

Standing Committee on Copyright and Related Rights

Twenty-Second Session
Geneva, June 15 to 24, 2011

Proposal on an international instrument on limitations and exceptions for persons with print disabilities

Document prepared by the Chair

Introductory note

This document has been prepared on the basis of the Office of the Chair to act as a simple channel and under the terms of the conclusions of the last 22nd Session of the Standing Committee on Copyright and Related Rights (SCCR/22), which provided for the obligation of the Chair to submit a document bearing the number SCCR/22/16.

The aim of this document is to submit a text in a clear, coherent and transparent manner, participatory in nature, in which are compiled the comments made by the Delegations participating in the discussion of the subject of limitations and exceptions to copyright for persons with print disabilities and other reading difficulties, at the plenary of the 22nd Session of the Committee (SCCR/22), with the aim of continuing to work on an international instrument.

The Chair's intention is to incorporate in a single document the comments of the Delegations, thereby avoiding the loss of work done previously, and providing the opportunity to take into account the comments made, without it being considered that the Chair has any position in that regard.

This text is the result of the contribution by the Delegations, whose comments have been taken into account without any position being compromised or future positions being prejudiced or affected in any way in the discussions on the subject, since they will remain open and subject to the changes based on the future contributions by all Delegations.

It is worth reiterating that the opinions and arguments put forward are the result of the work done by Delegations, in accordance with the agreement reached at the 21st Session of the Committee (SCCR/21), held in November 2010.

The Chair therefore urges Delegations to achieve concrete and final results on this subject at the next 23rd Session of the Committee (SCCR/23).

PREAMBLE

Recalling the principles of non-discrimination, equal opportunity, accessibility, and full and effective participation and inclusion in society, proclaimed in the United Nations Convention on the Rights of Persons with Disabilities,

Mindful of the challenges that are prejudicial to the complete development of persons who have limited vision and those with print disabilities, which limits their right of access to information and communication, and also education and research,

Emphasizing the importance of copyright protection as an incentive for literary and artistic creation and enhancing opportunities for everyone to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits,

Emphasizing the importance and flexibility of copyright protection as an incentive for literary and artistic creation, and for increasing the opportunities for all persons with limited vision and those that have reading disabilities to participate in the cultural life of the community, enjoy the arts and share scientific progress and its benefits.

Recognizing the importance of both accessibility to the achievement of equal opportunities in all spheres of society and of the protection of the rights of authors in their literary and artistic works in a manner as effective and uniform as possible,

Aware of the many barriers to access to information and communication experienced by persons who have limited vision and those who have print disabilities, or have other disabilities regarding access to published works,

Aware also that the majority of visually impaired persons and persons with a print disability live in developing countries,

Desiring to provide full and equal access to information, culture and communication for the visually impaired persons and persons with a print disability and, towards that end, considering the need both to expand the number of works in accessible formats and to improve access to those works,

Recognizing the opportunities and challenges for the visually impaired and persons with a print disability presented by the development of new information and communication technologies, including technological publishing and communication platforms that are transnational in nature,

Recognizing also the need to seek, receive and impart information and ideas through any media and regardless of frontiers,

Aware that national copyright legislation is territorial in nature, and where activity is undertaken across jurisdictions, uncertainty regarding the legality of activity undermines the development and use of new technologies and services that can potentially improve the lives of the visually impaired/persons with print disabilities,

Recognizing the large number of Members who, to that end, have established exceptions and limitations in their national copyright laws for visually impaired persons and persons with a print disability, and yet there is a continuing shortage of available works in acceptable formats for such persons,

Recognizing that the preference is for works to be made accessible by rights holders to people with disabilities at publication and that, to the extent that the market is unable to provide

appropriate access to works for visually impaired persons and persons with a print disability, it is recognized that appropriate copyright exceptions and limitations are needed to improve such access,

Recognizing also the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information, and that such a balance must facilitate effective and timely access to works for the benefit of visually impaired persons and persons with a print disability,

Emphasizing the importance and flexibility of the three-step test for limitations and exceptions established in Article 9(2) of the Berne Convention and other international instruments,

Needing to contribute to the implementation of the relevant recommendations of the Development Agenda of the World Intellectual Property Organization,

Taking into account the importance of Member States agreeing to make commitments both to increase the number and range of accessible format works available to visually impaired persons and persons with a print disability in the world, and to provide the necessary minimum flexibilities in copyright laws that are needed to ensure full and equal access to information and communication for persons who are visually impaired or have a print disability in order to support their full and effective participation in society on an equal basis with others, and to ensure the opportunity to develop and utilize their creative, artistic and intellectual potential, for their own benefit and for the enrichment of society,

Have agreed as follows:

ARTICLE A DEFINITIONS

For the purposes of these provisions

"work"

means a literary or artistic work protected by copyright and includes any literary and artistic work in which the copyright remains valid, whether published or otherwise made publicly available in any media.

"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 a print disability. The accessible format copy must respect the integrity of the original work and be used exclusively by beneficiary persons.

"authorized entity"

means a governmental agency, a non-profit entity or non-profit organization that has as one of its activities to assist persons with print disabilities by providing them with services relating to education, training, adaptive reading, or information access needs, in accordance with national law.

An authorized entity maintains rules and procedures to determine the beneficiary persons that they serve.

An authorized entity has the trust of both beneficiary persons and copyright rights holders. It is understood that to obtain the trust of such rights holders and beneficiary persons, it is not necessary to require the prior permission of said rights holders or persons.

If an authorized entity is part of a nationwide network of organizations, then all organizations, institutions, and entities must adhere to these characteristics, in accordance with national law.

"reasonable price for developed countries"

means that the accessible format copy of the work is available at a similar or lower price than the price of the work available to persons without print disabilities in that market.

"reasonable price for developing countries"

means that the accessible format copy of the work is available at prices that are affordable in that market, taking into account the needs and income disparities of persons who have limited vision and those with print disabilities.

"Member State"

means a State member of the World Intellectual Property Organization or of the Berne Convention for the Protection of Literary and Artistic Works and/or a Contracting Party of the WCT.

References to "copyright" include copyright and any rights related to copyright recognized by Member States in accordance with national law.

ARTICLE B BENEFICIARY PERSONS

A beneficiary person is a person who

- (a) is blind;
- (b) has a visual impairment or a perceptual or reading disability or any other print disability, which cannot be improved by the use of corrective lenses 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
- (c) is 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.

ARTICLE C NATIONAL LAW EXCEPTIONS ON ACCESSIBLE FORMAT COPIES

1. A Member State shall provide in its national copyright law for an exception or limitation to the right of reproduction, the right of distribution and the right of making available to the public, to facilitate the availability of works in accessible formats for beneficiary persons as defined herein.

2. A Member State may fulfill Article C (1) by providing an exception or limitation in its national copyright law such that:

- (A) Authorized entities shall be permitted without the authorization of the copyright rights holder to make an accessible format copy of a work, obtain from another authorized entity a work in accessible format, and supply those copies to a beneficiary person by any means, including by non-commercial lending or by electronic communication by wire or wireless means, and undertake any intermediate steps to achieve those objectives, when all of the following conditions are met:

1. the authorized entity wishing to undertake said activity has lawful access to that work or a copy of that work;
2. the work is converted to an accessible format copy, which may include any means needed to navigate information in the accessible format, but does not introduce changes other than those needed to make the work accessible to the beneficiary person;
3. copies of the work in the accessible format are supplied exclusively to be used by beneficiary persons; and
4. the activity is undertaken on a non-profit basis.

(B) A beneficiary person or someone acting on his or her behalf may make an accessible format copy of a work for the personal use of the beneficiary person where the beneficiary person has lawful access to that work or a copy of that work.

3. A Member State may fulfill Article C(1) by providing any other exception or limitation in its national copyright law that is limited to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

4. The Member State may limit said exceptions or limitations to published works which, in the applicable special format, cannot be obtained within a reasonable time and at a reasonable price.

5. It shall be a matter for national law to determine whether exceptions or limitations referred to in this Article are subject to remuneration.

ARTICLE D

CROSS-BORDER EXCHANGE OF ACCESSIBLE FORMAT COPIES

1. Member States shall provide that if an accessible format copy of a work is made under an exception or limitation or export license in accordance with the national law, that accessible format copy may be distributed or made available to a person with print disabilities in another Member State by an authorized entity where that other Member State would permit that beneficiary person to make or import that accessible copy.

2. A Member State may fulfill Article D(1) by providing an exception or limitation in its national copyright law such that:

(A) Authorized entities shall be permitted without the authorization of the rights holder to distribute or make available accessible format copies to authorized entities in other Member States for the exclusive use of beneficiary persons, where such activity is undertaken on a non-profit basis.

(B) Authorized entities shall be permitted without the authorization of the rights holder to distribute or make available accessible format copies to persons with print disabilities in other Member States where the authorized entity has verified the individual is properly entitled to receive such accessible format copies under that other Member State's national law.

The Member State may limit said distribution or making available of published works which, in the applicable accessible format, cannot be otherwise obtained within a reasonable time and at a reasonable price, in the country of importation.

3. A Member State may fulfill Article D(1) by providing any other exception or limitation in its national copyright law that is limited to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

ARTICLE E IMPORTATION OF ACCESSIBLE FORMAT COPIES

To the extent that national law would permit a beneficiary person or an authorized entity acting on the beneficiary person's behalf to make an accessible format copy of a work, the national law shall permit a beneficiary person or an authorized entity acting on that person's behalf to import an accessible format copy, without the copyright rights holder's authorization.

ARTICLE F TECHNOLOGICAL PROTECTION MEASURES

Member States shall ensure that beneficiaries of the exception provided by Article C have the means to enjoy the exception where technological protection measures have been applied to a work.

In the absence of voluntary measures by rights holders and to the extent that copies of the work in the accessible format are not available commercially at a reasonable price or via authorized entities, Member States shall take appropriate measures to ensure that beneficiaries of the exception provided by Article C have the means of benefiting from that exception when technological protection measures have been applied to a work, to the extent necessary to benefit from that exception.

ARTICLE G RELATIONSHIP WITH CONTRACTS

Nothing herein shall prevent Member States from addressing the relationship of contract law and statutory exceptions and limitations for beneficiary persons.

ARTICLE H RESPECT FOR PRIVACY

In the implementation of these exceptions and limitations, Member States shall endeavor to protect the privacy of beneficiary persons on an equal basis with others.

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