

Standing Committee on Copyright and Related Rights

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Draft Joint Recommendation concerning the improved access
to works protected by copyright for persons with a print disability

Proposal by the Delegation of the European Union

Draft Joint Recommendation concerning the improved access to works protected by copyright for persons with a print disability

adopted by

the International Union for the Protection of Literary and Artistic Works (Berne Union) Assembly, the WIPO Copyright Treaty (WCT) Assembly, and the General Assembly of the World Intellectual Property Organization (WIPO) at the [____]

PREFACE

Recognizing the importance of accessibility to the achievement of equal opportunities in all spheres of society,

Considering the need to improve access to works in accessible formats in order to reduce obstacles to equal access to education and culture,

Considering that it is important for Member States to adopt all necessary measures to facilitate access to works by persons suffering from a print disability which constitutes an obstacle to the use of the works themselves and to pay particular attention to accessible formats,

Considering the discussions within the WIPO Standing Committee on Copyright and Related Rights on the issue of exceptions and limitations for the benefit of persons with a print disability and the various proposals tabled by Member States,

Aware of the importance of copyright protection as an incentive for literary, scientific and artistic creation, and as a mean to ensure that everyone has the opportunity to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits,

Considering that, to the extent that the market is unable to provide an appropriate access to works for persons with a print disability, it is recognised that alternative measures are needed to improve such access.

Considering that the balance of the international system of intellectual property as reflected in the Berne Convention and in the WIPO Copyright Treaty (WCT) must facilitate effective and timely access to works for the benefit of persons with a print disability.

The International Union for the Protection of Literary and Artistic Works (Berne Union) Assembly, the WIPO Copyright Treaty (WCT) Assembly and the General Assembly of WIPO adopted the following Joint Recommendation.

The aim of this Joint Recommendation is to increase the number and range of accessible format works available to citizens with a print disability in the world to the extent that there is no appropriate commercial product on offer. The provisions are predicated on the basis that every Member State should introduce in their national copyright law an exception to the right of reproduction, the right of distribution and the right of making the work available to the public, as defined in Article 8 of the WCT. The exception should cover uses that are directly related to the

print disability to the extent required by the specific print disability, and that are of a non-commercial nature.

The Joint Recommendation fosters a pragmatic approach, recommending a global system of mutual recognition of Trusted Intermediaries in the world. Where Trusted Intermediaries do not yet exist, Member States are encouraged to help establish at least one such body for their territory.

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Joint Recommendation

The International Union for the Protection of Literary and Artistic Works (Berne Union) Assembly, the WIPO Copyright Treaty (WCT) Assembly and the General Assembly of the World Intellectual Property Organization (WIPO),

Taking into account the provisions of the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) and the WCT,

Considering the Universal Declaration of Human Rights and the UN Convention on the Rights of Person with Disabilities,

Recommend that each Member State of the Berne Convention or of WIPO, Contracting Party of the WCT and/or Member State of WIPO brings its legislation into accord with this Recommendation.

Article 1

Definitions

For the purposes of these Provisions:

- (i) "Member State" means a State member of the Berne Convention for the Protection of Literary and Artistic Works and /or a Contracting Party of the WCT and the WIPO.
- (ii) "Person with a print disability" means any person:
 - a) who is blind; or
 - b) who has an impairment of visual function which cannot be improved, by the use of corrective lenses, to a level that would normally be acceptable for reading without a special level or kind of light; or
 - c) who is dyslexic; or
 - d) who is unable, through physical disability, to hold or manipulate a book; or
 - e) who is unable, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for reading; and whose disability results in an inability to read commercially available standard editions of works; and who can be helped to read by reformatting the content (but, does not require the text itself to be re-written in simpler terms to facilitate comprehension);
- (iii) "Work in an accessible format" is the term used to describe a printed work the format of which is modified prior to publication or afterwards so that a person with a print disability can have access to that work at the time of or after publication. Any work which is to be modified into an accessible format must be lawfully acquired and the reformatting must respect the integrity of the original work.

- (iv) "Trusted Intermediary" is an approved institution whose activities must have the consent of both, persons with a print disability and rights holders such as publishers. Trusted Intermediaries facilitate the production of works in accessible formats, and/or their cross border transfer in a controlled manner.

Trusted Intermediaries should fulfill the following conditions:

- they operate on a not-for-profit basis;
- they register the persons with a print disability they serve;
- they provide specialized services relating to training, education, or adaptive reading or information access needs of persons with a print disability;
- they maintain policies and procedures to establish the bona fide nature of persons with print disabilities that they serve;
- they maintain policies and procedures to ensure full and complete compliance with copyright and data protection laws.

If the Trusted Intermediary is a nation-wide network of organizations, all organizations which are members of this network must fulfill all of the above-mentioned conditions.

Article 2

Exception for the benefit of persons with a print disability

Member States should provide in their national copyright law for an exception to the right of reproduction, the right of distribution and the right of making the work available to the public, as defined in article 8 of the WCT, for the benefit of persons with a print disability. The exception should cover uses that are directly related to the print disability to the extent required by the specific print disability and that are of a non-commercial nature.

Such exception may only be applied in certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightholder.

Member States may ensure that the rights holders receive an adequate remuneration for the use of their works covered by the exception. This claim may be exercised through a collective management society.

The recommendation is not of application to the extent that there are sufficient and adequate market solutions for persons with a print disability.

Article 3

Setting up of Trusted Intermediaries

Member States should encourage the setting up for their territory of at least one Trusted Intermediary. Such bodies should fulfill the conditions set out in Article 1(iv) and qualify for the status of Trusted Intermediary.

Article 4

Cross-border transfer of physical works in accessible formats that are produced under a copyright exception

Member States should recognize that if a work is made accessible under an exception provided for in their national legislation for the benefit of persons with a print disability, a copy of that work in an accessible format can be distributed to a Member State that has an exception for the benefit of persons with a print disability or, subject to a specific export license granted by the rights holder, through a Trusted Intermediary into another Member State.

A copy of the work in an accessible format may not be directly distributed to a person with a print disability resident in the latter Member State but must be distributed through a Trusted Intermediary established for that Member State.

Article 5

Cross-border making available to the public of works in accessible formats that are produced under a copyright exception

Member States should recognize that if a work is made available online under an exception provided for in their national legislation for the benefit of persons with a print disability, the work in an accessible format can be made available online, as defined in article 8 of the WCT, to a Member State that has an exception for the benefit of persons with a print disability or, subject to a specific export license granted by the rights holder, through a Trusted Intermediary into another Member State.

The work in an accessible format can only be made available online through a Trusted Intermediary established for that purpose for the Member State where the person with a print disability resides.

Article 6

Notice to rights holders regarding the use of their works

In cases involving the reproduction, distribution and the making available to the public, as defined in Article 8 of the WCT, of works in an accessible format for the benefit of persons with a print disability under Articles 4 and 5, the Trusted Intermediaries should provide notice within a reasonable time to the rights holders or to the collective management societies prior to any use of the work. Such notice shall include the following:

- i) the name, postal address and relevant telecommunications contact information of the party reproducing, distributing and making available to the public works;
- ii) the nature of the use of the works, including the countries where the work is to be distributed and made available to the public and the terms under which the work is to be distributed and made available to the public; and
- iii) information regarding his/her right to challenge the use, on the grounds that the uses are not sufficiently restricted to persons with a print disability, or that the use conflicts with a normal exploitation of the work or prejudices his/her legitimate interests.

Article 7

Development of an online International accessible works service

Member States should encourage the establishment of an online international catalogue listing accessible works.

Article 8

Promotion of an enabling technology framework

Member States should encourage the design and development of an enabling technologies framework so that these technologies become accessible to persons with a print disability at a reasonable cost.

Article 9

Member States awareness

Member States should raise awareness of the challenges and opportunities regarding access to works for persons with a print disability amongst a range of stakeholders including governments, publishers, technology and software producers, the retail sector, libraries and other organizations making accessible formats, and persons with a print disability.

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