

**WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)**

**STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS (SCCR)**

**27<sup>TH</sup> SESSION: DAY 4- 01 MAY, 2014, GENEVA, SWITZERLAND**

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**PRELIMINARY**

This is the transcript of Day 4 (01 May, 2014) of the 27<sup>th</sup> Session of the WIPO SCCR held at Geneva, Switzerland. This includes statements by various country representatives and non-governmental organizations. Proceedings on the fourth day revolved around the Limitations and Exceptions for Libraries and Archives. The text in the following section is largely unedited, save for additions to indicate where text is missing (poor internet connectivity meant that access to transcription was often interrupted) and clearly identify the speakers.

**TRANSCRIPT – INTRODUCTORY**

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**TRANSCRIPT – NATION STATES**

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**CHAIR:**

Good morning to all of you. It is a pleasure to see you, to continue our work in this important topic of exceptions and limitations for libraries. I want to thank especially those delegations and NGOs which permitted yesterday the interesting exchange on the topic of parallel import, which I know the presentation of is evidence and the unification, the proposal to work on a unified proposal among the proponents. I think if we continue this path we will try to obtain progress on the different topics we're facing. It is a -- yesterday we started with crossborder uses. So before getting into the seventh topic, we would like to continue with the treatment of crossborder uses. So in consequence, we open the floor for additional comments regarding crossborder uses. You will recall that the Secretariat made a summary of the situation of topic mentioning the proposed text by the African group, the proposal from Ecuador, the proposal from India, and the comments made regarding the topic # and proposals. We're ready to listen to you if you've additional comments regarding this issue. I should say that after individual countries, we open the floor for NG Os to make comments regarding crossborder uses, only about this topic in order to have an order, a discussion, not extended to different issues. So we open the floor.

**(some text missing)**

**Kenya:**

Kenya yesterday we tried to give our opinion on the crossborder in our statement and therefore I would like to go back to what we said yesterday, but we realize there are many changes in the international scene, especially terms of the digital environment which has

necessitated the change in terms of how we are moving away from hard copies to digital copies and from the traditional way of capturing that information or transmission of that information through hard copy to digital. Therefore, this new development and the increase in terms of education and the way we have satellites, compasses, institutions which are promoting distance learning we feel that the current exceptions and limitations aren't adequate to deal with new challenges. In this regard, therefore, we feel this is an important issue and we have made proposal and recognize the other proposal from colleagues from Ecuador and India, and in the spirit of moving this issue forward we would like to request that we mandate the Secretariat to work on these three proposals to come up with a text that's acceptable to our colleagues. Thank you, chair.

**CHAIR:**

I thank the distinguished delegate from Kenya. For your comments and your suggestion. We'll look and see whether this gets support from other delegations, particularly from the proponents or not, or if they may prefer to work on their own common proposal together. It depends.

I now would like to call on India.

**India:**

India thank you, Mr. Chair. Thank you, everyone. We support the Kenya proposal, thank you.

**CHAIR:**

Thank you to the distinguished delegate from India for that support for the kenyan proposal. Ecuador has the floor

**Ecuador:**

Chairman, a very good morning to all of you, as we said yesterday, for our delegation we are happy to work together with other delegations. I think this is a good way forward and it may help us Tom up with a text involving the interest of all delegations who have proposals on this matter. We support this proposal of moving forward this way. Thank you.

**CHAIR:**

The thank the distinguished delegate from Ecuador who is showing his availability to work with other proponents to come up with a common joint proposal. I should now like to call on Kenya.

**Kenya:**

I would like to thank the distinguished delegates from India and Ecuador for their flexibility and we look forward to the compromised text we can work on in the next session. Thank you, chair.

**CHAIR:**

Thank you very much to the Distinguished Delegate from Kenya. The proposition to work together with other opponent. A common text for sure that is the path to discuss hopefully not just this topic but others. Thank you very much for that. We open the floor to ngos regarding the topic six, number six, crossborder issues. Please do not forget that we'll talk about this topic.

Is eifl. EIFL has the floor.

**TRANSCRIPT – NGO INTERVENTIONS****EIFL:**

Thank you. Only behalf of electronic information for libraries, partners for libraries and those in more than 60 transition and economy countries we thank you for the opportunity to speak on crossborder issues. We thank the African Group, Ecuador and India for proposals on this topic. The collections of libraries and archives in one country often contains materials of unique Cultural and historical significance to people in other countries due to national border changes, mass immigration, shared common languages, research interests and a host of other reasons.

These materials collectively contribute to the Cultural heritage of human kind and the building of intercultural understanding. Take, for example, an Italian scholar researching the lives of the people in South America. Should the Italian scholar only have access to research materials in Italian libraries? They will get resources in Italian libraries, but for the most part, the materials are only available elsewhere, for example in peru, Bolivia, Ecuador. like wise a person studying in the U.S., studying an Italian in fehr would find material in the U.S. libraries and would certainly need to consult other materials by and about gramsky held souly in Italian libraries. A recent survey by the copyright committee of ifa, international Federation of Library Associations, showed that libraries receive requests for access to specialized items in their collections from a wide variety of countries. For example, libraries in Senegal get requests from Morocco, France and I think others, Colombia libraries get requests for materials from Mexico, U.S.A., peru, France, Spain, Brazil, Argentina, cost rica, air guy and Venezuela. In many countries, however, copyright stops at the border, they do not permit libraries to legally provide copies of documents to overseas libraries at the request of an end user. I will provide one condition create example of a crossborder use, a recent example. A phd student in estonia was undertaking comparative research in five countries in narratives that's a critical analysis of authentic source materials used in the writing of history. The student needed to consult Articles and book chapters from around the 1920s that are not available in estonia, the University library certainly electronic requests to Iceland and Norway that had the materials in their collections, but due to copyright and licensing restrictions the requests were refused by the libraries. How do we explain to today's generation that they must get on an airplane to consult for bonafide research purposes a chapter of a book that was published 90 years ago? Or the copyright exists to actually encourage research and creativity? Finally, Mr. Chairman, we note that despite extensive schemes in nordic countries, licensing did not facilitate this straight forward request on this

occasion. In addition, libraries in Denmark and Norway reported in the recent consultation on copyright that crossborder access is not permitted under their extended collective licensing schemes. In its comments, to the consultation, the national Library of Norway that has a extended collective licenses to provide online access to Norwegian literature said that the crossborder effect is faulted as the crossborder effect is not compatible with EU law. So we need an international solution to an international problem. Thank you.

**CHAIR:**

Thank you to EIFL for the concrete examples of the need of such an exception. Time to listen to efro.

**IFRRO:**

Thank you for giving the floor to efro, we join those in congratulating you in your election and your committee work. This is the collective management organizations framework, cmos, authors, publisher organizations in the text and image sector with 143 member organizations in some 80 countries worldwide. These organizations represent millions of authors and publishers to books, journals, newspapers, et cetera. As stated in previous sccr meetings, we acknowledge the crucial role of libraries in preserving, making available cumulative knowledge and Cultural heritage and rights of countries to introduce exceptions and limitations to the exclusive rights in favor of libraries for certain defined uses provided that they are compatible with the three-step test. (Ifro).

**CHAIR:**

Thank you to IFFR for that. For that intervention. The position they express. This is a time for listening to cilci, charter institutes of libraries and institutional professionals.

**CILIP:**

Mr. Chairman, and Distinguished Delegates, the chartered instituted of library professionals thank you for granting us accreditation to observe the meetings and we congratulate you on your election. As the main U.K. possession association for some 14,000 librarians information and knowledge managers, the library and copyright right alliance, an umbrella for the major library information and archive associations and institutions. Most uk universities have over sea campuses or partnerships with foreign universities or coolings where they earn uk degrees overseases taught without leaving their home country. This generates demand for the cross-border transfer and access to digital resources held by the uk University libraries, the different licensing contracts for the UK libraries commercially purchased online information resources mostly restrict access by partnership staff and students, including accessory of the library's secure virtual learning environment. Many of these licensing contracts also override copyright exceptions, for example by preventing the library from furnishing electronic copies of documents crossborders to partnership staff and students in response to adhoc requestion that would be committed under the non-commercial

search or private study exception. Partnership staff and students are significantly disadvantaged, they need the same access to the same digital materials as the U.K. counterparts for teaching and learning on the same courses. Generally it requires express permissions, extra licensed provisions and additional fees costing a typical 30% extra on top of the libraries e journals and databased license spent. The rapidly increasing use of academic ebooks in replace of the printed books will exacerbate this situation. Thank you for your attention.

**CHAIR:**

Thank you very much, CILPA. For the statement.  
Time to listen to crisma.

**Karisma Foundation:**

Thank you very much, Mr. Chairman. As this is the first time that our foundation has taken the floor, we would like to thank you for inviting us and congratulate you on your election as Chair of this committee. As an organization of Civil Society in Colombia who works on rights and technology the foundation supports and promotes policies that help with the development of copyright from perspective of users. With regard to the topic we're looking at the moment I would like to emphasize the importance of this guarantee to enjoy the rights to culture and the Committee of economic Cultural and social rights at the United Nations said that the right to access and enjoy Cultural rights is a human right that's more important than copyright. I close the quote. In the exercise of enjoying Cultural life, the libraries and archives play a major role. In the past, we have the source to create a better future, it enables us to enjoy Cultural heritage of our nations and gives us an education and far more than that, the ability to acquire knowledge, the uses in Colombia often find themselves in legal problems that restrict their access to their own Cultural heritage which is done in other areas of the world. For example I would like to share with you is regarded to a public library, to ensure that Colombia has access to a whole series of older visual works that were produced by researchers, farm researchers to focus their studies on Colombia, they're protected by copyright and they're part of the archives and collections in the United States and French libraries. These works are of huge interest to Colombia but we can't access them by -- users can't access them unless they go to the libraries and this involves high-costs, authorization from the author which is long and involved and a complex process. This situation prevents the development of new content, the promotion of knowledge and also generates problems for access to culture, our own culture which is unjustified, this is a reason why we think this guarantee is a necessary one. Thank you.

**CHAIR:**

I thank you the CARISMA foundation for giving us the good idea of the Colombia reality and a clear example. I now would like to call on IPA.

**IPA:**

Thank you, Mr. Chair I'm delighted to note from the previous speakers that you have heard on this issue from the NGO community that it is understood among the NGOs how complex the issue of crossborder delivery actually is. So far I have heard of at least five, perhaps six different areas, very different circumstances where the issue of crossborder delivery comes up and needs to be resolved. We have the traditional issue of crossborder document delivery, we have heard about multicountry universities with campuses in American countries, we have heard about distance learning, virtual learning environments, remote access to libraries from various researcher, to students in different countries, from alumni, we have heard about the problems of accessing Cultural heritage or of distributing unpublished material which is only uniquely available in one area. All of these different issues is an issue in itself. Each of these issues would require a Marrakech Treaty type negotiation to actually understand the concerns and to actually understand the different problems. However, these issues are more complicated because unlike the Marrakech issues, we already have solutions. We already have a dynamic environment and we are putting our fingers into a running machine. There are commercial solutions and the licensing solutions that publishers are providing dramatically improving access which is why document delivery is less and less frequent simply because there is more access. There is enormous amounts of philanthropic interests to provide the research material in a developing country and this is an instrumental organization in providing and promoting that access and in getting the support from publishers for the initiatives. There is other business models which created services around delivering content, in particular to developing countries as prices and following business models which make the access affordable. There are collective licensing solutions that we have heard from ifro. There is a lot going on in each of these areas and I would, again advise through to committee extreme caution in trying to regulate issues which are developing dramatically and are being resolved in many ways in many different ways following existing legal frameworks or new business solutions.

Thank you very much

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**CHAIR:**

Thank you very much to international publisher's association for the statement. For the term of isa counsel of archives.

**ICA:**

Thank you Mr. Chairman. The international crown on archives is grateful for the opportunity to address the Committee about crossborder uses. It seems certain that every person in this room has used a library, probably many times. Many may also have used an archive. Everyone here should therefore be well aware of how important libraries and archives are as providers of information about other countries of the world, about current events, about culture, about history, about science. In fact, about any subject you can think of relating to any part of the world. The great British scientists sir ne WTO n said nothing he did was original. He said he was a dwarf seen by the guards before him because he was writing on his shoulder and even there, he was quoting someone else. An English man, a French men who

knew nothing of copyright. Every creator benefits from the work of his or her predecessors wherever they may be. Knowledge of that work comes largely from libraries and archives, wherever they may be. Crossborder transmission of copies of copyright works by libraries and archives would not assist in an imaginary group of users to exploit other people's material and export it around the world. It would assist all of us encouraging research and study leading to the creation of new works. In other words, without libraries and archives, the rights holder bodies represented here today would have little to protect. I represent archives, the material in archives is hugely valuable what you value is largely Cultural, not economic. Consider for instance the personal letters to their families of soldiers in the trenches in the first World War, now deposited for public access in archives. Those soldiers came from many countries of the world, from the U.K. and colonies and dominion, South Africa, Canada, Australia, so on, from Germany, from France, from the U.S.A. Can you really contemplate in this year a researcher for new history of that war to be unable to consult such material now kept in all of those countries? It cannot be licensed. No one could represent the multitude of rights owners in the unpublished materials that make up the majority of archive collections. The suggestion of right owner NGOs that the licensing solutions could provide an answer is wholly mistaken. Instead, archives need an exception that clearly permits them to make material available across borders to individual researchers and archival institutions.

Thank you, Mr. Chairman.

**CHAIR:**

Thank you to ica for the clear statement. Now we hear from ilia, Australian library information association.

**Australian Library and Information Association:**

Thank you, Chair. As this is the first time that the Australian library and information association has addressed the room, may I just congratulate you on your chairmanship. Thank you very much for leading the discussions today. I would also like to thank Africa, India, Ecuador for their proposals in this matter and to support the suggestions for a consensus text or common joint proposal. I would also like to support the statements of ifil and carisma and the Scottish council of archives. The Australian library and information association is a professional body for the library information sector in Australia. For 77 years we have been representing individuals and institutions in all types of libraries. From the national library through to the public, academic state, specialists, school and government libraries, Australia is a developed nation. We're wealthy by world standards, geographically isolated and facing challenges of distance and nature. Australia libraries have a proud heritage playing in the distance by providing knowledge and culture to our farm population. It is an incredibly long way from Australia to this room in WIPO. Australia libraries don't exist just in our small corner of the world, we have known for

a long time that Australian libraries face challenges especially crossborder projects. In preparation for this SCCR we actually surveyed a cross-section of our libraries to get hard evidence of the extent of the problem. Despite the statement from my learned friend from the IPA in Australia our experience surveyed experience is that documents supply is in the going down but instead is maintaining or even growing. Indeed I would actually be quite curious to speak to him afterwards about where he got his figures from exactly. Of the 15 libraries we surveyed recently and the two consortia, every single library surveyed participated in crossborder projects. Every single library participated in interlibrary learning and document supply. In that small sample they did interlibrary line and document supply with 77 other countries. Unfortunately a majority of those libraries surveyed also reported requests from overseas institutions that had been refused for copyright reasons. Even though those requests were made in accordance with Australian Copyright Law and even who some requests, the material was not available from any other source. As legacy of our colonial heritage, many documents relating to Australia are government, heritage reside overseas especially in the archives of the United Kingdom that my learned friend just spoke about. To this day, even our national library has been unable to digitalize or get access to digital copies of the microfilm of some of those official documents. Documents relating to my country held overseas. In the last two days I have been here, I have heard a lot of states question why we would need a treaty for libraries and archives as there is nothing to stop nations from implementing exceptions at the national level, same thing could be said for any Copyright Treaty at WIPO. There is nothing to stop any nation protecting copyright, it was nothing preBerne Convention that stopped any nation from setting the term of copyright for 50 years after death. WIPO fantastically recognized the practical issues facing Member States and the importance of international norms. Similarly then, the importance of protection for libraries and archives and the importance of international norms need to be recognized. Our experience in Australia, a developed country, with specific library and archive exceptions is that today libraries face real problems in delivering their mandated services. We look to you to ensure that access to knowledge and dissemination of culture are protected and ask for your support in the treaty for libraries and archives.

**CHAIR:**

Thank you very much to the Australian library and information association. I would like to remind the non-governmental organizations that we are seeking comments on the topic which we are actually in the course of discussing, and please could I urge you to focus on the particular topic which is under consideration at the moment. Thank you. I now call on the association of European research libraries. You have the floor.

**LIBER:**

Thank you, Mr. Chair. This is the first time we have taken the floor on behalf of liber I would like to thank the Committee for granting us observer status. Liber represents 410 research libraries, University research center and national libraries from over 40 countries across Europe and beyond. Our mission is to create an information infrastructure to enable research

in our institutions to be world class. Research shows **(some text missing)** The United States national library, the Library of Congress even has overseas field offices in Cairo, Islamabad, Nairobi, New Delhi and Rio de Janeiro, that sounds crossborder, the preservation and sharing by large research libraries is by definition international and crossborder. We also see the huge growth in international research outputs. According to data over 40% of research outputs from France and Germany are from international search collaborations. The U.K. between 1990 and 2005 sold collaborations are researchers in India, Australia, Canada and Germany grow from 50% in the case of Germany up to 65% in the case of India. Why then given all of this crossborder activity a library limitations and exceptions do not crossborder? Education, culture, this huge increase in international research and education does not take place in jurisdictional silos. In the context of a crossborder research project it is only common sense that a medical researcher shares a new and passionate research finding packaged in the form of a research Article with his or her international colleagues working on the same project. National silos of limitations and exceptions do not clearly allow such activity. It could be argued perhaps within Europe that levy based private copying exceptions may allow this Article to travel from Berlin to Vienna, how does it work when the Article travels to Canada when no such levies exist? Did the German legislature foresee that use in Canada? Is it incorporated in that German levy calculations? Have the German limitations and exceptions enter play with the Canadian dealer, the exceptions for research? Are there obligations that the Canadian laws place on the German researcher when making the copy? This example, I think, illustrates why nation-based silos of limitations and exceptions leave libraries in an impossible legal position in a context of cross-border learning. As we start seeing to happen in the EU for certain limitations and exceptions libraries believe we need specific well defined exceptions to facilitate the activities of libraries to be crossborder in effect. Not doing so does not reflect the norms of our respective Member States, massive investment in libraries, research and education itself. Complexity does not mean that we should not solve this. Thank you.

**CHAIR:**

Thank you very much to the association of European research libraries for referring to the topic under discussion and for providing evidence collected that I'm sure will be useful to consider within the discussion of this important topic as we are seeing. We have the request from one country before continuing with two other NGOs on list. Brazil has the floor.

**TRANSCRIPT- NATION STATES**

**Brazil:**

Thank you Mr. Chairman. Good morning to everyone. Briefly we just wanted to express our support for the proposal made by other Delegations basically the proponents on topic 6 to consolidate their text. We think it is a good idea and that's the right way to move forward. With this in mind, we just would like to contribute to that effort, making a few comments on our views on this text here and first of all we see that under paragraph 108 we see that the African Group used the language to send, receive, to change a copy of work.

We would like to suggest that perhaps we should use the expressions import, distribute, lend and make available and thus we are, of course, taking inspiration from the market treaty. Then, regards to the proposal from Ecuador, we see merit in it. It is quite simple in the best sense of the word and there's a lot of merit in this. As well as in the proposal that was made by India and as regard to this particular proposal by India, we see a lot of merit in it because we tend to see that it is well captured the goal, the main goal that we will seek when addressing crossborder uses and that's related to the fact that it makes clear that we're talking about the sharing of resources between libraries and archives. That should be our main goal here. In general terms, we see lots of merits, in the three proposals, we think it is a good idea to combine them. Finally, we would like to point to the possibility of perhaps seeking inspiration on the Marrakech treaty and look closely as we try to combine the three proposals that perhaps we should look closely at Article 5 that set specific limitations for the rights of distribution and also at Article 6 that deals with importation of copies as well. Thank you very much.

**CHAIR:**

Thank you to the Distinguished Delegate from Brazil for that, for those suggestions. I'm sure that the proponents will take into account some of them and work closely in order to have enriched common text. Coming from the proponents. Now we continue with the NGOs, is it time for society of American archives.

**TRANSCRIPT- NGO INTERVENTIONS**

**Society of American Archives:**

It is a privilege to be here, to be able to address the delegates. It is a special privilege to be able to follow that intervention from Brazil. Recommending a consolidation, a unification of the text, that's an effort which we support. On behalf of the society of American archivists I would like to address the use of crossborder uses in relationship to a couple of particular challenges and examples that I have. As an archivist for four de kids I'm used to the fact that archives are misunderstood. This stems from a general lack of knowledge of how we go about fulfilling our societal mission. Let me clarify three important points you need to know, number one, archives are the bridge between the past and the future. Two, archives exist to be used. Three, because archives by their very nature consists of unique documents, nearly all archives worldwide face the problem of crossborder requests for copies. An example, just two weeks ago I received an e-mail from a polish historical museum interested in our collection of United States posters promoting radio-free Europe in the 1950s and 60s. To connect with their own displays on polish immigration during the Soviet era the museum sought images to reflect the anti communist message that was enticing the east European population to immigrate. The first question was do we have such posters? That was easily answered by a resounding yes. But, the follow-up questions were not. Their e-mail read if you have such posters, is there anyway for us to research them? Can you send preview photos? How do we obtain copies and a license for our expedition? Without international norms on the right to provide

copies to user, we are unsure of the legal environment for us to provide the documents crossborders to help the museum meet its mission and ours. The second example, we were similarly frustrated by what should have been a simple request from a graduate student. Our archives holds a substantial collection relating to 20th century classical or art music. Last year a doctoral student from Cuba who is studying composition in Madrid contacted us for his research on Latin American composers writing new music on percussions ensembles between 1930 and 1960. It it so happens one of our faculty member high school made several innovations in this subject. There was a long request asking for copies of the rare, unpublished music manuscripts. As material for doctoral thesis such copying should be more than appropriate, however, without solid knowledge of Cuban law, Spanish laws and the laws of several countries where our faculty member gathered some of that music this rather standard request became a significant challenge. As historical cure raters we shouldn't be doing legal research and making such decisions. Obviously neither of these requests involve items made for commercial use, but Copyright Law assumes commerce. This puts archivists and copyright at logger heads. We must continue to preserve the culture and enable accountability. But traditional copyrights disproportionate focus on revenue potential makes it increasingly impossible for us to fulfill our essential mission. Something must be done to enable our two worlds to work together. As archivists committed to best practices and respecting rights, the saa hopes that the good faith work of the SCCR will find a way to enable our two worlds to work together. Thank you very much.

**CHAIR:**

Thank you very much to the south of American archivists for this explanation and especially for the example, the clear example, which brings us evidence to this committee regarding what is considered a need. I have heard some Delegations asking for evidence and I think especially NGOs are giving us examples and cases which I think that deserve further comment.

It is the time for Ecuador, they have the floor.

**TRANSCRIPT- NATION STATES**

**Ecuador:**

Chairman, thank you very much. I'll keep it extremely brief. I simply wanted to express my thanks for what was stated by the Distinguished Delegation of Brazil. As we said under other items, we'll be very happy to work with him on the points he mentioned. Thank you.

**CHAIR:**

Thank you to the Distinguished Delegate of Ecuador for showing such flexibility and willingness, willingness you have always displayed when dealing with these issues. I now give the floor -- no, I won't. I'm sorry. Before the next NGO takes the floor, we have a state requesting it. Kenya, please.

**Kenya:**

I would like to work on the comments by the Distinguished Delegate of Brazil and we trust that the Secretariat will bring the revision and we take into account those comments. Thank you, Chair.

**CHAIR:**

Thank you very much, Kenya. Thank you for, again, showing flexibility and willingness to work which I'm sure will help us to make specific progress. With that, I will call on the German library association. You have the floor.

**TRANSCRIPT- NGO INTERVENTIONS****German Library Association:**

Thank you, Mr. Chairman. I speak on behalf of the German library association presenting 2,000 libraries in the country. I agree totally with my colleague from liber, complexity is not a reason to leave the discussion in contrary, too much complexity in the interest of study and research makes it necessary to make things a bit easier. I would like to give a German example.

A special library that within the German legal framework, paying enumeration to the collective societies sends copies of works to both institutions and individuals predominantly book chapters and journal Articles. They estimate they lent roughly 600 copies to North America, 500 to EU countries, and 100 to other countries per month. Copies are provided for research and study. But because of legal uncertainty, they refuse delivery in 30% of the -- of all cases which is a huge problem in science and technology research as they are the sole institution with possession of a number of reports not available in other countries. Another example, a long-distance learning University like University of hagen has students around the world. We have a national exception for document delivery for students of such universities that live outside the countries, there is no such provision. So sending documents from the University library to them constitutes at least illegal limbo. Distant learning without question is an emerging paramount and negotiating licensing for sending copies to students of other countries is cumbersome if not impossible. Imagine a student in South palo, naraiobi studying machine engineering at a University of hagen, Cambridge bridge, mit, don't they need the same documents as the students on the University campus? We think they all should be treated equally. The ifro representative mentioned licenses on distant learning and crossborder delivery, but a few individual licenses won't help. You have to take into account that we speak of hundreds of different licenses for electronic resources. Not to speak of the resources that only exist in paper format. There is no way to license all of these materials for international delivery. The ipa delegate spoke about the complexity of the different issues providing resources to students. How can a sole library solve those problems with each of hundreds rights holders when each of them has its own business model with 20 pages of licensing terms in very small writing? Many right holders also still prohibit to send copies within the borders of the same country. To make such crossborder delivery and distant learning more just an international

harmonized framework is needed.  
Thank you, Mr. Chairman.

**CHAIR:**

Thank you to the German library association for building up the need of an exception in this topic and for crossborder uses. I'm sure it is very helpful, your explanation. This is time to listen to kei.

**KEI:**

Thank you, Mr. Chairman. I think it should be obvious that looking forward people have to think about the crossborder architecture of the copyright system. The idea that -- I mean, we Certainly on a regular basis need to have information on activities in a variety of different countries. We're trying to research important issues by IP in **(some text missing)**.

**TRANSCRIPT- NATION STATES**

**(some text missing)**

**Egypt:**

Thank you, Chairman.

The Egyptian Delegation would like to offer you its congratulations on the way in which you have been Chairing the work of this committee and we would like to express our gratitude for and our total support to the work being done by the Committee. In order to acquaint all of us with best national practices. This is helpful in identifying the real and practical needs of libraries and archives and ensuring that we can hopefully tackle the worldwide problems which one of us have to deal with in one way or the hour. I do think Member States and observer, I thank you for your active participation and above all, for focusing on the real situations that they're dealing with in giving us practical examples of what they have to do. Now, we have a much better picture of their needs. The purpose ever copyright is as we know is to encourage creativity and to spread knowledge. And in so doing we're to encourage companies, individuals, nations to benefit from creativity. Chairman, as you will be aware, Egypt has a very, very long history and in addition, we have been an active participant in world affairs for many, many years. We have archives in which we have thousands of books, very rare documents which go back as far as the 7th century. They're extremely valuable nationally and internationally, I think that's recognized. The national archives of Egypt, one of the oldest such archive in the world with 75 # 0 documents and books in many languages, Egyptian, Greek, Latin, which tell of mankind's past. I think that exceptions and limitations have applied properly could be helpful for us in sharing this and that goes particularly for the crossborder use, we're discussing that at the moment. Making rare documents digital and translating them could also be made easier and we would appreciate it if it were made simply first to share this knowledge and information with students and researchers worldwide. That being the case, we support the proposals made by the African Group, Ecuador and India and we ask the Secretariat to prepare a document which will bring together the three proposals so

that they can be discussed in a consolidated form and to the next session. Could we urge everyone, please, to support that request. We want to share our culture, our certain risation and encourage the development of the copyright system in a way that will make it more useful not only nationally in our case in Egypt, of course, but also internationally. Thank you.

**CHAIR:**

Thank you very much for the that important, consistent declaration. The additional example of how his tore yal background could be shared with our copyright rules, including exceptions and limitations which may help to help find out the fantastic history of Egypt for example.

Is it time to listen -- Congo.

**Congo:**

Thank you very much, Chairman

I'm aware that Congo's statement yesterday on this issue is fairly explicit, but nonetheless, I wanted to take this opportunity to give you what may be a useful example. After the 1970 in the Congo, libraries and archives were blundered and the archives of the colonial governments in the Congo are now in France. Many have had to spend thousands of euros just for an example, to get a new copy of their birth certificate because the relevant documents are only available in France. If these exceptions and limitations had been provided for I imagine that my compatriots would find it easier to get ahold of the birth certificate without leaving home. I would therefore, Chairman, ask you to with your usual Diplomatic skill, of course, nudge the negotiations forward a bit more quickly so we can finally give birth to this treaty and perfectly in the very near future, thank you.

**CHAIR:**

H thank you to the Distinguished Delegate from Congo for that request. That's my will as well, you have to help me in doing so. I'm not alone. But in convincing the rest to move quickly. So thank you for that in advance. Since it is time to listen to Pakistan.

**(some text missing)**

**CHAIR:**

**(some text missing)**...I would like to appreciate the NGOs that have given a lot of examples and evidences to support that this is much needed exceptions and limitations. But on the other hand, we have heard that there are some interventions saying that there are some complexities, of the sensitive issue, I think those complexities and problems, which may arise due to this exception, evidence and examples that for sure will have given us some important thoughts regarding the need of what this topic implied. I think that there is a challenge that

we have to give responses to those questions, answers, cases, examples, and that's why we are here.

The challenge will be probably made during the discussions of our text proposals based on other comments that will arise. Thank you very much for this interesting exchange, useful exchange that we have to now concrete-ize our work. Before passing to, we'll pass to the next topic, the next number seven, and as we did before, we will ask -- request the Secretariat to give us a brief summary of where we are in the 7th topic, profound works.

### **SECRETARIAT:**

Thank you, Chair. This topic is entitled orphan works, retracted and withdrawn works and works out of commerce in SCCR document 26/3 this topic is handled on pages 34 through 39 and then pages 56 through 58 of the Annex. We have once again three substantive proposed texts one from the African Group, one from Ecuador which responds to the proposal from the African Group, one from India. The proposal from the African Group and Ecuador separate orphan works from retracted and withdrawn works and address them separately. So, with respect to orphan works the African Group has a provision that calls for permitting the beneficiaries to reproduce and use a work or materials protected by related rights when the author or rights holder cannot be identified or located after reasonable inquiry. Then it goes on to provide that it would be a matter for national law to decide whether there would be enumeration provisions in indications of commercial uses of work or materials protected by related rights. With respect to retracted, withdrawn, unaccessible works there is a general principle stated that the ideas for the right to reproduce, to help achieve the goal of permanent access and preservation, the provision provides that except as provided by national law or through the decision of a court it shall be permitted through libraries and archives to reproduce, make available as appropriate in any format for preservation, research or other legal use any copyright work or work protected by copyright related rights which has become inaccessible but has previously been communicated to the public or made available by the author or rights holder. There is then a provision for reservations, saying that the Director General may with the notification to the Director General the provisions of the paragraphs above may be applied only in respect of certain uses or limit the application in some other way or not apply the provisions tall

The proposal from Ecuador has many similar elements but spells out slightly differently the rights, so libraries and archives may be permitted to reproduce, make available to the public and otherwise use any work or material protected by related rights for which the author or other right holder cannot be identified or located after reasonable inquiry. That is mandatory and then there is a provision that contracting parties may provide a provision for equitable enumeration or termination of the use once the rights holder is located.

With respect to access to retracted and withdrawn works, the Ecuadorian proposal spells out that libraries and archives could reproduce, make available has **(some text missing)**

## **TRANSCRIPT- NGO INTERVENTIONS**

### **CHAIR:**

Thank you for that very strong intervention, which reminds us of the legal framework concerning moral rights and which is a critical right for the preservation of the system. And which should lead us to take a much closer look at this issue of orphan works which we are seeking to apply the same rule to retracted and withdrawn works as to the orphan works. This was very thought provoking, and I hope this will give rise to other views. IPA.

### **IPA:**

Thank you, Mr. Chair. Yes, this previous intervention does give rise to further comments, as you suggest, and I'm delighted that we are putting some focus on not just the issue of orphan works, not just the issue of out-of-commerce works, but also on this third issue, which is about withdrawal, retraction, and removal of works from the record. These are three very, very different issues with three very different sets of rights and balances which need to be struck in the different environments. I would like to -- because other people have already spoken about orphan works and about out-of-commerce works and because we've seen the kind of solutions which are gradually developing in this session over lunchtime, I'd like to briefly focus on withdrawal and removal and retraction of works. In this area, the international publishers association and the International Federation of Library Associations created a joint position paper and a joint statement in 2006. And because we both share the same value of preserving the published record, we were -- it took us only a few years to come to a consensual statement. The reason why that was also possible is because we were able to blend out a number of important issues which Member States will not be able to blend out. For example, just this week, I received a copy of a book published in India about gas prices in India, which includes a lot of investigative journalism, and there is now -- there are major industrialists who have come down very hard against the author, against the distributor, against the publisher, and insist that this book be removed, that it no longer be distributed or published because it contains allegedly defamatory material. Now, if a judge decides that this material is, in fact, defamatory, if a judge decides that a book is plagiarism, if a judge decides that, in fact, it contains false statements or it is illegal for one reason or the other, what does that mean for the library record? How will libraries deal with these kind of books where a national law has decided that they can no longer be made available to the public? These are questions which are complex, and they deal with many different sets of values which different countries will have different views on, so I look forward to the debate on this, but I'm quite skeptical that on any substance we can actually achieve the kind of consensus here that IFLA and IPA were able to achieve on a limited set of circumstances in 2006. Thank you very much.

## **CHAIR:**

Thank you for IPA for sharing with us the opinion that differences among these three types of works should be taken in account as the previous intervention has pointed out as well. Thank you very much for that. India has the floor.

## **TRANSCRIPT- NATION STATES**

### **India:**

(some text missing) End as my friend, distinguished delegate from IPA said, discussion is turning very interestingly. Somebody raised the moral rights issues. Now, Berne Convention recognizes two basic moral rights, in Article 6 bis, right to paternity, right to integrity. It doesn't include other moral rights, like right of withdrawal. Many national laws also don't include, but there are countries which have gone beyond the Berne Convention to include right to withdrawal. If you study the model rights included in the copyright laws available in the copyright laws of WIPO, 125 countries, I don't think more than 10 countries have included the right to withdrawal in their national copyright laws. -- to withdrawal in their national copyright laws. This can be dealt as per the national legislation, blah, blah, normally the language we use here. And then coming to the issues raised that is recently popular book about gas wars, which my friend mentioned, written by Pronunja Gupta the author's name is. The gas wars he was referring to. So if publisher thinks that the accusation is defamatory because he incriminated maybe government officials how the gas prices are decided here, or any other book which is considered blasphemous if he must, just like Satanic verses was banned by government of India, obviously, these kind of banned books cannot be treated as withdrawn books and made available to the library. It is against their national law which decided to ban that book or withdraw that book. But the countries, just like in India, which have no such law of right to withdrawal, so it is for them to define whether it should be available, we can debate whether that can be a law or not. But I would like to make a proposal with your permission, Mr. President. Library and archives limitation exceptions and also now soon we will be moving to limitation and exceptions of educational institutions and research institutions. What Indian delegation suggests to this august Standing Committee, that it should conduct regional workshops or consultations on both issues, library archives and educational and research institutions, so that how these things are functioning. Of course, there are very good studies conducted by WIPO, library archives we have, and then various studies conducted region-wide, about five or six studies about education and research institutions. But these regional workshops, with my experience of holding two regional workshops, back-to-back workshops, to which His Excellency, Ambassador Mr. Clark also witnessed, attended the audiovisual and broadcasting, so such workshops do give clarity on the position of how things are working at the grass-roots level, whether it is libraries, education, and regional-wise, and what material comes out of that, that will be useful going forward in discussion and negotiations in the SCCR. Thank you.

**CHAIR:**

Thank you very much to the distinguished delegate from India, not only for his opinions and clarifications regarding the scope of moral rights in the international conventions, but for his specific suggestion that I'm sure will trigger some discussion here. So we welcome opinions regarding that proposal. Russian Federation has the floor.

**Russia:**

Thank you very much, Chairman. I've listened very carefully to the statements which have been made by our Non-Governmental Organizations, and I'd like to take the opportunity to share a couple of points with you myself on the issues we've been discussing. First of all, however, I would like to give you an example from our own Russian legislation and our civil code. Part 4 thereof covers that works, the author of which is unknown, are not covered by a copyright. They are not given protection. In other words, they are a common social good, and libraries and archives may use such works freely. There is absolutely no impediment in their way to doing so. In some countries, however, we seem to have an understanding of the publisher when a work, the author of which is unknown, is found, then the work is published, and it becomes something that the publisher has the right to use and dispose of. Then I think we should be talking about protection being provided by national legislation. I would, however, be a little bit cautious because I have very, very considerable concerns about this issue we've been discussing related to the retraction or withdrawing of works. I think here the problems that we may come up against would be a lot more complicated than it appears to seem to some people. After all, what are we talking about when we talk about the right to retract or withdraw? We are talking about the moral right of the author, **(some text missing)**

**CHAIR:**

Ecuador has the floor.

**Ecuador:**

Thank you very much, Chairman. To begin with, various observations have been expressed and positions have been taken in the Ecuadorian proposal, and particularly the aspect of it that covers the right to retract. As the distinguished delegate of India mentioned, an analysis of 6 bis in Berne and on the basis of that everything else that has to do with moral rights in individual legal systems is something which we should approach with caution. Nonetheless, I do think that in this forum we should take the opportunity to put the issue on the table and have a thorough discussion of it. Furthermore, on the Indian proposal, which I think was supported by Brazil and some other delegations, we also support the proposal. Thank you very much, Chairman.

**CHAIR:**

I thank the distinguished delegate of Ecuador for having expressed his point of view and for having offered support to the proposal, which I believe has also been endorsed by the delegations of Kenya and Brazil. I believe they all expressed support for the original proposal tabled by India. With that, I will give the floor to El Salvador.

**El Salvador:**

Good afternoon, Chairman, and thank you very much. First of all we would like to pay tribute to the level of detail and interest of the discussions this afternoon. They have really been extremely helpful and very enlightening, and we are especially grateful to FILAIE for having made an excellent and very helpful statement. It goes without saying that colleague, the Professor from the Indian delegation, has also shed a great deal of light on the discussion. Now, turning to the proposal from the Indian delegation, our El Salvadoren delegation would like to welcome it, and we would also like to note with gratitude that an idea of this kind has been brought to this forum. Like other delegations who took the floor before I did, including, I think, Brazil, Ecuador, and Kenya, we would like to support the proposal. I don't think there is either the time or place in particular, but we would like to know at some stage what Brazil and India and, indeed, other countries, including Kenya on behalf of the African Group, about how we can work through these regional meetings, what format we have, et cetera, and so forth. We would be particularly interested in these, and we have every intention of participating very actively in them. Thank you.

**CHAIR:**

I thank the distinguished delegation of El Salvador for having offered support to what was said by several other delegations, including India. Your viewpoint seems to be very similar to that put forward by other delegations, and it is noted. Guatemala, please, you have the floor.

**Guatemala:**

Thank you very much, Chairman. This is the first time Guatemala is taking the floor in the course of this Committee session, so first of all, congratulations on being elected chairman. Secondly, we would like to express our thanks for the statements which have been made during the course of this afternoon because we think they have shed a great deal of light on the work we are in the process of doing at the moment. We would also like to offer our backing to the proposal tabled by India because we are of the opinion that it will be very interesting. Most important of all, it should, we think, help us to reach specific conclusions on these issues. I'd also like to talk about the question raised by the El Salvadoran delegation. Thank you.

**CHAIR:**

I thank the distinguished delegation of Guatemala and now call on the European Union, to be followed by Chile. European Union, please.

**European Union:**

Thank you, Mr. Chair. I don't have anything to add as regards the Indian proposal. I want to make a clarification in reaction to an intervention by an NGO before the lunch break.

The context of harmonization in the EU is considerably different from the international context. Harmonization of copyright legislation in the EU should be seen within a regional project of creating an internal market without borders. The EU is a system of regional integration which requires a level of harmonization that is not necessary or even possible at international level.

Thank you.

**CHAIR:**

Thank you to the European Union for clarifying the differences among the subregion treatment of legislation and the international legislation. It's time to listen to Chile.

**Chile:**

Chairman, thank you very much. Good afternoon, everybody. Basically, I just wanted to thank the Indian delegation for its proposal and also to offer our support, along with all the other countries that have done so. We think this possibility is a very helpful one. Regional meetings or seminars are, we think, an excellent alternative for pushing the work forward because they will help us to clarify the situation, taking into account the individual experiences of our countries and the possibility of reaching an international solution on these issues.

Now we just need to look at the detailed organization of such activities, but certainly, our delegation would support the proposal for them. Thank you.

**CHAIR:**

I thank the Chilean delegation for that. Islamic Republic of Iran, please.

**Iran:**

Thank you very much, Mr. Chairman. I would like to give some information about the situation of limitation for libraries and archives according to Iranian copyright law.

According to Article 8 of Iranian Copyright Law, Copyright Act of 1970, public libraries, document centers, scientific institutions, and educational establishments which are noncommercial may reproduce protected works by photographic and similar -- or similar process in the number necessary for the purposes of the activities according to a directorate issued by the Board of Ministers. Actually, the drafting of this decree has been delayed until recently, and recently the Ministry of Culture and Islamic Guidance has drafted this decree but has not yet approved, recently provided some articles of this draft related to orphan works. According to this draft, actually, in the case of using or reproducing orphan works, the moral rights of the author should be protected and should be obeyed, and if the library decides to reproduce an orphan work, it should inform and give permission from the Ministry of Culture and Islamic Guidance. Actually, I would like to inform this information. Thank you, Mr. Chair.

**CHAIR:**

Thank you very much to the Distinguished Delegate from the Islamic Republic of Iran for informing us of new developments in Iranian legislation, so we are looking forward to see the result of the decree immediately after it is approved and shared with the other delegates. Thank you very much. Okay. After listening to different delegations and listening to NGOs, usually the information shared by NGOs triggers other opinions from the -- from different delegates here, so I think that has been a very good exchange of the topic that we have that is under number 7 here. Something that I would like to highlight is the differences among the types of works that have been included under this topic, some warnings that have been said or some effects that might arise from a policy to treat some type of works that are included under this topic have been expressed, and it's very important to consider those differences among those types of works. The effect of moral rights has been stressed. And regarding orphan works, we have received several contributions from different delegations on the way different countries are treating this new topic, so it has been very rich, the exchange on that matter. Therefore, additionally, the NGOs have given us more information and examples regarding **(some text missing)**

**Belgium:**

Thank you, Chairman. This is actually the first time I am taking the floor, and then obviously, I shall have to congratulate you for steering these debates in such a constructive and professional manner. And thank you for so doing. Along the lines of what was said by the European Union, I'd simply like to say that in Belgium, domestic legislation, we do not have any limitations on liability of libraries and archives. We Actually make a clear distinction between exceptions and limitations and possible liability regime and eCommerce. It's very specific and very limited, as you know, to certain types of activity on the Internet. That is why I must confess that it seems to us to be a little odd in a discussion on exceptions and limitations to have this issue on limitations on liability of libraries and archives. It also seems rather delicate to us to look at exceptions or

suei general limitations on liability. We do have a rather complete set of laws already on exceptions, and in any case, I think that the current proposals, at least in some cases, are too subjective and too general. Even if we agreed to them, I think they would have to be more restricted to certain specific cases, and on the cases of clear and subjective criteria, which are the only way of getting sure legal guarantees, especially on an issue like liability. I must confess, as I say, that I'm not that familiar with this subject, and I have to be honest about this, and I am talking about limitations on liability of libraries and archives. I am even less expert when it comes to dealing with the issue in the international arena. We would need more substantive information, particularly provided from countries which have been operating a regime of this kind before we move on any further. So basically, as the EU said, we also would need a great deal more clarification before moving further ahead. Thank you.

**(some text missing)**

### **United Kingdom:**

Chairman, thank you for giving me the opportunity to speak. I would like to set out some of the law the UK has on liability in relation to libraries. In the United Kingdom, we don't have any general provision on library liability; however, we do have some specific exceptions relating to the making of copies by librarians for users of libraries. And under these provisions, we have a requirement that in order for a librarian to provide an extract from published work, they must have a declaration from the person who will be receiving the copy and a declaration must say that that person will be using the copy for the purposes of noncommercial research or private study. And if it then transpires that the person has used it for some other purpose, then the person who has received the copy is liable and not the librarian. So that's how it works. We have a couple of provisions that work in that way. Thank you very much.

### **CHAIR:**

Thank you very much to the Distinguished Delegate from UK for sharing with us a creative solution in regarding the liability of libraries in cases of infringement. It's time to listen to El Salvador.

### **El Salvador:**

Thank you, Chairman.

Here we would like to make clear that our own legislation does not contain a regulation of this type. However, our secondary legal system might allow us to find something to cover this. However, we are working on a binding international treaty here, and we would certainly welcome the inclusion of this topic. Since it will be very useful in practice, particularly when we would also welcome the objectivity and pragmatic nature of the Indian proposal.

Thank you, Mr. Chair.

**CHAIR:**

Thank you, El Salvador. And now I give the floor to India.

**India:**

Thank you, Mr. President.

The topic number 8, limitations and liability of libraries and archives. This is, indeed, an interesting topic to be covered in this proposed Treaty, something you never heard of in such topic covered in India, that Treaty, because the main problem stems from the very nature of functioning of the libraries. So many national laws, a study clearly mentions at least one exception is given to libraries. But several occasions, there is -- there are examples where these exceptions have been misunderstood because -- I'll give you an example of India. In India, when reproduction exception is given for education, research, private copy, or personal use, or for the library, no terms or conditions have been imposed. Unlike other laws where only chapter has to be copied, only a poem has to be copied, only an article has to be copied, like this. So we don't understand international law and trying to -- since that book is published in X country, where those laws are like that, that only one chapter has to be copied, so those country laws were imposed on the library here disregarding the nation law's exceptions. So legal notations have been sent, they have been harassed. What has been asked -- because after the coffee break, one of the Distinguished Delegates mentions that, you know, everybody should be treated equal before the law. There should not be any exceptions if any crime committed by the librarian. We except. Rule of law is the law all over civilized nations. We don't give any exceptions to the person who is ruling the nation or a person who is begging in the street. Everybody is treated equally under the rule of law. But a person, a librarian who is implementing the law in good faith, he is implementing the law in good faith, is implementing the exceptions given in the national law (coughing) -- sorry -- so he should not be harassed sending legal notices, threatening him, putting him in such a situation that the won't be able to function. So behind that spirit, this has been introduced. So that's what we have to see. So if you look at the Indian proposal, it clearly states that it is in that spirit. Any person working in any library or archive shall be protected for any action performed in good faith. So here it means performing action in good faith means as per the exceptions provided in the national law. So against claims of damages or criminal liabilities. So he should not be harassed with criminal liabilities or damages for the copy exception he allowed to the researcher. That's what I wanted to explain.

**CHAIR:**

Thank you. Thank you very much to the Distinguished Delegate from India for explaining and developing their reasoning behind India's proposal. Pakistan has the floor.

**Pakistan:**

Thank you, Chair. At present, we don't have any provision in our Copyright Law regarding the liability of libraries and archives, but our delegation is of the view that this exception is very much needed, especially in the context of our country, and I hope it would be the case with many other countries where the libraries are not very much aware of their liabilities under copyright law. And these libraries and archives, while undertaking their routine functions, are at the risk of infringement. For example, the digitization project is under way at national archives of Pakistan, and they have digitized papers which were fortunately under public domain, but for the rest of the material, they are at the risk of infringement because copyright ordinance -- our national copyright ordinance allows three copies, reproduction of three copies, while digitization may require more. So our delegation is of the view that this exception should be available to archives and libraries, obviously with the condition that if these activities are being performed in good faith.

Thank you.

**CHAIR:**

Thank you to the Distinguished Delegate from Pakistan. It's time to listen to Italy.

**Italy:**

Thank you, Mr. Chairman. Since it is the first time we are taking the floor, I should like to congratulate you on your election to the chairmanship. We have a great deal of difficulty with this topic because we believe that it completely overturns general principles of civil law. We're talking here about legal entities and the responsibility of nations in the case of libraries is born by the entity itself. If I am damaged by an action taken by a library, I have recourse to the library and not to the member of the library staff. It is a second-degree responsibility for the staff member. According to national legislation, they can turn to their employer. But here we are talking about the responsibility of the staff member. And if the staff member is not responsible, then the library cannot be held responsible either, cannot be held liable. Therefore, we cannot agree to this principle. There is some professional liability inasmuch as anybody exercising a profession is expected to have the necessary knowledge and skills to practice that profession. But if they are not properly trained, then they cannot be considered responsible.

Well, I think that we need to reflect further on topic 8.

**CHAIR:**

Thank you, Italy, for urging us to reflect further on the scope of this particular topic. Vietnam, you have the floor.

**Vietnam:**

Thank you, Mr. Chairman. We think that the library and archives have a very important role in accessing information and knowledge, so we think that this topic is limitation and libraries and archives is very useful so that when they act in good faith, we support in principle that such extensions would be to introduce appropriate specific circumstances. Thank you.

**CHAIR:**

I would like to thank the Distinguished Delegate from Vietnam for a very clear statement. Now I will give the floor to -- Pakistan, do you need to speak again? Thank you. Seeing no further delegations requesting the floor on topic 8, limitations on liability, I would then ask the NGOs to express their views. IFLA has the floor.

**TRANSCRIPT- NGO INTERVENTIONS**

**IFLA:**

Thank you, Mr. Chairman. I speak on behalf of IFLA, which represents more than 650,000 information professionals in more than 50 countries. The complexity of legislation on copyright and the difficulties they represent for archives and libraries, particularly with often works, has been made clear this morning with a number of examples. I should like to give you another example as to legal liability of libraries on copyright.

Switzerland digitized with a number of researchers a number of postcards dating from the first world war. The majority of them are in the public domain. It is, however, very difficult for a national library to ensure that each individual card is not protected by copyright. Finally, because we feared suit, we decided not to publish that collection, which would have been very useful for all.

So the good-faith infringements of copyright by libraries very often has a dissuasive effect on libraries and archives from making available material to its users. Providing a limitation to libraries on copyright liability is nothing new. The U.S. already has limitations of liability for libraries which allows the staff to do their job properly. IFLA would like to extend this to all libraries by including this topic in an international instrument. Thank you.

**CHAIR:**

Thank you, IFLA, for that brief clear intervention. FILAIE.

**FILAIE:**

Thank you, Chairman. We, too, will be very brief and simply wish to express our strongest support for the representative of Italy. His arguments are perfectly correct. We are including here a staff member responsible for a library who is required to have training which is superior to what is the norm. If he's going to be accused for having authorized an illicit act in good faith or from having been unaware of an illicit act. This specific responsibility does not exist in Spanish legislation, but in our civil code on the question of culpability of liability in the area of certain professions, medicine or law, for example, and we have adopted the principle of Roman law of the *bonus parta familias*.

**CHAIR:**

Thank you, FILAIE, for that contribution., And I now give the floor to the Scottish Council on archives.

**Scottish Council on Archives:**

Thank you, Mr. Chairman. I represent the Scottish Council on archives, a not-for-profit organization providing leadership for the archive sector in Scotland, although I speak today with the support of all of the archive and library NGOs present. This is our first time taking the floor, so let me thank you for the opportunity to speak and congratulate you on your reelection to the chair. I am also a professor of copyright law at the University of Glasgow in Scotland. In that capacity, I've spent time researching the way copyright both enables and inhibits the core mission of the archive community. And the point I was to make is very simple. Exceptions alone are not sufficient. Archivists take copyright law very seriously. They are law-abiding people with strong professional ethics. But they often find the copyright regime complicated, confusing, and intimidating, and especially within an international context. Few archivists enjoy the benefit of formal legal training, and archives rarely have the financial resources to pay for specialist legal advice.

And research tells us that archivists worry about copyright. They worry about whether or not they are acting lawfully. They worry about the threat of litigation. And they worry about the reputational damage to their institution and to their profession that might flow from inadvertent or unintended copyright infringement. And it is easy to understand why they worry.

Archives and libraries want to act within the law, and they want to know with certainty that they are, in fact, acting within the law. But even tightly drafted and narrowly focused exceptions often turn on flexible and situational concepts, such as fairness and reasonableness. And as such, there often remains an element of doubt in the mind of the archivist about whether reliance on the exception is lawful or not. And that sliver of doubt often triggers an unwillingness on the part of archivists and librarians to rely upon and benefit from those lawful exceptions. And that is why exceptions alone are not sufficient. They must be accompanied by a limitation on liability, a safe harbor that empowers archivists and librarians engaging in

noncommercial activities to have confidence in their own good-faith interpretation and application of the law. They need a provision that establishes that when archivists and librarians act in good faith, believing that they have acted in accordance with the law, they will not be held liable for inadvertent or uncopyrighted copyright infringement. Such a provision would enable archivists and librarians to take full advantage of the scope and opportunity which copyright should afford the preservation and digital accessibility of the shared cultural heritage of humankind. An international instrument on exceptions for libraries and archives that does not make provision for a limitation on liability runs the risk of undermining its own value and worth. Thank you very much.

**CHAIR:**

Thank you very much, the Scottish Council on Archives for the developed statement and reminding us that the perception we share about the archivists here in this room, I'm sure, and applicable to the librarians as well, and the effect that such a provision that some proponents are trying to present will have in your important job and task. KEI has the floor.

**KEI:**

Thank you very much. I'm Impressed with a lot of the -- KEI is impressed with a lot of the presentations by the United States, by India, by other governments, and by the librarians and archivists have just discussed. I just want to add I think an important technical issue. When we were looking at the proposals by Mary Beth Peters, former Library of Congress of the United States, to address orphan works problem, there was a paper they published which proposed limitations on liability as a legislative solution to the orphan works problem in the United States. It was different from the European proposal, which is more like -- some of the proposals in Europe rely on collection societies or various licenses. The U.S. was going to limit the liability of the works. And you find out -- and there is already some things in the U.S. law. But one of the rationales for it was that the Berne Convention, which puts some limitations related to three-step test or some of the other provisions they have for certain kinds of copyrighted works, that none of those restrictive provisions really applied to limitations and remedies because the Berne Convention didn't really extend to the issue of enforcement of the rights; it really dealt with the rights, not so much the enforcement issues. When you look at the TRIPS Agreement, part 2 is on the right, so that's where the three-step test is found, for example, references to the three-step test, in sort of a highly nuanced and technical way, but the enforcement provisions and the remedies are put in part 3 of the TRIPS, and it's, I think -- it's now there's a lot of scholarship now that the remedies in part 3 of the TRIPS are not subject to the restrictions in part 2. This is found in both patents and copyrights.

So in patents, for example, they found that countries in the United States can export freely when the limitation is done as a limitation on liability as opposed to if it be granted a compulsory license. And so an important area is that when you fashion exceptions that deal with libraries, that one area you can look at is even broader than what's been discussed

generally is limitations on liability for infringement. The United States, as a blanket compulsory license on all copyrighted works as a limitation on liability, which is 28 USC 1498, and then in the African Group proposal, which I guess will be on document SCCR/ 26/4 prov. On page 22 and 23, there's reference to access to educational materials as a limitation on remedies for infringement, where they include discussing areas where works are unaffordable. And I think this concept, which is found on page 22 and 23 of that document, could also be considered in the context of libraries for certain cases where they're struggling to deal with excessively priced products. For example - - I apologize for the long intervention. Thank you very much for being able to discuss this narrow point.

**CHAIR:**

Thank you very much to KEI for those comments. Iran is asking for the floor.

**TRANSCRIPT- NATION STATES**

**Iran:**

Thank you very much, Mr. Chairman.

I would like to add some related articles in the draft related to the liability of libraries. According to one article, the library has no responsibility in the following cases: One, if in spite of applying all requirements laid down by this decree by the library, a user illegally commits reproduction; two, if a work that has been published without the permission of the author or his or her agent and the library without knowing the fact allowed the user the reproduction of that work. In these two cases, the library has no responsibility. According to another article, the library shall prevent infringement of the intellectual property rights in the case of information about illegal production through following ways: One, stopping the illegal reproduction; two, prevention of exiting the illegal copy from the library; and three, suspension or cancellation of the membership of the guilty person. These two articles related to the responsibility of libraries in the draft. Thank you.

**CHAIR:**

Thank you very much to the Distinguished Delegate from the Islamic Republic of Iran, and for sharing with us details of the draft proposal on limitations on liability for libraries they are preparing. Since we don't have -- oh, sorry. SCI is still asking for the floor? Okay. So since we don't have any more requests for the floor, I want to thank all of you for this very rich exchange of information and positions, and I am sure that they will give us enough material to have a clear position on this matter. So we jump to the next topic, number 9, and we ask the Secretariat summarize this topic.

**SECRETARIAT:**

Topic 9 is on technological measures of protection, and we have in document SCCR/26/3, at pages 43 to 45, three proposed texts from the African Group, a proposal from Brazil,

Ecuador, and Uruguay to the proposal from the African Group, and a proposal from India. The African Group proposal on the circumvention of technical measures says Contracting Parties shall ensure that beneficiaries of the exceptions and limitations in the instrument have the means to enjoy the exception where the technological protection measures have been applied to a work, including, when necessary, the right to circumvent those measures to make the work accessible. Brazil, Ecuador, and Uruguay, in their provision on obligations concerning technological protection measures, say that Member States and Contracting Parties shall ensure that libraries and archives have the means to enjoy the exceptions and limitations provided in the instrument when TPMs have been applied to a work or other protected matters. India Characterizes this as a right, says that libraries and archives shall have the right to circumvent technological protection measures applied to any work for the purposes of enjoying any act permitted under this Treaty and in their national legislation. There are a number of comments found on pages 43 through 45, and in the Annex on page 58. And these, generally speaking, talk about the intersection of technological -- well, the provisions in various treaties, including the WCT, WPPT, and TRIPS, the intersection of those with technological protection measure provisions, and a number of commenters say that it's important to look at how these provisions operate in the digital environment and to allow some possibility of circumvention for institutions, including libraries and archives, to fulfill their mission while, at the same time, preventing piracy. There were a number of comments clarifying that this provision should only apply to legal uses of works. There were also descriptions of the legal systems prevailing in the United States, Switzerland, and Japan, which all allow some level of exemptions to the application of technological protection measures under relatively narrow circumstances. The overall reasoning for providing this provision was mentioned in a number of comments where there was a request to provide greater legal certainty, and then there are also a number of comments that suggest caution in the approach to this type of provision. Thank you, chair.

(some text missing)

#### **SECRETARIAT:**

Well, Chair, in terms of the schedule, we are supposed to spend tomorrow morning on the limitations and exceptions topic, and we said we would discuss limitations on, and exceptions for libraries and archives first and then move to limitations and exceptions for educational and research institutions. There is no specific provision as to exactly when we do that, but tomorrow morning would be our time to discuss both of those topics.

#### **CHAIR:**

Thank you, Michelle, tomorrow morning we will continue the discussion because I think that we can achieve our goal. That is finishing the discussion on these three topics. Thank you very much.

Soy, someone else?

**(some text missing)**

**CHAIR:**

Thank you very much. See you tomorrow at 10:00.