

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

**Twenty-fifth Session**  
**Geneva, November 19 to 23, 2012**

DRAFT REPORT

*prepared by the Secretariat*

1. The Standing Committee on Copyright and Related Rights (hereinafter referred to as the “Standing Committee”, or the “SCCR”) held its twenty-fifth session in Geneva from November 19 to 23, 2012.
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: Andorra, Argentina, Armenia, Australia, Austria, Bangladesh, Barbados, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Brunéi Darussalam, Burundi, Cameroon, Canada, Central African Republic, Chile, China, Colombia, Congo, Costa Rica, Côte d’Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Germany, Greece, Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Italy, Japan, Jordan, Kenya, Lebanon, Libya, Lithuania, Madagascar, Malaysia, Mexico, Monaco, Morocco, Myanmar, Nepal, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Russian Federation, Senegal, Singapore, Slovenia, South Africa, Spain, Sri Lanka, Switzerland, Tajikistan, Thailand, Trinidad and Tobago, Turkey, Ukraine, United Kingdom, United States of America, Venezuela (Bolivarian Republic of), Viet Nam, Zambia and Zimbabwe (95).
3. The European Union (EU) participated in the meeting in a member capacity.
4. The following intergovernmental organizations took part in the meeting in an observer capacity: *Organisation Internationale de la Francophonie* (OIF), World Trade Organization (WTO), South Centre and the African Union (4).
5. The following non-governmental organizations (NGOs) took part in the meeting in an observer capacity: Actors, Interpreting Artists Committee (CSAI), *Agence pour la protection des programmes* (APP), American Bar Association (ABA), American Council of the Blind (ACB), American Intellectual Property Law Association (AIPLA), Asia-Pacific Broadcasting Union (ABU), *Asociación Argentina de Intérpretes* (AADI), *Asociación Internacional de Radiodifusión* (AIR), *Associação Brasileira de Emissoras de Rádio e Televisão* (ABERT), Association IQSensato (IQSensato), Association of Commercial, Center for Performers' Rights Administration of Geidankyo (CPRA), Central African Economic and Monetary Community (CEMAC), Central and Eastern European Copyright Alliance (CEECA), Centre for International Intellectual Property Studies (CEIPI), Civil Society Coalition (CSC), Computer and Communications Industry Association (CCIA), *Confédération française pour la promotion sociale des aveugles et amblyopes* (CNPSAA), British Copyright Council (BCC), Copyright Research Information Center (CRIC), Electronic Information for Libraries (eIFL.net), European Broadcasting Union (EBU), European Digital Rights (EDRi), European Law Students' Association (ELSA International), European Network for Copyright in Support of Education and Science (ENCES), International Video Federation (IVF), German Library Association (GLA), Ibero-Latin-American Federation of Performers (FILAIE), Inclusive Planet Foundation (IPF), International Association for the Protection of Intellectual Property (AIPPI), International Center for Trade and Sustainable Development (ICTSD), International Centre for Trade and Sustainable Development (ICTDS), International Chamber of Commerce (ICC), International Confederation of Societies of Authors and Composers (CISAC), International Council on Archives (ICA), International Federation of Associations of Film Distributors (FIAD), International Federation of Film Producers Associations (FIAPF), International Federation of Library Associations and Institutions (IFLA), International Federation of Musicians (FIM), International Federation of Reproduction Rights Organizations (IFRRO), International Federation of the Phonographic Industry (IFPI), International Group of Scientific, Technical and Medical Publishers (STM), International Publishers Association (IPA), Internet Society (ISOC), Knowledge Ecology International, Inc. (KEI), Latin American Anti-Piracy and Intellectual Property Consulting, Library Copyright Alliance (LCA), Motion Picture Association (MPA), National Federation of the Blind (NFB), North American Broadcasters Association (NABA),

*Organización Nacional de Ciegos Españoles (ONCE)*, Royal National Institute of Blind People (RNIB), Software and Information Industry Association (SIIA), South African Broadcasting Corporation (SABC), South African National Council for the Blind (SANCB), The Japan Commercial Broadcasters Association (JBA), Transatlantic Consumer Dialogue (TACD), Unión Latinoamericana de Ciegos (ULAC) and the World Blind Union (WBU) (59).

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

6. Mr. Francis Gurry, the Director General of WIPO opened the session and welcomed all delegates to the 25th session of the SCCR. He reminded delegates that at the General Assemblies of 2012, Member States reached a breakthrough in the area of improving access to published works on the part of visually impaired persons and the print disabled. That breakthrough consisted of a roadmap which was hoped would enable Member States to achieve an outcome on the issue in June or July of 2013. The roadmap contained several steps. The first was an inter-sessional meeting which took place at the end of October to work on the text that it was hoped would constitute the basis of the new international instrument. A huge amount of work was put in by all of the delegations in improving that text and taking it forward, but important issues remained outstanding at the end of the inter-sessional consultations. The current session of the SCCR represented the second of the three steps. It was hoped that during the course of the week, the text would be improved to such a point that all Member States would be confident that by December they would be able to take a decision to convene a diplomatic conference at the end of the first half of 2013 to conclude a new treaty on this issue. A good new instrument would place the visually impaired community and the print disabled in a better position than they were at the moment. The Director General had had the privilege to attend the quadrennial assemblies of the World Blind Union that took place in Bangkok. The expectations on the part of the visually impaired community and the print disabled were extremely high. The Director General pleaded with the delegations to rise sufficiently above their national positions to see that common good could be achieved for the international community through the conclusion of a new treaty in this area. The importance of the task ahead could not be over emphasized. It was indispensable to demonstrate sufficient flexibility to see the international common good that could be achieved by overcoming particular national positions and to reach a compromise. It was an extremely important step for WIPO and for multilateralism. There were three other issues on the agenda that required some consideration. The delegations were thanked for the flexibility that they had shown so far in being able to focus the discussion on the visually impaired and the print disabled. It was important to also discuss broadcasting organizations, the objective being to schedule a diplomatic conference in the year 2014. Further it was also important to give due consideration to important exceptions and limitations of libraries and educational institutions.

7. The Chair indicated that the SCCR would continue to work on the basis of the mandate of the General Assembly. He noted that the meeting was a particularly crucial step in the roadmap towards completing the agenda item on limitations and exceptions for visually impaired and print disabled persons. Delegations must work constructively together over the next five days to achieve that objective. Given that it was the last SCCR meeting before the Extraordinary General Assembly which would be held on December 17 and 18, 2012 to be followed by the Preparatory Committee, regional coordinators had expressed their willingness to devote more time to the issue of limitations and exceptions for visually impaired persons and persons with print disabilities. They wished to address other topics on the agenda on an equal basis, of course taking into account their respective levels of maturity.

8. The Secretariat indicated that it had been agreed that the first three days, Monday, Tuesday and Wednesday, would be spent discussing exceptions and limitations for visually impaired persons or print disabled persons. Thursday morning would be devoted to the proposed treaty for broadcasting organizations. The afternoon would be devoted to a

discussion on other limitations and exceptions that included libraries and archives, education, research institutions and other persons with disabilities. The schedule for Friday would be the same as was posted on the tentative proposed agenda, that is, the morning would be left for whichever topic needed additional time and attention, and the afternoon would be devoted to the conclusion of the meeting.

## **ITEM 2: ADOPTION OF THE AGENDA OF THE TWENTY-FIFTH SESSION**

9. The Chair turned to the draft agenda for the meeting which was in document SCCR/25/1 and a draft annotated agenda, noting that both of them had been made available for delegations for some weeks. He indicated that delegations should be prepared to work until 9:00 p.m. every day if necessary. . It was noted that item 8, limitations and exceptions for educational and research institutions, should also include persons with other disabilities. The final agenda should therefore reflect this correction.

10. The Delegation of South Africa recalled that three days were going to be spent on VIP, half a day on broadcasting and another half a day on other exceptions and limitations. The SCCR had a mandate that all issues were to be treated equally. The Director General had already mentioned that on the broadcasting issue, the objective was to have a diplomatic conference in 2014. The Delegation said that spending half a day on broadcasting did not show enough commitment to that particular issue and the same could be said in regard to the other exceptions and limitations. Accordingly, as the SCCR had prioritized the VIP issue, it was expected that the SCCR would devote enough time to discuss other issues as well. The Delegation was concerned that so little time was going to be spent on broadcasting, particularly as experts had been brought from capital to advance work on broadcasting. The same applied for other exceptions and limitations.

11. The Delegation of the United States of America supported the Chair's suggestion on the schedule *vis-a-vis* the remarks of the distinguished colleague from South Africa. The Delegation was, like the Delegation of South Africa, prepared to have longer discussions on the broadcast treaty, but suggested that perhaps that could be done profitably during the week in small groups, including the experts they had brought from capital. The Delegation stated that a lot of useful discussion could be done outside the three hours or outside the half day spent on that.

12. The Chair proposed to adopt the agenda and announced its adoption.

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

13. The Chair noted that no submissions for the accreditation of new NGOs had been made.

## **ITEM 4: ADOPTION OF THE REPORT OF THE TWENTY-FOURTH SESSION OF THE STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS**

14. The Chair invited the SCCR to adopt the report of the 24th session of the SCCR as reflected in document SCCR/24/12. The document was only available in English and translations were being prepared. Delegations were therefore invited to send any comments or corrections on the English version available on the web to [copyright.mail@wipo.int](mailto:copyright.mail@wipo.int) by Friday, November 23.

15. The Chair announced the report had been adopted.

### **General statements**

16. The Chair informed the delegations that he had had consultations with regional coordinators and had reached agreement with them to restrict the general statements to regional coordinators. He opened the floor to regional coordinators to make their statements.

17. The Delegation of Belgium, speaking on behalf of Group B, stated that the issues on the agenda were very important and it looked forward to progress on these issues. With regard to the proposal for an international instrument on limitations or exceptions for visually impaired persons, the Delegation stated that Group B had actively engaged in extensive discussions at the last session of the SCCR and during the recent inter-sessional meeting. Group B remained engaged to continue the discussions in a constructive manner. The specific problems of visually impaired persons required specific solutions, while they were also mindful of the need to have effective protection for the rights of creators. It was important for all delegations to recognize that the current session of the SCCR would determine whether in December a decision could be taken to agree to a diplomatic conference in 2013. It was necessary to work together to identify the key concerns of different delegations and stakeholders and then to craft compromises that met those key concerns. A lot of hard work, creativity and compromise would be needed from all sides to complete the work in order to move toward a diplomatic conference in 2013. Group B also hoped that substantial progress would be made on the protection of broadcasting organizations. That issue had been the subject of intensive work in previous sessions of the SCCR. The objective was to further the work in order to make a recommendation to the WIPO General Assembly of 2013 on the possible scheduling of a diplomatic conference in 2014. Finally, Group B would continue to actively participate in the discussions on limitations and exceptions for archives and libraries, as well as on educational and research institutions. The Delegation noted that the main aim of these discussions should be to foster an exchange of ideas, taking into account that some exceptions and limitations to copyright were already adequately addressed under existing international conventions.

18. The Delegation of Egypt, speaking on behalf of the African Group, welcomed the SCCR work plan according to which WIPO Member States would continue their collected efforts towards concluding a treaty on exceptions for visually impaired persons in 2013. That work plan had, as an integral part, the commitment by all Member States to hold a conference on the protection of broadcasting organizations by 2014. The African Group attached great importance to the VIP negotiations and looked forward for their successful outcome. The WHO estimated that 90 per cent of the world's blind people lived in developing countries, including 7 million people in Africa. The estimated numbers of people visually impaired including blind people and those with low vision, was 20 million people. The comparable number in the Middle East was 17 million people. The SCCR inter-sessional meeting held on October 17 to 19 managed to make progress, for example, regarding the definition of the works and beneficiaries and the rights to translation. However, additional progress needed to be made in order to achieve convergence and to overcome outstanding issues and reach an outcome that would allow the WIPO Extraordinary General Assembly scheduled in December to decide on a diplomatic conference to conclude a visually impaired treaty in 2013. There were however, key policy questions that needed to be resolved in order to pave the way for further progress. They included, for example, defining the nature of the authorized entities, what actions they would be permitted to conduct and what obligations they would be required to assume. In this regard, special attention should be accorded to entities in developing countries which may lack the resources and capacity to assume overly strict administrative rules and procedures or act as enforcement agencies. Secondly, the trigger for developing countries to exercise the exceptions and limitations permitted under the treaty should reflect the notion of reasonable price. Thirdly, the exceptions and limitations permitted under the treaty should not be impeded or negated by other factors, such as TPMs or contract law, nor should they be accompanied by new obligations regarding the sovereign discretion by Member States regarding how governments create other exceptions and limitations to address public interest needs nationally.

The Delegation stated that one of the primary goals of the copyright system was the dissemination of creative works to enhance public welfare. Copyright had never been an end to itself and increasingly technological developments had strained the capacity of copyright law to constrain the ways in which the public accessed creative works. While some important doctrinal shifts had occurred in the United States of America and in the European Union, these efforts had yet to be reconciled with the international copyright system. In particular, new compromises that facilitated access to educational material and scientific research reflected the demands that developing countries had been making since the conclusion of the Paris Convention to the Berne Convention. African countries needed access to educational materials and resources in order to ensure the development of human resources as well as their overall cultural, social and economic development. The copyright system should reflect a focus on access to education which remained critical to the development priorities of African countries. A minimum standard for exceptions and limitations in regards to educational and research institutions would both reduce the menace on rights holders, who were vulnerable to increasing threats of capacity licensing combined with new technological disruptions of access controls, while accomplishing the interest of African governments to ensure a robust educational environment to support innovation. The SCCR 25 was also expected to advance the discussions regarding exceptions for libraries, archives, educational institutions and people with other disabilities. The African Group looked forward to the limited time allocated to libraries and archives being devoted to substantive text-based discussions of the proposed text contained in SCCR/22/8, rather than on the sequence of the clusters on national experiences. In that regard, the African Group looked forward to constructively engaging on that important issue in order to assist libraries and archives to continue their crucial role as custodians of human knowledge and indispensable platforms to facilitate access to information. The African Group also emphasized the importance that the SCCR advance text-based negotiations on broadcasting organizations in order to be able to adopt a treaty on the protection of broadcasting organizations in 2014. The African Group supported an inter-sessional meeting for broadcasting issues to be held before the next SCCR session. At that important juncture in the work of SCRR, the African Group reminded the delegates of the guiding principles that had served the SCCR well in the past, namely, to follow a global, transparent and inclusive approach and equal treatment for all exceptions and limitations and to acknowledge the needs and priorities of developing countries for cultural, social and economic development.

19. The Delegation of Peru, speaking on behalf of GRULAC, hoped that the spirit and enthusiasm, the flexibility and commitment of delegations, as seen in the Beijing Diplomatic Conference would manifest in the SCCR so that in conformity with the mandate of the General Assembly, a text for visually disabled persons and people with a print disability could be soon agreed. The Delegation noted that it was also very important to continue updating the rights relating to broadcasting organizations.

20. The Delegation of Sri Lanka, speaking on behalf of the Asian Group, thanked the World Blind Union for its valuable contributions toward these discussions. The Asian Group afforded the utmost importance towards the work set for the SCCR and recognized that the outcome of the meeting would be of utmost importance for visually impaired persons and persons with print disabilities around the world. The Asian Group recognized that a sufficient amount of time would be devoted toward the deliberations on the text on limitations and exceptions for visually impaired persons and persons with print disabilities and then towards the protection of broadcasting organizations, limitations and exceptions for libraries and archives and limitations and exceptions for educational and research institutions. The Asian Group remained committed to those deliberations. The Delegation pointed out that as the discussion on VIP entered its final phase it was critical to maintain complete transparency in the deliberations within plenary or during informal meetings. While the Asian Group understood that during the coming week there would be a need for informal discussions to take place with a limited number of delegations, it felt that it was imperative that all Member States followed those informal

discussions. The Asian Group was confident that all members would contribute constructively with a view to making progress on the work at hand.

21. The Delegation of Hungary, on behalf of the Central European and Baltic States, indicated that it assigned high importance to all items to be discussed in the course of the week, but that it attached particular importance to progress on the international instrument for people with print disabilities and in relation to the protection of broadcasting organizations. The Delegation supported the ambitious plan approved at the General Assembly in October, whose first step encompassed progress in the inter-sessional meetings recently held. Although some progress and clarifications had been achieved, efforts needed to be redoubled in order for the SCCR to be in a position to recommend to the General Assembly to convene a diplomatic conference in 2013. The work in the final phase should concentrate on bridging the gaps, while respecting each other's positions. The Delegation stated that the focus of the deliberations should be on a balanced, workable and safe system that would improve access to published works for persons who are visually impaired or print disabled, and, at the same time, respect the rights of rights holders and enable the effective control of the distribution of the works. The Delegation stated that there was a duty to develop a system in complete harmony with the existing international copyright framework and that could be easily implemented in national copyright laws. Moreover, ensuring adequate protection at the international level for broadcasting organizations was highly needed and long overdue. The Delegation welcomed the important progress made at the SCCR in July and asked for a positive and intensified engagement from all delegations to further improve the single text with the objective of reaching a decision to convene a diplomatic conference on the protection of broadcasting organizations in 2014. The successful outcome of the diplomatic conference on the protection of audiovisual performances was a good example that establishing a harmonized level of protection at the international level was still achievable. Finally, with regard to exceptions and limitations in favor of libraries, archives and educational and research institutions, the Delegation noted that the current international copyright framework already provided the appropriate means for those institutions to fulfill their roles both in the analog and digital world. The Delegation stated that a further exchange of views and international experiences was welcomed to better understand the concerns raised by some delegations.

22. The Delegation of China considered that progress had been achieved on the issue of limitations and exceptions of visually impaired persons and persons with print disabilities. The Delegation expressed its readiness to actively participate in the discussions with a spirit of cooperation and working positively with other delegations. The Delegation stated that time should also be devoted to some of the issues that had remained pending so that substantive progress was also made on those issues.

23. The Delegation of Brazil, speaking on behalf of the Development Agenda Group (DAG) reiterated the commitment of the Group to work constructively on the issues to be discussed during the SCCR session. The Delegation noted that the last session of the General Assembly in October had adopted a clear calendar for all limitations and exceptions comprised in the work program. With respect to limitations and exceptions in favor of visually impaired persons, the SCCR had the objective, over the course of that session, to further define the working text on the remaining issues. The Delegation noted that the outcome of that work would be submitted to the General Assembly, which would hold an Extraordinary meeting in December to evaluate the text from SCCR 25 and to make a decision on whether to convene a diplomatic conference in 2013. The Delegation urged Member States to work constructively during the sessions with the same spirit of cooperation and commitment that prevailed in Beijing in order to pave the way for the adoption of a treaty in favor of visually impaired persons in the year 2013. In respect of limitations and exceptions for libraries and archives, education and research institutions, and persons with other disabilities, the Delegation affirmed the importance of moving forward on the basis of text-based work in a global and inclusive approach, taking into account the equal

importance of the different work program areas. Finally, the Delegation also recommended the adoption of a Treaty on the protection of broadcasting organizations.

24. The Delegation of the European Union and its Member States stated that the SCCR had made considerable progress to find a solution to the very specific problem of the visually impaired, with the very specific objective of removing barriers which prevented the access of the visually impaired persons to copyright works. At the last session of the SCCR, an extensive discussion on the proposal for an international instrument on limitations and exceptions took place, based on the comments made by the different delegations. During the debate, the Secretariat prepared the working document SCCR/24/9. The Delegation noted that it had actively engaged in the work of the inter-sessional meeting organized by WIPO in October. The Delegation had found those discussions very useful as they helped to achieve a better understanding of the positions of the delegations and regional groups. It hoped that those discussions would continue in a constructive manner. The Delegation noted that it was important to concentrate on the specific needs of visually impaired and print-disabled persons and to achieve a strong convergence of views on the solutions that need to be delivered. It was necessary to advance as much as possible on the text as only a balanced approach would allow the Standing Committee to recommend that the General Assembly convened a diplomatic conference in 2013. The objective was to ensure that visually impaired and print disabled persons anywhere in the world had the same access to books as any other person. The Delegation was now also in the position to negotiate the conclusion of an instrument including a binding treaty, which should be balanced and not undermined the effective protection of the rights of creators.

#### **ITEM 5: LIMITATIONS AND EXCEPTIONS FOR VISUALLY IMPAIRED PERSONS/PERSONS WITH PRINT DISABILITIES**

25. The Chair opened the discussion on agenda item 5, limitations and exceptions for visually impaired persons and persons with print disabilities. The Chair stated that as indicated by the Director General, the mandate received by the General Assembly was to continue text-based discussions with the objective of concluding or substantially advancing the work on the text. In that regard, the SCCR did advance the text during the inter-sessional meeting of October, 17 to 19. That work was reflected in the revised working document on an international instrument on limitations and exceptions for visually impaired persons and persons with print disabilities, namely the working text dated October 19, 2012. The text had been available on the website and delegations were invited to adopt it so that it became the working text in moving forward. The document was adopted. The Chair reported on consultations held with regional coordinators on how to advance negotiations on the text. There had to be a balance between efficiency and transparency and inclusiveness. In order to achieve efficiency, the proposal was to work in a smaller configuration of regional coordinators plus five, but also to accommodate transparency and inclusiveness, a plenary session every morning would present to the group the outcomes of the deliberations in smaller groups.

26. The Chair invited the Secretariat to present the results of the work from the smaller groups.

27. The Secretariat indicated that the text had been revised in two areas. The first was the preamble, where a text with 17 paragraphs had been converted into a text with only 12 paragraphs. The African Group was still considering paragraphs 10 and 12 so those were presented in brackets. There was a set of four articles that had been revised: E, F, G and J. For F, which was related to obligations concerning technological measures, the basic changes were that the previous chapeau became part of one alternative, alternative A. The previous alternative A was deleted and new text was added to the chapeau as a new alternative A. Alternative B was basically a text that was based on the agreed statements of the Beijing

Treaty, regarding Article 5. For Article G, which was related to relationships with contracts, the previous alternative A had been deleted. There was a new alternative that was called alternative C. For the new provision, three alternatives were available and all of them were in brackets as none were fully agreed on. Finally, regarding Article J, the main change was that the registry was called a registry of authorized entities. There was a clarification that the idea was to facilitate the recognition of the identification of authorized entities. The Secretariat stated that basically for the time being it proposed a list of authorized entities in a voluntary basis.

28. The Chair proposed to continue work in the same informal setting to try to narrow the gaps within the text.

29. The Delegation of the Bolivarian Republic of Venezuela proposed that the informal work should continue in Room A because whether it was informal or formal did not affect the size of the delegations. The Delegation stated that it was a real fight to try to get into a tiny room which was not big enough for all. The Delegation also withdrew its proposal on Article B.

30. The Delegation of the United States of America considered that it was very important that people could be face-to-face in the informal meetings. It noted that the kind of legislative setting of Room A was not conducive to the discussions under consideration. Being sensitive to the concerns that were raised by the distinguished Delegate of the Bolivarian Republic of Venezuela, the Delegation proposed to inquire whether a larger room was available in the new building.

31. The Delegation of Egypt supported the proposal made by the distinguished Delegate of the Bolivarian Republic of Venezuela stating that the room where the work had taken place the day before was not really fit for all of the delegations.

32. The Delegation of Ecuador stated that it had submitted a proposal on article B and would like to withdraw it until further consultation with capital took place.

33. The Delegation of the Bolivarian Republic of Venezuela reminded all delegations that its proposal was submitted a long time ago and it was then supported by the Delegation of Ecuador. The Delegation was ready to withdraw that proposal. The Delegation noted that if more straitjackets were put on an international agreement it would become more difficult to progress and make headway. The idea of reinterpretation of the three step test had been analyzed in capital and it was proposed that it would further complicate the agreement which was almost mature and ready for adoption.

34. The Chair reminded all delegations of the need to maintain some balance between effectiveness, transparency and inclusiveness so that progress could be achieved.

35. The Secretariat indicated that the room available in the new building only accommodated four more chairs. At the moment, the room was booked but there was a possibility to have that room for the rest of the week, possibly starting in the afternoon. Unfortunately, that room could only accommodate interpretation in two languages. The Secretariat noted that overnight it had tried to arrange a private transcript of the discussions in the Uchtenhagen Room to be made available on the screen in Room B. This would allow delegates to sit in that room and see the real time transcript.

36. The Delegation of the Bolivarian Republic of Venezuela thanked the Delegation of the United States of America and the Delegation of Egypt for their support. The Delegation noted that it was necessary to avoid the conclusion being drawn that the work done in the small group was signed and sealed. The work continued to constitute informal text, which was subject to approval.

37. The Delegation of Morocco requested to stay in Room A in order to follow the same plan that was followed in the Uchtenhagen Room, namely that the five regional representatives and the others, especially those who have come from capitals, could follow the debate.

38. The Chair reminded all delegations that an arrangement based on the coordinator plus five was already in place. The five representatives from each group had to be one individual from each country. It had been proposed to increase that number to one plus six, if that would help the coordination of the various delegations. The Chair stated that it was however considered necessary to proceed in the format followed the day before.

39. The Delegation of India supported the concerns raised by the distinguished Delegates of the Bolivarian Republic of Venezuela, the Delegates of Egypt and others. The Delegation indicated that it was too strict that only one individual from each country could be part of the drafting group. For transparency sake and to acknowledge that it was the final stage of negotiations, there should be more coordination between the Geneva-based delegates and the experts who had come from the capital. The Delegation proposed that there was some flexibility to encourage more participation from the Member States and also more than one representative for each delegation.

40. The Delegation of Japan shared the concerns expressed by the Delegation of India. While it was necessary to think of efficiency, there also needed to be transparency. The Delegation stated that it preferred to use a much bigger room and allow other members of the delegations to enter the room.

41. The Delegation of the United States of America was sympathetic to the concerns expressed by many delegations to ensure the right balance between efficiency and transparency. For things to succeed, a face-to-face environment was needed, where delegations could really talk to each other. On the other hand, listening to what many delegations had said, the Delegation proposed that perhaps the Chair could recommend a schedule that allowed a meeting in the Uchtenhagen Room to be followed by consultations between capital experts and Geneva-based representatives. In that way, there could be a hybrid model. This did not mean that Room A was indispensable, but the Delegation stated that there needed to be an opportunity for consultation between Geneva-based representatives and capital experts.

42. The Delegation of Peru stated that along the same lines expressed by the Delegation of the United States of America, it would be useful to know what articles were going to be discussed in the morning and the afternoon so that people could be prepared as some delegations might have different experts for different issues.

43. The Chair stated that he would consult with the Secretariat on the rooms available in the new building and when they may be available, so that the group could move for informal consultations from the Uchtenhagen Room to the bigger room. The Secretariat had also arranged to have a transcript in Room B strictly for Member States to follow the discussions in the Uchtenhagen Room. In terms of the issue raised by the Delegation of Peru, the discussions would be centered first on the preamble. There were three provisions that needed to be cleaned up: eight, ten and twelve, for which feedback from the African Group was expected. The definition clause was next and a lot of work had to be done on authorized entities. In the inter-sessional meeting work had been assigned to a few colleagues and feedback was expected.

44. The Vice-Chair opened the session announcing that the Secretariat was going to present the results of the informal consultations, which had taken place the previous day. After that, the floor would be open for NGOs' interventions.

45. The Secretariat explained that a new paragraph 12 had been added to the Preamble. In respect of Article A on definitions, there had been a small change on a preliminary basis, which was the removal of the brackets in the chapter on authorized entities. The African Group was still considering the change and additional modifications were expected. The text of Article B BIS had not changed. On the nature and scope of obligations, the draft included a group of principles on application of the future instrument or treaty. Member States needed to further discuss those principles and develop a text. On Article E regarding the importation of accessible format copies, there was a change to the plural of the word "beneficiary person" in the last line of the provision. Article G regarding relationships with contracts had been deleted by unanimous decision. Finally on Article J, cooperation to facilitate cross border exchange, both the title and the text had changed. However they remained in brackets for further consultation.

46. The Delegation of the Bolivarian Republic of Venezuela proposed a small change in the Spanish version to simplify the provision.

47. The Delegation of India expressed concerns with the words "primary activities" in relation to the definition of authorized entity in Article E. The Delegation was unclear on whether the definition satisfactorily included all educational institutions. Finally, the Delegation noted that there was agreement that an agreed statement to be attached to that instrument would be negotiated.

48. The Secretariat reminded the Member States that the objective of the three days was to advance the negotiations on the visually impaired instrument in the interests of millions of visually impaired persons around the world, some of which were very well represented in the SCCR. Given that few people were directly involved in the negotiations, maximum flexibility was needed to achieve the agreement to move to the Extraordinary General Assembly in December. Additionally, the Secretariat stressed the importance of keeping in mind that the objective of the instrument or treaty was to do something in the interests of the visually impaired persons.

49. The Vice-Chair reminded the SCCR that it was the last day fully devoted to negotiate the visually impaired issue. The informal consultations in the afternoon were therefore key for the overall outcome. The Vice-Chair opened the floor for NGOs' interventions.

50. The Representative of the International Federation of Journalists (IFJ) welcomed an instrument that ensured fair access to creator's works by people with print disabilities worldwide. The Representative stated that WIPO's mission was to administer a body of law that rewarded creativity and stimulated innovation and contributed to economic development while safeguarding the public interest. Economic development depended on ensuring that fair reward was given not just to the intermediary to distribute authors' and performers' work, but also to the humans that actually did the creative work. National and international legislation must recognize the huge number of individual citizens who were published creators thanks to social media. The Representative believed that limitations to author's rights and extended collective licenses caused an imbalance of negotiating power in the protection of inalienable and equitable remuneration. The Representative highlighted that these raised challenging legal issues in some jurisdictions. It was worth exploring ideas such as fair trade where works were distributed in accordance with a code of good practice. The Representative finally welcomed the progress towards ensuring that people with print disabilities could access creative works while respecting the needs of creators.

51. The Representative of the National Federation of the Blind (NFB) of the United States of America recognized that there was enough determination in the room to finally get the deal done and open up the flow of books and information throughout the world for blind and visually impaired and otherwise print disabled individuals. Certainly there were other issues, text based issues that would continue to need further negotiations. The NFB believed that many of those issues could be taken care of in the time period between the Extraordinary General Assembly and the Diplomatic Conference. With reference to the definitions of authorized entities, the Representative noted that it was important to keep in mind that authorized entities were non-profits and organizations without great resources; therefore the more burdens put on those entities the less likely it would be that the actual flow of information would be performed appropriately. The presumption that without close monitoring a wave of piracy would occur was wrong. The situation in the United States of America proved that less restrictive legislation could work very well. Finally, the Representative endorsed the statement of DAISY shared with many of the Member States.

52. The Representative of the Internet Society (ISOC) said that ISOC was committed to continue working toward the common goal. Governments and policymakers had an important obligation to use the political legislative and regulatory tools at their disposal to address accessibility for persons with disabilities and there was a need to make accessibility a priority in the ongoing work individually and collaboratively. To that end, the Representative stated that it supported the call for a diplomatic conference for persons with print disabilities leading to a much needed treaty. The Congress of the United States of America had recognized that technological advances might require public accommodations to provide auxiliary aids which at that moment would not be required because they would be held to impose burdens on such entities. Vulnerable communities should be allowed easy and inexpensive access to copyright material. The Representative stated that to encourage and allow easy access to copyrighted material by visually impaired persons and persons with print disabilities was in line with the objectives of the copyright system.

53. The Representative of the International Federation of Library Associations and Institutions (IFLA), also speaking on behalf of Electronic Information for Libraries (eIFL), International Council of Archives (ICA) and the German Library Association, supported the proposed treaty for the visually impaired that many Member States, the WBU and related organizations were seeking. The Representative stated that it believed that it was right, fair, just and long overdue. The Representative was therefore pleased that the SCCR was making a concerted effort to satisfactorily conclude an agreed proposal for a treaty that met the human rights of the visually impaired and print disabled people to equal access to information. The Representative urged the SCCR to make its long awaited recommendation to the WIPO General Assembly to summon a Diplomatic Conference to negotiate the treaty in 2013. The Representative noted that libraries and archives had three particular concerns about the current draft. The first was the definition of authorized entity. Libraries and archives everywhere were major providers of assistance to the blind and print disabled people. The definition in the treaty must explicitly and definitively recognize that core responsibility of all libraries and archives. Second, the IFLA believed that the treaty must not be used to expand or increase the reach of the three step test but should include a balancing statement affirming the public interest in the application of the three step test to avoid restrictive interpretations. Thirdly, the treaty must include provisions establishing the primacy of limitations and exceptions over contracts and technological protection measures.

54. The Representative of the Library Copyright Alliance (LCA) pointed out that a recent decision in the United States of America had found that fair use allowed the digitization of 10 million books and the making available those books to the print disabled. The court also found that the University of Michigan was an authorized entity under the Chafee Amendment. While the LCA was happy to see progress, the Representative stated that it was concerned about the

deletion of Article G concerning the relationship of the treaty with contracts. The Representative stressed that at the very least, the treaty should explicitly give Member States the right to decide whether they wanted to nullify contracts inconsistent with the treaty's provisions. If a rights holder by contract could prevent the making available of an accessible copy then the treaty would accomplish very little. The Representative also echoed the statement made by the Representatives of the IFLA and the NFB concerning the definition of authorized entities and the burdens placed on them. The Representative stated that the LCA was concerned about the record keeping requirements in that they could be burdensome and there was no other community in the world where users' exceptions needed to have a record of their uses.

55. The Representative of the International Publishers Association (IPA) wanted to make comments on two particular matters. One was the issue of commercial availability and the second was the issue of authorized entities and their duty of care. The Representative stated that the most important thing was that publishers shared the common goal with the visually impaired community to provide content at the same time, same place and same price. Since the October 1, 2011 publishers were also technically able to provide digital formats which were fully accessible. The Representative highlighted that since that time, there had been global standards in place that made it possible to universally access accessible books. From the study of the Royal National Institute for the Blind in the United Kingdom in 2011, 76 per cent of the top 1,000 titles were available and accessible through touch and hearing and vision enlargement and enlargement, for people who had low or no vision. Commercial availability was an important qualifier for that instrument. The Representative stated that the IPA believed it should be mandatory for international exchange. The Representative noted that some Member States had argued that it was already included in the second step of the famous three step test. Beside the fact that the three step test represented as essential principle of the copyright system, there was a need to have a clear statement in the text that incentivized publishers to provide accessible formats from the outset at the same time, place and price. Regarding the price, the IPA understood that works must be available to persons with print disabilities, in particular in developing countries, at prices or using business models that could reach out to them and put those works within their reach. That, of course, included the use and inclusion in libraries that must continue to serve the visually impaired at low or no cost. Some Member States were worried about mentioning price in any instrument, but it was an issue of clever wording and the IPA was ready to share textual proposals, which hopefully could address both the issue of appropriate price in developing countries and the concerns of some Member States. Furthermore, the Representative stated that determining commercial availability was not an issue. In fact this was actually quite easy because the stakeholders were all aligned. Visually impaired people wanted to have the content visible to them, and publishers, if they made something commercially available, wanted visually impaired people to know about that. In conclusion, the Representative stressed that the 'book famine' could only be addressed through collaboration. On the issue of authorized entities, the IPA did not expect burdensome record-keeping but digital files were important to them. Digital files had an economic value and the IPA was asking only that there was a reasonable duty of care. The wording could be chosen just to recognize the legitimate concerns of publishers where their full digital works were being circulated around the world. In conclusion, to incentivize publishers to make works available around the world at the same time, place and price thus to address the 'book famine' the Representative believed commercial availability must be an important qualifier within the instrument.

56. The Representative of Knowledge Ecology International (KEI) said that firstly, the KEI was disappointed that deaf people had been left out of the treaty. Secondly, it was disappointed about the decision to eliminate the provision on contracts and it completely supported the statement of the Representative of the LCA in that regard. The Representative stated that in reality, contracts were being used to kill exceptions. Thirdly, the three step test was an important topic and it was important that nothing be done that could undermine the current national flexibility. The three step test was already part of international law and it did not need

to be included in that treaty. Otherwise it would be an effort to restrict the freedom of countries to write national laws to address the public interest. Fourthly, the KEI echoed the concerns raised by the Representative of the NFB. Complicated provisions did not work. Avoiding excessive burdens should also be a priority. The last point was that for non-profit entities there should be no requirement regarding commercial availability, as it caused ambiguity, litigation and delays.

57. The Representative of the International Federation of Reproduction Rights Organizations (IFRRO) stated that IFRRO appreciated the objectives expressed by Representatives of the print disabled communities to be allowed access to intellectual property on basically equal terms with other reader groups. Exceptions in favor of the print disabled should be made subject to copies not being commercially available. That would also stimulate the publishing industry to consider more actively the print disabled as an attractive consumer group. To that end, an enabling technology framework had been developed jointly by the print disabled and the rights holders' organizations allowing more cost efficient production of works for the print disabled. The WIPO Member States could support that development further by allowing copies of copyrighted works to be made under an exception, subject to copies not being made available already in accessible format. An alternative was also the use of collective licensing to further permit wide usage in a cross border way of accessible format files that pre-existed. Finally, as a last resort, the Representative stated that it supported a balanced instrument that took into account the interests of the print disabled and the rights holders in promoting access through exceptions and limitations.

58. The Representative of the Transatlantic Consumer Dialogue (TACD) said it was essential to reach agreement on a text ready for a diplomatic conference for signing an international binding treaty. The Representative stated that anything less than that would be seen as a failure all around the world. The international copyright system depended on legitimacy and social acceptance of the system itself, and TACD believed it very much needed robust and clear exceptions and limitations in place. Many of the delegations considered the treaty not as an exception and limitation treaty but more of a treaty on licensing. The Representative pointed out that TACD appreciated that the Representative of the European Union was able to negotiate a binding treaty responding to the opinion of the European Parliament. At the same time, TACD asked blocks like the European Union to show the same positive attitude in the text related negotiations. On the other side the blind organizations, led by the WBU, had shown great flexibility and great negotiating powers. The Representative stressed that the opinion that the main danger of exceptions and limitations was piracy was a fallacious one. More flexibility was needed to reach an agreement. The issue of over-regulation was also important. Member States should not want to overburden companies and businesses promoting the economy nor those non-profit organizations that were exercising basic human rights. Commercial availability should not be a condition to the exercise of a human right as reflected in the Convention of the Rights of Disabled Persons. Human rights deserved preference according to international law. The Representative stated that it was also clear the need for voluntary collaboration of the publishers and the business world, but that could not be a substitute for mandatory international law.

59. The Representative of the Software & Information Industry Association (SIIA) said that industry players continued to be committed to making their products and services accessible to people with print disabilities so that those with print disabilities could make use of copyrighted works like all consumers. Many addressed the needs of people with disabilities during all phases of product planning, development and support. The Representative stated that included working with the print disabled community and external accessibility experts to solicit and incorporate feedback when designing and publishing products and services to ensure mainstream access. The Representative supported the objective of the members of the SCCR seeking consensus on a WIPO instrument. To ensure that the WIPO instrument was successful in achieving its important objectives three critical issues must be taken into account. One, it

was important that the provisions not be applied to printed works that were already being made available to the visually impaired community in accessible format. The Representative concurred with the objectives of the visually impaired community to have access to the same extent as those who were not visually impaired. However, the Representative stated that if the copyright exceptions that were eventually to be codified in the instrument did not exempt printed works already available to the visually impaired community in accessible format, the instrument would have a perverse effect. Secondly, it was essential that provisions in the new instrument be absolutely clear, that the accessions enacted by Member States be compliant with the Berne Convention and numerous other international binding agreements such as TRIPS Agreement, WCT and the WPPT. That would ensure that the copyright protections were not weakened in ways that undermined the incentives benefiting all people including the visually impaired. Thirdly, it was important that the instrument included appropriate rules and procedures to ensure that effective and transparent mechanisms were in place to ensure that any digital files created by authorized entities were distributed to the visually impaired. The Representative stated that there also needed to be simple and yet effective mechanisms for correcting failures of authorized entities that did not comply with appropriate safeguards.

60. The Representative of the Latin American Blind Union (ULAC) urged everyone to reach a concrete outcome and encouraged flexibility among all delegations. The Representative stated that it was important to find a simple text applicable in different contexts. Member States should not introduce obstacles or excessive requirements because in developing countries, the blind organizations would be prevented from using those tools. The ULAC was interested in using that tool without causing any harm to the rights holders, ensuring that the material was used exclusively by beneficiaries. A lot of attention was focused on digital formats but in developing countries there was a need for exceptions to get the material to people in other formats, other than electronic, because they still did not have access to that kind of technology. The purpose of the negotiations was to facilitate access to books for those who did not have libraries or other services. There were a lot of people who still had no access to books, either commercially or through exceptions, and the objective was to solve that problem.

61. The Representative of the Motion Picture Association (MPA) affirmed that the MPA was supportive of the objectives of the VIP instrument that improved access to print materials in a manner that was consistent with the international copyright framework. Copyright was also a fundamental right and the driving force behind the production of new works. The Representative pointed out that the SCCRSCCR must be very careful not to upset the balance and dis-incentivize creativity and investment in the content sector. In that regard, the MPA was concerned about the inclusion of reference to national doctrines that were not defined at the international level. The Representative indicated that it would be advisable to allow Member States to maintain their own flexible approaches. That was the strength of the international copyright system and was not about extending the reach of the three step test, which already covered all general and specific exceptions. Instead it was about reaffirming the test while facilitating access to books for the visually impaired. Digital copyright exceptions did not exist in a vacuum, they needed to be accompanied by digital rights and other protections including those related to technological measures which were driving the launch of new business models to deliver those works. Member States had always been free to develop balanced approaches to the interface between exceptions and technological measures. The Representative stated that there was no need to address the issue in the instrument.

62. The Representative of the International Federation of Film Producers Association (FIAPF) welcomed the progress achieved by Member States on the work towards international norms for access to text based publications by the visually impaired and the print impaired. It was important to ensure that the text be limited in scope and consistent with the international legal framework and in particular with the three step test. The FIAPF also believed that the exceptions as defined in the text should not undermine the specific solutions deployed by the publishing industry itself. The use of the exceptions should be allowable only subject to the

non-availability of a version of the work enabling access by the print impaired community. Finally, authorized entities should operate according to high standard of reliability, safety and transparency. The Representative stated that these standards need not be onerous or bothersome.

63. The Representative of the American Council of the Blind (ACB) appreciated the progress made by the SCCR. The Representative highlighted that the draft needed to be balanced and acknowledge the interests of rights-holders, but it must also be clearly understandable and useable by real people who would work for the organizations that produced accessible format books and would like to share them with print disabled around the world. The provisions must be simple, yet effective. It didn't matter how many accessible format books produced. If an entity was prohibited from sharing those accessible format copies by either the onerous nature of the regulations or the fear of violating those regulations. The rights of authors and publishers and other rights holders could be protected by a treaty providing a meaningful process by which authorized entities could clearly know how to share documents. The Representative stated that there was no interest in promoting piracy or protecting any guilty subject.

64. The Representative of the International Video Federation (IVF) expressed support for an instrument to facilitate visually impaired persons access to print materials in harmony with, and without prejudice to, the existing international copyright framework. In order to facilitate access without undermining incentives to create and make works accessible, firstly the instrument must be one consistent with the international copyright law. Secondly, it needed to be narrow in scope. Thirdly, it must reaffirm the three step test. Fourthly, it must be flexible. Fifthly, it must be conditional to commercial unavailability, and finally, it must ensure appropriate care of digital files.

65. The Representative of the World Blind Union (WBU) endorsed the comments previously made by other colleagues. The Representative congratulated Member States for their willingness to work hard and their attempts to reach agreement. The WBU was ready to offer advice on possible draft provisions. The Representative stated that was a fear of overregulation in regard to import and export, and noted that the treaty must work practically. The exporters were not in a position to verify who was a *bona fide* recipient and to verify if a book was available in a country. The responsibility must lie with the exporter. The Representative wished to share the Representative of the IPA's expectations regarding the scenario of same book, same day and same price. The Representative referred to the statement made that research in the United Kingdom the previous year had discovered that 76 per cent of the top 1,000 books were made accessible. The Representative agreed it was true, but it also pointed out that the overall number of books produced in the United Kingdom in accessible format was only 7 per cent. The Representative reminded the SCCR that many Member States in the room had signed the Convention on the Rights of Persons with Disabilities and everything that was asked for in the treaty was consistent with many articles in that Convention. Finally, the Representative urged Member States to advance the negotiations so they could have the Extraordinary General Meeting in December calling for a Diplomatic Conference in 2013 to adopt the long awaited and important treaty for the blind, visually impaired and print disabled community around the world.

66. The Vice-Chair closed the session and announced that the Plenary would meet again the following day at 10 a.m. to assess the advancements of the informal negotiations.

## ITEM 6: PROTECTION OF BROADCASTING ORGANIZATIONS

67. The Vice-Chair opened the session and informed the SCCR that according to the agenda the subject of discussion was broadcasting. During the previous session, there was a commitment to continue working on the signal based approach, consistent with the 2007 General Assembly mandate towards developing an international treaty to update the protection of broadcasting and cablecasting organizations in the traditional sense. The WIPO General Assembly approved the recommendation by the SCCR that the SCCR should continue its work toward a text that would enable a decision on whether to convene a diplomatic conference in 2014. The Vice-Chair asked the Secretariat to introduce the "Working Document for a Treaty on the Protection of Broadcasting Organizations": contained in document SCCR/24/10.

68. The Secretariat recalled that during the previous SCCR, the SCCR agreed to adopt the single text titled "Working Document for a Treaty on the Protection of Broadcasting Organizations" contained in document SCCR/24/10. The text, submitted for the SCCR's consideration, included the textual proposals from the Delegation of India, previously contained in the footnotes. The text submitted constituted the working basis for the further text based discussions which would be undertaken on the topic of broadcasting.

69. The Delegation of Belgium, on behalf of Group B, welcomed the progress made during SCCR/24 on broadcasting and the decision of the General Assembly to continue work towards an international treaty to update the protection of broadcasting organizations. The Delegation indicated that work should continue on the basis of the single text adopted during the previous session of the SCCR in July 2012 titled "Working Document for a Treaty on the Protection of Broadcasting Organizations" with the objective of reaching a decision on convening a diplomatic conference in 2014. The Delegation stated that Group B believed the SCCR should continue working towards developing an international treaty to update the protection of broadcasting organizations. The Delegation noted, however, that important tasks remained ahead and believed that it was essential to see how the differences could be bridged. It was essential to offer balanced protection in the digital environment for broadcasting organizations. The Delegation acknowledged the level of maturity of the text and therefore welcomed further specific technical discussions within the first half of 2013. The Delegation said that Group B stood as committed as ever to work towards a consensus that would enable broadcasting organizations to be given effective protection at the international level.

70. The Delegation of Cyprus, speaking on behalf the European Union and its Member States, welcomed the preparation of document SCCR/24/10 on the protection of broadcasting organizations. It noted that the WIPO treaty on broadcasting organizations remained a high priority for the European Union and its Member States. The protection needed to be meaningful and adapted to the realities of the 21st century, while at the same time respecting the rights of rights holders in works and other protected subject matter carried by broadcast signals. It remained convinced that WIPO was the right forum for discussing the new international standards. The Delegation wanted to continue the discussions with the aim of progressing work on a draft treaty and making a recommendation to the 2013 WIPO General Assembly on the scheduling of a diplomatic conference. With the working document on the table, the Delegation was looking forward to technical discussions on the substance of the proposed treaty based on the text, including proposing amendments and making textual comments.

71. The Delegation of Hungary, on behalf of the Group of Central European and Baltic States, welcomed the preparation of the "Working Document for a Treaty on the Protection of Broadcasting Organizations" contained in document SCCR/24/10. The single text was a work in progress and formed an appropriate basis for the future work. The Delegation stated that the protection of broadcasting organizations had not been updated internationally for decades, but many technical developments had occurred. The Delegation recalled that the conclusions of the previous SCCR enabled greater intensity of discussions with the aim to allow the convening

of a diplomatic conference in 2014. For that reason, it proposed to have technical discussions in the spring of 2013 to deepen the understanding of the text in order to prepare the ground for expedited progress at the following SCCR.

72. The Delegation of China hoped to be able to have technical discussions on the document SCCR/24/10, which would enable the SCCR to achieve greater understanding and come to a consensus. The Delegation continued to support the work of the session in order to find agreement on both the scope, the objective of the protection as well as the signal based protection. It was also hopeful that they would be able to convene a diplomatic conference as soon as possible.

73. The Delegation of the Bolivarian Republic of Venezuela believed that until the issue of the visually impaired was resolved the topic of broadcasting organization should be outside the scope of the work of the SCCR. The Delegation stated that the Member States were trying to protect the rights under Article 26 of the Universal Declaration of Human Rights. The Delegation stated that it should not be put on the same level as the issue of visually impaired persons. The SCCR should have focused primarily on the visually impaired issue until it was fully resolved.

74. The Vice-Chair confirmed the full commitment of the SCCR to achieve positive results on the issue of the visually impaired.

75. The Delegation of South Africa was committed to work on a signal based approach towards developing an international treaty to update the protection of broadcasting and cablecasting organizations in a traditional sense, as per the mandate of the WIPO General Assembly in 2007. In that regard, it had pursued discussions that led to the adoption of a single text inserted in the "Working Document for the Treaty on the Protection of Broadcasting Organizations" contained in document SCCR/24/10. The document constituted the basis of further text based discussions in the SCCR. The WIPO General Assembly added further impetus by deciding that the SCCR should continue its text based work enabling a decision on whether to convene a diplomatic conference in 2014. Therefore, the Delegation noted that there was a need to work tirelessly in order to have the Working Document on the Treaty on the Protection of Broadcasting Organizations ready for the 2014 diplomatic conference. The Delegation did not see the efforts of developing an international treaty to update the broadcasting and cable casting organizations in isolation from other international processes. The Delegation encouraged countries to roll out relevant infrastructure that would be supportive of migration from analog television to digital television broadcasting systems. One of the challenges with that development was that the migration system from analog to digital would free up spectrum to facilitate the creation of other television channels. The risk was it could facilitate signal piracy and exacerbate the current problems. The Delegation supported the proposal to have a three day inter-sessional meeting before the following SCCR in order to deal with the difficult issues contained in the working document.

76. The Delegation of Mexico recalled that the topic had actually been on agenda for more than 14 years, and believed that this was more than sufficient. It stressed that signals should not be protected for the sake of them, on the contrary signals carried content. It was important to understand that it was not just a matter of protecting broadcast organizations, but also the artists, the authors and the speakers, because the content was transmitted through those signals. The Delegation stressed that the SCCR was on the right track in order to ensure the protection of all authors' rights. The Delegation indicated that in order to speed up the process, an inter-sessional meeting only on broadcasting issues was highly needed and appropriate.

77. The Delegation of Japan endorsed the statement made by the Delegation of Belgium on behalf of Group B. It welcomed the decision of last WIPO General Assembly which encouraged the SCCR to reach a decision on the convening of a diplomatic conference on the protection of

broadcasting organizations in 2014. As further work would be based on document SCCR/24/10, some corrections needed to be made to the document to reflect its proposals in an appropriate way. With respect to Article 8, Alternative B, the provision was different from the original proposal submitted by the Delegation and some corrections needed to be made at the end of the sentence. In relation to Article 9, Alternative B, paragraph 1(v), the Delegation requested the addition of the following text, "in such a way that members of the public may access them from a time and place individually chosen by them." In relation to Article 9, Alternative B, paragraph 1(vi), the Delegation requested that the second sentence be deleted. The deletion of Article 9, Alternative B, paragraph 2 was also requested, as that text was not included in the initial proposal from the Delegation. With respect to Article 9, Alternative B, paragraph (iii), the correct edition of the roman numerals would be provided and the deletion of (iv), (v) and (vii) was requested. The Delegation stated that Article 9, Alternative B, paragraph (iv) should be placed in a paragraph and not in an article. Finally, in relation to article 16, paragraph 1, the words "to any fixed or" seemed to have been inserted by mistake and needed to be deleted. The Delegation added that sustained discussions were required to advance the work towards a treaty and it supported the idea of providing additional time for discussion within the first half of 2013.

78. The Chair stated that there had been a request to introduce the wording of Article 8, Alternative B in the body of the text, however the original proposal did not make any more sense. A general idea explaining what was meant by the provision had been introduced. This referred to the possibility of sending notification to the WIPO Director General on certain obligations which could be introduced in the treaty. As the current text had become clearer, such requests for modification could be taken into account. However, the Chair stated that some of the other requests for modification did not have any basis in the discussions of the SCCR. These were new elements which had not been submitted at the previous sessions while two readings of the text had taken place. The Chair stated that they were therefore reluctant to introduce such new elements. In particular, Paragraph 2 of Article 9, Alternative B was not an element related to the proposal from the Delegation of Japan but rather an element introduced by the Chair for the SCCR's consideration, which it had subsequently adopted. A corrected version of the document could be produced to remove mistakes, but without adding or deleting textual elements that had been accepted by the SCCR in its previous meeting.

79. The Delegation of Egypt thanked the Secretariat for submitting a working document. This represented the most advanced and consolidated step since the beginning of the discussions on the subject matter and would help to achieve the objective of convening a diplomatic conference at the proposed date of 2014. In accordance with the recommendation provided by the General Assembly, the basis for the protection of broadcasting organizations was the signals and that could lead to the granting of rights in an indirect manner while rights in the underlying content were addressed somehow under other international instruments. The Delegation stated that it expected that concrete results would be achieved.

80. The Delegation of the United States of America stated that it was committed to moving the discussion forward on the basis of a better understanding of the Member States' differing positions which had been reflected in the working document. The most productive way forward was to carry out a technical discussion of substance and it supported the call which had been made in favor of inter-sessional work to be undertaken in the spring 2013 to focus on technical issues. The working document provided the basis for finding consensus on at least a core area of protection and broadcasting organizations' central needs, notably in relation to retransmissions of signals to the public while avoiding any negative impact on other rights holders or consumers. The Delegation noted that such an approach would require flexibility from the Member States to find an approach that would not mirror any of the national approaches but would set out an international core norm to be adopted by all members in accordance with their own legal and cultural contexts. The Delegation stated that significant progress could be achieved on the basis of that approach.

81. The Delegation of the Russian Federation expressed support for the efforts made by the Member States and the Secretariat to prepare a text on the protection of broadcasting organizations with a view to bringing it to a diplomatic conference in 2014. It supported a signal based approach as established by the SCCR and also reminded delegates that the protection of the signals was related to the protection of the content carried by the signals. As the digital age had become a reality, the Delegation stated that there was also a need to address digital related issues. The Delegation expressed support for technical discussions during the inter-sessional period.

82. The Delegation of Argentina reminded the SCCR that it had been following the process with a view to making progress with regard to the protection of broadcasting organizations. The Delegation noted that the subject matter was of high relevance to the country which produced important volumes of audiovisual content originating both from the private and public sector. The Delegation stated that it was prepared to work together with other delegations on technical matters and to participate in any formal or informal exercise which would provide the opportunity to submit comments and textual proposals.

83. The Delegation of Kenya expressed its gratitude to the Member States for adopting a single text for discussions as well as its commitment to working towards a fruitful conclusion of the process to allow for broadcasting organizations to operate in a proper legislative framework. The working document constituted a good basis for technical discussions which would eventually lead the negotiations towards the diplomatic conference in 2014. The Delegation highlighted that there was a need to reach definitive results in this process after many years of discussions. It expressed support in favor of a three day inter-sessional working session which would facilitate further work and expedite the process.

84. The Delegation of India said it appreciated the work done in preparing the working document and thanked the Chair for the inclusion of the Indian legal textual based comments as alternatives in the document. The Delegation also reiterated its commitment to the signal based approach toward developing an international treaty for protecting broadcasting organizations in the traditional sense, consistent with the 2007 WIPO General Assembly mandate. It was opposed to the inclusion of any elements of webcasting and simulcasting issues under the framework of the proposed broadcasting treaty and against any attempt to amend the mandate to include retransmission over computer networks and any other platforms because these activities were not broadcasting at all in the traditional sense. There was however, some flexibility to support protection against unauthorized live transmission of signals over computer networks, which caused significant economic loss to broadcasting organizations but which should not be understood as any kind of webcasting or simulcasting. In the framework of the proposed treaty, the protection of broadcasting organizations was based on a signal based approach in the traditional sense and the Delegation opposed the inclusion of any element related to a rights based approach. The Delegation stated that it supported suitable alternative proposals to strengthen the General Assembly mandate and considered the working document as a good basis for the further discussions to conclude this treaty.

85. The Delegation of Brazil, speaking in its national capacity, stated that the work being carried out in the SCCR should not depart from the guidance provided by the General Assembly to orientate the work. Some agreement was required on the objectives, the specific scope and the object of protection in accordance with the mandate for the adoption of a signal based approach and to define the scope of the future treaty which should be focused on broadcasting organizations in the traditional sense. The textual proposals from the Delegation were part of the working text and addressed public interest considerations, such as Article 2, general principles, Article 3, the promotion of cultural diversity, and limitations and exceptions and defense of competition as contained in article 4. The Delegation reserved its right to provide

further textual suggestions and comments over the course of the negotiations with a view to participating in a constructive way to the discussions.

86. The Delegation of Morocco stated that the discussions on the protection of broadcasting organizations had been going on for a number of years before a single text could be adopted. The text was therefore the result of many years of work. Signals contained some artistic content, although there was agreement to base the protection on signals and to protect broadcasting organizations in the traditional sense. The work of the SCCR on this issue had to be accelerated to become a priority in 2013. The audiovisual had been liberalized and a number of broadcasting organizations had been created which made the adoption of an international instrument necessary to protect the signals of those organizations against piracy. The Delegation requested the SCCR to adopt an action plan for 2013 in order to step up the pace of the work at a technical level either via inter-sessional meetings or regional meetings to agree on pending issues with a view to convening a diplomatic conference in 2014.

87. The Delegation of the Islamic Republic of Iran noted that the SCCR was engaged in intensive discussions on the new instrument for visually impaired persons which would prevent comprehensive discussions on the protection of broadcasting organizations to be carried out at that session. The Delegation stated that an inter-sessional meeting was required before the next regular session of the SCCR in order to achieve the objective of convening a diplomatic conference in 2014.

88. The Delegation of Switzerland noted with pleasure an emerging consensus on technical discussions in relation to the protection of broadcasting organizations. It expressed support for the position expressed by the Delegation of the United States of America in relation to the need to identify core issues to arrive at a more focused document and a result in the time available.

89. The Delegation of the European Union and its Member States expressed that in view of the technical and very complex nature of the working document which formed the basis for discussions, and the need to progress to submit a recommendation to the 2013 WIPO General Assembly, it was in favor of conducting further focused technical discussions in the spring of 2013. The way forward was to identify core issues and to try to understand the various positions and approaches before going into very detailed discussion on the wording. The Delegation also emphasized its understanding that it would be possible to submit further amendments and textual comments during those discussions and it considered the working document to be a basis for further identifying core issues, without being a closed text.

90. The Chair proposed to the SCCR that due to the lack of time, NGOs would not make any oral statement but rather would send to the Secretariat their written comments for inclusion in the report. The following statements were received.

91. The Centre for Internet and Society (CIS) reiterated its statement provided at SCCR 22, opposing a rights based broadcast treaty. While it was encouraged by the inclusion of more suitable alternatives in many of the areas where civil society organizations had expressed concern, it was important that these alternatives be considered carefully as some of them in the working document were not keeping with the mandate of the SCCR or with a balanced protection for broadcast organizations. The definition of 'broadcast' itself was too broad and the treaty required a clear and precise definition that limited it to the protection to signals and did not extend to retransmissions or transmissions over computer networks. It was also essential that the protection granted to a broadcasting organization be limited to broadcast signals. The current working document extended that protection to public accessibility/performance of the broadcast signal and such restrictions were not feasible in developing and least developed countries. One alternative even extended the protection available to fixations of the broadcasts which was unacceptable in a signals based treaty. The obligations with regard to technological protection measures, if any, had to be limited to protect only lawful broadcasts. Limitations and

exceptions to the protections granted under the treaty were also of great importance, especially in light of the Development Agenda and had to be made mandatory and be expanded to include issues of national interest and for free-to-air broadcast signals (such as the laws governing broadcast of cricket games in India). The CIS stated that a fixed term of protection of either 20 or 50 years was also inconsistent with a signal based approach to the treaty.

92. The Commercial Broadcasters Association of Japan (NAB Japan) welcomed the working document and stated that it was based on the conclusion of the previous SCCR and provided fair treatment to the proposals submitted by the Delegations of South Africa, Mexico, Japan and India. Although some areas required further clarification and improvement, the existence of that document acknowledged the differences of opinions and constituted a basis for further substantive and intensive discussions which had not been made possible in the past several years. The NAB Japan stated that it was important to resolve the issue of scope of protection to further streamline the document.

93. The Delegation of the Bolivarian Republic of Venezuela stated that the SCCR had to focus on reaching a positive outcome on the issue of visually impaired persons/persons with print disabilities and if no agreement could be achieved, the inter-sessional meeting agenda would have to be dedicated to that issue.

94. The Chair replied that this would be taken into consideration during the adoption of the general conclusions, but was hopeful that progress would be made in that session on the issue of visually impaired persons/persons with print disabilities. The Chair recalled that the Secretariat would produce a revised corrected version of the document taking into account the corrections submitted by the Delegation of Japan and the comments it had made after their intervention. The Chair also recalled the plea from many delegations to intensify the pace of work in order to achieve the objective of making a recommendation to the General Assembly on the possible convening of a diplomatic conference in 2014.

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

95. The Chair opened the floor on item 7 of the agenda.

96. The Delegation of Belgium stated that it had taken note of the interesting discussions which had taken place in the past SCCR sessions and recalled that existing international instruments relating to the subject matter such as the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS), the Berne Convention, the Rome Convention, the WIPO Copyright Treaty (WCT) and the WIPO Performance and Phonograms Treaty (WPPT) already provided for some flexibility on limitations and exceptions. The Delegation stated that discussions on national experiences and best practices had to be pursued in the SCCR, including the possibility for additions of new topics or background to the ongoing discussion.

97. The Delegation of Egypt, speaking on behalf of the African Group, recalled and expressed its support to the SCCR 2012/2014 work plan and stated that it expected that progress would be made in the discussions regarding document SCCR/23/8, which contained the proposals made by different Member States. The document was structured in terms of topics and clusters and the textual proposals which had been submitted by Member States as part of each cluster. These had to be retained so as to allow a compilation of comments or opinions as part of an annex to that document. The Delegation noted that limited time had been allocated to discuss these issues and in order to make progress an inter-sessional meeting was needed during the second half of 2013 to advance discussions.

98. The Delegation of the European Union and its Member States stated that libraries and archives were important tools for the dissemination of information. Exceptions to copyright for

the benefit of those institutions could play an important role for the achievement of public objectives and were allowed under the existing international conventions and treaties. The Delegation attached a great deal of importance to ensuring flexibility in the application of these exceptions which had been incorporated in Member States' legal systems. A lot could be done under the current framework and it had some reluctance at this stage of the discussion to engage in any drafting exercise which would limit the open ended nature of the exceptions to the benefit of libraries and archives. The way to make further progress was to have first a debate on the SCCR's needs and to concentrate the debate on selected topics of document SCCR/23/8. The Delegation stated that the door had to be left open in the forthcoming debates for new topics or background to be added to the document where necessary. It stood ready to make constructive proposals in view of pursuing a balanced approach.

99. The Delegation of Brazil, speaking on behalf of the DAG, expressed its appreciation that the SCCR had reached a single working text on limitations and exceptions for libraries and archives, which was a good step forward in achieving an instrument. It reaffirmed the importance of moving forward on the basis of text-based work in a global inclusive approach. With regard to the structure of the document SCCR/23/8, the Delegation was of the view that the document could be significantly enhanced if comments were compiled in an annex which would contribute to enhance the user-friendliness of the document. Comments were also helpful as supporting material as they provided more context to the discussions, but they had to be separated from textual suggestions to facilitate the analysis of provisions. The Delegation noted that these could be grouped in an annex to the document to enhance the treatment of the text on limitations and exceptions for libraries and archives.

100. The Delegation of India thanked the Secretariat for the inclusion of the legal textual comments and of all topics in the working document. It hoped that these would form the basis of future text-based negotiations. It reiterated its support for a WIPO Treaty on limitations and exceptions for libraries and archives and considered that in order to make substantial progress towards text-based negotiations the SCCR had to work on a document containing only legal textual proposals originating from Member States. The Delegation stated that the current document included three kinds of proposals, namely the legal textual comments, the specific comments by topic and the general comments. It requested that a deadline be fixed for Member States willing to send additional legal textual comments on the topics to replace existing specific and general comments. The Delegation proposed that the Secretariat would then need to revise the document and include specific and general comments in the annex.

101. The Delegation of Nigeria supported the statement made by the Delegation of Brazil regarding the importance of working on a document containing the text without the comments. Much of the background information which had been discussed at the previous SCCR was contained in some of the comments, but it was hard to access them given the document format. Once comments were removed, about 10 or 11 issues needed to be addressed. The Delegation stated that a set of narrow principles had to be identified in view of a proposed treaty on limitations and exceptions for libraries and archives.

102. The Delegation of Senegal endorsed the comments made by the Delegation of Egypt on behalf of the African Group and reiterated the interest of least developed countries in exceptions for archives and libraries as teaching and research went beyond the right to education and the right to information. It was essential for the SCCR to progress its work substantially and the Delegation supported the proposal to have a separate document on legal provisions and an annex of comments.

103. The Delegation of Belgium referred to the proposal for inter-sessional work and stated that it considered that the text was not mature enough when compared to other topics which had been discussed earlier in the SCCR. The Delegation welcomed further open ended

discussions, including on the possibility of including new topics without being subject to any deadlines for such submissions.

104. The Delegation of Kenya reiterated the importance of having limitations and exceptions for libraries and archives and supported the proposal made by the Delegation of Egypt. It also endorsed the proposal made by the Delegation of India to allow delegations to submit their comments to the text. The Delegation pointed out that the revised document had to be made available at the next session of the SCCR.

105. The Delegation of Nigeria reiterated the importance of the issue for its government and considered that the discussions had to remain open ended as libraries only had a specific set of core functions which was to lend and provide books on a non-commercial basis. The concerns of delegations asking for further studies or comments had to be addressed. An inter-sessional could assist in that process by getting additional comments and identifying the scope of an international instrument in a way which would be based on the vast amount of research which had already been done and on the existing state of the art.

106. The Delegation of Hungary supported the statement made by the Delegation of the European Union and its Member States and expressed the view that the existing international framework allowed Member States to introduce exceptions and limitations for libraries and archives. The work had to be focused on existing models at the international level. The Delegation indicated that additional work would be best handled in the SCCR rather than in inter-sessional meetings.

107. The Delegation of Algeria supported the statements made by the Delegation of Egypt on behalf of the African Group, and the Delegation of Brazil on behalf of the DAG. It already had legislation which included limitations and exceptions for libraries and archives. The Delegation pointed out that the SCCR had passed the stage of a simple exchange of information regarding national experiences and had to move to considering setting up international standards. The Delegation stated that an inter-sessional meeting was necessary to make headway in discussions. It noted that limited substantive discussions had taken place to enable the SCCR to have more in-depth discussions and to improve the working document by separating the textual proposals from the comments.

108. The Delegation of Argentina expressed its support for the continuation of the process with the objective of establishing limitations and exceptions on copyright for the better functioning of libraries and archives on some specific issues such as the preservation, the lending, the responsibilities of libraries and archives, and the technological protection measures. These issues continued to be discussed and reviewed with no progress made in the discussions. The Delegation stated that it was important during internal consultations to get a clearer text by separating the legal text from the comments.

109. The Delegation of Kenya wished to reiterate its commitment to the topic discussed but it also considered that the SCCR had to realistically look at its calendar and consider the number of inter-sessional meetings which had been scheduled on copyright issues and other areas of work of the organization, such as traditional knowledge. The SCCR needed to consider whether delegates could give their best under such a heavy agenda. National experiences had already been addressed by past studies and the SCCR had moved beyond that point to start considering working on a text. The Delegation indicated that a concrete working document was needed for any inter-sessional to be productive.

110. The Delegation of the United States of America supported the statement made by the Delegation of Kenya on the need to be practical before calling up an inter-sessional. The SCCR had to be cautious and conscientious of existing commitments when planning what it should be doing in the future taking into account the amount of time which would need to be devoted to

the visually impaired to resolve outstanding issues should a diplomatic conference not be called for. It supported the conclusions which had been agreed at the previous sessions of the SCCR to proceed to text-based work while the SCCR was struggling with the issue of the organization of the document. The Delegation stated that it was advisable to agree on which topics to work on, as this would provide a greater level of confidence for all delegations on the shape of the emerging document. Comments had been included because the SCCR had not reached consensus on which topics it should be working on and how it should be working on them. The Delegation noted that it was open to further consider all ideas while it was looking forward to an effective plan to continue the discussion without prejudice to the nature of any future instrument which would help to improve the copyright norms that apply to libraries and archives globally.

111. The Delegation of Brazil considered that the suggestion made by the Delegation of India to provide a deadline before the next SCCR for submitting legal text based on existing comments was helpful. The Delegation stated that this would be useful for the SCCR's use at its next session.

112. The Delegation of Ecuador stated that the work carried by the SCCR was of the utmost importance as libraries and archives were a historical pillar of education supporting both authors and the public. The Delegation noted that it would be legitimate to remove barriers and legal omissions prejudicing its activities. The SCCR had to make headway on the basis of text based work. It needed to take into account the proposal of the African Group and other delegations to facilitate the analysis and consolidation of texts. The Delegation stated that dedicated meetings and deadlines were necessary to enable the finalization of an instrument on exceptions and limitations for libraries and archives.

113. The Delegation of Egypt referred to the conclusions of the SCCR/24, which indicated that document SCCR/23/8 would be the basis for the future work of the SCCR. The Delegation noted that the document included the comments made by all WIPO Member States from all different groups, having captured, in an inclusive and comprehensive manner, the best practices and experiences of all Member States. It regretted that other best practices remained to be shared with the SCCR despite the fact that that issue had been on the agenda of the SCCR for a long time. It asked Member States to benefit the exercise by sharing these best practices in addition to what their national laws said about these issues. It also underscored its optimism on the good progress they were having with these discussions at the SCCR that could lead them to hit the target for having another Diplomatic Conference the year after. The Delegation highlighted the clear work plan that invited delegates to work hard to meet the timeline given to them regarding limitations and exceptions for libraries and archives, if they wished to provide a specific recommendation to the General Assembly by SCCR 28. It proposed to continue the text based work, as the instrument needed to be a legal text, and afterwards to discuss the nature of the instrument, as it has been done with the VIP issue. The Delegation highlighted that the two issues were not mutually exclusive but mutually inclusive. It recalled the statement given by the Delegation of Kenya to look at the calendar, and invited the Secretariat to provide the best timing for having an inter-sessional meeting for three days during the second half of the next year, after they had celebrated the conclusion of the VIP Treaty.

114. The Vice-Chair indicated to the Delegation of Egypt that they all shared, instead of "optimism", in fact "engagement" in arriving to a solution on the VIP issue by the end of that week, highlighting that there was still a lot of work to be done.

115. The Delegation of Canada invited the other delegations to consider the numerous copyright reforms that had recently come into force under its domestic copyright law. The reforms in Canada's Copyright Modernization Act were developed in order to address the challenges and opportunities of the digital era. A number of these reforms pertained to uses of copyright material by educational institutions, students, researchers, librarians, persons with perceptual disabilities and others. These reforms included new provisions permitting technology

enhanced learning, including distance education, the digital delivery of course materials, the digital delivery of interlibrary loan materials, and the use of publicly available Internet material in the education context. The Delegation concluded by expressing its support to the development of a treaty to facilitate access to material by persons with print disabilities.

116. The Delegation of New Zealand recognized the importance of the work on limitations and exceptions as they related to other exceptions. It stressed the great value in looking at copyright limitations and exceptions as an essential part of the overall evolution of the international copyright system. It underscored that at that moment it did not support an inter-sessional meeting to take place in 2013 for the reasons given by the Delegations of the United States of America and Kenya. The Delegation concluded by reminding the SCCR that an inter-sessional meeting posed a serious resourcing issue for a number of delegations, including itself, and should therefore remain as the exception.

117. The Delegation of Mexico noted to the SCCR that after listening to different comments of the delegates on the document, it considered that the current situation should be used to work on a work plan, by identifying which were the most important of the 11 topics on which the document was divided. Once this was done, they could concentrate their work on those topics and in case they were to have an inter-sessional meeting, the work could be focused on those topics. The Delegation concluded by observing to the SCCR that by identifying those topics they might be able to find a common ground for the work.

118. The Delegation of Brazil highlighted that it was important to give attention to the 11 topics which were not selected randomly, but the result of a prior process. The Delegation underscored its preference for having a comprehensive discussion of all the 11 topics, which all merited the same level of attention.

119. The Vice-Chair indicated to the SCCR that a preliminary conclusion at that stage, could be that it was in the strong interest of many delegations to try to reorganize the text, at least by trying to put some textual proposal in some part of the text and having the comments in an annex. The Vice-Chair also noted the idea of having a deadline for submitting textual submissions, and the proposal to identify the most important issues on which they should work on. The Vice-Chair underscored that they had already identified during the previous SCCR that "preservation" was the first topic to be discussed from the list. Regarding the idea of restructuring the document, the Vice-Chair asked the delegations if it could state as a conclusion that the document would be separated by including the comments to the text in a separate annex. There was no clear consensus on the idea of having a deadline for submitting textual submissions. In relation to the proposal for having an inter-sessional meeting, the Vice-Chair highlighted the strong request made for having it in the second semester of 2013. The Vice-Chair also noted the point of view of some delegations that it could be premature to decide on this regard. The Vice-Chair observed that there had not been any clear opposition to this proposal, and accordingly, this made it difficult to have a clear conclusion on that issue.

120. The Delegation of Belgium endorsed the proposal of having some priority setting within the topics, and expressed its desire for keeping the list of topics open, as well as the nature of the discussion. The Delegation concluded by stressing its interest in hearing from other delegation in terms of best practices regarding the topics.

121. The Vice-Chair proposed that because of the divergences in positions that different delegations had at that stage, they should stop the current discussions and move towards the discussions on document SCCR/24/8 Prov. Afterwards they would come back and the conclusions to be made on that agenda item. The Vice Chair pointed out that this would provide time to reflect on the direction they should follow.

122. The Delegation of the European Union and its Member States aligned itself with the proposal of debating some selected topics as the way forward. It also noted the importance of having the possibility to add new topics and background to the document if necessary.

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

123. The Vice-Chair opened the discussions on agenda item 8, limitations and exceptions for educational and research institutions and for persons with other disabilities, document SCCR/24/8 Prov. The Vice-Chair requested first to have the groups' statements and then statements from individual delegations. The Vice-Chair proposed that afterwards they it would give the floor to observers to make their statements regarding agenda items 7 and 8.

124. The Delegation of Brazil, speaking on behalf of the Development Agenda Group (DAG), provided two comments on document SCCR/24/8 Prov. The first comment was to suggest restructuring the document in a manner so that the textual suggestions were the first part of the document and then an annex with comments and/or statements made by the delegations on the topics identified. The second comment was that as it was a provisional working document, it should be adopted by the SCCR in order to continue working on this issue.

125. The Delegation of Belgium underscored the fundamental role of copyright as the basis of education and research and expressed its readiness to further engage in a balanced debate. It concluded by reminding the delegations that they should remain focused and not deviate from the core educational and research objectives of the discussion.

126. The Delegation of the European Union and its Member States observed that quality of education and vibrant research were priorities in all countries, and that educational and research institutions played a crucial role in their society with respect to the dissemination of knowledge, culture and information, as well as for the progress of science. It noted that education depended on copyright protected content, such as textbooks and journals, using education as their basis of teaching, and that copyright was a fundamental and a key factor in stimulating education and research. The Delegation underscored that it was ready to continue the debate started during the twenty-fourth session of the SCCR on education and research, and to have a further exchange of views on all relevant aspects of that topic. It expressed its concern that there were a number of issues on the table that seemed beyond the topic of their discussions. It noted that they should understand better the relevance for the discussions and see to what extent they should try to advance them by identifying those issues which were directly linked to education and research. The Delegation proposed that first of all, they should have a debate on the scope of their discussions. Secondly, that document SCCR/24/8 Prov. should be restructured in a similar manner to document SCCR/23/8, on limitations and exceptions for libraries and archives, with textual proposals and comments separated under each topic. The Delegation noted that it wanted to leave the door open in the forthcoming debates to add new topics or background to the document if necessary, as this could lead to, for example, the inclusion of licensing schemes. It looked forward to discussing the national experiences in the implementation of limitations and exceptions for educational and research institutions, teaching purposes, and scientific research, and the way they were used in practice. It indicated that in its view, the framework they had at the international level allowed them the necessary flexibility. The Delegation concluded by expressing its readiness to contribute to discussions and to accept whether they should engage in making recommendations or providing model licensing clauses.

127. The Delegation of China noticed that progress had been made on this topic since the last session of the SCCR. It expressed its gratitude for having included its proposal in the provisional working document. The Delegation stressed its willingness to continue supporting

the efforts on limitations and exceptions for educational and research institutions. It concluded by calling for a spirit of flexibility and openness so that they could continue with the discussions.

128. The Delegation of Egypt, speaking on behalf of the African Group, recalled its opening statement which highlighted the importance of adhering to the work plan in the SCCR. The Delegation noted that the 30th session of the SCCR had been asked to submit to the General Assembly recommendations for limitations and exceptions for educational and research institutions and people with other disabilities. It stressed the utmost importance of streamlining the document to make more useful and meaningful by separating the legal text from the comments presented by several Member States. The Delegation also highlighted the importance of adopting this working document to be the basis for the future work of the SCCR regarding this issue of limitations and exceptions for education, teaching and research institutions.

129. The Delegation of Nigeria aligned itself with the comments made by the Delegations of Belgium, the European Union and its Member States and the African Group. It observed that the comments made so far were not in conflict, but rather they were all consistent with the efforts toward a stable international environment in which the movement of digital files in particular, but also print material, could be done in a transparent, efficient, and affordable way. It underscored that while having the uncertainty on whether imported educational texts were created under an exception or under a regional agreement, its copyright agency would have to continue intercepting and holding them, creating a lot of confusion. The Delegation noted that this situation that was untenable. The Delegation noted that Nigeria was the major education center, following South Africa, on the African continent, and therefore it was concerned that this situation of uncertainty would simply facilitate infringement. The Delegation indicated that it needed to get a better sense of what was acceptable for cross-border shipments and uses of exceptions and limitations for educational materials. It observed that it did not have an existing international instrument. The Delegation noted that it did not believe was that the Berne Convention appendix, which had not been updated for the digital age, but which continued to make available the spectrum of compulsory licensing, was the best way to address the issue. It pointed out that the combined interest of publishers, governments, copyright holders and Ministries of Education worldwide was that they must had some sort of an honest, fair and balanced discussion about what was needed to be done and how it should be done. The Delegation concluded by stressing that there was no question that it had to be done and that it was the appropriate forum to consider those issues.

130. The Delegation of India aligned itself with the Delegation of Nigeria in supporting the statement made by the Delegations of Brazil and Egypt. It pointed out that it was fundamental for the negotiation progress that the provisional working document should contain the legal textual proposals, and the general comments, specific comments, delegated to the annex. This would allow the work in progress to have meaningful negotiations. The Delegation hoped that the Secretariat under the Vice-Chair's guidance would set a deadline for countries providing the legal textual comments, making them available for the next SCCR.

131. The Delegation of Ecuador aligned itself with the Delegations of Brazil, Egypt and India. The Delegation indicated that it was necessary to separate the text of the legal proposals from the comments. This was essential if they were to achieve the objective of making progress on text-based work which would lead them to an international instrument dealing with the various different problems affecting education, caused by inconsistencies or inadequacies in copyright law at the international level.

132. The Delegation of the Russian Federation supported the proposal of drafting a document on limitations and exceptions for educational and research institutions. It aligned itself with the statement made by the Delegation of the European Union and its Member States. It underscored that it was an extremely important task, particularly for school books. It supported

access for all sectors of the population, for which existing national laws and existing international agreements required new approaches precisely on exceptions and limitations. The Delegation concluded by proposing to bring to the specific limitations and exceptions for educational and research institutions, the methodology previously that had been proposed for limitations and exceptions for libraries and archives issue.

133. The Delegation of Algeria aligned itself with the statement made by the Delegations of Brazil and Egypt, on behalf of the DAG and the African Group. It pointed out that if they wanted to make progress on this important issue, they needed to have a document that allowed for such discussion. It noted that they could agree to review the document which was being examined by the SCCR and ensure that the document set out the text proposals in one part and the comments in an annex. It recognized the concerns expressed by some delegations indicating that at that stage they could not adopt the document as it was, based on the principle that some topics included in the document could pose problems for them. It observed that nothing in the document said that such categories would be adopted and nothing obliged those delegations to work on those particular categories. It indicated that the SCCR should press on by adopting the document as a basis for their further discussion in order for them to make progress. The Delegation concluding by underscoring that in an environment where they were seeing borders between States disappearing, differences between national legislation relating to limitations and exceptions might create discriminatory access to research and development. Therefore it was a limitation on the right to access to knowledge and on the basis of that principle. It considered they could start discussing the possibility of drawing up an instrument that that would take into account that particular fact.

134. The Delegation of Belgium indicated that for it the separation of legal proposals from the comments was problematic. It noted that since they had different legal cultures and different legal systems, that proposal would decrease the readability of the text. The Delegation proposed that it was better to keep it as it was. It proposed that as a way forward, they could move on to certain of the 11 topics.

135. The Delegation of the United States of America observed that in repeating the discussions held during the previous SCCR, too much time had been focused on the format and the name of the document. It noted that there were certain elements in the document that made it very difficult for it to discuss the document as a working document of the SCCR. The Delegation proposed that a way to streamline the document and have meaningful progress on it was to identify and focus on certain topics they could all agree on. It noted as an example the topic of distance education. It also noted that there was no reason for having just one working document for all the topics. They could have one for each topic, for example, one for distance education, one for preservation for libraries, etc. They could have a series of working documents, which over time could be brought together. The Delegation proposed that this might reduce some of the tension they had SCCR after SCCR over the nature of the document, the organization of the document, the name of the document, etc.

136. The Vice-Chair noted there was no consensus in the SCCR for either restructuring or adopting the document. The Vice-Chair considered that they should perhaps identify the issues and chose one from which they could start working together as it was hard to have a conclusion at that stage. The Vice-Chair invited delegations to think about where they could find a compromise on that issue, taking into account that by the end of that day, they needed to have at their disposal time to finalize discussion on those two topics concerning limitations and exceptions. In the meantime, the Vice-Chair opened the floor for observers for their comments. Afterwards, discussions on how to conclude on those two topics would be re-launched.

137. The Representative of the International Federation of Library Associations and Institutions (IFLA), the Electronic Information for Libraries (EIFL), and the Canadian Library Association (CLA) highlighted that the substantive proposals presented by all Member States, together with

the extensive written comments, illustrated their engagement in the issues facing libraries and the confluence of copyright with access, public policy and private licensing, and evolving digital technologies. It noted that every day libraries in all parts of the world provided information services to people for their work, study, research, and leisure needs. Libraries required the ability to properly fulfill their mandate in the digital environment in order to meet the information needs of library users of tomorrow. The Representative noted with appreciation that document SCCR/23/8 included topics essential to aiding that outcome as digital preservation and permitting the removal of digital locks for non-infringing use. It reminded the SCCR that it had been agreed during the previous SCCR that document SCCR/23/8 should constitute the basis for future text-based work, in order to maintain progress and to achieve the target of submitting recommendations on limitations and exceptions for libraries and archives to the General Assembly by SCCR/28 in 2014. It called on Member States to engage in a text-based discussion, approaching each topic in a sequential manner according to the agreed structure. That would allow a deeper analysis of each topic, while using the limited time available for substantive discussions, and keeping the two year timetable on track. The Representative aligned itself with the suggestion of the Delegation of Brazil to separate the proposed text from the comments, in order to facilitate the text-based work. The Representative urged Member States to maintain the overall sequence as set out in the conclusions of the 24th sessions of the SCCR: limitations and exceptions for persons with disabilities, then libraries and archives, followed by education and research institutions. The Representative recognized the role of copyright protection and fostering creativity, and was respectful of the rights of rights holders. The Representative highlighted that managing copyright content was what libraries did every day and they enjoyed the highest reputations for compliance with the law. The Representative concluded by requesting for a clear framework that established a basic minimum standard of limitations and exceptions for libraries and archives, consistent with international law, as a positive way to implement the Agreed Statement to Article 10 included in the WCT. Finally, the Representative stated that they did not seek for harmonization or a single solution, because they recognized that nations have different needs and priorities.

138. The Representative of the International Federation of Reproduction Rights Organisations (IFRRO) referred to its statement on limitations and exceptions, made during the previous session of the SCCR, and noted that appropriate access to copyright works, including teaching materials, was a question of building up positive infrastructure and sustaining the development of good teaching materials and other copyrighted works. It was therefore indispensable that they carefully framed narrow exceptions to limit the use to libraries and education, complemented by the access to materials with rights holders and their representatives, supplemented by collective rights management. It observed that, as was demonstrated at the side event held during the 24th session of the SCCR in July 2012, seamless access for agreements with rights holders most efficiently meets the needs in terms of providing access to content in constantly changing environments. In a fast changing world, where technology moved with unprecedented speed, laws and other regulations did not alone have the ability to offer the required flexibility. As outlined by the Delegation of the United State of America, licensing agreements did. The Representative highlighted that the sharing of best practices on how to provide access to works, would allow other countries to give expertise, so the countries could establish their own mechanisms, including management structures adopted to their needs and tradition, building and maintaining a sustainable national copyright industry.

139. The Representative of the Civil Society Coalition (CSC) observed that an appropriate text on limitations and exceptions for education should promote as a principle the recognition of publicly funded works as public goods. That is, society should have a right to widely distribute, copy and use. In that regard, out of print titles meant that reproduction, translation, display, dissemination and distribution of out of print works for educational and research use should be completely allowed. Limitations and exceptions should also prevail for the whole copy for non-commercial purposes, or at least, for users inside classrooms and for scientific purposes. The exceptionality of the scientific purposes was derived not only from the social importance of

those activities, but also from the fact that the public sector had historically supplied without demanding anything in return, a great part of the contents for the private publishing sector. In the absence of an arm allowing the books for a non-commercial purpose, it would be convenient that there were specific limitations for copying important books. The Representative stated that for public universities and other scientific institutions, it should be defined in their working contracts that books resulting from research and development from an institution should be published with a license allowing its full reproduction. It indicated that the criminal liability for the circumvention of technological protection measures should be reviewed with regard to the access to works in the public domain and under open access licenses. Finally, the Representative expressed its preference for having proposed text separated from comments in order to facilitate text-based work, regarding document SCCR/23/8.

140. The Representative of the German Library Association (DBV) was grateful to have the opportunity to take part in that SCCR meeting for the first time as an official observer. It observed that many people depended on libraries to access the information they needed to live their lives, especially those who needed to make significant use of research materials, use of rare documents or unique works that were no longer commercially available. In the digital world, while they had access to many free information resources, on the other hand access to the most relevant materials was usually subject to often restrictive license terms and technical protection measures. The first sale doctrine did not apply to digital works, libraries and archives. A number of proposals included in document SCCR/23/8, the working paper on limitations and exceptions for libraries and archives, sought to address that problem. Those topics all had clear international dimensions and therefore, needed an international framework and the flexibility of Member States. It expressed its support to separating text proposals from comments in order to make the document better to work with, and asked delegations to start text-based work on the proposals included in document SCCR/23/8, starting with topic number one: preservation. The Representative highlighted the importance of preservation, as libraries and archives in every country needed adequate exceptions to enable them to make preservation copies of both digital and analog materials before they deteriorated and became unusable. Otherwise, the Representative noted that future generations would have no access to their history, their knowledge, and human memory.

141. The Representative of the International Group of Scientific, Technical and Medical Publishers Association (STM) stated that since 2008 it had a position on exceptions and limitations in the public interest, which was included in a paper made available to the Secretariat in a previous occasion. The Representative noted that the paper's headlines coincided with many of the headline topics currently being discussed in the SCCR. The Representative stated that the STM had five principles that underscored individual topics such as preservation. The first principle was absolutely fundamental: the respect for the Berne Convention's three-step test. The second principle was in relation to special markets and how they are served by specialized rights holders. Therefore they must not be eroded by too broad or general exceptions. The third principle was that licensing is the smart route to provide access to knowledge and should be preferred over exceptions and limitations. The fourth principle was that exceptions and limitations must take account the increased risk of digital dissemination. The fifth principle was that exceptions and limitations must take into account cultural diversity and legal traditions.

142. The Representative of the International Video Federation (IVF) recognized with appreciation, developing countries' legitimate requests for assistance in adapting their copyright laws to the global online environment. It also expressed its support for practical solutions taking advantage of the existing international copyright framework's flexibilities, balancing limitations and exceptions, and exclusive rights.

143. The Representative of the International Publishers Association (IPA) pointed out that in the access to copyrighted works, collective management organizations played an important role.

It observed that Member States had the sufficient flexibility to introduce limitations and exceptions that met their domestic needs and reflected their local policies. These included the possibility of introducing exceptions for libraries and archives and educational establishments, which currently existed under many countries' laws. The Representative concluded by indicating its position that a balance between rights and exceptions, as they were established under the existing international copyright framework, should be maintained.

144. The Representative of the Motion Picture Association (MPA) informed the delegations that it was a trade association that represented major international producers and distributors of film and other audiovisual work, whose activities took place throughout the world. The companies served by the MPA devoted substantial efforts and resources to developing a wide range of entertainment content and services in a variety of formats and on a variety of media, including on the Internet. It welcomed the calls made by delegations for licensing, as it strongly believed that licensing of legal content around the world was the best way to address the various challenges that were posed by piracy and from those that want to weaken copyright for their own personal reasons. The Representative underscored that the basis of its members' businesses was copyright, and that they had always supported a balanced and workable system of copyright, including not only strong exclusive rights, but also exceptions and limitations in the field of education and indeed others. It observed that they had significant experience in working with relevant bodies in the audiovisual sector, such as film archives, museums, film schools, etc., whose work was critical to promoting media literacy and ensuring the preservation of cultural heritage, something that was very, very important for film producers as well. The Representative noted that they recognized the need to facilitate access to audiovisual content for users with disabilities, for which special subtitling and audio description tools were increasingly made available on audiovisual content. It noted that when dealing with such issues, delegations should be careful not to upset the balance inherent in copyright. Copyright was also a fundamental right that incentivizes creativity and the investment in new works. It recalled the importance of the international framework, including the three step test, which provided already flexibility to introduce a wide range of exceptions and limitations. The Representative reminded the delegations that the three step test, which was applied broadly across a wide range of treaties and found in many national laws, was not about constraint, but about the flexibility for parliaments and courts around the world. Its beauty was that Member States could fashion solutions to address the issues being discussed there that day. It stressed that exceptions did not exist in a vacuum, in the digital environment they came along with rights. It observed that it was vital to implement the WCT, the WPPT, and indeed the new Beijing Treaty. The Representative noted that the international framework meant that Member States maintained the flexibility to fashion solutions to deal with the interface between limitations and exceptions on the one hand and technological measures on the other.

145. The Representative of the International Federation of Film Producers Associations (FIAPF) reminded delegates that on the subject of limitations and exceptions for educational and research institutions, copyright encouraged creators to create, but also promoted legal certainty without which, people engaged in the industry would not undertake considerable risks. It observed that it was essential that a balance between the interests of the rights holders on the one hand, and the general public on the other hand, should be respected. It noted that this balance was at the heart of the discussions on copyright and it would be dangerous to question that balance contained in the existing treaties. The Representative called on Member States to have substantive discussion on limitations and exceptions, but only to do so if they were linked to the exclusive rights relating to copyright.

146. The Representative of the International Council on Archives (CIA) received with gratitude the introductory remarks of the Director General of WIPO about the importance of an instrument in favor for visually impaired persons and people with disabilities. It observed the constructive manner in which Member States were working towards a document suitable for a diplomatic conference. The VIP Treaty was the first of three to be considered by the SCCR, according to

the program set out during the 24th session of the SCCR. It recognized that the proposed instrument in favor of educational institutions still had a long way to go, but an instrument in favor of libraries and archives had been under the consideration by the SCCR for some years. The target had been set to achieve an agreement by the 28th meeting in July 2014 and it remained confident that Member States would achieve that target. It underscored that libraries and archives were an essential element in the life of all Member States of WIPO, as they recorded and made available to citizens the culture of their country and of other countries and cultures of peoples around the world. They were the primary source of education for citizens, as they assisted all members of society, including the visually impaired persons and the disabled, to participate in the life of their country. They informed governments at all levels about the opinions and needs of the people and in return, they informed those people about the activities of government and of their elected Representatives. In the digital world, the international flow of information between libraries and archives, and from those libraries and archives to their users, was especially dependent upon limitations and exceptions to copyright that were recognized internationally. The Representative noted that archives were especially dependent upon exceptions and limitations because for most material in their collections, such as unpublished letters or family films, there were no Representative bodies to provide licensing, and there was little prospect of new licensing models.

147. The Vice-Chair asked the delegations if there was some result from the consultations they had had, so that they could draw some conclusions concerning that issue before the end of that day's second session. The Vice-Chair proposed they should close that issue and totally focus on the VIP issue, which was the most important thing they had to deal with that week. The Vice/Chair expressed to the delegations the possibility in case there was no agreement on the conclusions, to suspend the meeting for a short period of time, in order to let them continue discussing and be able to return with results.

148. The Delegation of Peru, speaking on behalf of the GRULAC, asked the Secretariat to give them some preliminary conclusions so that they could discuss them in their groups, and return on the next day with a group position and more precise ideas.

149. The Delegation of Belgium aligned itself with the proposal of the Delegation of Peru on behalf of the GRULAC, and indicated that it was ready to discuss further and in detail, but it needed to do so within its group. They could have preliminary conclusions, with the understanding that they reserved themselves the right to come back on them after consultation within their groups, which would be done on the morning of the next day.

150. The Delegation of Egypt, speaking on behalf of the African Group, highlighted the positive and constructive proposals presented by other delegations, which in its opinion, should be captured, so they could have further consultation on them and be able to get back with perhaps a clear way to move forward. It recalled the three proposals made on libraries and archives to have a streamlined structure of the document. One of them was to separate legal text from comments. The other, was to have an inter-sessional meeting on libraries and archives in the second half of 2013 after celebration the Diplomatic Conference on VIP. The third was the proposal made by the Delegation of India which it supported. For education and research, it recalled that the African Group had proposed to have a streamlined document with legal text being separated from comments. Also, its proposal for adopting during the current 25th session of the SCCR, the provisional working document on education and research institutions, as a basis for the future work. The Delegation concluded by requesting to the Secretariat to compile those proposals and made them available for Member States, in order to facilitate their discussion that day on that issue, so they could perhaps come back on the following day with some sort of clear vision for the way forward. The Delegation noted that at that stage it was hesitant to have even preliminary conclusions, when they did not yet have conclusions on their consultations.

151. The Vice-Chair indicated to the African Group that the intention for preferring to achieve preliminary conclusions was on the understanding that each group would to consult on them, and come back the next day with their position. They would be able to make changes and modifications over that preliminary consensus. The Vice-Chair expressed reluctance on just having a compilation of the proposals, as this would delay the ability to arrive at conclusions. Rather, the Vice-Chair proposed a compromise, based on the nature of the discussions held that day, it would attempt to put these as the basis for discussing the conclusion of the SCCR on that issue. If there was a position, they could go back to the idea of compiling the proposals, highlighting that it was on the basis that it would delay a lot the process. On the question of limitations and exceptions for libraries and archives, it proposed to include in the preliminary conclusions the reorganization of the document by moving the comments to an annex. It also proposed the inclusion of the possibility of having an inter-sessional meeting during the second semester of 2013 between the Diplomatic Conference on VIP and the 2nd SCCR meeting of 2013. The Vice-Chair stated that in respect of the proposal to establish a deadline for submitting textual proposals, it considered there was an evident reluctance from some delegations to close the discussions. The Vice-Chair proposed that the restructuring of the document was perhaps the best way to proceed at that stage. Concerning the education and research issue, the only clear view it could note among the current divergence, was the adoption of the document, or to have the same document on the agenda of the next session of the SCCR, so they could have more time for continuing to discuss the document. Having the document approved was just a symbol. What was important was to have the document on the table and to be able to work on it, even if it was a provisional version. The Vice/Chair concluded by requesting the Secretariat to prepare and formulate the preliminary conclusions on the indicated way.

152. The Delegation of the United States of America said that more time was needed for group consultation before conclusions on the issue of limitations and exceptions were put forward for adoption.

153. The Delegation of the European Union and its Member States echoed the concerns raised by the Delegation of the United States of America.

154. The Vice-Chair encouraged delegations to discuss among themselves the possible draft conclusions of the meeting.

155. The Delegation of Argentina said that in order to speed up the process of adopting the conclusions an alternative could be to have a simple compilation of proposals.

156. The Delegation of Belgium, on behalf of Group B, concurred with the proposal by the Delegation of Argentina.

157. The Vice-Chair said the Secretariat would draft a compilation of proposals and would circulate it to regional coordinators for consultation.

158. The Chair invited the Secretariat to go through the revised texts on limitations and exceptions for persons with print disabilities that the delegations had received on November 21 and 22.

159. The Secretariat explained that after the work developed by the group of Member States, the status of the document on November 21 and 22 could be summarized as follows. The preamble was more or less a stable text. The definition of "work" had no brackets and included a footnote that read that a possible interpretive understanding or Agreed Statement would be drafted to clarify that audiobooks would be included in the definition. The definition of "authorized entity" had no brackets and included a footnote related to the possible interpretive understanding or Agreed Statement on the word "primary". Article Bbis included the draft

principles of application. Those principles had been modified and had been moved to the end of the text. The development provision of those principles had been cleaned up, but still had a paragraph that remained in brackets. The respect for copyright provision which had previously had four alternatives now had only two paragraphs that remained in brackets. The provision on respect for visually impaired persons had also a tiny modification and still had some text in brackets. In Article C, the right of public performance was in brackets and had been moved to paragraph B of Article C(1). Similarly the right of translation had been included in that Paragraph B of Article C(1). In Article C(3), the alternative A and B had disappeared and there was some part of the text that remained in brackets.

160. The Chair invited the Secretariat to go through the revised texts on limitations and exceptions for persons with print disabilities that the delegations had received on November 23.

161. The Secretariat explained that following the work by the group of Member States the status of the document of November 23 was as follows: Article D had a modification in the last part of paragraph 1. Some square brackets in paragraph 2 had disappeared. In the principles of application cluster package, the reference in the second paragraph of respect for copyright tradition had been deleted.

162. The Chair clarified that the version of November 23 would be submitted for adoption by the SCCR as Draft Text of an International Instrument/Treaty on Limitations and Exceptions for Visually Impaired Persons/Persons with Print Disabilities, document SCCR/25/2. The Chair called for a meeting with regional coordinators plus two national delegations in order to discuss the draft conclusions.

## **ITEM 9: OTHER MATTERS**

163. The Chair noted that there were no other matters to be discussed.

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

164. The Chair presented the set of draft conclusions and submitted them for the consideration of the SCCR.

165. The Delegation of Belgium, speaking on behalf of Group B, thanked the Chair and the Secretariat for the hard work in facilitating the negotiations towards an appropriate and balanced solution that took into account the specific needs of visually impaired persons, while also protecting the rights of creators. The Delegation noted that members of Group B had actively engaged in the discussion and remained committed to the successful outcome on that important issue. In December, Member States would have an opportunity to convene a diplomatic conference in 2013 and, in that regard, the Delegation noted that good progress towards resolving outstanding concerns had been made to maintain the momentum.

166. The Delegation of Sri Lanka, on behalf of the Asian Group, thanked the Chair for his tireless patience and understanding and the Secretariat for its competent efforts in facilitating the work. The Delegation agreed that the conclusions would facilitate the progress of the work and looked forward to meeting again during the Extraordinary Session of the General Assembly in a few weeks. The Delegation believed that deliberations on the text for a treaty or instrument for visually impaired persons had been undertaken in a spirit of good faith and hoped that approach would continue. The Delegation also looked forward to the next session of the SCCR where focused discussion on broadcasting, libraries, archives, educational and research institutions would take place. Finally, the Delegation thanked the interpreters, without whom the work would have been lost in translation, and the many stakeholders with whom it had been

able to interact for their input during the sidelines of the sessions. Special mention was made to the WBU's input.

167. The Delegation of China stated that since the first day of the session it had expressed a flexible attitude towards any constructive proposal. The footnote in the provision relating to the definition of "work" that included an interpretive understanding or Agreed Statement to be drafted to deal with the issue of audiobooks, as well as the development provision in the cluster on principles, were example of points of particular importance for the holding of the diplomatic conference. It noticed that a great deal of work still needed to be done on the draft interpretive understanding or Agreed Statements related to the scope of "primary" in the definition of "authorized entity". The Delegation was convinced the Beijing spirit would help Member States to actively and flexibly work for the conclusion of an international instrument on limitations and exceptions for visually impaired persons. Finally the Delegation thanked the Secretariat, the Chairman and the various delegations for their commitment.

168. The Delegation of the European Union and its Member States thanked the Chair and the Secretariat for their efforts in facilitating the negotiations on the issue of the visually impaired. The Delegation noted that it had redoubled its efforts in the last year to arrive at a successful conclusion of the negotiations, including in the run up to the SCCR where it had engaged in numerous multilateral contexts. The objective was clear and it was to ensure that visually impaired and print disabled persons anywhere in the world had the same access to books as any other person. The Delegation remained politically committed to addressing the specific needs of the visually impaired and print disabled persons in an effective and balanced instrument, including a treaty, in a manner that did not affect the principles of the existing international copyright framework. Delegations had gained common ground and understanding, but more was needed, particularly on some points that seemed to relate to larger and horizontal issues on the needs of the visually impaired. The Delegation stated that the way to success required delegations to remain focused on negotiations and to build on the momentum in view of the Extraordinary General Assembly to be held in December to convene a diplomatic conference.

169. The Delegation of India thanked the Secretariat, the Chair and other delegations for the tireless efforts spent during the SCCR session. Great progress had been made regarding the text on exceptions and limitations for visually impaired persons and persons with print disabilities in order to have to a diplomatic conference the following year. On behalf of the Ambassador of India, the Delegation invited all delegates to the cinema film festival of India, organized by the Government of India in collaboration with WIPO, from December 4 to 7, 2012.

170. The Delegation of the Bolivarian Republic of Venezuela commended the flexibility that had been shown by delegations which allowed the SCCR to continue working in a climate of confidence. It thanked the Secretariat and the interpreters for the intensive work and, especially the Chair for his ongoing patience and for having listened to punishing interventions throughout the meeting.

171. The Delegation of Egypt, on behalf of the African Group, thanked the Chair for his dedication and leadership throughout the week. The SCCR had made good progress on the issue of the visually impaired. Delegates had shown flexibility during those negotiations and the same spirit was expected to be shown on the key issues that remain unresolved. The Delegation stated that it aspired to reach a meaningful treaty for visually impaired persons to serve the cultural needs and priorities of the seven million visually impaired persons in Africa. Regarding other exceptions and limitations, the Delegation was concerned about not having extensive discussions on those topics that directly related to cultural development and preservation of cultural heritage. Therefore, the Delegation stressed that a concrete outcome on the exceptions and limitations for libraries and archives, educational and research institutions, and persons with other disabilities was very important for WIPO as well as for its

Member States, regardless of their level of development. It hoped that next time all delegations could show similar strong political will and commitment for those issues.

172. The Delegation of Peru, on behalf of GRULAC, thanked the Chair for his patience and wisdom shown in decision-making that week. All delegations had showed their commitment to advance the work on the visually impaired and it was hoped that Member States showed the same dedication to convene the diplomatic conference next December. It thanked the interpreters and the Secretariat for the late nights spent preparing and translating documents. The Delegation noted that the agenda of the session had been very balanced and had reflected the right priorities.

173. The Delegation of the United States of America expressed its satisfaction about the results of the SCCR session. In December 2009, the Delegation had come to the SCCR to fashion new norms on international copyright to address what it believed was a legitimate concern: the book famine or the unjustifiable lack of availability of special format copies for visually impaired persons and persons with print disabilities throughout the world. The book famine existed and the SCCR should go on a substantial way to addressing that problem. As said earlier in the informal sessions that day, it had been two years of meetings where delegations had shown tremendous good will among a bunch of people of very strong wills. It was not possible to imagine a more conducive and cooperative environment where people were completely honest about what was important to them and what they needed to see in the work going forward. Delegations had made tremendous progress during that week, but more work had still to be done to achieve the desired outcome. The Delegation would be working diligently to explain the content of the new document SCCR/25/2 in Washington, in order to seek the necessary support to have a favorable decision in December. The Delegation offered to join the flexibility boat, but requested delegations show more creativity and capacity to listen to one another.

174. The Delegation of Ecuador expressed its commendation to the Chair for the excellent leadership and to the Secretariat and interpreters for the commitment maintained throughout the meeting. It congratulated all delegations for the spirit of compromise. The task before the SCCR to successfully approve a treaty on limitations and exceptions for people with visual impairments was drawing closer. The Delegation stated that it remained committed to carrying out all efforts that were necessary to bring the ship to a good port, and to help overcome any concerns on the way.

175. The Delegation of Nigeria joined all delegations that thanked the Chair for his leadership over the week. It also thanked the Secretariat for the efficiency and endearing spirit as well as the dexterity and firmness with which it had handled all proceedings. Issues had been unusually complex and delegates who were not always flexible were always friendly in addressing all concerns. All delegates could be thankful for having the opportunity to not have a visual impairment, and the honor to commit to the work necessary to make sure that those who lived with visual impairments were recognized and enabled to be part of their respective societies. Since Africa was the home to more than seven million blind people and home to many least-developed countries, it was important to the Delegation that the process resulted in a legally binding treaty that was workable, simple, and that delivered and met the needs of the visually impaired. It was important for Africa not to create or agree to a multi-lateral system that created a second class citizenry. It hoped that the goodwill, the political commitment, and the democratic virtue of all Member States would prevail in carrying the SCCR through the final lap of the race to ensure that the interests of persons with print disabilities were fully recognized. The Delegation stated that it also hoped that the importance of the multilateral cooperation would once again be infused with the reality that it was important to work together, not against one another.

176. The Delegation of Brazil congratulated the Chair on his very good job. It also thanked Assistant Director General, Mr. Trevor Clarke, the Secretariat and the interpreters for all the hard work. The Delegation extended its congratulations to all other delegations for their hard and constructive work along the session, and for the flexibility in order to reach acceptable solutions. It stressed the importance the Delegation attached to the work towards the adoption of a treaty in favor of visually impaired people and reiterated its commitment to continue collaborating with other Member States on the work of the SCCR.

177. The Representative of the World Blind Union (WBU) thanked Member States for the progress that had been made that week. Delegations were working very hard on a practical, workable and meaningful text of a treaty that would change the human rights for people who were blind and visually impaired around the world. It thanked Mr. Justin Hughes, from the Delegation of the United States of America, for his very kind and generous words. The Delegation noted, however, that one word was missing in his long statement: the word “treaty”, despite the fact that almost every Member State had acknowledged its support for a treaty. It urged the SCCR to keep the momentum up and to meet in December and to call for a diplomatic conference in June 2013 to finalize the work.

178. The Representative of Knowledge Ecology International (KEI) thanked the Secretariat and Member States for the most transparent secret negotiation. The facts that after a daily secret negotiation, a revised text was published every day, that digital copies could be shared around the world, that video webcasting of the meetings was made available, and that real-time transcripts were also made available, were amazing innovations that were greatly appreciated. People around the world fully appreciated that level of fair openness in negotiations. Like the World Blind Union, the Representative was disappointed that, after all those years doing a nice job making it sound like it was going to be helping out with a treaty, and particularly after it had got pretty much all the red lines met (such as the wipe out of relationship with contracts, the elimination of audiovisual works from the definition of works, and taking out deaf people of the treaty), the Delegation of the United States of America could not say that it was ready to adopt the treaty. That was unfortunate.

179. The Chair thanked delegations for their statements and for being active in contributing to finding solutions in the course of the SCCR’s work. He also thanked those that had remained silent because that had also been very helpful in most cases. He thanked the Secretariat for being very supportive to the Chair and indeed to all delegations. It was amazing to see that some difficult areas, which had not been solved in the past, had been easily solved thanks to the good faith of delegations. He wished good travels to those that were back to capitals and a good stay for those who lived in Geneva. Finally, he noted that the SCCR unanimously had adopted the conclusions set out below and closed the session.

## **CONCLUSIONS**

### **Limitations and exceptions for visually impaired persons/persons with print disabilities**

1. At the start of its discussions, the SCCR adopted the “Revised Working Document on an International Instrument on Limitations and Exceptions for Visually Impaired Persons/Persons with Print Disabilities - WORKING TEXT October 19, 2012” as its working document for the SCCR/25 session.
2. The SCCR adopted the “Draft text of an international instrument/treaty on limitations and exceptions for visually impaired persons/persons with print disabilities” (document SCCR/25/2) at the close of its discussions.

3. The SCCR noted that significant progress had been made on the substantive provisions of a draft legal instrument/treaty on appropriate exceptions and limitations for persons with visual impairment and/or print disabilities.
4. The SCCR agreed to recommend that the WIPO General Assembly, convened in Extraordinary Session on December 17 and 18, 2012, evaluate the text of document SCCR/25/2 and decide whether to convene a diplomatic conference in 2013 to adopt a legal instrument/treaty on appropriate exceptions and limitations for persons with visual impairment and/or print disabilities. Should the General Assembly decide not to convene a diplomatic conference in 2013, the SCCR recommended that it be directed by the General Assembly to continue negotiations on the text and to reallocate its time in the next SCCR to give priority to that work.
5. The SCCR agreed to waive the two month notice period for documents to be considered both at the Extraordinary General Assembly and the proposed Preparatory SCCR meeting to be held on December 17 and 18, 2012.

### **Protection of broadcasting organizations**

6. The SCCR considered the “Working document for a treaty on the protection of broadcasting organizations” (document SCCR/24/10). It was agreed that a corrigendum, based on textual corrections suggested by the Delegation of Japan and the discussion held by the SCCR, would be produced by the Secretariat.
7. The SCCR further decided, subject to further textual comments to be submitted by the Members, that in order to advance its work on the basis of document SCCR/24/10 towards a text that will enable a decision on whether to convene a diplomatic conference in 2014, a three day inter-sessional meeting will be organized during the first half of 2013.

### **Limitations and exceptions for libraries and archives**

8. The SCCR expressed different views on the “Working document containing comments on and textual suggestions towards an appropriate international legal instrument (in whatever form) on exceptions and limitations for libraries and archives” (document SCCR/23/8).
9. The SCCR agreed to continue its text-based work at the SCCR/26 session, towards an appropriate international legal instrument or instruments (whether model law, joint recommendation, treaty and/or other forms), and to consider the structure of the document, as well as whether to hold a three day inter-sessional meeting on limitations and exceptions for libraries and archives in the second half of 2013, between the SCCR/26 and SCCR/27 sessions, with the target to submit recommendations on limitations and exceptions for libraries and archives to the General Assembly by the SCCR/28 session.
10. The SCCR took note of the request of the African Group and its Member States, and of the Delegations of Argentina, Brazil, and Ecuador, that their comments in document SCCR/23/8 be moved to an annex at the end of the document.

### **Limitations and exceptions for educational and research institutions and persons with other disabilities**

11. The SCCR took note of the “Provisional working document towards an appropriate International Legal Instrument (in whatever form) on Limitations and Exceptions for Educational, Teaching and Research Institutions and Persons with Other Disabilities Containing Comments and Textual Suggestions” (document SCCR/24/8 Prov.).

12. The SCCR agreed to continue text-based work on SCCR/24/8/Prov. at the SCCR/26 session, towards an appropriate international legal instrument or instruments (whether model law, joint recommendation, treaty and/or other forms), and to consider during that meeting the possible reorganization of the document and the possible identification of issues on which the SCCR could focus its text-based work, with the target to submit recommendations on limitations and exceptions for educational, teaching and research institutions and persons with other disabilities to the General Assembly by the SCCR/30 session.

13. The SCCR took note of the request of the African Group and its Member States, and of the Delegations of Argentina, Brazil, and Ecuador, that their comments in document SCCR/24/8/Prov. be moved to an annex at the end of the document.

### **Next session of the SCCR**

14. The 26th session of the SCCR would take place in July 2013. The SCCR agreed that two days will be devoted to the agenda item on the protection of broadcasting organizations, two days will be devoted to the agenda item on limitations and exceptions for libraries and archives, and one day will be devoted to the agenda item on limitations and exceptions for educational, teaching and research institutions and persons with other disabilities.

[Annex follows]

**ANNEXE/ANNEX**

**LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS**

I. MEMBRES/MEMBERS

AFRIQUE DU SUD/SOUTH AFRICA

Abdul SAMAD MINTY, Ambassador, Permanent Representative, Permanent Mission, Geneva

Luvuyo NDIMENI, Deputy Permanent Representative, Permanent Mission, Geneva

N. L. POTELWA (Ms.), Counsellor, Economic Development, Permanent Mission, Geneva

Tshihumbudzo RAVHANDALALA (Ms.), First Secretary, Permanent Mission, Geneva

M. MATROOS, Second Secretary, Economic Development, Permanent Mission, Geneva

Theunis Jacobus KOTZÉ, State Law Adviser, Department of International Relations and Cooperation, Pretoria

Simon Z. QOBO, Director Bilateral Affairs, Department of Communications, Pretoria

Miyelani KHOSA (Ms.), Deputy Director, Broadcasting Policy, Department of Communications, Pretoria

ALLEMAGNE/GERMANY

Dorothee KUON (Ms.), Federal Ministry of Justice, Berlin

Heinjoerg HERRMANN, Counsellor, Permanent Mission, Geneva

ANDORRE/ANDORRA

Montserrat GESSÉ (Mme) premier secrétaire, Mission permanente, Genève

ARGENTINE/ARGENTINA

Rodrigo BARDONESCHI, Primer Secretario, Misión Permanente, Ginebra

Alfredo CURI, Secretario, Dirección de Asuntos Económicos Multilaterales y G-20, Ministerio de Relaciones Exteriores y Culto, Buenos Aires

ARMÉNIE/ARMENIA

Kristine HAMBARYAN (Mrs.), Senior Specialist, Copyright and Related Rights Department, Intellectual Property Agency, Yerevan

AUTRICHE/AUSTRIA

Dietmar DOKALIK, Federal Ministry of Justice, Vienna

AUSTRALIE/AUSTRALIA

Richard GLENN, Sydney

James BAXTER, Deputy Permanent Representative, Permanent Mission, Geneva

David KILHAM, First Secretary, Permanent Mission to the World Trade Organization (WTO), Geneva

BANGLADESH

Nazrul ISLAM, Counsellor (Political Affairs), Permanent Mission, Geneva

BARBADE/BARBADOS

William MARION, Ambassador, Permanent Representative, Permanent Mission, Geneva

Corlita BABB-SCHAEFER (Mrs.), Counsellor, Permanent Mission, Geneva

BÉLARUS/BELARUS

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Delphine LIDA (Mrs.), Counsellor, Permanent Mission, Geneva

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\* Sur une décision du Comité permanent, la Communauté européenne a obtenu le statut de membre sans droit de vote.

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

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VI. BUREAU INTERNATIONALE DE L'ORGANISATION MONDIALE DE LA  
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INTERNATIONAL BUREAU OF THE WORLD INTELLECTUAL  
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[End of Annex and of document]