

Submission to Marrakesh Treaty Implementation Options Paper

RESPONDENTS DETAILS

Name/organisation: Australian Copyright Council

Address: 15/233 Castlereagh Street, Sydney

Website (if applicable): www.copyright.com.au

Email address: lbaulch@copyright.com.au

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

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.

BACKGROUND

Copyright Agency was 'declared' in 1990 as the collecting society for Part VB of the Copyright Act in relation to 'works' other than works in sound recordings and films.

Part VB includes a statutory licence for educational use of 'works', and a statutory licence for institutions assisting people with a print disability to make accessible-format versions of text works.

'Institutions assisting people with a print disability'

'Institutions assisting people with a print disability' are:

- educational institutions covered by the educational statutory licence; and
- institutions with a principal function of providing text works to people with a print disability, that has been 'declared' as such in the Government Gazette.

Statutory licence

The statutory licence allows institutions to:

- make accessible-format versions for people with a print disability; and
- make and retain 'master' versions of accessible-format material.

Copyright Agency's board decided not to seek any payment under the print disability licence.

A statutory licence has the benefit of providing comprehensive repertoire with limited compliance requirements. In practice, the administrative requirements are more minimal than may appear by reading the legislation. And in practice, the statutory licence operates in conjunction with section 200AB, so that what may appear to be 'gaps' in the statutory licence (such as the omission of images) are filled by the application of section 200AB.

Online 'masters' catalogue

Copyright Agency developed an online catalogue of 'master copies' so that institutions could use masters already made by others rather than making their own. There are about 14,000 master copies in the catalogue, and about 80 participating institutions.

We are reviewing the online catalogue in consultation with the institutions using it, with a view to improving its functionality.

Other provisions enabling the making of accessible-format versions

Many of the exceptions in the Copyright Act are sufficiently broad to allow the making of accessible-format versions. These include the 'fair dealing' exceptions for research or study. In addition, section 200AB specifically allows uses that enable people with a print disability to get an accessible-format version. It applies both to institutions, complementing the statutory licence, and to individuals.

We think section 200AB allows the conversion of images into accessible formats, and that it allows the provision of accessible-format versions by Australian institutions to authorised entities and people with a print disability in countries that are parties to the Marrakesh treaty.

Commercial availability

The statutory licence does not apply where a copy is available within a reasonable time at an ordinary commercial price.

Our view is that, either as a result of interpreting the statutory licence in accordance with its intended operation or by applying section 200B, an institution can make an accessible-format version to meet the needs of the person who requires it, unless that person's needs can be reasonably met by a commercially available version.

Commercial providers of accessible-format versions

There are commercial providers of accessible-format versions. These include Read How You Want and Bolinda (for audio books).

'Marking' of copies

The statutory licence for the print disabled has the same 'marking' requirements as the education statutory licence. The requirement in section 135ZX(3) to mark reproductions has no practical effect because there are no regulations to support it. The requirement in section 135ZXA for a 'prescribed notice' for communications applies in the same way to both the statutory licences.

The marking of master copies referred to in section 135ZQ(4) can be determined by agreement with the collecting society.

Guide to making accessible-format versions

Copyright Agency commissioned guidelines on the making of accessible-format versions from the Copyright Council in 2005. The Guidelines, which are [available online](#),¹ were updated in 2007, after the introduction of section 200AB.

We are developing a much shorter, simpler guide taking into account supply of copies to countries that are party to the Marrakesh treaty, and practical issues that have been raised.

Request from New Zealand for cross-border exchange of copies

We have been asked by Copyright Licensing New Zealand to develop an arrangement that allows New Zealand institutions to participate in the masters catalogue, and for exchange of master copies between Australia and New Zealand. We are developing an arrangement in consultation with stakeholders.

WHICH OPTION WOULD WORK BEST FOR YOU OR YOUR ORGANISATION? CAN YOU RECOMMEND AN ALTERNATIVE APPROACH?

The treaty can be implemented in Australia without any amendment to the Copyright Act. The main issue is the mechanism for recognition of foreign authorised entities to which Australian institutions can provide accessible-format copies.

The Copyright Council has suggested an amendment to the regulations, which is one mechanism. There may be other options, such as an agreement on the application of section 200AB to supply of accessible-format versions to authorised entities that are published through an official source, such as the Attorney-General's Department website or possibly by the World Intellectual Property Organization (WIPO).

DOES THE STATUTORY LICENCE AT PART VA OF THE ACT NEED CONSIDERATION FOR THE MARRAKESH TREATY TO BE PROPERLY IMPLEMENTED?

No.

¹ www.copyright.com.au/print-disability-guide

WHAT IS AN APPROPRIATE WAY TO REDUCE THE REGULATORY BURDEN ASSOCIATED WITH S10A DECLARATION PROCESS?

The declaration process only applies to institutions with a principal purpose of assisting people with a print disability. Educational institutions are automatically covered.

As far as we are aware, most (if not all) institutions assisting people with a print disability are already declared. We are happy to assist any that are not.

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?

We are structuring the new guide we are preparing by activity or issue rather than by provisions in the Copyright Act, particularly given section 200AB is intended to complement the operation of the statutory licence. We are happy to provide more detail as the guide develops.

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?

As noted above, we think the Copyright Act allows an institution to make an accessible-format version to meet the needs of the person who requires it, unless that person's needs can be reasonably met by a commercially available version.

WOULD ANY OF THE PROPOSED OPTIONS REMOVE THE PRACTICAL OBSTACLES TO THE CREATION OF AN ONLINE REPOSITORY OF ACCESSIBLE WORKS?

We are not aware of legal obstacles to an online repository. Section 135ZQ allows the making and retention of master copies. The section would seem to allow the storage of these master copies in a central repository.