

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS (SCCR)

27TH SESSION: DAY 3- 30 APRIL, 2014, GENEVA, SWITZERLAND

PRELIMINARY

This is the transcript of Day 3 (30 April, 2014) of the 27th Session of the WIPO SCCR held at Geneva, Switzerland. This includes statements by various country representatives and non-governmental organizations. Proceedings on the third day revolved around the proposed treaty for the Protection of Broadcasting Organizations and 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

CHAIR:

(some text missing) but distinguishing this activity in a consequence potential right from what could be called post fixation rights which are yet a fourth category which is the same right of fixation, reproduction and distribution of copies and that includes also public communications of said fixed broadcast. The fifth element, the fifth right established here for the discussion was protection of prebroadcast signals. And then on this as well there was a greater Consensus as regards the fact that we had to identify the language between the two tables so as to avoid any confusion as to the platforms concerned. The exploitation and rights and here this work has been started but has not been concluded and we need to have more definitions, more clarifications. I must recognize the Delegation of

India contributed specifically with various elements for technical definitions which helped us with our discussion. And then with these two tables there is a whole task left pending and that is the revising to have a greater clarification and to have a position of the countries or groups regarding the areas where we have to say where their limits but keeping in view other areas of exploration and the rights. This is all I can say what occurred during the work that we did. I would like to thank the regional coordinators but I would like to open the floor up for greater clarification from the Delegates and groups. The floor is open. Brazil.

TRANSCRIPT – NATION STATES

(some text missing)

Brazil:

Thank you, Mr. Chairman. And thank you for your report of our discussions that were indeed very helpful this morning. And I -- for the sake of transparency with all Member States and Delegations I want to say that from the viewpoint of those Delegations,

this Delegation those discussions were indeed very helpful in the sense that they have provided to some extent a deeper understanding of what we are talking about. There is a range of documents, informal documents entirely informal documents on the table which cause a little bit of a confusion during our discussions this morning. One Delegation also came

up with yet another informal document that is extremely useful, let me say that. Because it represents an intent precisely to shed light on terms and expressions that somehow we are discussing when we discuss the other informal papers that were on the table. So all that was extremely useful, at least from the viewpoint of our Delegation. Having said that I have thought to qualify one aspect of something that you mentioned in your import here,

in the sense that there is a greater Consensus, at least regarding some issues that have been discussed.

I have to recommend that we see what we have gone through up until now cautiously. I would have tremendous difficulty at this point in time to refer to and to mention the word Consensus. As a matter of fact I think that there are yet so many aspects to be clarified that talking about Consensus would be precipitating things at this point in time. And in very informal conversation with the fellow Delegate he mentioned that we are talking about things

perhaps without realising the elephant in the room. So I take advantage of this comment that was made just a few moments ago to me and to actually to actually suggest that we see our conversations with a grain of salt. And with cautious in terms of considering that Consensus is

actually being built. Thank you very much.

CHAIR:

I thank you very much to the Distinguished Delegate from Brazil. I take his wise advice and contribution to development of progress here in this work. So I thank again the Distinguished Delegate from Brazil. So we will be cautious. And we will find progress when we see progress as well. So there is -- there is a request from India.

India:

Thank you perfect President and the Indian Delegation supports the intervention made by the Distinguished Delegate from Brazil. We grapple with many issues a

couple of days discussing about the technicalities of the broadcasting -- with the traditional broadcasting issues or the new platforms, new digital platforms. As the Distinguished Delegate of Brazil said still the more clarity is required. We Indian Delegation it a small exercise on that and we thank you for accepting that and circulating that paper. However we request you to have an informal meeting consisting of few broadcasting engineering experts in

the next SCCR, at least for half day or less than -- about two to three hours in the beginning of the SCCR so they can clarify the technical issues of broadcasting to the Member States so that there will be much clarity in this. Thank you.

CHAIR:

Thank you very much Distinguished Delegate from India. We take note of that request. And for the position as well of your comment. European Union.

European Union:

Thank you, Chairman and we would like to also express satisfaction of our discussions today in this meeting. We think that it has helped in our effort to clarify positions to discuss various technical issues but also to look at the positions of various Delegations. Of course, some Delegations had more precise views on some of these issues. Some need some more time but I think this is all fine in the discussions that we are having and I would say on the -- like you already introduced on the topic of transmissions, for

example, so object of protection, what we take -- what we take away from this discussion is that a number of Delegations expressed their support for covering traditional broadcasting and

cablecasting transmissions. As you also mentioned probably the biggest amount of questions concerned the last column which is the Internet originated linear transmission and I think we see that there is -- that what is in the middle, so simul casting deferred transmissions and on demand transmissions is where the most divergent positions. A number of Delegations expressed they would like to see this as covered as a mandatory, an mandatory provision. Some looked at that it could be an optional coverage and some to our understanding at least indicated that they would not like to see this covered at all. So I think that this already to some extent shows us maybe where we need to discuss further, for example, these three columns. I think in a similar vain what came out of our discussions for us on rights is, of course, we know and we know from discussions in this -- also notice Plenary session, but there are -- that there are such Delegations, for example, the Delegation of the European Union but also others that would like to see protection for all these rights that I mentioned here but I think also what was interesting and in regard of further discussion was that we need to have more discussion and more understanding on points 2 and 3. So the near simultaneous retransmission and transmission of broadcasting from fixation because as many Delegations indicated there could be -- there could be flexibility on what is in point 4 if we find a good solution for points 2 and 3. Because points 2 and 3, of course, to some extent overlap because the point 2 is a limited in time retransmission from fixation while point 3 is not limited in time transmission from fixation. So I think this is probably, of course, taking in to account but not all Delegations had the possibility to express their views and but those that were participating not all already had definite views but I think there is a certain indication that

further discussion on points 2 and 3 in particular is needed in our discussions. Thank you very much.

CHAIR:

I thank the distinguished Delegation of the European Union for that discussion and I now give the floor to the United States.

United States:

Thank you, Mr. Chairman. The United States believes that we have made considerable progress in just the short time that we've had in improving our mutual understanding of the issues on the table. And we would note that that itself is a meaningful step forward. We think it has been quite helpful to have in front of us the charts prepared by the Secretariat that pull out of the multiple proposals on the table the key elements and be able to discuss those understand them better and also get some initial indication of where different Delegations' thinking is on those elements. As to the U.S., we will certainly need to engage in further consultations at home now that there is a clearer picture of what's on the table. Just a couple of initial observations, we agree that on the issue of the object of protection, there is general agreement as to traditional broadcasting over the air which is clearly within the mandate of the General Assembly, of the other four items while

there is still some clarification that we continue to need, there is no question that the first one that deals with simulcasting or near simultaneous transmissions has the clearest connection to over-the-air broadcasting and also clear the last item, web casting has no connection to over-the-air broadcasting and raises questions of why traditional broadcasters would get protection for those activities and not others who are engaged in the same activity. We also continue to note that there is a question about the extent to which piracy may take place from these different types of Internet transmissions so that could be a question more related to enforcement than the object of protection itself. And then on the table of rights No.s 1 and 2, the simultaneous and near simultaneous retransmission of signals to the public are essentially the U.S. proposal for discussion purposes. That's reflected in the annex plus item 5 on protection of prebroadcast signals and we just wanted to note that our goal is to have a clear differentiation between signal theft and content theft and we would have particular concerns about No. 4 on that table because of the potential double protection for content and the potential impact on consumer copying. So finally we would like to say we would support India's request to have a technical discussion at

the next SCCR. And we look forward to further clarification of all the issues. Thank you.

CHAIR:

Thank you very much United States. Islamic Republic of Iran now please.

Iran:

Thank you, Mr. Chairman. I would like to support the interventions made by the distinguished Delegation of Brazil and also India. We had useful discussions yesterday

and also today morning in informal meetings. My Delegations believes there are many divergent voous that have been mentioned. Many consents will transmission over Internet should be more clarified. Thank you.

CHAIR:

Thank you very much Islamic Republic of Iran for very specific comment and also for what stems from your contribution. I will now call on Trinidad and Tobago.

Trinidad and Tobago:

Thank you very much Chair. I indeed would be brief. My Delegation wishes to thank you for your summary a few minutes ago which was quite accurate. And the discussion this morning in room B as an observer was quieteducational for my Delegation. Just for that reason we wanted to state for the record Trinidad and Tobago's position in terms of the scope of protection we agree that the traditional praud casting and cablecasting should be mandatory. Indeed the consultizations were inlight with respect to sim casting and Webcasting and broadcasting and those four categories we are still discussing and we hope to provide some future advice or with respect to those four pillars that we see. Just for the record in Plenary Trinidad and Tobago we do agree the scope of protection should be traditional broadcasting and cable casting. Thank you, Mr. Chair.

CHAIR:

Thank you very much to Trinidad and Tobago. Brazil.

Brazil:

Yes, thank you, Mr. Chairman. And I apologize for taking the floor again but tus just to refer to the intervention made previously our Indian colleague, right after mine and to express our support for India's request for technical discussions in the next SCCR. Thank you.

CHAIR:

Thank you very much Brazil for your support to the proposal made by the Indian Delegation. That has been duly noted. Delegation of El Salvador, please.

El Salvador:

Thank you, Chairman and I will keep it extremely brief. I want to echo what was said by the distinguished Delegation from India supported by the Brazilians and we think this would be very useful for the continuation of our work and we express our satisfaction with the format we are following in dealing with these issues. Everything is very,

very clear. We know now exactly what everyone's positions are and that will simplify the continuation of the work. Thank you.

CHAIR:

That I thanks to the distinguished offel Sal va Dhar for her opinion and I now turn the floor to South Africa.

South Africa:

Thank you very much Mr. Chairman. I will be very brief as well. Thank you very much for your summary. I think it is very clear. And the African Group in fact, views the informal consultation as very useful in terms of clarifying certain key concepts

so that we have a common understanding of what they mean. As well as some indications as to where the Delegation stands on certain issues. I think it is very helpful for most of us when

we go back home at least we can finalize this with our key stakeholders. Thank you very much.

CHAIR:

Thank you to the Delegation -- the Distinguished Delegate from South Africa for that comment. Ecuador.

Ecuador:

Thank you very much Chairman. I don't have very much to say. I basically wanted to endorse what has been said by the Delegations of India, Brazil and El Salvador. I think that a major commitment has emerged from the work which has been in the informal meetings and I particularly like to thank the Indians for producing the document. That goes to the Secretariat and to you sir for the tainls which have been produced and very helpful to us as we forge on with this work.

CHAIR:

Thank you Ecuador for your comment. And for your support to the suggestion made by India. I now call on the people's Republic of China.

China:

Thank you Chair. First of all, we would like to thank the WIPO Secretariat for the hard work done and especially summarizing the positions of different parties and the documents have been prepared and disseminated to Delegations which are very helpful. We fully understand the commitment and Resolution by WIPO to press awhaed with the protection

of broadcasting organizations and we also fully understand our collective will to advance this issue. We have also made clear our position in the informal consultation. We believe that simul casting should be included in the Treaty which is very necessary. With regard to other issues, we will continue to show flexibility and openness. And we hope to listen to more clarifications on concepts as well as other views and positions and we hope that based on our

discussions we will be able to reach Consensus and advance our work. Thank you very much.

CHAIR:

Thank you very much to the Distinguished Delegate from China for her opinion. Canada has the floor.

Canada:

Thank you. Thank you to all our colleagues who have provided these tables and participated in the discussion of them. My Delegation will consider the content of the tables very carefully because there is some technical clarifications we would like to receive

on them. We support the proposal which has been made by our distinguished colleague from the Indian Delegation that exchange be organized at the next session because we are sure this will shed further light on this approach. Thank you.

CHAIR:

I thank the distinguished Delegation of Canada. I see we are piling up proposals and support for them and what has been said has been carefully noted. So that when we come to take a decision on this we will take the right one. Czech Republic please.

Czech Republic:

Thank you and I am speaking on behalf the CEBS group. The CEBS group would like to welcome the discussion held in the room B yesterday shortly and this morning. We feel that within that process as well as in during the discussions on brewed casting as a whole we are identifying clarifying and closing the gaps that brings us closer to solutions and with regards to the proposal made by India, we will certainly consider it within our group. Thank you very much.

CHAIR:

Thank you very much to the Distinguished Delegate from Czech Republic for that opinion and the time for Colombia.

Colombia:

Chairman thank you. Really I just wanted to echo what has been said by other Delegations in expressing their satisfaction at the progress we have been making. The discussions we have heard really have I think been extremely helpful because they have managed to move us forward in the discussion which, of course, is the point of the exercise. We would however like to express some concern because yes, there has been progress but the

progress is fairly modest and it is being made rather slowly. We'ds also like to underline the importance of what other countries have said it is important we have a technical discussion as

well. These are very technical issues and I do think it is necessary that we involve people who know the technical nuts and bolts so so to speak.

CHAIR:

I thank you the distinguished geligation of Columbia for that contribution. Okay. I don't see any further requests for the floor. And that being the case with your permission I'd just like to thank all of you for the contributions to the work done thus far. We have noted points made and we have taken careful note of opinions expressed by Brazil and India among others. Those have hopefully complimented the report which I myself was trying

to make. With that I think we can say that we have a much more comprehensive report of what happened this morning in the course of the informal group meeting. Due note has also been taken of the request that we start the next session on this issue with a specific technical contribution which will shet further light on the issues that remain pending. We have some clarification as a result of the discussion that has taken place in the informal consultations. We now know exactly what to ask. However the request has been noted. We will pass it on to the Secretariat and we will include it in the conclusion to this section if you so agree. With that I would like to conclude the handling of this important issue. We will prepare some potential conclusions on the item. And I'd ask the Secretariat to be kind enough to distribute them to us as quickly as possible that way they can be discussed in the regional groups and in the various other coordinators and informal groups over the next

couple of days. Between now and the end of the session. I would now like to give the floor to the Secretariat for some formal housekeeping announcements.

SECRETARIAT:

Thank you, Chair. As the Chair said we will resume here at 3 p.m. today. At that time there will be a signature care mow any for the Marrakech VIP Treaty. We expect that to last for approximately 30 minutes. All Delegations are invited to be present at that ceremony. And then we would go immediately in to the Plenary after that ceremony is finished. At 3 p.m. there will also be a meeting with the regional coordinators with the Chair in the you can tan ha again room. If any Delegations have corrections to the initial list of participants that was distributed, please provide them to the Secretariat so that we can put the final list out by the end of this week. There is a side event that will be starting very shortly, in fact, technically it also already started. There is a light lunch available outside and then will be a discussion of a summary of national systems regarding Internet intermediaries will go on until 2:45 p.m.. we would ask anyone who is participating in the signing ceremony

to please try to arrive by about 2:45. So we can make sure we have everyone here and ready to go for 3 p.m. We have some ambassadors and others who need to start on time and leave

on time. We are intending to begin that signature ceremony at 3 p.m.. we thank everyone very much and we will see you this afternoon.

(some text missing- Signing Ceremony of the Marrakesh Treaty- transcript available in separate document)

CHAIR:

Thank you very much. Thank you for being present in this session, this afternoon session. I would like to tell you that with the same enthusiasm with which we began the topic of the first topic being looked at by this committee, I hope that the second topic will also be developed with much enthusiasm, and much readiness to work such to be able to make progress, make important progress in the understanding of the scope of exceptions and limitations for libraries and archives.

That's an opportunity. I am sure that the signing of the Marrakesh Treaty which has just taken place will serve as a source of inspiration to remind us that the objectives are possible to achieve if we are willing enough to do so. So just to say to you that this topic has been pointed out as one of critical interest for this committee, and that, therefore, the same energies, dedication, and enthusiasm would be called upon during the discussion of this topic.

Now, with that statement, we are going to ask the Secretariat to give us an update of the state of play of this topic in the previous session of the committee so that we can begin to start dealing with this issue. Michelle, you have the floor.

SECRETARIAT:

Thank you, Chair, with respect to libraries and archives, the committee is working with document SCCR263 and at the last meeting the committee considered that document the working document containing comments on and textual suggestions towards an appropriate international instrument in whatever form on exceptions and limitations for libraries and archives. The committee started working through the document topic by topic. This the document has eleven topics, and the committee discussed the first four of those topics at the last meeting. So the expectation is that today we would start our discussion on topic five, which is parallel importations.

The topics we covered last time were topic 1 on preservation, topic 2 on the right of reproduction and safeguarding copies, topic 3, on legal deposit, and topic 4 on library lending. The committee also asked the Secretariat to make arrangements for the update of the study that had been done by professor Cruz on copyright limitations and exceptions for libraries and archives with the understanding that that would be a resource for the committee and would not delay the discussions in any manner, and we have in fact asked professor Cruz to undertake that update work. My colleague, Ms. Long, is overseeing that project and we hope at the next meeting to be able to provide more specific information on that study. Mr. Chair, the other thing to note is we are working with the same working document as we were at the last meeting with the idea that our hope is to get through the discussion of all of the remaining thematic topics, 5-11 at this meeting and then the could update its working

document for the future to reflect the discussions that take place. Thank you.

CHAIR:

Thank you very much Michelle. Thank you for the summary of this state of play which is an important topic in the previous committee meeting. Now, before beginning or restarting the work at the point where we left off, this is the time to receive general statements from the regional groups and groups that would like to express an opinion on this issue. So this initial round will be open for the coordinators, the regional coordinators. Kenya has the floor.

Kenya:

Kenya has the honor to make this statement on behalf of the African group. Mr. President, I wish to take this opportunity to thank you once again for giving us this opportunity to give our general comments on the issue of limitation and exceptions for libraries and archives. We reiterate our support for the work of this committee, and are committed to insuring that we attain our goals as set out in the agenda before us. The group notes that there is need for protection of the creative industry by upholding and respecting the copyright system while maintaining the necessary balance for public interest. While copyright law grants exclusive rights to authors and owners of copyrighted works and for any third party to access such works, there is a need for exceptions and limitations to create a balance between the rights of the right holders and the public interests, especially for libraries and archives who are entrusted with the responsibility to provide access to information and knowledge to its newses. It is noted that the exceptions and limitations as they currently stand are not sufficient to enable such institutions render these services effectively.

This is moreso with the move to a digital environment, especially with regard to the development of the new format of works including modes of transmission which are moving from hard copies to digital copies. This new development was not foreseen in the current copyright regime. In this regard, there is need to revisit the existing provisions on exceptions and limitations to provide for the changes in technology so as to facilitate access to knowledge while at the same time taking precautions to avert a book famine where the authors would be discouraged from further creativity.

We believe such a balance can best be achieved through the adoption of an appropriate legal framework at the interest necksal level. The African group would like to touch on some clusters which we feel have a direct impact as far as the provision of access to information by libraries and archives are concerned. First, cross border uses. In the past, the method of transmission of information by libraries and archives was via the traditional mode where a library would make available a hard copy of published work in its collections, however, now that the environment has drastically changed and with the evolution of transmission mode to digital platforms, it has become inevitable that libraries and archives need to quickly embrace the changes so that they can be effective in their distribution of information, especially in the areas of research and education.

A good example would be where a researchers from an African country whose rich historical background is housed in libraries or archives abroad and they need to access such information. It becomes very expensive and difficult for such a researcher to access such information in the traditional mode, yet the same can easily be done if the works were digitized. The limitations that would speak to this concern would allow the institutions to access digital copies for legitimate use of such a researcher.

There is also another scenario with regard to distance education which requires that students across countries have access to the same study materials in the digital forms. On this basis, it has become necessary for the purpose of education and research to provide access to information to users irrespective of their location. Two, liabilities on libraries and archives. The librarians and archivists carrying out mandates to provide access to information to their users, normally do so in good faith. In most cases, these persons may not possess adequate legal background and may be limited in knowledge with regards to copyright and IP laws in general. In carrying out the mandates, therefore, they may find themselves in difficult circumstances with the law by inadvertently using copyrighted works beyond the provisions as currently provided under copyright laws.

It is on this basis that the African group would like to seek an international solution where there could be exceptions and limitations to such acts as long as they endeavor to exercise due diligence in carrying out the mandate.

Thirdly, technical protective measures. The African group recognizes the need for the use of TPMs for enhancement of protection of copyright works on the internet. This notwithstanding it creates a barrier for both libraries and archives in carrying out the mandate to provide access to information to their users. Now that most of the sharing of information is done via the internet, these institutions face challenges where they are either required to pay fees to access such information at cost which may be prohibitive especially so for libraries in developing countries.

Even where exceptions and limitations already exist, the inclusion of TPMs threaten to render such exceptions and limitations redundant. It is on this basis that the African group wishes to emphasize the need to make it possible for these institutions to access such works by providing appropriate exceptions and limitations in the copyright system. In conclusion, the African group wishes to reiterate the need to separate the textual suggestions from comments which should be captured in an annex as stated previously in our opening statement. With those comments, I once again echo our support to this committee in achieving the important task before us. Thank you.

CHAIR:

Thank you, Distinguished Delegate from Kenya for your very clear and comprehensive explanation you just gave us. I call on the Distinguished Delegate from Japan.

Japan:

Thank you, Mr. Chair. On the importance of libraries and archives in our society. Group B has been actively participating in discussions on limitations for libraries and archives through sharing of experiences and views with other Member States. We would like to reiterate that in

the discussions of this committee the recognition and respect should be given to differences of legal systems relating to libraries and archives among Member States to the difference of traditions and cultures. Based on this principle, group B continues to believe that the goal of this committee's work should be promotion of the exchange of experiences, ideas and principles in this field. In this regard, we look forward to fruitful exchange of views and experiences on items in this field which we could not deal with at the last session because of the time nor limitation was used for discussion on another issue. The work by-by Secretariat should be fully appreciated and the format of this document including proposed text and comments under each item should be kept for the purpose of the efficient taking into point Member States views. Group B believes the committee should continue its work as foreseen in the mandate.

Group B also sees merit in asking the Secretariat to update studies from 2008 noting that there have been a number of developments since those studies were first published. Mr. Chair, group B will continue to engage in the discussions on the limitations and exceptions for libraries and archives in a constructive and useful manner. To that end, we appreciate the contribution by SCCR26-8 titled objective and principle for exceptions and limitations for libraries and archives, and looks forward to discussing objective and principles. I thank you,

CHAIR:

Thank you very much Distinguished Delegate from Japan. Thank you for your statement on behalf of group B.. We do not have any further requests for the floor from the representatives of the different regional groups. I call irera guy and then the Islamic public of Iran.

Uruguay:

Thank you, Mr. Chairman, I wanted to refer to the issue at hand. We have already outlined our position at length and we did this very specifically. And, therefore, so as I suggest we dedicate ourselves to sub standive discussions I would like to refer back to our opening speech which we gave on Monday, the GRULAC would like to highlight the importance it feels this topic has and this is why I would like us to concentrate on this substantive discussions.

CHAIR:

Thank you Distinguished Delegate from irera guy. Thank you for referring to your initial statement. Fine, now, we are going to move on to the individual statements, country statements and I am sorry, I would like to correct myself, Mexico had asked for the floor before Iran and I would like to thank Iran for understanding. Mexico has the floor

(some text missing)

Iran:

Thank you, sir. My delegation strongly believes that limitations and exceptions while essential part of copyright law and play a vital role in bringing balance to the system. The

work of SCCR on the limitations provide a peculiar and particular example of the activities and afford for the implementation of development agenda. We do hope that the outcome of the expected international instrument or instruments from the work of the committee provide more opportunity for easy access to the cache of literary and artistic works of creative minds of human beings. My delegation strongly supports the development of a legally binding international instrument for limitation and exceptions for libraries and archives and also research and educational institutions as well. Institutions that considerably facilitate the access of people to information and culture. We believe that such a legally binding instrument or instruments would facilitate addressing the needs of all countries in particular developing countries in terms of digitization of work. In the case of libraries and archives, the objective of the possible Treaty is strengthening the capacity of libraries and archives to provide access to and enable preservation of library and archives material to carry out the public service role. Finally, Mr. Chairman, in order to fulfill the mandate and come about a concrete proposal to establish an international instrument, as many delegation reiterated last session that committees should expedite the process and start text based negotiation. So as my delegation would like to second the African group's suggestion for facilitating this exercise the comments should be separated and transferred to an annex in the working document. Thank you, Mr. Chairman.

CHAIR:

Thank you, very much, Distinguished Delegate from Iran. Thank you for the statement.. I now call on India.

India:

Thank you, Mr. President. Indian delegation associates with the interventions made by distinguished Delegation of African group, Iran and Mexico, and we have been insisting that there should be a legally binding Treaty for exceptions and limitation for library archives considering the changes in the working of libraries, whether it is due to the onset of digital environment, availability of various digital copies or the various contracts are overriding limitations and scoactions being provided by the national laws. All with all respects to the right owners, exemptions and limitations cannot be taken away by the contracts because the library functions will be totally directed by the licenses with these libraries are getting, for instance, the interlibrary loan. So and these licenses will not facilitate interlibrary loan because interlibrary loan is a mechanism that originally followed by the libraries in agency where there is a delay in buying any book, making that available, that copy available to the researchers, they borrow this temporarily from the library. They loan it and return it. They do buy these books and make these available but only in cases of urgency this practice is followed. So that's what we understand from the most of the libraries not only in India, and other western world these contracts and licenses are not allowing the libraries to practice this interlibrary loan and other exceptions given in the many nation laws. They cannot, the seminal work returned by thanks to the WIPO Secretariat getting such study done on limitations exceptions on libraries and archives, Kenneth Cruz has done very good work and then notice what kind of limitations and exceptions are there.

We know that eneye clough pedia Britannica physical book is not available now. When asked to go and get that on line, the other day, I returned to the digital environment that is Oxford dictionary. So like this, many books are dying, physical books. So in this environment, how libraries should start lending books digitally so these things are important things this Treaty has to look into by protecting the right owners right. We also have to facilitate libraries to make these books accessible to the students and researchers. This is very, very important because this issue is not specific to the developing countries or least developing countries, it is specific to all of the countries whether it is developed or developing countries. The libraries have to function in this digital environment. I, again, support the comments made by the distinguished delegate of Africa, Iran and Mexico that after two years working on this document of limitations exceptions which is available, unfortunately everything is next year. So some of the countries including India have given legal textual proposals so that a legal textual Article, where Article discussion can happen, but that is not happening. Whereas the general comments which we make in the plenary, that is also included in the text.

So we should not be creating any confusion. The moment you see the document. if you just compare this document with the broadcasting text the countries like India and U.S.A. and other countries have given legal textual proposals that has been put in the annex here. So why we are allowing these general comments in the main text? So we should not have any double standards here. In the brought casting, even legal comments are put in a nutshell.. Here, general comments bla, bla, bla, made in plenary are kept in the main proposal. So my request is they should be separated and then the is SCCR should give a deadline. If any member country would like to give an illegal proposal, that line should be given so they can either revise earlier sprue posals or send a flash proposal. So that's when I request. >

CHAIR:

Thank you very much Distinguished Delegate from India for those proposals. We will take note of these proposals, and we will receive other opinions on them so as to assess them during this committee. I call on Bangladesh.

Bangladesh:

Thank you, Mr. Chairman. Mr. Chairman, libraries and archives are two extremely important institutions of our owe tight which are solely to give service to the people. That's why when we discuss about IP rights about libraries and archives, we should take into consideration their contribution to our social and development issues. The Delegation of Bangladesh strongly believes that libraries and archives should be among the first organisations to get the benefit of exceptions and limitations. That's why we hope to see progress to our adapting an international legal instrument in this session. Thank you.

CHAIR:

Thank yoBangladesh, thank you for your brief intervention. I give the Chair to Brazil.

Brazil:

Thank you, Mr. Chair for giving me the floor. I would like to state that our support for interventions made especially from the African group, from Iran, from India and the last intervention from India regarding possible deadline for presentation of new proposals, and also bringing the, to the annex the comments that were made so we would have a clear text and text that we can actually work. If you compare to the text of broadcasting, we would have some similar treatment of this text to the text we are having in the broadcasting. I would like also to touch upon one suggestion made to discussion of that perhaps one way to accommodate would be to bring principles to the coppices we are discussing, but in in the way that we would only have one text because we understand the mandate should work on these texts for etiquette of legal instruments -- adequate legal instrument. So this might be one way that we would have one text that would have a preamble and also the topics we are discussing.

CHAIR:

Thank you very much, Brazil. Thank you for your proposal. We invite the remainder of the delegations to also make comments on the suggestion. I call on Ecuador.

Ecuador:

Thank you, Mr.. Chairman. For the Delegation of Ecuador the agenda this committee has is of paramount importance. This agenda is fully in the political line that that Ecuador has. We want to have the human being included, ins inclusive policy. Policy involves development of norm setting, both at the national level as well as proposed on international level which create balance between protection, access, protection and access to the copyright and intellectual property rights to work in a norm setting framework to enable us to remove unjustified obstacles to knowledge and culture is a task which can only be carried out in an effective way with the assistance of all of the delegations who are taking part in this committee. A work, which, of course, we must carry out in depth, but also with a feeling of urgency. Mr. Chairman, the assembly of 2012 gave us a mandate to work on the tempt with the objective -- text with the objective being able to make recommendations in the 28th session of this committee, and, therefore, we should do our utmost and be as enthusiastic as possible in this meeting so we can fulfill the objectives already indicated by the is seemably. Because of the above we must focus on the drawing of specific provisions for the international instrument which for our delegation should be a Treaty for limitations exceptions for libraries and archives. In this respect, we endorse the proposal made by the representation of India and Brazil as well, and they have pointed out regarding separating the comments of the text which complete text and we could work in a better way. Now, to conclude, Mr. Chairman, I repeat that this delegation is committed towards this work so as to be able to achieve positive results which would involve progress made by the end of this week. Thank you, Mr. Chairman

CHAIR:

Thank you, Distinguished Delegate from Ecuador. Thank you for the positions you have submitted in response to the proposals which have been provided in this committee, and for inviting us to enjoy the objectives as you have described it, and that is good living or proper living. Morocco has the floor.

Morocco:

Thank you, Chair. My delegation considers the question of libraries and archives very important one. They play a vital role in the educational and cultural and scientific development of all nations. This is clearly seen in all thesis and research papers. These all start from research in libraries and archives. For this reason, Chair, libraries and archives play a role that is evident and well k in any country. For this reason, the Moroccan delegation considers libraries and archives and the limitations and exceptions to copyright holders are essential to meet demands and requirements in the field of research and education. These limitations and exceptions should enable libraries and archives to import works and to transport them across borders. This will enable us to avoid this book famine in the field of written works. We are currently updating limitations and exceptions, ones that are in some cases are outdated. The current exceptions and limitations are unable to meet the demands and purposes of the current age. Present day technology and the digital environment require and have set before libraries and archives major challenges. We must, therefore, open before them new vistas and horizons so that may in fact proceed along the path of a digital environment which work hand in hand with digital technology.

This was clearly sit out in the statement of the African group which we fully endorse. As this will enable libraries to fulfill their role and will open up horizons for researchers and all of those seeking knowledge and education. This will enable them to fulfill their needs without any obstacle. The question, therefore, Chair, is a question of updating and here in this updating we must take into account the current challenges in modern technology. We along with the other delegations find we must all seek to fulfill that international instrument or agree to that international instrument which would clearly set out limitations and exceptions in the atmosphere of modern technology. We call on all delegations and we call on the Secretariat to separate between the proposals and the commentaries so that we may clearly see our purpose and goal, i.e., adopting new limitations and exceptions adapted to the present day generation.

CHAIR:

Thank you very much, Distinguished Delegate from Morocco for your position and also for the proposal that you are endorsing. I call on the Russian Federation.

Russia:

Thank you, Chairman. Chairman, the Russian Federation would also like to express support for all of the efforts that have recently been made by the committee in seeking to improve

legislation in the area of copy right. Of course, we also support all of the efforts that have been made to include exceptions and limitations within our work on copyright, particularly when it comes to libraries and archives. And once again, I would like to appeal to colleagues to take a broader view of this. I know I have said this many times before, but I have often referred to the fact that we have to think about what kind of limitations and exceptions we are talking about and I refer to the importance of education and research institutions in any country.

This is very important for higher education, and I know I have said it before, but I think it's worth saying again. Having said that, I would go on to support an idea that has been put forward by a number of delegations at this session who have said that we really have to work effectively, and that means that we have to come to a stage where we can work on a single text and start working on a single unified text. Now, we have a very good example. We have the Marrakesh Treaty that is an excellent example that we follow, and as it were try to base ourselves on the approach that led to the Marrakesh Treaty.

Then it seems to me we could really make progress and perhaps at the next session then if we took that approach, we could work more effectively and more quickly on this issue. There is just really one other comment I would like to make at this stage. I would like to draw attention to one point, and here I'm speaking, of course, to my colleagues but particularly to the experts who will be working on this document.

When we are drafting the document I'm talking about, when we are then discussing it and when we are then moving towards our ultimate goal, that is the goal of including these exceptions and limitations to copyright, when we do all of this, we have to have flexibility as our watch word. We have to be as flexible as possible so that we do not lose sight of our ultimate goal, that is to say insuring that we have effective protection for authors and for creative artists for those who produce creative work. We have to insure that their work is protected. And we also have to understand that limitations and exceptions can't go on forever, that there has to be some kind of limit. And I know that we often end up certainly in my country arguing with libraries about this. We understand libraries want as much as possible. They want to have the greatest possible opportunities available to them, but that's not always possible if we have to uphold copyrighted cases. So we know that there is a balance that has to be struck, but if we take a flexible approach, I'm sure we can make progress, and first and foremost, I think we have to come up with a single text so we have one text that we are working on towards the objective that we all share. Thank you.

CHAIR:

Thank you very much, Distinguished Delegate from the Russian Federation for your very clear intervention. I call on Tunisia.

Tunisia:

Thank you, Chairman. Chairman, it goes without saying that we support the statement from the African group, and having said that, I would like to emphasize the fact that Tunisia attaches particular importance to the role of libraries and archives in educational and cultural development. And also in the area of scientific research. Having an international legal instrument on limitations and exceptions in that context could really breathe new life into the

work of such institutions, libraries and archives. I would just like to point out that in Tunisia's new constitution, we have enshrined intellectual property rights but we have also enshrined a right to culture. Thank you.

CHAIR:

Thank you very much, distinguished delegate and representative from Tunisia for the brief and very clear intervention. I call on the European Union. European Union:

EU:

Thank you, Mr. Chairman and let me present the statement on behalf of European Union and Member States on the topic of limitations and exceptions for libraries and archives and later on I will briefly comment on your invitation to react to the India proposal. Cultural heritage institutions play an essential role in our society with regard to the dissemination of knowledge, information and culture

While the Yule and its to fulfill public intermissions both in analog and digital world, we under that the existing international framework provides for a wide variety of possibilities for all Member States of WIPO to insure meaningful limitations and exceptions in this area. WIPO Member States that have not yet introduced such exceptions in their national legislation, can currently do so, and if necessary, request the assistance of WIPO or help of other WIPO states and stakeholders.

European Union and its Member States believe that it is important to reiterate that we are not willing to consider a legally binding instrument in this area. Apart from the flexibility effort by the existing international framework, we see too main reasons, first, the E.U. and its Member States do not believe that possible issues related to activities and archives require the same type of action was deemed necessary to the unique case of access to books for the benefit of people who are blind, visually impaired and print disabled. Second, this committee did not provide an answer to the question as to the rationale, the need to harmonize exceptions for libraries and archives at an international level. The E.U. and its Member States are of the view that this committee did not provide substantial evidence that would justify such an international harmonization. Problems that were raised called for the introduction of exceptions on national level, yet they lack a general international dimension. The few examples of issues related to access to content on actual tur rail identity held in the catalogs of cultural heritage held abroad do in our opinion not mandate such an intervention. It is important that WIPO maintain a certain degree of flexibility which is particularly important in view of the different legal systems and traditions.

Many countries have taken different approaches in line with the cultural and legal traditions. In Member States licensing plays an important role either alongside the application of exceptions or instead of the application of exceptions. We perceive that the issue of exceptions and limitations for libraries and archives is a national issue and, therefore, does not require addressing by an enacting international new norms. In conclusion the E.U. and Member States are prepared to continue to debate and have an exchange of views on this

topic and to have an change of views on the diverse national experiences in this area. We believe that the best way to make progress in our work is to identify those issues which are most important and useful for the exchange of national experiences and to update relevant WIPO studies. Mr. Chairman, as regards the proposal just made by India to clear the Secretariat's from comments and to move those to the annex, we cannot agree with this proposal. We are of the opinion that all views expressed during the previous standing committees should be duly reflected in the document. Thank you.

CHAIR:

Thank you very much, E.U. I would call on Chile.

Chile:

Good afternoon. Mr. Chairman, for our delegation, the issue of exceptions and limitations is of vital importance in the work of WIPO. Regarding libraries and archives, we are pleased to hear positive interventions on this item of the agenda. The Delegation of Mexico explained in a precise manner the important role that these institutions have for the development of humanity. An explanation which we endorse. We believe that said rule is also shared by the museums and, therefore, we consider to include them in our analysis during several sessions we have exchanged visions, points of view on national experiences. And the different legal realities. We can continue making progress in this process as soon as this goes hand in hand with defining results. There are important issues which require an international view, library lending in particular in a digital environment.

The reproduction for preservation purposes, the effect of TPNs, technological protection measures, the orphan works amongst other relevant topics. We -- topics, we must analyze with a glimpse of compared experiences seeking solutions jointly, which will enable us to guarantee the preservation and access to knowledge as well as research and study in the different areas of knowledge. Thank you very much.

CHAIR:

Thank you very much Distinguished Delegate from Chile for your clear intervention. I call on Columbia.

Columbia:

Columbia is a country which has always been characterized as wanting to promote the use of the system of intellectual property, considering the twofold use or the twofold element which the intellectual property system contains, that is the element of protection for the creators of protected works through copyright, but likewise, the element for flexibilities that the system contains which enable us to have access without authorization in certain cases for certain protected works through copyright. In this respect, our country endorses the initiative of continuing making headway in the study

of limitations exceptions in general and particularly for libraries and archives since we consider that this is a mechanism with no doubt whatsoever will serve as a key element for the promotion, access to knowledge and to stimulate in future research. Thank you.

CHAIR:

Thank you Distinguished Delegate from Colombia for your position you have expressed. I give the floor to the United States.

United States:

Thank you, Mr. Chairman. The United States starts with the recognition that exceptions and limitations are a critical element of a balanced and vibrant copyright law regime. A combination of strong protections for authors and appropriate exceptions and limitations on their rights together serve to further the copyright's systems of goals of encouraging creativity and learning. Of course, exceptions and limitations must be consistent with Member States existing international obligations including the three step test. Now, libraries and archives play a special central role in all of our societies. They advance knowledge by protecting and providing access to works that comprise the cumulative knowledge, cultural heritage and collective memories of the world's nations and peoples and in order to carry out their public service roles, libraries and archives need adequate and appropriate exceptions and limitations in national laws. The beneficiaries of such exceptions and limitations are not only those entities themselves, but also their users and society at large. In our view, individual countries should have flexibility to tailor limitations and exceptions to address their own circumstances and needs within the constraints of international obligations and taking into consideration their specific legal cultural and economic environments. For this reason, we do not support binding norm setting at the international level. At the same time, however, there is much we can do here at WIPO. We want to encourage and promote the development of appropriate exceptions and limitations in this area. We believe it would be extremely valuable to find consensus on the general objectives and principles that should inform and guide the development of such exceptions and limitations at national level. And we would then propose taking our work further through mutual collaboration and implementing the general objectives and principles and in crafting the details of our domestic laws we can work together on this committee to examine and learn from the legislative frameworks that have been adopted or put forward in different places. Doing so can benefit all countries in improving the scope and effect of our own national exceptions and limitations and without imposing a one size fits all template on any specific type of use. To help move forward with this approach at SCCR23, the United States introduced a text for discussion, and that was a set of objectives and principles for exceptions and limitations for libraries and archives. These objectives and principles recognize the many and varied public service roles of these institutions including with respect to preservation and support for research and human development. They also acknowledge the special needs of these institutions in carrying out their responsibilities. We have listened carefully to Member States' discussions over the past

few meetings and having done so we have updated our original objectives and principles document to reflect additional areas where we believe there may be agreement. And that updated document was introduced as SCCR26/8, and incorporated into the relevant documents for this meeting. It recognizes, for example, that limitations and exceptions should appropriately insure that libraries and archives can preserve and provide access to information developed or disseminated in digital form and through network technologies. In terms of the presentations of the various texts on the library and archives issue and the Chairman's text, we would make the following points. We all agreed at the General Assembly to continue discussions on a text based approach, but we did not agree on any particular form that the text should take. We cannot agree to limit the documents that we are considering to only text in the form of Treaty language as we have not agreed to pursue a Treaty on these issues. We believe that each delegation must be free to determine what type of text they wish to propose. So the United States would be happy to discuss or answer questions on our updated objectives and principles text and we look forward to continuing to engage productively on this important topic. Thank you.

CHAIR:

Thank you very much. Thank you for the delegation of the United States for expressing its opinion on this topic as well as for providing a renewed version of the principles and objectives which have facilitated discussion on these issues. I now call on Japan.

Japan:

Thank you, Mr. Chair. I am speaking in my national capacity. Regarding the issue of limitations and exceptions for library and archives, we fully echo the statement made by group B. We recognize the important law of library and archives in our society to provide public access to knowledge, which is one of the main resource of energy in development of mankind. According to the WIPO study of 17/2 at 2008, more than 100 countries already have at least one stage storage library exception. This clearly shows that the library and archives have certain function in number of countries, however, in a reflection of social diversity, the function of libraries and archives in each country are not uniform, which means that the limitations and exceptions provided to archives on library and archives are also different in each country. For example, organisations to which limitations and exceptions are applied, in other words, the definition of libraries and archives works which library and archives do activities which library and archives can do under the limitations and exceptions. All of these things vary from member to member. Thus we are of the opinion that exchanging our experiences will be useful to find the best possible way to make limitations and exceptions for those organisations effectively function within the existing international copyright or legal frameworks.

Furthermore, taking such circumstances into account, we are of the belief that it is highly important for each member state to make efforts to implement adequate systems or practices

in accordance with its laws and declarations. In this context we strongly believe that flexible approach should be allowed regarding how to establish the exceptions in each Member States. At the same time, we would like to shed light to the fact that the established steady step test is working well as a general provision for maintaining a fair balance between protecting copyright and insuring public interest. Mr. Chair, Japan will continue to participate in the discussion on the limitations and exceptions for the libraries and archives in a forceful manner. Finally, with regard to the working document on this issue, we are of the opinion that the proposed text and the comments should be treated in the parlorred manner of each item.. I thank you, Mr. Chair.

CHAIR:

Thank you very much. Distinguished Delegate from Japan. Congo has the floor.

Congo:

Thank you, Mr. Chairman... as I'm speaking on behalf of my delegation on the excellent job you are doing in the Chair of this committee.. Many congratulations. Having said that, I would two on to say that Congo supports the statements made here by Kenya speaking on behalf of the African group. Indeed, access to culture and to knowledge is in the world in which we now live something that is essential for all human kind. Sadly, however, in this knowledge and culture is available in some countries but not in others because of different levels of development. Congo is convinced that in order to guarantee universal access to knowledge and culture, we need a trance monitoring system of exchange among research institutes, libraries, universities and archives. And this service of change has to be available in real time. At present, this is not possible. Because of TPMs and other measures that are taken in order to penalize such institutions in accordance with copyright if they seek to gain access to certain pieces of knowledge or culture. We, therefore, need to have an international binding instrument striking a proper balance between copyright on the one hand and the right of the general public throughout the world to access culture and knowledge on the other. Congo knows about this because we are speaking from our own example of what happened in our country. In 1997 war ravaged Congo and everything was destroyed including libraries and archives. It is now very difficult for researchers, students and others working in Congo to do what in fact they are trying to do, to is to say to study, to gain knowledge and culture. So how then can they gain access to knowledge and culture? Well, unless they can do that, then in fact the Gulf that separates Congo from other parts of the world will only grow. Thank you.

CHAIR:

Thank you very much girled delegate from Republic of Congo for warning us about the need to have responses in the face of these critical situations which can occur. China has the floor.

China:

Thank you, Chairman. The Chinese delegation would like to thank this committee and the Secretariat for the work that has been done on limitations and exceptions for libraries and archives. We believe that libraries and archives have a very important role to play in providing access to knowledge. We, therefore, believe that these bodies, libraries and archives should have a right to benefit from limitations and exceptions. At present in China, we have legislation and regulation governing libraries and archives and they have the right to put works into a digital format in order to keep a copy of them. This is done in order to allow them to preserve works, however, they have to indicate the name of the author and other details in doing so. We have other regulations governing libraries and archives in this area and in the light of our experience, we support what is being done here in this committee, the exchange of practices taking place and we very much hope that this Agenda Item will receive greater attention in future. Thank you.

CHAIR:

Thank you very much, Distinguished Delegate from China. Thank you for your request for the floor. Right, after having listened to the countries, the proposal which we have from the Ross strum is the following. So as to make an effective use of time, since we have already had statements from the NGOs in the past committee which will continue illustrating the situation for us generally speaking, illustrating the topic we are reviewing, the previous committee there we agreed that we would -- we would have a more in depth follow-up topic per topic. And we drew up a list of topics and this exercise was very interesting because the purpose was specifically to see whether topic per topic we could already conclude in the fact that there was a need to draw up exceptions and limitations, for example, for the specific topic. And, therefore, this revision I repeat because it was very interesting because it enabled us to achieve what some delegations have requested, and that is to identify the most important topic where we would establish the need to provide a response amongst them and that of providing exceptions and limitations. And also to analyze alternative proposals which could occur to deal with the issues of related problems or contents under each topic. Now, in that line of thinking, we stopped at topic number 4, that is the library lending. Irrespective that we would have to move onto topic five the conclusion 16 on the issue limitation exceptions points out that discussions were initiated on topic 4, topic 4. However, without prejudice of this, I will ask the Secretariat to read out conclusions 21 on this topic for library lending was drawn on this issue. And we invite any delegation or any NGO if they wish to compliment something dealing with this topic 4 they may do so, however, please, we request that you do not repeat yourself, that you don't repeat the comments that have already been made on this topic 4 in the previous committee. Only if something new was left pending and had to be said on topic 4, then you could add that. Otherwise, it would be within our interest to move onto topic 5, right. So there is no problem if we open the floor for topic 4. There is no problem if you don't receive any requests for the floor.

Right, so as to be faithful to what was being reflected in the conclusion, we would like the Secretariat to read conclusion 21. Thank you.

SECRETARIAT:

Conclusion 21, as to the topic of library lending, the committee recognized the importance of addressing this issue and various delegations suggested different alternatives for providing this service including the use of limitations and exceptions, the exhaustion of rights and or licensing schemes. The committee expressed different views on digital distribution in the scope of library lending.

CHAIR:

Fine. Thank you very much. Thank you Secretariat. Thank you for the reading out of this conclusion. Topic 5 is an interest of parallel importations and unless there is some comment, additional comment that has to be made to what was already made during the previous session on topic 4, I would invite people to open the floor on the parallel importations topic 5. Fine. Then we will open the floor for topic 5, parallel importations. And the process we would follow is first the countries, and then specifically on each and every one of these points, we invite the NGOs to make a contribution. It's very important to stress that we are going to follow that same process in each and every one of the remaining topics and, therefore, we would like you to please not mix up topics because that would take more time than is necessary, and we would be ineffective. Thank you very much. And now I open the floor on topic 5, parallel importations. While we are waiting for your opinions on parallel importations as the fifth topic for today's session, we are going to ask the Secretariat that they give us an update. What do we have on the document on the topic 5, a custom which we have already started in the previous session of the committee. We are going to proceed before the summary of the Secretariat and while you are thinking about your interventions on this topic we are going to have a coffee break.

(Break).

CHAIR:

The floor is being requested. But previously Michelle had received a request from making comment on topic 5 and after her summary, then Ecuador will with the floor.

SECRETARIAT:

Thank you, Chair, for topic 5 on parallel importations we have three Paragraphs of proposed text. The first is from the African Group on the purchase of works and it provides for libraries and archives to purchase and import legally published works to be incorporated into their collections in cases where contracting party does not provide for international exhaustion importation right after the first sale or subsequent importation of ownership of a work. Ecuador has a proposal to the proposal from the African Group further elaborating on the situation where there is no provision for international exhaustion of the rights or importation or exportation

rights after the first sale or transfer of ownership in those cases libraries and archives should be permitted to buy, import or otherwise acquire copyright works or materials protected by related rights legally available in any country. So this provision has somewhat more detail. Then there is a proposal from India that adds the element of permission from the author providing that libraries and archives shall have the right to buy, import or otherwise acquire copies of any work published in any other member state with the permission of the author of that work. Those are the proposed texts. Then there are a number of comments. There were oral comment that's have been added to the text and written comments, and in addition, and those are found on pages 30 and 31 of document SCCR26/3 and they go over to page 32 and then there are some further comments found on pages 54 and 55. And Mr. Chair, rather than go through all of the comments, I will try to summarize most of the comments related to the subject of exhaustion and a number of them noted that there are possibilities for international, regional or national exhaustion. Different countries specified what applied in their situations and there were a number of references to Article 6 of TRIPS and to the flexibility that provided countries in terms of choosing their regime for exhaustion. And then there were a number of comments that suggested that the subject of exhaustion didn't need to be specifically linked to library exceptions, that it was a more general topic that didn't need an exception, rather states needed to decide their policy on exhaustion. And there were comments that having exhaustion apply in one way to certain exceptions or certain works might lead to some fragmentation, but then the proponents explained in a number of comments that the goal here really is to -- not to tell countries what type of exhaustion regime they should have, but to provide that if they do not have an international exhaustion regime, then this particular provision would apply in order to allow the acquisition of materials for library collections and there were a number of comments suggesting that there could be a number of conditions on this right of parallel importation or this ability to make parallel imports so that it was clear that the goals were specifically to build the collections of libraries or for other purposes that are recognized for libraries and archives. And finally, there were a couple of comments that suggested more details were needed on what sorts of works would be imported or exported under these provisions. Thank you, Chair.

CHAIR:

Thank you very much, Michelle. Thank you for the summary of the proposed texts, the comments, the written and oral comments, and then the comments of the sponsors about the texts pro proposed. We will now listen to Ecuador and then El Salvador.

Ecuador:

Thank you, Mr. Chairman. We would like to thank the Secretariat for the summary which was so comprehensive that they have made of these proposals and they have reflected very well the essential aspects, something which we really appreciate. Our delegation would like to delve further into the proposals as to why this is necessary and refer to the need that the libraries have to have to resort to markets, different markets, different from their own countries.

There are many situations in which a work was not necessarily is going to be a book. It could be a video. It could be a photograph. Anything that is of interest to a library. Which, for example, is available in some country in Europe but is not available in Ecuador. So since it's necessary that the library have access to that work, it's going to have to carry out an operation. Normally importing the work. And that is where we want there to be a guarantee that irrespective of the system of exhaustion which a country might have, if this system established restrictions for the importation, well then the libraries would then have an exception for that restriction. Or an exception to that restriction. A country may not have a restriction. In that case it doesn't have to do anything whatsoever. It doesn't have to effect its legislation. The point is that in some countries there are restrictions for the acquiring purchasing of works outside of the country or outside of the region. For example, in the case, European case where there is a regional exhaustion. So what was hand proposed here, and we find a great coincidence with what has been expressed by the after can group and end -- African Group and India. The proposal of Ecuador is simply to guarantee the possibility that the libraries might be able to purchase, import, and acquire, now, they may not be books that are bought, they could be given, they could be a gift, they could be given to other holders. So this is a provision which is very limited in its application, possible application. And then afterwards, it is completely in line with the flexibilities which international law enables us to have, in other words, that there are no restrictions so that the countries can be compelled to provide this protection to libraries. Thank you, Mr. Chairman.

CHAIR:

Thank you Distinguished Delegate from Ecuador. Thank you for your clear intervention and the presentation of your proposal. El Salvador has the floor.

El Salvador:

Thank you, Mr. Chairman. With your indulgence, if you allow me I will make a declaration on item 6, topic 6. I arrived a bit late. Item 6 in agenda and then we will move onto 5. 6 and then 5. If you allow me, sir, it's a very, very general brief presentation. Mr. Chairman, generally speaking regarding item 5 of the agenda limitations and exceptions our delegation would like to endorse what our coordinator, the Delegation of Ecuador has expressed and we would as a legal gages like to say how important this topic is in the working agenda. Particularly because in our opinion great objectives will be achieved, one, of enabling the preservation of the collections and allow us to achieve a big objective, preserve these collections and make works accessible. Allow the library in their work and support education and research. The result of all of this work which we will be carrying out in this committee with a lot of vigor should respond to the demands of the digital and technological era. Now, regarding the point at hand and thank you very much for your indulgence for allowing me to make this very brief, making this statement, topic 5, parallel importations, we would like to say how grateful we are for the proposals made from the African Group and to endorse the proposal made by Ecuador, the Delegation of Ecuador we consider that this includes important elements and has been analyzed under the development component. Thank you.

CHAIR:

Well, thank you very much, Distinguished Delegate from Ecuador. El Salvador damage collarration made and also for the topic of parallel importations. Kenya has the floor.

Kenya:

Thank you, Chair. and Kenya would like to support our proposal. I think we did make a proposal which we don't want to go back to because it's clearly stated that we would want to make it possible for libraries to purchase works which may not be available in the country for one reason or the other by virtue of the fact that the order does not make the -- the author does not indicate that that work should be made available in that country or for within reason or the other the work may be available but may not be affordable for the libraries to be allowed to purchase that work, whatever it is legally. And the area here is to make sure to -- I mean to enable countries, especially for developing countries whose budgets are really constrained to be able to increase the access and to purchase work and increase the collections and make it available for members, I mean, the users, who as we have stated in the library environment have more needs. We are experiencing a lot of exchange in terms of digital, in terms of expansion of education opportunities, and the libraries have to be able to adapt to the changing realities. That means then if western not able to have these facilities in case the country does not provide for that exception to import the work before the rights then you find that users who may have needs for that particular work and are able to access it, yet libraries by virtue of the fact that they perform public service and they provide information for both education, research and cultural development would be able, would be an opportunity to avail that work in an early manner. That's really the basis of our proposal and we hope that the delegations and Member States would be able to contribute in a concertive manner given that what is proposed here, including the platform from Ecuador and India aims to achieve the same purpose.

And we believe that type is right to be able to move forward and to see whether we can bring this proposal from African Group, Ecuador and India into a single proposal so that we can begin early to refine our discussions and to move our agenda forward. Thank you, Chair.

CHAIR:

Thank you very much, Distinguished Delegate from Kenya who besides explaining his proposal has made a specific suggestion, and that is an invitation to Ecuador and India to consider the preparation of unified text and it is very encouraging this proposal, so I would be interested in hearing initial responses regarding this kind invitation. So it is time to listen to India.

India:

Thank you, Mr. President. It is very imperative to include the parallel imports facility for the libraries because it is very important for the survival of these libraries because if parallel imports are not allowed, it will steeply increase cost of the library material especially acquisition of the books because the parallel import books are basically the low price books because these books are important for libraries of other countries from one country to other countries. And this would result in very few books in the library of such parallel imports. We are aware that Article 6 of the TRIPS agreement gives flexibility to the Member States of the TRIPS to introduce eecialg international exhaustion or the regional exhaustion, but here in the WIPO Treaties like WCT or WPPT, and bay Beijing Treaty we use the formulation in the distribution right where we discuss. But while dealing with libraries, we allow to move forward and then fix only the international exhaustion of parallel imports would facilitate better functioning of libraries, otherwise there will be a lot of problems. Libraries would also be deprived of many of the specialist services if parallel import facility is not provided to them. For example, these specialists are obtaining and supplying material from adult and non-customer that will publishers, supplying of cataloging of national bib low graphic databases. And secondhand book market. So this is very, very important to include this because parallel import is not allowed, increases the liability costs, results in fewer books in the libraries and acquisition of libraries will suffer because these are cheaper books. So legally published by the right holders, various reasons the prices have fallen in the particular - - and the library which is located in other territory importing them so that the students or researchers can access that knowledge, and then they will be able to get more books. Otherwise, I know it will be more access to specialist supplies services as well. if is a few things as a student of libraries I remember. So thank you.

CHAIR:

Thank you, India. Thank you very much, indeed, for those comments. And I thank you for explaining your proposal. I would really encourage you to make comments on the Kenyan proposal that we merge the two things.

India:

Mr. President, I just forgot, I welcome the connect Kenyan proposal because if you look at proposals of Africa Ecuador, India, they are one in the same. We can combine them and have a single text and then we can discuss with Ecuador and the African Group to have a common legal textual language, because we are talking about international exhaustion of parallel imports. Thank you.

CHAIR:

Thank you very much, India. And I thank you indeed for your reception of the Kenyan comments and I would like to know what Ecuador now thinks. Ecuador, please.

Ecuador:

Thank you, Chairman. Well, Chairman, we would like to begin by thanking Kenya for the proposal that has been put forward and indeed as the delegate of India has stated here, we too are ready to make progress on all of the topics that we are working on here. Now, Ecuador has a proposal, and our proposal is based on what in fact has already been put forward and the proposal of merging our proposal with the African Group proposal is one that we believe might be considered, and we think it would be possible then to merge those two proposals, and that might be very useful. We have already done a lot of work on this, as I have said, and we certainly stand ready to cooperate with others on the issue.

CHAIR:

Thank you very much. Thank you for this effort to unify the proposals and to simplify them, which does assist the work we are carrying out without you implying anything beyond the simplification because that is the work of the committee and a call on the United States and then the E.U. and then Kenya. The United States.

United States:

Thank you, Mr. Chair. Parallel, we note that parallel importation is a cross-cutting issue that even extends beyond libraries and archives and it has been quite contentious internationally. In fact, most international copyright Treaties explicitly disclaim any attempt to control national approaches in this area. So this is an area that we look to very carefully. In the United States, our copyright law specifically contemplates importation for library purposes and archival purposes. For example, under section 602A3 of our copyright act an organization operated for scholarly education or religious purposes and not for private gain may import up to five copies of works for library lending or archival purposes unless the importation of such copies is part of an activity consisting of a systematic reproduction or distribution.

This is in addition to the first sale doctrine. So we did want to identify that this is a very sensitive area. Thank you.

CHAIR:

Thanks to the U.S. delegation and her distinguished delegate for bringing out part of her national legislation that may give us some additional ideas to set will this topic. European Union has the floor. Niewrp niewrp thank you, Mr. Chairman, on the topic of parallel importation the E.U. has commented previously and this has been truly introduced in the text under Paragraph 98. We have difficulties to see a relation between parallel importations and the rad traditional library exceptions and we made technical comments on the proposal text. We are also of the opinion that international Treaties leave it up to the individual Member States or contracting parties how to deal with the issue of exhaustion. Now, in the E.U. regional exhaustion of the distribution rights applies. For example, Article 42 of the information so I site directive -- society directive provides that distribution right shall not be

exhausted in the community if in respect to the original or copies of the work except where the first sale or other transfer of ownership in the community of that object is made by the right holder or with his consent. We listened very carefully to the explanations by some of the drafters of the proposals, and if I understand it correctly, the proposals wouldn't envision to oblige WIPO Member States to provide for international exhaustion, but still one should provide by law. So this would mean there is a compulsory nature, binding nature there for an exception possibly for an exception to an exhaustion rule there or in these regions or states where international exhaustion doesn't apply. Indeed, for the moment, as I understand it, this would be a narrow exception, but I caution that this should be dealt with a lot of care and a lot of assessment. It could well be that other stakeholders might ask for similar treatment. Thank you.

CHAIR:

Thank you. Kenya has the floor.

Kenya:

Thank you, Chair. I would like to thank the delegations of India and Ecuador for their flexibility and we look forward to having a combined text from the three proposals which we can work together in the next session. Thank you, Chair.

CHAIR:

Thank you very much Distinguished Delegate from Kenya for the proposal and the success of its propose am or initiative.. If there are no further requests from the floor from Member States, then I don't see any requests from NGOs either, I do see E.I. and someone else asking for the floor now. I would like to point out that we are just talking about the issue of parallel importations. Because we are not dealing with anything else now, so I would beg you for your understanding on that. And E.I. now has the floor

(some text missing)

IFLA:

May then purchase the book directly from South Africa in order to respond to its patrons needs. Libraries and archives may wish to -- for several reasons. The mandate of the library may be impossible to fulfill unless it is purchased from outside the country. For example, national libraries usually have a mandate to collect works by their nationals in their national language or about their country. Another reason may be that a work is made available in one market but is not yet published in the library or archives market. A further reason, the content of the imported work may vary in ways important to the library or archives' users from a locally available version. For example, literary scholars often require access to all versions of a text in existence in order to do comparative study. Finally, the format of the imported work may be better suited to the function of the library and archive, for example, a

hard cover edition is more robust for lending than a paperback version. In response to an earlier intervention regarding the lack of evidence that we face an international problem, I would like to point out that libraries are truly global institutions. Worldwide there are over 1,000 school libraries, tens of thousand international line and 320, 73 percent of these located in developing and transitioning countries. When we give examples in this forum we are trying to illustrate the sorts of situation that numerous libraries and archives find themselves in every day. The ability to parallel import is important to enable libraries to fulfill their missions. If a pay from research or student needs access to a work not available in their country libraries should be able to purchase for them. We are here because we are guaranteed that libraries all over the world will be able to provide their patrons with the information they are seeking. Thank you, Mr. Chair.

CHAIR:

Thank you to IFLA for that important opinion with intention to give evidence to the need of a measure on the parallel importation. Now we have IPA.

IPA:

Thank you very much, Mr. Chairman. I think the two previous interventions have already highlighted the complexity of this particular issue. This issue is so complex that actually IPA agrees by and large for the first time, I think in the history of this Committee, with what KEI has said, in that I think we need to exercise extreme care and caution and differentiate between a plethora of different situations and contexts in which differential pricing may occur. Just to add one more facet, parallel imports or the prevention of parallel imports enables a business model that is called differential pricing, ie. offering the same book at a lower price in one country and at a higher price in another country. So an African author who writes an international best seller might want to sell or have a publisher and allow a publisher to sell this book more cheaply in his home country or another African country but would like to charge a lot more from the patrons and readers in the developed world. Equally, there are many textbook publishers who provide special editions for Developing Countries which contain the same content as textbooks in industrialized countries but are sold at a far, far lower price. If you resolve to do away or allow parallel imports this will not lead, as my colleague

in India would like, to cheaper books in India. It will actually lead to much more expensive textbooks in India because the cheap local editions will disappear and all that will be left is a single international edition priced for the discerning and comparatively wealthy student in the industrialized and Developed Countries. I strongly advise caution in this area and it just highlights on this very small and very specific issue the range of different circumstances, the range of different problems, the range of different solutions that are necessary depending on each country, on each type of book, on each type of library, et cetera. Thank you.

CHAIR:

Thank you very much to IPA for inviting us to think carefully and cautiously, which is a manner I'm sure we will deal with these matters when we try to make international treatment for this topic. This is a term for German library association.

German Library Association:

Thank you -- am I online? Okay. Thank you, Mr. Chairman. I speak on behalf of the German library association representing 2,000 libraries in Germany. The topic of parallel importation is apart from the right to purchase information and resources from other countries. The problem of international exhaustion of the distribution right, as long as countries have only national or regional exhaustion, like the EU, libraries that buy books in other countries outside the European Union cannot be sure they are allowed to lend them to their patrons. A good example for this is the situation I already talked about in SCCR 26. A special research institution in Germany buys books in India or Mexico or the USA, can they lend those books? Not if the rightsholder did not agree on the distribution within the EU. On the other hand, in Swiss, they have international exhaustion. And institution in Geneva, say the WIPO library which buys books in any country can lend them to whoever they want. Libraries that help to build up research infrastructures need legal certainty and freedom to buy their resources wherever they need to. This can be a cross-border issue which has to be internationally binding. If we take a look at worldwide interconnected cultural or research institutions, for example the branch in Germany, for example, of Guten institute, should be able to send books to their branch in Boeing take, Nairobi or Sydney. Those branches should be allowed to lend those books to their patrons. That applies the same to institutions like the Kennedy institute, institute Cervantes or the British Council. To enable this, we need balancing of exceptions and limitations, but also of exhaustion. Every country, there should be international exhaustion. Thank you, Mr. Chairman.

CHAIR:

Thank you very much to German library association. Since we don't have more requests for having the floor, let me summarize something. We have made interesting progress due to the kindness of the Kenya Delegate, Distinguished Delegate from Kenya. Probably we will have a unified text coming from the three proponents that will ease the way that we conceive that here the proponents may simplify and unify their proposal, the text proposal. On the other hand, we have received some commends coming from the different Delegations and some NGOs regarding that if we approach to this topic, it has to be cautiously and with care. And I'm sure that those are the ways to do so, and not only for this topic. We have received some suggestions of evidence from an NGO regarding the, what it could be considered the need for an international treatment of this matter and we have received from U.S. an example of how is national legislation deal with in section 602A3C, how importation by organisation, operator for scholarly educational purposes, for example, are not considered infringing if they do so. We have interesting information regarding this topic at this point. I think for at least for this part of the table we consider that, I want to thank you for that. It gives us important tools to deal with this matter. Of course, it is not exhausted, but at this point I think we are

ready to pass to the next topic, topic 6, considering this as a summary. I'm glad that I have received and we have received, all of us, this very useful information. The sixth topic is cross-border uses. So since it is a very short topic I will ask the Secretariat to do the same as she did for the fifth topic, reviewing the status of this. Then we can receive your initial comments on that. Please, Michelle.

SECRETARIAT:

Sixth, we have again three proposals, one from the African Group that spells out in some detail, although it is still a relatively short provision, what is permissible with regard to cross-border uses. This provision says it's, shall be permissible for libraries and archives located in the territory of the contracting party to send, receive, or exchange a copy of a work or material protected by related rights, legally made in the territory of another contracting party, including works and materials protected by related rights. Then Ecuador has a proposal to the proposal from the African Group saying that to the extent it is necessary for the exception of a limitation or exception provided for in this treaty, cross-border uses shall be permitted. India then has a very simple suggestion for a provision that reads: Libraries and archives shall have the right to share resources in any format available with them to libraries and archives located in another Member State. Na provision focuses specifically on cross-border exchanges between libraries. And the commentary to this provision, there were only two comments. One is with respect to the fact that this issue may already be covered by reproduction and distribution questions. Then another says that the main goal of the provision, this is from one of the proponents, the main goal of the provision was to allow for interlibrary exchange or loan across borders.

CHAIR:

Thank you very much to the Secretariat. Since this is a very straightforward, short topic, I will like to receive some initial comments on this from the room. U.S. has the floor.

UNITED STATES:

Yes, thank you, Chair. This is not a specific comment on the topic 6, but just to let you know we do have an engagement at 6:00 o'clock with some of our stakeholders. I'm wondering how much longer you plan to go. Thank you.

CHAIR:

Thank you for U.S. Of course, since all of us were interested in the, in going further in this topic I was not aware of the time. I know that you have some other commitments. So you can think about this and I will urge you to think about the 6, 7, and 8 topic because it is my intention to cover all of them. As you see, it was very interesting, the discussion on the fifth one. We have the goal to finish the discussion of the 11 topics because substantial interventions shouldn't be necessarily long. No? So I appreciate very much your effort and thank you very much for your attendance and contribution today. We will leave the Secretariat for some announcements.

(some text missing- administrative announcements- end of session)