

Submission to Marrakesh Treaty Implementation

Options Paper

Respondents details

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Submissions may be published online. Do you consent to having your submission and name/organisation published on the Attorney-General's Department website? YES

Response to options paper

Which option would work best for you or your organisation? Can you recommend an alternative approach?

Arts Law congratulates the Government of its prompt action in signing the Marrakesh Treaty and moving to complete the implementation of the commitments in the Treaty.

Arts Law recommends the adoption of Option One to implement the Treaty.

We agree with the Australian Copyright Council's proposal that this be achieved by amending the *Copyright (International Protection) Regulations 1969* in order to confirm that any beneficiary person or an authorised entity may import accessible format copies made in another Marrakesh Treaty country, as described in Article 6 of the Treaty.

Does the statutory licence at Part VA of the Act need consideration for the Marrakesh Treaty to be properly implemented?

No - We agree with submission made by the Australian Copyright Council that the Marrakesh Treaty relates to "published works" as defined in Article 2 (1) of the Treaty and that the statutory licence in relation to broadcasts in Part VA of the Act is outside the remit of the Marrakesh Treaty.

What is an appropriate way to reduce the regulatory burden associated with s10A declaration process?

We agree with submission made by the Australian Copyright Council that Article 2 (c) of the Marrakesh Treaty defines "authorised entities" and that the s. 10A declaration process does not appear to provide any particular regulatory burden for establishing authorised entities.

Would it be helpful for the department to issue guidelines for the use of s200AB? If so, what information would be most useful for you?

Arts Law supports the adoption of guidelines as to the use of s. 200AB. We agree with submission made by the Australian Copyright Council that the guidelines could set out when s. 135ZP would apply and when s. 200AB would apply.

The guidelines could also assist by clarifying the concepts of "special case", "conflict with a normal exploitation" and "unreasonably prejudice the legitimate interests" of the owner of the copyright. That is, such guidelines could explain when uses will be classified as a special case; what are the legitimate interests of the copyright owner; and when prejudicing those interests will be reasonable.

Would it be helpful for the department to issue guidelines on the application of the commercial availability test under Part VB, Div 3 and if so, what information would be most useful for you?

Arts Law supports the adoption of guidelines as to the application of the commercial availability test under Part VB, Div 3 so that an authorised entity has an understanding of when audio (talking book) version, Braille versions, large-print versions, photographic versions or electronic versions of the work or of a part of the work can be made. That is, to provide an understanding of: what is a "version" (for example, can an authorised entity create an accessible format copy where there is already a commercial version available, even though that version may not be in the accessible format that the authorised entity wants to make available to persons with a print disability); what is a "reasonable investigation" as to whether a version has been separately published; and what is to be understood as to whether such a version can be obtained within a "reasonable time" at an "ordinary commercial price".

Would any of the proposed options remove the practical obstacles to the creation of an online repository of accessible works?

Arts Law submits that the adoption of Option One to implement the Marrakesh Treaty will assist in the creation of online repositories of accessible works by authorised entities. The confirmation that authorised entities may export accessible format copies made in Australia to authorised entities and beneficiary persons in other Marrakesh Treaty countries and import accessible format copies into Australia will allow the exchange of accessible works and the development of online repositories of accessible works for use by beneficiary persons. The most significant barrier to the development of online repositories of accessible works is likely to be a lack of funding to carry out the costs of scanning and digitisation of existing printed material.

Existing digital publishing technologies allow for e-publications to be read in large print formats. Arts Law submits that Option One reinforces the incentives for general publishers to produce material in accessible formats in the ordinary course of their publishing activities.