

Submission to Marrakesh Treaty Implementation

Options Paper

Respondents details

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YES

Response to options paper

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

The Australian Copyright Council (ACC) congratulates the Government on signing the Marrakesh Treaty. We support the Government continuing its leadership role and ratifying the Treaty as soon as possible. In order to facilitate this process, we are in favour of Option One. We also support practical measures to improve access to published works for people with print disabilities, for example, through the adoption of best practice guidelines and through the efforts of organisations such as Read How You Want.

In our view, the *Copyright Act 1968* (the Act) is almost ready to implement the Marrakesh Treaty. However some uncertainty surrounds whether authorised entities may export accessible format copies made in Australia to authorised entities and beneficiary persons in other Marrakesh Treaty countries.¹ Currently, two provisions in the Act allow the making of accessible format copies in Australia: sections 135ZP and 200AB. Section 200AB applies where another exception does not (i.e. section 135ZP). In order to overcome this uncertainty, we favour an amendment of the regulations.

Amend Copyright (International Protection) Regulations 1969 to extend section 200AB to cover export of accessible format copies

Section 184 provides that regulations may be made to extend provisions in the Act to other countries. The Copyright (International Protection) Regulations 1969 extends protection and applies various parts of the Act to works and other subject matter created in other countries.

¹ Article 6

A new regulation could be included in the Copyright (International Protection) Regulations 1969 to extend the benefit of s 200AB (4) which deals with use by or for persons with a disability to use by or for beneficiary persons in a “Marrakesh Treaty Country”.

The advantage of this option is that it would facilitate an efficient implementation of the Treaty and bring forward the benefits the Treaty envisages.

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

No. The Marrakesh Treaty relates to “published works”. Article 2 defines this to mean “literary and artistic works within the meaning of Article 2(1) of the Berne Convention for the Protection of Literary and Artistic Works, in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available in any media”. The Agreed Statement extends this to audio books. Part VA of the Act deals with broadcasts and in our view is outside the remit of the Marrakesh Treaty.

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

The Treaty includes the concept of “authorized entities”. This is defined in Article 2(c) to mean “an entity that is authorized or recognized by the government to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis. It also includes a government institution or non-profit organization that provides the same services to beneficiary persons as one of its primary activities or institutional obligations.”

In our submission, the s 10A declaration process already provides a mechanism for establishing authorised entities. The ACC is not aware of any particular regulatory burden associated with the s 10A declaration process. Indeed, the steps set out in s 10A are generally expressed in permissive language. However, to the extent that there are any regulatory burdens posed by the declaration process, in our submission they may be overcome by practical measures and do not require legislative amendment.

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?

The ACC supports practical measures such as the development of guidelines about the use of s 200AB. For example, the guidelines could set out when s 135ZP would apply and when s 200AB would apply.

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?

The ACC strongly supports works being made available in accessible formats as part of mainstream business. For example, our new Copyright Essentials online training program has been created to comply with accessibility guidelines. The ACC also endorses the initiatives being undertaken by its members to promote accessibility.

We also support the development of guidelines about the meaning of commercial availability to inform the practical implementation of the Treaty. For example, would it depend on the needs of a particular beneficiary person? By way of illustration, a commercial audiobook without full citations might qualify if someone wanted a book for recreational purposes but not for educational or research purposes.

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

By moving to ratify the Treaty quickly as we suggest in this submission, Australia has the opportunity to take a leadership role on this issue.

While Copyright Agency already maintains a catalogue of accessible format copies made under the statutory licence, the focus of the Treaty is cross-border exchange of accessible format books. Initiatives such as the Accessible Book Consortium (ABC) are important for delivering practical benefits. Membership of the ABC includes rights holder organisations such as the International Publishers Association, the International Authors Forum and the International Federation of Reprographic Rights Organisations as well as the World Blind Union and WIPO. One of the goals of the ABC is to make TIGAR the premier repository of accessible titles in the world.

The ACC is committed to the Marrakesh process as seen by our attendance at the Diplomatic Conference in 2013. We hope that the Department finds this submission useful. We look forward to constructive engagement with the Government and stakeholders in achieving ratification of the Marrakesh Treaty.