy thanked Senegal for their comments and added that it would take that experience into account as well as a study any material that was provided by the Delegation. Referring to comments from Canada, he noted that it was important to understand in what cases to give a higher level of protection to the rights of the directors. It pointed out that in Russia, they have gone the route of providing protection through related rights. However, it stated that it understands that the level of protection provided by

copyright or author's rights was likely to be higher and indeed the term of the protection was likely to be longer than under related rights. The Director indicated that it wasn't ready to give its final conclusions or recommendations as to what type of right was better to use for protection, related right or copyright as there was the need to reach consensus together to define exactly what was most logical, most appropriate, most accessible in order to provide protection for those rights holders. He believed that agreement would be reached on the premise of copyright or related rights and indicated that the concerns raised by the Delegation of Argentina was the reason for undertaking the study. He stated that in identifying what kind of protection a state director had, it was necessary to explain the various bases on which that protection rested. Additionally, if it was a protection through author's rights or copyright, then it meant that it was considered that what the stage director did was a work. Therefore, it was essential to clarify what the components of that work involve. The Director noted that it was quite easy to identify various elements part of the activities that a stage director has to do in order to create his stage direction. So perhaps a mere understanding of what a stage director's activity was a conclusion to be addressed and what the work entails. That explained why the notion of work has to be interpreted so as to include the work of a stage director. The Director added that he understood Russia's reason for suggesting the topic to WIPO and hoped that everyone involved was working on a common field of understanding. But up to now if it was not, it was known worldwide that a stage director's activity was the nature of a work. He believed that was because it requires to be made more explicit and that was a very important component of the work been done, knowing that in some countries they were protected as performers.

261. The Delegation of Belize noted that within the selection of countries, no country from the Caribbean was mentioned as a selection for the study. Without recourse to highlight its culture and also some theatrical components, Belize asked for a revisit to select some countries within the Caribbean as part of the study.

262. The Representative of Corporacion Innovarte noted that it was important to determine the nature of the protection and whether it was under copyright or related rights. The study needed to incorporate elements on contractual practices.. He noted that it was really important to know the nature of the work and the actual rate of the contribution of the stage director .

263. The Chair stated that looking at the contractual practices was important because it was one thing for the law to say that one was protected but then it was another to see if the contracts actually reflect that willingness to recognize stage directors through a scheme or through one type of right or another. Many people were involved in stage productions, and that was a very interesting factor to take into consideration because stage directors were not alone in the work. Recognition as author or performer or as a rightsholder was one thing, but beyond that one had to think about the status as a single author or as an author among many others that might also have rights to claim.

264. The Russian State Academy thanked all members for sharing great insights and posing interesting and very important questions. He noted that it would take into account all their observations and concerns. He pointed out that that was a very interesting issue for the further development of copyright and was convinced that they would be able to make a substantial contribution to providing protection to the rights of stage

265. The Delegation of Croatia speaking on behalf of the CEBS thanked the Russian Federation for their proposal on the strengthening the rights of the theater directors at international level. It noted that majority of CEBS members have regulated that issue at the national level but was grateful for the report on new developments on the study undertaken by the esteemed Professors.

266. The Delegation of the European Union noted that as regards the proposal from the

Delegation of the Russian Federation with regard to strengthening the protection of theater directors rights at the international level, the European Union have taken note of that proposal and the subsequent presentations, and listened with interest to the presentations on the interim report on that complex topic, and acknowledged the professors. The European Union looked forward to hearing more about the scoping study to be presented at SCCR 39 and affirmed its readiness to engage in preliminary discussions.

267. The Delegation of the Russian Federation welcomed the work being done in the study on the rights of theater directors. It added that the presentations and the plan for the carrying out of the work seem to be fully detailed, and it would appear that the research, the investigation was being done in a comprehensive way as they were not only looking at the legal systems which exist in individual countries, but the way in which the laws actually were applied and mechanisms used. The Delegation called for a balance in respect of protecting the rights of theater directors because often, they did not have sufficient protection, at least in some individual states. It supported the need for the study to be continued and concluded, and urged that considerable attention needs to be given to the relationship between Member States and their cooperativeness in providing information. After all, any Member States can provide information on their legal system. That information was required to make the study as full and detailed as possible. It hoped that further discussions would be held on that matter further at the SCCR.

268. The Chair stated that the Committee had reached a consensus on the recommendation that would be given to the General Assembly. The Chair requested that the Secretariat read the recommendation.

269. The Secretariat read: In view of the steady progress made in recent SCCR sessions, the General Assembly invited the SCCR to continue its work towards convening a Diplomatic Conference for the adoption of a treaty on the protection of broadcasting organizations, aiming for the 2020, 2021 biennium subject to Member States reaching consensus in the SCCR on the fundamental issues including specific scope, object of protection and rights to be granted.

270. The Chair noted that the language represented and reflected the progress that had been made in the discussions on the agenda item, since recommendations were made to the General Assembly a year ago. The Chair noted that discussions, continued to be technical, there continued to be good suggestions and a lot of drafting proposals made by interested countries at each round. The Chair hoped that the recommendation, which would also include an aiming sort of time frame, would encourage everyone to bring their expertise to the negotiations and that would in turn allow the Committee to have good discussions at each round, and that would allow to be in a good position to recommend something positive, subject to consensus on the issues that the Committee would have to land on. The Chair thanked everyone for their constructive spirit. Moving ahead, he requested that the Committee review the summary of the Chair. He stated that he had tried to reflect, as accurately as possible, a factual record of what had occurred during that meeting. The Chair requested that the Secretariat read each paragraph.

271. The Secretariat read the summary of the Chair.

272. The Chair shared a couple of reflections in view of some of the comments and some of the observations raised regarding the progress and the results of the last few SCCRs including that one. Concerns were raised on how inter-sessional work would be conducted on the broadcasting treaty, as the negotiations continue to be technical, but there may be room for the Chair to play a slightly more active role to help to facilitate and bridge differences. The Chair indicated his readiness to bridge that gap through the Friends of the Chair process. He indicated that he would provide non-papers during inter-sessional to forestall some of the

difficult technical issues. The Chair pointed out that a lot of effort had been invested into Regional Seminars by the Secretariat and thanked them for their commitment and continued support. The Chair wished all participants attending the Regional Seminars the best of luck and looked forward to welcoming members to Singapore for the first session for the Asia and Pacific region.

AGENDA ITEM 10: CLOSING OF THE SESSION

273. The Chair opened the last agenda item, the Closing of the Session. The Chair opened the floor for regional coordinators and Member States to make closing statements

274. The Delegation of Croatia speaking on behalf of the CEBS Group thanked the Chair and Vice-Chairs for their guidance throughout the SCCR thirty-eighth session. The Delegation also acknowledged the Secretariat, interpreters as well as the conference services. It acknowledged the various inputs from the Member States and professors for their presentations. It also showed support for constructive discussions of different stakeholders on the protection of broadcasting organizations. The Group affirmed its readiness for constructive engagement in future SCCR discussions.

275. The Delegation of Indonesia speaking on behalf of the Asia and Pacific Group commended the Chair, Vice-Chairs, the Secretariat, interpreters, conference services and Secretariat teams for their guidance and extensive work. The Delegation also thanked Member States for continued collaborative efforts towards deliberations. The Group welcomed the progress made on agenda items from broadcasting organizations, limitation and exception as well as in the other matters. It looked forward to the Regional Seminar for the Asia and Pacific region at the end of April in Singapore, to enable participants to analyze the situation of all the stakeholders library archives museum as well as educational and research institutions in our region.

276. The Delegation of Guatemala speaking on behalf of GRULAC commended all stakeholders for extensive and collaborative efforts towards progressive discussions. The Group acknowledged the Chair and Vice-Chairs for the constant support and back up received from the Secretariat. The Group expressed that it was happy that a consensus had been reached on the recommendation for the forthcoming General Assembly regarding the protection of broadcasting organizations. The Group hoped that it would be able to continue discussions as positively on those issues. On exceptions and limitations to copyright and related rights, it acknowledged the excellent presentations on the various typologies and the updates received on the studies carried out and other activities under way. It believed that the results would continue to be valuable for the discussions. It showed great interest to the forthcoming regional meetings on exceptions and limitations which to be held between April and July in Singapore, Nairobi and Santo Domingo. The Group believed that the conclusions would provide insightful contributions to the continuing work on those topics. The Group expressed gratitude to the various delegations and regional groups who participated and showed constructive attitude and provided valuable contributions during the course of the week. It acknowledged the efforts of the interpreters, the conference services for their dedication and professionalism.

277. The Delegation of Canada speaking on behalf of Group B thanked all stakeholders for their invaluable commitment and contributions throughout the session of the SCCR. It welcomed the constructive technical discussions held on the protection of broadcasting organizations and acknowledged the level of engagement of Member States and also noted the excellent cooperation with other Regional Coordinators in a constructive spirit that helped reach a consensual decision on broadcasting. The Group welcomed the presentations regarding the studies and typologies in relation to limitations and exceptions, as well as other presentations and commended the respective authors. The Group pointed out that a regional group called in its opening statement for the SCCR to report to the General Assembly on its contribution to the

implementation of the Development Agenda. The Group noted that there were established and agreed practices for the consideration of such issues and advised that those practices should therefore be followed. It reiterated its commitment in a bid to promote progressive discussions.

278. The Delegation of China commended the Chair and Secretariat as well as delegations and staff for their hard work and participation in achieving the results on the agenda item despite differing notions. The Delegation stressed that it would continue to show constructiveness in a bid to promote the framework of SCCR agenda items.

279. The Delegation of Uganda speaking on behalf of the African Group acknowledged the Chair and Vice-Chairs for their professionalism and skillful leadership of the work of that Committee during the week. The Group thanked the Secretariat, interpreters and conference services for their excellent support for all delegates attending the session. It thanked the Member States and other stakeholders for their best endeavors to clarify their positions and try to reach common understanding on all issues that were discussed both in informal sessions and the plenary. Those discussions were to make best efforts to reach common understanding and reach consensus on all issues including broadcasting organizations, limitations and exceptions and other issues. The Group hoped that all intersessional meetings would contribute to moving forward the agenda on limitations and exceptions as well as other matters and remained optimistic in search for consensus in future sessions.

280. The Delegation of the European Union thanked the leadership and all stakeholders for their extensive efforts and successfully conducting the discussions carried out by the Committee. The Delegation remained committed to engaging constructively in them and noted that discussions on the treaty for the protection of broadcasting organizations were of great importance for the European Union. The discussions and explanations resulting from the informal sessions were of great value and helped to understand the aims and ideas behind the respective positions and proposals. It showed its full commitment to finalizing a treaty provided that it reflected the realities and developments of the 21st century and looked forward to making further progress on certain essential issues, such as the object of protection and rights to be granted. The Delegation also expressed gratitude for the conference of work carried out on limitations and exceptions and commended Professors Ncube and Reid, Professor Sutton, Professor Crews, Professor Seng and Professor Benhamou for presentations and interesting and informative question and answer sessions. It believed that the presentations and subsequent discussions were of great value and highlighted the significance of the work currently undertaken for the topics discussed under those agenda items. The Delegation reiterated that it believed a meaningful outcome of work in the field of exceptions and limitations could be guidance to Member States regarding best practices, taking advantage of the flexibility of the international copyright legal framework, to adopt, maintain or update national exceptions that adequately respond to local needs and traditions. It acknowledged the interesting presentation on theater directors' rights. The European Union was pleased to note that members had pushed for the artist resale right to be a self-standing agenda item in the agenda.

281. The Delegation of Philippines aligned itself with the statement made by the Delegation of Indonesia on behalf of the Asia and Pacific Group. The Delegation thanked the leadership for efficiently steering discussions to positive conclusions. It recalled the statement of the Director General during the opening session where he noted among other points how discussions on the draft broadcasting treaty constituted the oldest item in the normative agenda of WIPO. Based on that, the Delegation believed that it was their collective responsibility to effectively and timely manage a fast-changing technological landscape. It pointed out that it was crucial to reach a balanced and nuanced document towards the fulfillment of the mandate's delivery. Owing to the rapid rate of technological advancement, the Delegation found formidable reason for expediting work and that an opportune occasion expanding the scope to help ensure that global norm-setting keeps stride with the base of innovation. It noted that the steady progress

provides encouragement, under the Chair's leadership with the flexibility and willingness to engage that have characterized discussions. The Delegation was optimistic that final conclusions would be reached on that item dating from 1990s. On limitations and exceptions for educational institutions, libraries, museums and archives, the Delegation stressed the need for continuing exploration ways to make knowledge more accessible to present and future generations. It cited how knowledge leads to innovation, and how innovation could create economic value. Strengthening the foundation of educational institutions, libraries, museums and archives can only lead to more fertile networks of innovative ideas and informed solutions. Limitations and exceptions did not weaken intellectual property because they were an intrinsic part of the protection regime and provides strong mechanisms. It believed that because some countries may find the current system sufficient did not mean that areas for improvement needed by other countries do not exist. For the Delegation, the presence of over hundred languages has created challenges when textbooks need to be adapted and translated as well as converted into digital formats. While domestic laws on fair use exist, knowledge diffusion and an international setting means that more can be done beyond national or bilateral mechanisms to help address those challenges. It was in that context that the Delegation looked forward to actively taking part in the Regional Seminar.

282. The Delegation of Republic of Korea appreciated the work carried out by the Committee. The Delegation stressed that the SCCR played a crucial role of initiating and maintaining international dialogues in the field of copyright, which was even more significant nowadays with the expansion of the digital environment. It affirmed its commitment for constructive discussions on the agenda items of the SCCR. The Republic of Korea was pleased to have participated on deliberations regarding the protection of broadcasting organizations. It noted that were still some issues remaining to be resolved from the well-known matter of deferred transmission, to the section of definitions. The Delegation believed that those issues would be addressed further in the following SCCR and lead the Committee to a Diplomatic Conference. On limitations and exceptions, it recalled the role of the Committee in having experts to share experience on copyright. It acknowledged the presentations on various studies and looked forward to the future works. Republic of Korea reiterated its commitment to the Committee and thanked the Chair, Secretariat and all Member States for the fruitful discussions of the SCCR.

283. The Delegation of Chile aligned itself with statements made by Guatemala on behalf of GRULAC. Chile thanked the Secretariat for a successful session of the Committee, as progress were made on many items of the agenda. On the subject of the protection of broadcasting organizations it assured its commitment to update its protection regime, in line with new technological developments. The participation of capital experts had been essential to achieve great progress. Though it pointed out important aspects to be addressed, the Delegation was certain that the Committee would achieve positive results. On exceptions and limitations, the Delegation hoped that the dynamics of work at WIPO and the dynamic participation of those interested and the Regional Seminars, would be good input for encouraging countries to work on exceptions and limitations. It hoped that the work of the Regional Seminars would be inputted into the session so as to make progress in future sessions. It added that the proposals to adapt Marrakesh and other aspects would enable the Committee to continue making progress with a view to producing normative work on the subject. The Delegation expressed commitment to continuing work on the digital environment as well as developments in resale rights and theater directors' rights.

284. The Delegation of Argentina noted the insights on exceptions and limitations for museums, archives and educational institutions and commended the NGOs for their contributions which continued to fit into the discussions on those items. The Delegation noted progress made on broadcasting organizations as it had appeared to be impossible to achieve a single right based on the signal that was accessible to such diverse legal systems such as civil law and common law. The Delegation hoped that the following SCCR would be fruitful.

285. The Delegation of Mexico commended all stakeholders for their tireless contributions and expression of ideas towards the success of the session. . It stressed that it was important to realize that though there were challenges, it was imperative to ensure continued efforts. It noted the level of cooperation on museums, for example, and the respective limitations, and above all the exchange of ideas with other people.

286. The Delegation of Botswana endorsed the statements made by the Delegation of Uganda on behalf of the African Group. It commended the Chair for successfully steering the work of the 38th session of the SCCR towards achieving progress in the various issues before the Committee. Botswana also thanked the Secretariat for its hard work. On the topic of the protection of broadcasting organization, the Delegation stated that it appreciated the progress made as it was a long-standing issue since 1998. It acknowledged informative presentations made by various professors on the matter of limitations and exceptions. The Delegation looked forward to Regional Seminars with the hope that they would help the Committee to move forward.

287. The Chair commended all stakeholders who contributed tirelessly to make the thirty-eighth session successful including interpreters, conference services, the Secretariat, and all individuals who were instrumental in making invaluable contributions towards the SCCR session. He noted the extensive reports conducted by the experts, which contributed to discussions. The Chair also thanked the Vice-Chairs for stepping up to take on their roles. The Chair also commended the Regional Coordinators who have been critical in managing the process. He also thanked all members and observers who showed flexibility and constructivism in engaging at a technical level while understanding things at a strategy level. The Chair wished all stakeholders the very best and hoped for continued discussions and progress on all items in the following session of the SCCR.

[Annex follows]

ANNEXE/ANNEX

I. MEMBRES/MEMBERS

AFRIQUE DU SUD/SOUTH AFRICA

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

Meshendri PADAYACHY (Ms.), Deputy Director of IP Policy and Law, Department of Trade and Industry, Pretoria

Thembani MALULEKE (Mr.), Multilateral Trade Relations, International Relations and Cooperation, Pretoria

Kadi David PETJE (Mr.), Senior Manager, Copyright Intellectual Property Office, Pretoria

ALGÉRIE/ALGERIA

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

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

Mohamed BAKIR (M.), Mission Permanente, Genève

ALLEMAGNE/GERMANY

Matthias SCHMID (Mr.), Head, Division of Copyright and Publishing Law, Federal Ministry of Justice and Consumer Protection, Berlin

Laura PHILIPP (Ms.), Legal Officer, Division of Copyright and Publishing Law, Federal Ministry of Justice and Consumer Protection, Berlin

Jan POEPPEL (Mr.), Counsellor, Permanent Mission, Geneva

ANGOLA

Alberto GUIMARAES (Mr.), Second Secretary, Permanent Mission, Geneva

ARABIE SAOUDITE/SAUDI ARABIA

Salem ALMUTAIRI (Mr.), Copyright Officer, Intellectual Property Office, Minister of Culture and Information, Riyadh

ARGENTINE/ARGENTINA

Gustavo SCHÖTZ (Sr.), Director, Dirección Nacional del Derecho de Autor, Ministerio de Justicia y Derechos Humanos, Buenos Aires

Facundo CALVO (Sr.), Asesor, Misión Permanente, Ginebra

Alejo MONNER SANS (Sr.), Primer Secretario, Misión Permanente, Ginebra

ARMÉNIE/ARMENIA

Kristine HAMBARYAN (Ms.), Deputy Head, State Register Department, Intellectual Property Agency, Yerevan

AUSTRALIE/AUSTRALIA

Hari SUNDARESAN (Mr.), Senior Policy Officer, Copyright Section, Department of Communications and the Arts, Canberra

AUTRICHE/AUSTRIA

Günter AUER (Mr.), Civil Law Department, Copyright Unit, Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, Vienna

BAHAMAS

Bernadette BUTLER (Ms.), Minister-Counsellor, Permanent Mission, Geneva

BANGLADESH

Faiyaz Murshid KAZI (Mr.), Deputy Permanent Representative, Permanent Mission, Geneva

Abu Hena Mostofa KAMAL (Mr.), Secretary, Ministry of Cultural Affairs, Dhaka

Jafor Raja CHOWDHURY (Mr.), Registrar of Copyrights, Copyright Office, Ministry of Cultural Affairs, Dhaka

Wolora RASNA (Ms.), President, Licensing and Collecting Society for Cinematograph Film (LCSCF), Dhaka

Mahabubur RAHMAN (Mr.), First Secretary, Permanent Mission, Geneva

BARBADE/BARBADOS

Dwaine INNIS (Mr.), First Secretary, Permanent Mission, Geneva

BÉLARUS/BELARUS

Aleksei BICHURIN (Mr.), Director, Copyright Collective Management Department, National Center of Intellectual Property (NCIP), Minsk

BELIZE

Olabimpe AKINKUOLIE (Ms.), Crown Counsel, Deputy Registrar, General Registry, Belize Intellectual Property Office (BELIPO), Ministry of the Attorney General, Belmopan

BHOUTAN/BHUTAN

Tshering WANGMO (Ms.), Chief Intellectual Property Officer, Department of Intellectual Property, Ministry of Economic Affairs, Thimphu

BOLIVIE (ÉTAT PLURINATIONAL DE)/BOLIVIA (PLURINATIONAL STATE OF)

Ruddy José FLORES MONTERREY (Sr.), Representante Permanente Alterno, Misión Permanente, Ginebra

Fernando Bruno ESCOBAR PACHECO (Sr.), Primer Secretario, Misión Permanente, Ginebra

Mariana Yarmila NARVAEZ VARGAS (Sra.), Segundo Secretaria, Misión Permanente, Ginebra

BOTSWANA

Keitseng Nkah MONYATSI (Ms.), Copyright Administrator, Copyright, Companies and Intellectual Property Authority, Gaborone

Tshepo RADITLOANENG (Ms.), Copyright Administrator, Copyright Department, Companies and Intellectual Property Authority, Gaborone

BRÉSIL/BRAZIL

Alexandre PAROLA (Mr.), Ambassador, Permanent Representative, Permanent Mission to the World Trade Organization (WTO), Geneva

Carolina PANZOLINI (Ms.), Director, Copyright Secretary, Copyright Office, Brasília

Sarah De ANDRADE RIBEIRO VENITES (Ms.), Intellectual Property Officer, Division of Intellectual Property, Ministry of Foreign Affairs, Brasilia

Caue Oliveira FANHA (Mr.), Second Secretary, Permanent Mission to the World Trade Organization (WTO), Geneva

BRUNÉI DARUSSALAM/BRUNEI DARUSSALAM

Hjh Zunaidah HJ ISMAIL (Ms.), Senior Legal Officer, Attorney General Chambers,
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