

Submission to Marrakesh Treaty Implementation

Options Paper

Respondents details

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YES

Response to options paper

Please provide your response to the Marrakesh Treaty Implementation Options Paper below. You can respond to some or all of the options outlined in the paper, and/or you can discuss other options not covered in the paper.

Executive Summary

“Increased access to information and knowledge, underpinned by universal literacy, is an essential pillar of sustainable development.”¹

The Australian Libraries Copyright Committee (ALCC) congratulates the Australian Government on the signature and progress towards implementation of the Marrakesh Treaty. The Treaty is a landmark agreement that, when implemented, will do much to address the book famine, a global shortage of accessible format books for the blind and vision impaired. We acknowledge the leadership role played by Australia in the development of the Treaty and look forward to Australia being amongst the lead nations in ratification.

The Australian Libraries Copyright Committee's members span the range of library and archive services in Australia, from National and State libraries through to academic, public, government and specialist libraries (including libraries in organisations serving the blind and vision impaired). The library and archive

¹ Lyon Declaration

sector is united in its desire that patrons with a disability should be able to access works on an equal footing with other citizens. The official statutes of the International Federation of Library Associations (IFLA) provide that libraries' duties to their patrons are 'without regard to citizenship, disability, ethnic origin, gender, geographical location, language, political philosophy, race or religion'²

Libraries have a key role in implementing the Marrakesh Treaty. As 'authorized entities'³ libraries are enabled to make accessible format copies for their patrons and will be crucial in ensuring the smooth operation of cross-border exchanges of accessible works. Libraries have a long history of working productively and cooperatively across borders with formal processes such as document delivery and inter-library loan handled proficiently and with due regard for the legal framework. Additionally they hold the most comprehensive collections of works, often the only repositories of out of commerce or non-published works.

In implementation of the Marrakesh Treaty the ALCC strongly supports an approach that fulfils our obligations to provide equality of opportunity and accessibility to all Australians.⁴ We believe that the easiest and most streamlined approach would be to introduce a fair use provision, as recommended by the ALRC. If that option is not preferred, both options 2 and 3, with some fine tuning, could fulfil our obligations. Of the two, Option 3, with the fair dealing provision, is to be preferred as a more user-friendly and flexible provision. We support streamlining the statutory licence, which would reduce inefficient and redundant administrative burdens. The ALCC does not support Option 1 as it places redundant administrative burden on charitable organisations, is inefficient and does not adequately address our obligations under the treaty.

We have also made some recommendations in relation to the cross-border supply of works, a minor amendment to s49 of the *Copyright Act 1968* and the potential for the creation of a digital repository of accessible works.

We would be pleased to provide any further information that would be helpful in the deliberations.

Fair use, fair dealing or s200AB?

Fair Use

² [International Federation of Library Associations \(IFLA\) Statutes](#) at 2.3.4, emphasis added

³ Marrakesh Treaty Article 1(c) "authorized entity" means 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

⁴For example Australia's obligations under UN *Convention on the Rights of Persons with Disabilities*, 13 December 2006, ATS 12 (entered into force on 3 May 2008) Article 3 (e) & (f)

After having examined the options presented in the options paper, the Australian Libraries Copyright Committee (ALCC) recommends the introduction of fair use, rather than a new fair dealing provision or use of the existing s200AB. Fair use would be the best opportunity to provide an exception for accessible works that will be able to take advantage of new technologies and distribution methods as they arise. The introduction of fair use was the recommendation of the Australian Law Reform Commission (ALRC) in their recent review into exceptions and limitations.⁵

By concentrating on whether a use is fair, as judged against the four fairness factors (familiar to Australians from the fairness factors applied under the current fair dealing exceptions) fair use allows new and innovative uses to be considered. Importantly, by concentrating on the fairness of the use rather than the person doing the act, fair use has the ability to facilitate third party uses even those done for commercial profit, for example a library contracting a commercial provider to do the conversion on their behalf.⁶ As the ALRC noted in regards third party uses:

“Using copyright material might sometimes be considered more likely to be fair when a third party merely facilitates a permitted use. However, other factors, such as whether the use is transformative or harms the rights holder’s market, will usually be more important. ...if a use is for a different expressive purpose than the original and does not harm a rights holder’s market, then the use should often be fair, even if it is commercial. Such an approach to copyright exceptions better serves an innovative digital economy.”⁷

Fair use in the USA has supported significant projects to benefit disability access. The HathiTrust project is probably the most significant project. In the HathiTrust project books held by a consortia of academic libraries were digitised and indexed. The full text of those works can be accessed by students with a certified print disability who are enrolled at the University of Michigan, and the hope is that further students will be able to take advantage of the program in the future. The decision that the disability access was fair use was recently upheld by the US Court of Appeal (second circuit).⁸ In responding to the judgment Dr Mark Maurer, President of the US National Federation for the Blind, stated:

⁵ Australian Law Reform Commission Report 122 [Copyright and the Digital Economy](#) (2014) at 16

⁶ Section 200AB of the Copyright Act 1968 allows anybody to make an accessible copy on behalf of a person with a disability, but not if that copy is made on a commercial basis, which would seem to remove the possibility of libraries commissioning third parties to do external conversion work. Following the reasoning in *National Rugby League v Singtel Optus* [2012] FCAFC 59 it seems likely that if library employees used a third party platform to convert works then copies made in the process would be made by the third party (or possibly by the library and the third party platform). That third party platform if based in Australia would need to seek a licence or operate on no more than cost recovery basis to avoid infringing copyright.

⁷ Australian Law Reform Commission Report 122 [Copyright and the Digital Economy](#) (2014) 7.3-7.4

⁸ [Authors Guild v. HathiTrust](#) (2d Cir. June 10, 2014)

“This ruling will dramatically improve the lives of blind and print-disabled Americans, allowing us access to the millions of books held by the HathiTrust Digital Library and any similar collections created in the future. The decision is a victory for the blind and print disabled, the significance of which cannot be overstated. The court’s historic action hastens the day when the blind and others with print disabilities will have full access to all of the world’s written knowledge”⁹

The American Library Association reports that fair use has provided the flexibility to allow libraries to ‘maintain their missions when a purpose-specific exception may not cover unforeseen or unaccounted-for changes in technology or access’.¹⁰ We would expect a similar outcome in Australia.

Fair dealing

The introduction of a standalone fair dealing provision proposed in option 3 would not be capable of supporting a project such as HathiTrust, whose other functions (the indexing and making searchable of the works, and potentially the preservation of materials) would not be covered by a narrower, purpose based provision. It seems unlikely that the project would have been viable simply on the basis of the disability access.

However, while not ideal, option 3’s proposal to introduce fair dealing for access of people with disabilities would be a solid exception of considerable benefit to Australians with disabilities. We strongly support the extension to all Australians with disabilities, not simply those covered by the Marrakesh Treaty.¹¹ Additionally, ensuring that the exception applies to both works and subject matter other than works means that Australians with disabilities do not have their access curtailed by the format in which it is presented. In extending the protection Australia is acting in compliance with other international commitments, for example UN Convention on the Rights of Persons with disabilities requires Australia to:

⁹ Mark Maurer, President of the US National Federation for the Blind quoted in National Federation for the Blind Press Release *National Federation of the Blind Applauds Ruling in Authors Guild v. HathiTrust* (June 10 2014)

¹⁰ American Library Association and Association of Research Libraries, *Submission 703* to the Australian Law Reform Commission *Copyright and the Digital Economy Discussion Paper* (2013)

¹¹ Marrakesh Treaty Article 3 defines a A beneficiary person as a person who:

(a) is blind;

(b) has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or ^[3]

(c) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading;

regardless of any other disabilities.

“ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.”¹²

Fair dealing is a strong, flexible exception that is expressed in plain English, making it relatively easy to understand and implement. This is especially important as it will cover the private uses of individuals, who often do not have any legal training or resources. Similarly to s200AB, flexible dealing takes advantage of the maximum scope of an exception allowed under the three step test, a test that ensures that rightsholder and user interests are held in balance. We would expect that uses that would be acceptable under s200AB would also be acceptable under fair dealing.

Section 200AB

The primary benefit of retaining s200AB would be ease of transition. S200AB has been in operation since 2006, and while there have been some issues (in particular the obtuse nature language which make it difficult to comprehend for the non-legally trained) it has been of considerable use. However should s200AB be retained serious consideration should be given to modification of s4(c) ‘the use is not made partly for the purpose of obtaining a commercial advantage or profit’. While we agree that organisations or people should not be using s200AB in order to make a profit by selling accessible works, the unintended consequence of this provision may be to restrict the ability to use third party providers and platforms for cost-effective conversions (see above at ‘fair use’).

Additionally the requirement in s200AB(6) that the exception applies only if another exception or licence applies. As the ALRC noted in regards to the coexistence of fair use and the statutory licences

“Like all other users of copyright material, educational institutions, institutions assisting people with disability, and governments should not need to obtain a licence for a use of copyright material that is permitted under an unremunerated exception.”¹³

This is even more compelling in regards disability access, as whether the use is made under a licence or exception no charge is ever made for the use. However the process of working out which licence or exception applies takes time and effort. Additionally organisations can be confused when one work is converted and supplied under different sections (such as a book which also contains pictures converted, covered by the licence and s200AB currently) and what labelling requirements apply. Many of these problems would be lessened by streamlining the statutory licences.

¹² *Convention on the Rights of Persons with Disabilities*, 13 December 2006, ATS 12 (entered into force on 3 May 2008).

¹³ Australian Law Reform Commission Report 122 [Copyright and the Digital Economy](#) (2014) at 8.54

Licences

The statutory licences can be a useful vehicle for organisations to convert and supply accessible copies. We acknowledge the good work that the Copyright Agency has done in making these uses free of charge, and the work they have gone to in assisting organisations. However all parties are limited in their ability to streamline the administrative and record keeping requirements of the licences as these are currently set in the Act and Regulations.

For uses that see no transfer of payment to rightsholders, these requirements are simply surplus administrative costs, born by non-profit organisations. As such we support the principles for streamlining the licences proposed by the Australian Digital Alliance (ADA). These are:

- No requirement to check commercial availability before each use or to wait to see if a commercially available copy will become available before converting it to an accessible file. The practical implication of these requirements is that people with a disability wait longer to access content than those who can access standard format works. This exacerbates the delay that comes from the processes of conversion and communication done by the institutions. It also makes efficient systems, such as online distribution platforms, a practical impossibility.¹⁴ If rightsholders are concerned about copies being available after they have created an accessible version, a notification system could be established where rightsholders can lodge information about which titles have been made accessible in which formats, at which point the commercial copy would have to be purchased for the institution to use. This would encourage rightsholders to provide market-solutions and accessible copies as part of their standard delivery.
- Works are only considered available in accessible format if the work is accessible to the person requesting it, not simply if there was a version in one of the five prescribed formats. For example, if a large print commercial version is available, but the person requesting it requires even larger print, the commercial 'large print' version would not be considered acceptable. Similarly, synthetic text to speech conversions would be an adequate substitution for DAISY format, a key concern for the blind and vision impaired.¹⁵ To achieve this, the references to the five formats in s135ZQ of the Act should be removed and replaced with a reference to the Marrakesh definition

¹⁴ S135ZQ *Copyright Act 1968*

¹⁵ See submissions to Blind Citizens Australia Australian Law Reform Commission Report 122 *Copyright and the Digital Economy* (2014) *Submission 157*; Vision Australia, *Submission 181*

of 'accessible format copy'.¹⁶ This will also allow the inclusion of new formats as they are developed, without need of further legislative change.

- If a person relies on a technology to make non-accessible text accessible (for example a screen reader) the licence covers the provision of a format that is appropriate to be used in conjunction with that technology. The file itself may not be accessible without going through the conversion process that the beneficiary would do under fair use/fair dealing/s200AB.
- Extended to people with any form of disability that means they cannot access the work in its current format, including the hearing impaired. While not a requirement of the Treaty, as noted above, Australia has obligations to provide access to all citizens with a disability that makes it difficult or impossible for them to access works.
- Remove obligations to provide remuneration notices, mark copies, record notices, sample notices and agree to surveys. As no money is paid out on this licence, there is no real need for this administration, and it makes a group of mainly charitable organisation face higher administrative burdens than other groups who simply rely on the exceptions.
- Licence extended to cover other works and subject matter other than works. Currently declared organisation may find themselves creating an accessible copy under two different sections of the Act. For example a text book may have the words converted under the statutory licence and the graphs converted under s200AB. We believe that fair use should cover both of these types of works. But if the licence is retained and organisations choose to operate under it in preference to the exceptions then it would be most useful if it was comprehensive in nature.
- Organisations who fit into the category of "authorised entities"¹⁷ may use the licence without needing to be 'declared.'¹⁸ This would put organisations assisting disabled persons on the same

¹⁶ The Marrakesh Treaty defines "accessible format copy" as:

"accessible format copy" means a copy of a work in an alternative manner or form which gives a beneficiary person access to the work, **including to permit the person to have access as feasibly and comfortably as a person without visual impairment or other print disability**. The accessible format copy is used exclusively by beneficiary persons and it must respect the integrity of the original work, taking due consideration of the changes needed to make the work accessible in the alternative format and of the accessibility needs of the beneficiary persons" (emphasis added)

¹⁷ Marrakesh Treaty Article 1(c) "authorized entity" means 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

footing as educational institutions (which do not need to be declared), reducing administrative overheads and the delay which declaration is subject to.

- As the Electronic Information for Libraries (EIFL) recent guide to the Treaty notes:
 - “To ensure that the accessible copies are used for bona fide purposes, the authorized entity establishes its own practices in this regard. Importantly, the treaty does not contemplate rules being established for it by the government, nor an approval process or mechanism ... In order to meet the definition in the treaty, a library must establish and follow its own practices to ensure that the persons it serves are beneficiary persons, to limit the distribution of accessible format copies to beneficiaries, to discourage the use of unauthorized copies, and to maintain due care in handling copies of works and in keeping records, while respecting the privacy of the library users”¹⁹
- The emphasis on sector and institution best practices reduces unnecessary red tape and allows organisations to fulfil their duties in the most appropriate and efficient way. It will be strengthened by the codes of best practice discussed below at ‘Guidelines’.
- We would be interested in exploring options in regards to a notification and record keeping system to ensure that records of commercially available copies were kept up to date. There may be scope to utilise existing library infrastructure (with appropriate funding) to facilitate record keeping. If plans for orphan or out of commerce works registers are advanced it would be good to integrate the accessibility records as well.

Sections 49 and 50 – destruction of electronic copies

One further change to make providing access to disabled patrons more efficient would be a minor changes to remove s49(7A)(d) and s50(7C)(b) of the Act (document delivery and inter-library loan provisions). These sections require libraries to destroy electronic copies made in the process of supplying a document delivery or inter-library loan request electronically.

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

¹⁸ This requires an organisation to write the Attorney-General, have their business details tabled in parliament and be announced in the Government Gazette, a time-consuming process. The Marrakesh Treaty provides a definition of authorised entity that does not require authorisation. Any tightening of this requirement may be counter to the Treaty – see Article 2(c) "authorized entity" means 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.”

¹⁹ Electronic Information for Libraries [The Marrakesh Treaty: The EIFL Guide for Libraries](#) [2014]

As we have previously written, the practical effect of these provisions is that:

“Every time an item is requested, it must be retrieved by a staff member, scanned, OCR’d and prepared for communication to the user, and then destroyed. This has become a particular problem for university libraries fulfilling requests for a homogenous pool of students and staff pursuing the same course of study.

For the period 2011-2012, the Australian National University reports that of 10,693 bibliographic titles requested from offsite Hume repository alone, 3,077 titles were requested 2 or more times. Of these, 2 titles were requested more than 100 times.²⁰ Further:

- 5 titles were requested between 50 - 99 times
- 23 titles were requested between 25 - 49 times
- 132 titles were requested between 10 - 24 times
- 477 titles were requested between 5 - 10 times.²¹

The mandatory destruction of electronic content supplied (and copyright issues associated with digitisation), contribute to inefficiencies and high costs in fulfilling document supply requests for students.

ANU has also raised issues caused by the mandatory destruction of all electronic copies in delivering services for students with a disability. ANU is permitted to scan whole books and other materials for individuals with a disability, but any items supplied must be re-scanned for the next student (ie each term, there may be a certain number of students requiring the same content in an alternative accessible format). ANU estimate the cost of scanning each book at over \$100, and notes there are often significant delays for students with disabilities to receive whole scanned works given the diversion of staff resources required to undertake the extensive scanning.²² The mandatory destruction of scanned copies inhibits services for those with disabilities.

The Explanatory Memorandum to Copyright Amendment (Digital Agenda) Bill 1999 indicates that subsection 49(7) was intended to “*prevent libraries and archives from building up electronic collections of parts or the whole of articles or works as a result of communicating such works to*

²⁰ Although ANU notes that the ‘title’ refers to serial title, not individual article. Articles from 1 title requested more than 100 times.

²¹ ANU have also noted the top five repeat requested serials: *Archaeology in Oceania* (138 times), *Linguistics* (121 times), *Australian Historical Studies* (78 times), *Medical Journal of Australia* (61), and *Nature* (60).

²² Australian National University adds that occasionally, delays can be more than a month.

users.”²³ This seems to have arisen out of concerns libraries would use section 49 to develop electronic collections of article excerpts rather than purchasing them in electronic format. This is not the case. Documents reproduced in electronic format under section 49 are to fulfil document supply requests - there has not been any expectation on the part of libraries that these copies would be made available for wider public access, or to reduce purchasing of digital content licences. Libraries have proven themselves to be eager and extensive purchasers of digital content licences. Additionally, the commercial availability of a work is already one of the considerations a library takes into account in deciding whether to supply a work. Internal storage of documents supplied in electronic format merely increases efficiency and effective provision of services for students with disabilities.”²⁴

Guidelines

Whichever option is decided upon, the ALCC strongly supports the production of guidelines. Overseas experience has shown that often the best form of guidelines are ‘codes of best practice’ produced by the sector involved. For example the American Association of Research Libraries (ARL) in 2012 documented the library community’s understanding on how to apply fair use in their work in the “*Code of Best Practices in Fair Use for Academic and Research Libraries*.”²⁵ This has been used successfully to guide academic libraries since that time, and the section regarding disabilities is reproduced at Appendix A.

The American Library Association (ALA) also has published educational materials aimed at providing guidance to library communities on applying fair use.

As the Electronic Information for Libraries (EIFL) recent guide to the Treaty notes:

“To ensure that the accessible copies are used for bona fide purposes, the authorized entity establishes its own practices in this regard. Importantly, the treaty does not contemplate rules being established for it by the government, nor an approval process or mechanism ... In order to meet the definition in the treaty, a library must establish and follow its own practices to ensure that the persons it serves are beneficiary persons, to limit the distribution of accessible format copies to beneficiaries, to discourage the use of unauthorized copies, and to maintain due care in handling copies of works and in keeping records, while respecting the privacy of the library users”²⁶

²³ Explanatory Memorandum, Copyright Amendment (Digital Agenda) Bill 1999, p 36.

²⁴ Australian Digital Alliance and Australian Libraries Copyright Committee [Submission 213](#) to the Australian Law Reform Commission’s *Copyright and the Digital Economy Discussion Paper* (2012)

²⁵ Association of Research Libraries [Code of Best Practices in Fair Use for Academic and Research Libraries](#) (2012)

²⁶ [The Marrakesh Treaty: The EIFL Guide for Libraries](#)

Cross border

Australian libraries already participate in cross-border exchanges, in particular inter-library loans. They have a sophisticated system for transfer and an evolved international ecosystem. While considerable barriers remain to seamless sharing between countries with different copyright exceptions and limitations²⁷ the current system still works well for a number of countries and will be an important platform for the sharing of accessible works.

In implementing the treaty care must be taken that we do not inadvertently curtail existing cross-border provisions while protecting those exchanges allowed under Marrakesh.

As the EIFL Guide to the Treaty notes:

“As the Treaty is without prejudice to other exceptions for persons with disabilities provided in national law, beneficiaries shall not be prevented from cross-border sharing of materials in the context of other exceptions, such as private use, that are within the limits of what is permitted under national law.”²⁸

Framing the provision as a positive right, that it is not a breach of copyright to reproduce and communicate accessible works in the ways envisioned by the treaty, would avoid curtailing existing cross-border practices.

Digital Repositories

“All governments have agreed that our vision is for an inclusive Australian society that enables people with disability to fulfil their potential as equal citizens. To achieve this vision, all Australian governments, non-government organisations, business and the wide community have a role to play.”²⁹

We have noted above (at ‘fair use’) the potential for digital repositories, such as that created by the HathiTrust, to greatly increase the equitable access to a wide range of works, including out of commerce and orphan works. Moving forward the ability to harness the digitisation projects being undertaken by libraries and archives will be of great benefit. Non-commercial works, such as government papers held in archival collections or war records, when digitised into the right format can be easily converted into a range of accessible formats. While these are still limited, technology is developing quickly and there is

²⁷ As reflected in the campaign for a WIPO treaty for exceptions and limitations for libraries and archives

²⁸ Electronic Information for Libraries [The Marrakesh Treaty: The EIFL Guide for Libraries](#) [2014]

²⁹ Council of Australian Governments [Principles to Determine the Responsibilities of the NDIS and other service Systems](#) (April 2013)

promise of better quality conversions in the future. And even now it gives many people with a disability an opportunity to be able to access these previously unobtainable materials.

Several state libraries are already able to request publishers deposit electronic materials under 'legal deposit' schemes. With appropriate safeguards and provisions around formats these deposits could form the core of a repository. Again, the library and archive sector would be pleased to explore options further with the department and other stakeholders.

Technological Protection Measures

Article 7 of the Treaty provides:

“Contracting Parties shall take appropriate measures, as necessary, to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, this legal protection does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in this Treaty”

Currently only institutions assisting persons with a disability, educational institutions (in limited circumstances) and libraries (in limited circumstances) are permitted to break a Technological Protection Measure (TPM) in order to make accessible copies.³⁰ To comply with our obligations under the Marrakesh Treaty a new exception should be added to schedule 10A of the *Copyright Regulations 1969* to permit uses required to make and communicate accessible copies for people with a disability. The scope to allow the importation, manufacture and use of devices to circumvent the TPMs should also be explored.

Appendix A

Excerpt from Association of Research Libraries *Code of Best Practices in Fair Use for Academic and Research Libraries* (2012)

FIVE: REPRODUCING MATERIAL FOR USE BY DISABLED STUDENTS,

FACULTY, STAFF, AND OTHER APPROPRIATE USERS

DESCRIPTION:

³⁰ [Schedule 10A Copyright Regulations 1969](#)

Print-disabled academic and research library patrons require access to readable text in order to function as full members of an academic community; likewise, hearing disabled patrons require captioned audiovisual materials, while those with physical disabilities may require the electronic delivery of materials outside the library setting.

Relatively new electronic technologies make these kinds of accommodations possible at relatively low cost. True accommodation for these patrons means access to any materials in the library's collection for any reason the patron may have (required reading, voluntary study, or recreation), i.e., access that is equivalent to the access afforded to students without disabilities. In addition to moral and mission-related imperatives to serve all patrons, there are also legal obligations to accommodate scholars and researchers with diverse needs. Although Section 121 of the Copyright

Act authorizes the reproduction of copyrighted materials to meet these needs under some circumstances, there is continued controversy over its exact scope. Some stakeholders insist, however unreasonably, that Section 121 does not cover academic libraries' efforts to provide accessible materials to print-disabled members of a college or university community. No specific exception to copyright even arguably addresses the needs of patrons with disabilities related to media other than print.

Making library materials accessible serves the goals of copyright, not to mention the goals of a just and inclusive society, and has no negative consequence for rights holders who have not entered the market to serve these users. Such uses add value to a work by making it available to communities that would otherwise be excluded, presenting the work in a format the rights holder has not provided and to an audience that the rights holder is not serving. Making this material available to disabled patrons, furthermore, should not penalize other potential constituents, for instance, by removing the original copy for the time that the version for the disabled is available.

PRINCIPLE:

When fully accessible copies are not readily available from commercial sources, it is fair use for a library to (1) reproduce materials in its collection in accessible formats for the disabled upon request, and (2) retain those reproductions for use in meeting subsequent requests from qualified patrons.

LIMITATIONS:

- Libraries should provide patrons with information about their own rights and responsibilities regarding works provided to them in this way.

- When appropriate (taking into consideration the needs of the disabled patron), the requester's use of the materials should be time-limited by analogy to the limits the library imposes on use by other persons.
- Libraries should coordinate their response to requests with the university's disability services office, or the equivalent, and observe standard conventions on the identification of individuals entitled to service.

ENHANCEMENTS:

- Claims for fair use may well be further reinforced if technological protection measures are applied to assure that limitations on the use of accessible copies are observed.
- The fair use case will be enhanced by programs that are well publicized to the affected communities together with policies that are widely and consistently applied.