

## **Standing Committee on Copyright and Related Rights**

### **Twenty-third Session**

**Geneva, November 21 to 25, 28, 29 and December 2, 2011**

WORKING DOCUMENT ON AN INTERNATIONAL INSTRUMENT ON LIMITATIONS  
AND EXCEPTIONS FOR VISUALLY IMPAIRED PERSONS/PERSONS WITH PRINT  
DISABILITIES

*adopted by the Committee*

## INTRODUCTORY NOTE

The aim of this working document is to present in a comprehensive and coherent manner various contributions on an international instrument on limitations and exceptions for visually impaired persons/persons with print disabilities. It contains:

- the proposal of the SCCR Chair on an international instrument on limitations and exceptions for persons with print disabilities (document SCCR/22/16)
- the comments made by SCCR Members to the above proposal during the SCCR/23 session, and
- the text-based options proposed by SCCR Members during the SCCR/23 session.

The texts of Articles of the Chair's proposal appear on the top of odd-numbered pages (right hand side).

Comments on the text of the Articles of the Chair's proposal appear on the even-numbered pages (left-hand side).

The text-based options of SCCR Members appear at the bottom of the odd-number pages (right hand side) as footnotes.

[End of introductory note]

[Preamble continues, page 5]

## Comments on the Preamble

0.01. Replace “visually impaired persons and persons with print disabilities” by “visually impaired persons/persons with print disabilities”. These are not two different groups, but two different ways to describe the same beneficiary group (European Union and its Member States, Kenya, on behalf of the African Group; United States of America). *This change was included in the Chair’s text.*

0.01*bis* Replace visually impaired persons/persons with print disabilities by “beneficiary persons” (Australia, Brazil, United States of America).

0.01*ter* Replace all terms in the preamble used to describe beneficiary persons, such as in the second, the fourth, the sixth, the thirteenth and the seventeenth paragraph, by “visually impaired persons/persons with print disabilities” (Austria).

0.01*quater* The term “visually impaired persons/persons with print disabilities” should also appear in the title of the proposal (Kenya, on behalf of the African Group).

0.02 The second paragraph should read “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 freedom of information and communication, their right to education and their freedom of research,” (Switzerland).

0.03 In the second paragraph, “limited vision” should be replaced by “print disabilities” (India, Kenya, on behalf of the African Group).

0.04 The second and tenth paragraphs are largely duplicative and can be merged (United States of America).

0.05 The second and third paragraphs are duplicative and cover a matter dealt with by the fifth and sixth paragraphs (Senegal).

0.06. The fourth paragraph needs further consideration (United States of America). This paragraph should emphasize the importance of copyright protection as an incentive and reward for literary and artistic or should be deleted (European Union and its Member States). This paragraph should be deleted (Morocco, Senegal).

[Comments on the Preamble continue, page 6]

## PREAMBLE

### *(First)*

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,

### *(Second)<sup>1</sup>*

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,

### *(Third)<sup>2</sup>*

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,

### *(Fourth)<sup>3</sup>*

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.

[Preamble continues, page 7]

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<sup>1</sup> (Second) 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 freedom to seek, receive, and impart information and ideas of all kinds, (United States of America).

(Second) 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 freedom of information and communication, their right to education and their freedom of research,” (Switzerland).

<sup>2</sup> (Third) Emphasizing the importance of copyright protection as an incentive and reward 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, (European Union and its Member States).

<sup>3</sup> (Fourth) Delete this paragraph (European Union and its Member States).

0.07 In the fifth paragraph, the word “uniform” should be deleted. There are differences in developing and developed countries and the current draft does not suggest uniformity (European Union and its Member States).

0.08 The sixth paragraph should read “Aware of the many barriers to access to information and communication experienced by persons who are blind or have limited vision, or have other disabilities regarding access to published works,” (United States of America).

[Comments on the Preamble continue, page 8]

[Preamble, continued]

*(Fifth)*<sup>4</sup>

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,

*(Sixth)*<sup>5</sup>

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,

*(Seventh)*<sup>6</sup>

Aware also that the majority of visually impaired persons/persons with print disabilities live in developing countries,

*(Eighth)*<sup>7</sup>

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

[Preamble continues, page 9]

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<sup>4</sup> (Fifth) 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 as possible, (European Union and its Member States).

<sup>5</sup> (Sixth) Aware of the many barriers to access to information and communication experienced by persons who are blind or have limited vision, or have other disabilities regarding access to published works, (United States of America).

<sup>6</sup> (Seventh) Aware also that the majority of beneficiary persons live in developing countries, (United States of America).

<sup>7</sup> (Eighth) Desiring to provide full and equal access to information, culture and communication for beneficiary persons and [...] (United States of America).

0.09. The tenth and eleventh paragraphs should be merged and read as follows “Recognizing also the need to seek, receive and impart information and ideas through any media and regardless of frontiers, and that the use of new technologies and services can potentially improve the lives of the visually impaired/persons with print disabilities,” (European Union and its Member States).

0.10. The tenth paragraph should be deleted as it is duplicative of the eleventh paragraph (Senegal).

0.11 The twelfth paragraph is not clear and needs further consideration. The problem is not the shortage but the need of international norms on limitations and exceptions (Senegal). Many countries do have national exceptions and limitations for visually impaired persons. But even counting on these exceptions and limitations, the cross-border exception should help in reducing the shortage in certain countries (Brazil).

0.12 In the twelfth paragraph, the word “acceptable” should be replaced by “accessible” (United States of America).

[Comments on the Preamble continue, page 10]

[Preamble, continued]

*(Ninth)*

Recognizing the opportunities and challenges for the visually impaired/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,

*(Tenth)*<sup>8</sup>

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

*(Eleventh)*

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,

*(Twelfth)*<sup>9</sup>

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

[Preamble continues, page 11]

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<sup>8</sup> (merge Tenth and Eleventh) 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~~ and that the use of new technologies and services can potentially improve the lives of the visually impaired/persons with print disabilities, (European Union and its Member States)

(merge Tenth and Eleventh) Recognizing also the need to seek, receive and impart information and ideas through any media and regardless of frontiers, as well as the fact that legislation is territorial in nature and there is uncertainty regarding the legality of activity that undermines the development and use of new technologies, (Senegal).

<sup>9</sup> (Twelfth) Recognizing the large number of Members who, to that end, have established exceptions and limitations in their national copyright laws for visually impaired persons/persons with a print disability, and yet there is a continuing shortage of available works in accessible formats for such persons, (United States of America).

0.13. In the thirteenth paragraph, “copyright exceptions and limitations” should be replaced by “alternative measures” (European Union and its Member States).

0.14 The thirteenth paragraph is not clear and needs further consideration. The objective is to have limitations and exceptions within a harmonized international environment. It should refer to the fact that there may also be works that are not in a format available to such persons, not necessarily print works or also other kinds of works (Senegal).

0.15 The fifteenth paragraph should read “Reaffirming the obligations of Member States under the existing international treaties on the protection of copyright and 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,” (European Union and its Member States).

0.16 In the fifteenth paragraph, the sentence “emphasizing the importance and flexibility of the three step test” should be replaced by “reaffirming the importance and flexibility of the three step test”. The concept of three step test should be the base of this instrument (European Union and its Member States, Japan).

[Comments on the Preamble continue, page 12]

[Preamble, continued]

*(Thirteenth)*<sup>10</sup>

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

*(Fourteenth)*

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/persons with a print disability,

*(Fifteenth)*<sup>11</sup>

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,

[Preamble continues, page 13]

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<sup>10</sup> (Thirteenth) 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 alternative measures are needed to improve such access, (European Union and its Member States).

<sup>11</sup> (Fifteenth) Reaffirming the obligations of Members States under the existing international treaties on the protection of copyright and 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, (European Union and its Member States, Japan).

(Fifteenth) 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 and its interpretation in a manner that respects the legitimate interests of third parties, including interests deriving from human rights and fundamental freedoms; interests in competition, notably on secondary markets; and other public interests, notably in scientific progress and cultural, social, or economic development, (Pakistan).

0.17 In the sixteenth paragraph, the word “Needing” should be replaced by “Prompted by a desire” (European Union and its Member States).

0.18 The seventeenth paragraph should read “Taking into account the importance of increasing the number and range of accessible format works available to visually impaired persons/persons with print disabilities in the world, and 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,” (European Union and its Member States).

0.19 In the seventeenth paragraph, “to support” should be replaced by “to guarantee” (Spain).

0.20 In the seventeenth paragraph, replace "of Member States agreeing to make commitments both to increase" with "of increasing" (United States of America).

0.21 The final wording of the Preamble “having agreed as follows” may depend on the nature of the instrument (United States of America).

0.22 A new paragraph should be added and read “Desiring to harmonize and enhance national laws on such limitations and exceptions through an international framework consistent with the Berne Convention in order to facilitate access to knowledge in copyrighted works by persons with disabilities,” (Kenya, on behalf of the African Group).

0.23 Member States have agreed to craft a clause recognizing the Development Agenda for the Audiovisual Performers Treaty (AVP) and that, eventually, there probably should some consistency between the AVP provision and the provision in this instrument (United States of America). This is related to the sixteenth paragraph.

0.24 The number of paragraphs of the Preamble can be reduced from 17 to no more than 10 paragraphs (Egypt, Kenya, on behalf of the African Group; Russian Federation, United States of America).

[End of comments on the Preamble]

*(Sixteenth)*<sup>12</sup>

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

*(Seventeenth)*<sup>13</sup>

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/persons with print disabilities 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,

*(New paragraph)*<sup>14</sup>

Have agreed as follows<sup>15</sup>:

[End of Preamble]

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<sup>12</sup> (Sixteenth) Prompted by a desire to contribute to the implementation of the relevant recommendations of the Development Agenda of the World Intellectual Property Organization, (European Union and its Member States).

<sup>13</sup> (Seventeenth) Taking into account the importance of increasing the number and range of accessible format works available to visually impaired persons/persons with print disabilities in the world, and 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, (European Union and its Member States).

<sup>14</sup> (New paragraph) Desiring to harmonize and enhance national laws on such limitations and exceptions through an international framework consistent with the Berne Convention in order to facilitate access to knowledge in copyrighted works by persons with disabilities, (Kenya, on behalf of the African Group).

<sup>15</sup> Having agreed as follows, (United States of America)

Comments on Article A

A.01 The definition of “work” should also refer to scientific works as provided by the Berne Convention (Egypt, Russian Federation). Other construction could be made to include the scientific works (United States of America).

A.02 The definition of “work” should read “means a protected work within the meaning of the Berne Convention, whether published or otherwise made available to the public in any media.” (Brazil, European Union and its Member States, United States of America). Works refer to printed material (European Union and its Member States, United States of America). Variations to the current definition are also acceptable (United States of America).

A.03 The definition of “work” should be further elaborated (Senegal).

A.04 In the definition of “work”, “literary” should be replaced by “written literary” (Switzerland). Some other construction could be made to include the print format (United States of America)

[Comments on Article A continue, page 16]

ARTICLE A  
DEFINITIONS

For the purposes of these provisions

"work"<sup>16</sup>

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.

[Article A continues, page 17]

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<sup>16</sup> "work" means a protected work within the meaning of the Berne Convention, whether published or otherwise made available to the public in any media (Brazil, European Union and its Member States, United States of America).

"work" means a literary, scientific 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 (Egypt, Russian Federation).

"work" means a written 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 (Switzerland).

A.05 The definition of “accessible format copy” should refer to any work, not just those that are printed but also those that are in digital form (Algeria). Other construction could be made to recognize works that exist principally or originally in a digital format, even though what they are is print or writing (United States of America).

A.06 In the definition of “accessible format copy,” the phrase “as a person without a print disability” should be replaced by “as a person without visual impairment and print disabilities” (India).

A.07 The definition of “accessible format copy” should refer to actually any type of copy (Senegal).

A.07*bis* The definition of accessible format copy should be comprehensive and holistic in a manner that it encompasses both the printed and digital works (Pakistan).

[Comments on Article A continue, page 18]

[Article A, continued]

"accessible format copy"<sup>17</sup>

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.

[Article A continues, page 19]

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<sup>17</sup> "accessible format copy" means a copy of any 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 (Algeria).

"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 and print disabilities. The accessible format copy must respect the integrity of the original work and be used exclusively by beneficiary persons (India).

"accessible format copy" means any 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 (Senegal).

A.08 As to the definition of “authorized entity”, it is asked who authorizes the authorized entity and how trust is got (Japan).

A.09 As to the definition of “authorized entity”, first paragraph, the phrase “activities” should be replaced by “primary missions” (European Union and its Member States, United States of America).

A.10 As to the definition of “authorized entity”, first paragraph, the phrase “in accordance with national law” should be further clarified (Brazil) or deleted (European Union and its Member States, United States of America).

A.10*bis* In the definition of “authorized entity”, first paragraph, the reference to “one of the activities” of the governmental agency, a non-profit entity or non-profit organization shall allow for the possibility of inclusion of many schools, universities and other bona fide organizations for which accessible format provision is vital work but not a “primary” part of what they do. Therefore the first paragraph of definition is supported as it is in the text (Pakistan).

A.11 In the definition of “authorized entity”, the phrase “to assist persons with print disabilities” should be replaced by “to assist persons with visual impairment and persons with print disabilities” (India).

A.12 As to the definition of “authorized entity”, the second paragraph should read “an authorized entity maintains rules and procedures to establish the bona fide nature of persons with print disabilities that they serve.” (European Union and its Member States).

A.13 As to the definition of “authorized entity”, the second paragraph should start with the sentence “The national competent authorities authorize the authorized entities.” (Morocco, Senegal).

A.14 As to the definition of “authorized entity”, the second paragraph should read “an authorized entity maintains rules and procedures to determine the eligibility of the beneficiary persons that they serve” (United States of America).

A.15 In the definition of “authorized entity”, third paragraph, delete “prior” (Ecuador).

A.16 As to the definition of “authorized entity”, the third paragraph should have an additional sentence that reads “Member States/Contracting parties should encourage rightholders and beneficiary persons to cooperate and participate in authorized entities.” (European Union and its Member States).

A.17 As to the definition of “authorized entity”, third paragraph, the meaning of “trust” should be further discussed. There is a concern that the current wording might lead to a licensing system (India).

A.17*bis* As to the definition of “authorized entity”, third paragraph, a complex set of authorization, security and reporting standards for “authorized entities”, and a reference to prior permission to be attached to authorized entities shall defeat the purpose of the flexibility as it would make the process extensively cumbersome and complex. Each authorized entity should undertake self regulation with respect to security and reporting standards. The text proposes to introduce exceptions and limitations and the exercise of such exceptions or limitations should not be subject to the “trust” of rights holders or the approval of rights holders, whether it is prior or post approval. In view of this, it is proposed that the third paragraph be deleted entirely (Pakistan).

[Article A, continued]

"authorized entity"<sup>18</sup>

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.<sup>19</sup>

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.

[Article A continues, page 21]

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<sup>18</sup> "authorized entity" means a governmental agency, a non-profit entity or non-profit an 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 (India)

"authorized entity" means a governmental agency, a non-profit entity or non-profit organization that has as one of its primary missions to assist persons with print disabilities by providing them with services relating to education, training, adaptive reading, or information access needs. An authorized entity maintains rules and procedures to establish the bona fide nature of persons with print disabilities 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. Member States/Contracting parties should encourage rightholders and beneficiary persons to cooperate and participate in authorized entities. Organizations, institutions, and entities which are part of a nationwide network and adhere to all these characteristics are authorized entities (European Union and its Member States).

<sup>19</sup> "An authorized entity maintains rules and procedures to determine the eligibility of the beneficiary persons that they serve" (United States of America).

A.18 The definition of “authorized entity” should be deleted. Reservations are kept regarding the fourth paragraph (Kenya, on behalf of the African Group). African do not have authorized entities and a certain amount of flexibility is needed in that respect (Senegal).

A.19 In the definition of “authorized entity”, the fourth paragraph should be replaced by “Organizations, institutions, and entities which are part of a nationwide network and adhere to all these characteristics are authorized entities.” (European Union and its Member States).

A.20 The definition of “authorized entity” should include a reference to the need to keep statistical tracking of what is being used and how many copies are produced and distributed (Jamaica).

[Comments on Article A continue, page 22]

[Article A continues, page 23]

A.21 The definition of “reasonable price for developing countries” should be replaced by “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, taking into account the needs and income disparities of visually impaired persons/persons with print disabilities in that market.” (European Union and its Member States).

A.21bis The word “affordable’ must be retained in the definition of “reasonable price for developing countries”. Each developing country Member State must have the flexibility to determine what “reasonable price” is (Pakistan).

A.22 Further discussions and debates are essential on the complex issue of “reasonable price” as it is not mature (European Union and its Member States).

A.23 The definition of “copyright” should be further discussed, but in the meantime it is desirable to delete it (European Union and its Member States).

A.24 According to the nature of the instrument, there will be a need to agree on a definition of “Member State” or “Contracting Party”. In the meantime, it is desirable to delete it (European Union and its Member States).

A.25 The definition of “Member State” should read “means a State member of the World Intellectual Property Organization or a country of the Union established by the Berne Convention for the Protection of Literary and Artistic Works and/or a Contracting Party of the WCT” (Argentina).

A.26 The instrument should refer to “copyright and related rights to copyright” as using the single term of “copyright” to cover both categories of rights is confusing (Senegal). This is a cross-cutting issue, particularly in relation to the inclusion of neighboring or related rights (Brazil, European Union and its Member States) and the reference to members of WCT in the definition of “Member State” (Brazil).

A.27 An additional definition on “limitations” and “exceptions” should be included, particularly regarding the different effects that each definition according to national law (Algeria). It is not wise to introduce such a definition (Brazil, United States of America).

[End of comments on Article A]

[Article A, continued]

"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"<sup>20</sup>

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"<sup>21</sup>

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"<sup>22</sup> include copyright and any rights related to copyright recognized by Member States in accordance with national law.

[End of Article A]

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<sup>20</sup> "reasonable price for developing 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, taking into account the needs and income disparities of visually impaired persons/persons with print disabilities in that market (European Union and its Member States).

<sup>21</sup> The definition of "Member State" should be deleted (European Union and its Member States).

"Member State" means a State member of the World Intellectual Property Organization or a country of the Union established by the Berne Convention for the Protection of Literary and Artistic Works and/or a Contracting Party of the WCT (Argentina).

<sup>22</sup> The definition of "copyright" should be deleted (European Union and its Member States).

## Comments on Article B

B.01 There is no need to refer to persons with print disabilities, persons with reading disabilities, persons with visual impairment, etc. in the instrument. Since there is a definition of “beneficiary persons”, the term “beneficiaries” suffice and can replace the above terms in the text (Brazil, United States of America).

B.02 The definition of “beneficiary persons” should be included in Article A with the other definitions (Algeria, India). The separate treatment of this definition is the approach taken in the draft treaty submitted by Brazil, Ecuador, Mexico, Paraguay, later joined by Argentina. This construction stresses the importance that this is for the benefit of those people (Brazil, Egypt, Morocco, Nigeria, United States of America). Definitions in Article A and B could also be grouped under one single chapter called “Chapter on definitions” (Algeria).

B.03 The first line of the definition should read “A beneficiary person is:” Then each paragraph (a), (b) and (c) should start with the words “a person”, so that it is clear that there are three categories of beneficiaries (Morocco).

B.04 In Paragraph b), delete “or any other print disability” (United States of America).

B.05 Paragraph c) should read “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 in the manner of a person without such a disability” (United States of America).

[End of comments on Article B]

ARTICLE B<sup>23</sup>

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.

[End of Article B]

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<sup>23</sup> b) has a visual impairment or a perceptual or reading 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 (United States of America).

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 in the manner of a person without such a disability (United States of America).

Comments on new Article X

X.01 It is proposed to reinsert Article X which reads:

ARTICLE X

NATURE AND SCOPE OF OBLIGATIONS

1. Member States/Contracting parties should/shall adopt appropriate measures to implement the provisions of this international legal instrument/joint recommendation/treaty.
2. Member States/Contracting Parties should/shall apply the international legal instrument/joint recommendation/treaty transparently, taking into account the priorities and special needs of developing countries as well as the different levels of development of the Member States/Contracting Parties.
3. Member States/Contracting parties should/shall ensure the implementation of this international legal instrument/joint recommendation/treaty allows for timely and effective exercise of actions covered, including expeditious procedures that are fair and equitable (Kenya, on behalf of the African Group).

[End of comments on Article X]

NEW ARTICLE X<sup>24</sup>

NATURE AND SCOPE OF OBLIGATIONS

[End of Article X]

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<sup>24</sup> NATURE AND SCOPE OF OBLIGATIONS

1. Member States/Contracting parties should/shall adopt appropriate measures to implement the provisions of this international legal instrument/joint recommendation/treaty.

2. Member States/Contracting Parties should/shall apply the international legal instrument/joint recommendation/treaty transparently, taking into account the priorities and special needs of developing countries as well as the different levels of development of the Member States/Contracting Parties.

3. Member States/Contracting parties should/shall ensure the implementation of this international legal instrument/joint recommendation/treaty allows for timely and effective exercise of actions covered, including expeditious procedures that are fair and equitable (Kenya, on behalf of the African Group).

## Comments on Article C

C.01 Replace Member States by Member States/Contracting Parties. Also, replace shall by should/shall. This is to reflect the prevailing difference regarding the nature of the instrument, namely a recommendation or a treaty. This applies to the other articles as well (Brazil, Egypt, United States of America, European Union and its Member States, Senegal). *This change was included in the text.*

C.02 Article C should include the right of translation, after the right of reproduction. Translation is a key to technological and cultural development and exceptions to that right are allowed by Article 13 of the TRIPs Agreement (Egypt). The right of translation is implicit in the right of reproduction, but it can be included explicitly (Ecuador). The inclusion of the right of translation is a matter of concern, particularly regarding its justification and the moral rights ramifications (United States of America).

C.03 Article C should refer not only to “exceptions” but to “limitations and exceptions” (Algeria, United States of America).

[Comments on Article C continue, page 30]

ARTICLE C<sup>25</sup>

NATIONAL LAW EXCEPTIONS ON ACCESSIBLE FORMAT COPIES

1. A Member State/Contracting Party should/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.

[Article C continues, page 31]

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<sup>25</sup> (Title) NATIONAL LAW LIMITATIONS AND EXCEPTIONS ON ACCESSIBLE FORMAT COPIES  
(United States of America)

C.04 The phrase in Paragraph (1) “to facilitate the availability of works in accessible formats” significantly broadens the aim of the instrument and has broad implications. It should be preceded by the phrase “or any other equally effective measure” (European Union and its Member States).

C.05 In Paragraph (1), the reference to the WCT should be reinserted so that it reads “the right of making available to the public, as defined in article 8 of the WCT” (Brazil). The issue of rights “such as the reproduction right and the making available right while referring to copyright as defined under national law” needs further clarification (United States of America).

C.06 Paragraph (2)(A) should read “Authorized entities shall be permitted to make an accessible format copy of a work, obtain from another authorized entity a work in accessible format, and supply such a copy 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:”, i.e. delete the reference to “without the authorization of the copyright rights holders” and replace “these copies” by “such copies” (European Union and its Member States).

C.07 The footnote of Paragraph (2)(A) which reads “It is understood that cooperation or partnerships with other organizations, including for profit organizations, shall be permitted.” should be reinserted (Brazil, United States of America).

[Comments on Article C continue, page 32]

[Article C, continued]<sup>26</sup>

2. A Member State/Contracting Party 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.

[Article C continues, page 33]

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<sup>26</sup> 1. A Member State/Contracting Party should/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, or any other equally effective measure, to facilitate the availability of works in accessible formats for beneficiary persons as defined herein.

2. [...]:

(A) Authorized entities shall be permitted to make an accessible format copy of a work, obtain from another authorized entity a work in accessible format, and supply such a copy 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: [...] (European Union and its Member States).

C.08 In Paragraph (3), delete reference to three-step test “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.” This proposal of deletion is absolutely conditional on the inclusion of a separate Article *Ebis* (European Union and its Member States).

C.09 In Paragraph (3), the word “likewise” should be inserted before “limited” (Brazil, United States of America). Paragraph (3) is intended to state the freedom of Contracting Parties of the Berne Convention and the other copyright treaties to adopt other exceptions and limitations that also meet the three-step test (United States of America).

C.10 Paragraph (4) should read “the Member State/Contracting Party should/shall limit the exceptions or limitations provided for in this article to published works which, in an applicable special format, cannot be otherwise obtained within a reasonable time and at a reasonable price” (European Union and its Member States). The word “otherwise” should be retained in this paragraph (Brazil, United States of America). Exceptions should not depend on the existence of commercially available works, as in this case the question is defending a fundamental human right (Ecuador).

C.11 Paragraph (4) should read “The Member State/Contracting Party should/shall limit the exceptions or limitations provided for in this article to published works which, in an applicable special format, cannot be otherwise obtained within a reasonable time and at a reasonable price.” The term “otherwise” shows that there is a leeway for market-based solutions to get copies as an alternative to the exception (European Union and its Member States).

C.12 As to Paragraph (4), it is asked what “reasonable time” means. Delete from the second sentence “within a reasonable time and” (India).

C.13 Paragraph (4) should use the word “shall” so that exceptions are applied when there are no reasonable alternatives, and incentives to produce accessible materials remain (Jamaica).

C.14 In Paragraph (4), the word “said exceptions or limitations” should change to “exceptions or limitations under this Article”. This will clarify the scope of the provision (European Union and its Member States, United States of America).

C.15 Paragraph (4) should be moved as part, and at the end, of Paragraph (2) (Japan, Switzerland). This paragraph provides flexibility for alternative solutions but should not limit the flexibility in paragraph (3) beyond the limitations of the three-step test (Switzerland). This scope and proper ordering of this paragraph needs further consideration (United States of America).

C.16 In Paragraph (5), the expression of exceptions or limitations is used, but it does not mean that this refers to the licensing system (India).

C.17 The order of paragraphs could be a matter of further consideration for the sake of clarity. Paragraph 2(B) can change with 2(A), paragraph (3) can change to (1), paragraph (4) can change to (2), and paragraph (5) can change to (3) (Senegal). This sequence seems acceptable for the sake of coherence (European Union and its Member States).

[End of comments on Article C]

[Article C, continued]<sup>27</sup>

3. A Member State/Contracting Party 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/Contracting Party 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.

[End of Article C]

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<sup>27</sup> 3. A Member State/Contracting Party may fulfill Article C(1) by providing any other exception or limitation in its national copyright law.

4. The Member State/Contracting Party should/shall limit the exceptions or limitations provided for in this article to published works which, in an applicable special format, cannot be otherwise obtained within a reasonable time and at a reasonable price (European Union and its Member States).

3. [...] or limitation in its national copyright law that is likewise limited to certain special cases which [...],

4. The Member State/Contracting Party may limit exceptions or limitations under this Article to published works which, in the applicable special format, cannot be otherwise obtained within a reasonable time and at a reasonable price. (United States of America).

## Comments on Article D

D.01 In paragraph (1), add “or otherwise” after “export license” (Ecuador).

D.02 It is asked whether the reference in the first paragraph to “authorized entity” is an authorized entity of an exporting country. Under Japanese copyright law, the accessible format copy which is made in accordance with the provision of limitation on reproduction right can be exported as long as it is treated within the purpose of the provision of limitation. Therefore, it is possible for Japan to enable accessible format copies to be exported without an authorized entity which is precisely defined in Article A although an authorized entity may be one of good measures to ensure accessible format copies are treated within the purpose of the limitation. This kind of flexibility can contribute to cross-border exchange of accessible format copies (Japan).

D.03 It is also asked what paragraph (1) of Article D asks Member States to do exactly. According to the first paragraph, a Member State is required to achieve its legal condition under which its own authorized entity is allowed to distribute or make available accessible format copies in case the member state has an authorized entity and the authorized entity wants to do so. In other words, a member state is not necessarily required to establish an authorized entity or to implement the exportation of accessible format copies through an authorized entity. On the basis of this understanding on the first paragraph and thanks to the third paragraph, Article D is interpreted as it allows a Member State to adopt any other measure which satisfies the criteria of three step test and does not require an authorized entity (Japan).

D.03*bis* As to Paragraph (1), An authorized entity in one Member State must be able to distribute accessible format copies to beneficiaries in another Member State after determining the bonafide nature of the beneficiary persons they serve without having to undertake any other inquiry. Therefore the paragraph 1 be reworded as follows :  
“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 after determining the bona fide nature of the beneficiary person” (Pakistan)

D.03*ter* As to Paragraph (1), delete from the last sentence “where that other Member State would permit that beneficiary person to make or import that accessible copy” (India).

D.04 The word “importation” and “exportation” usually means the exchange of tangible goods or products, and usually does not mean, exchanging intangible goods such as the digital format. If the word importation and exportation in this instrument include exchanging the digital format, it is better to explicitly write this point somewhere in this instrument in order to prevent ambiguity (Japan).

D.05 In Paragraph (2)(A), delete “without the authorization of the rightholder” (European Union and its Member States).

D.05*bis* As to Paragraph 2, an authorized entity in one Member State must be able to provide accessible format copies to an authorized entity in another Member State. Article D(2)(a) must be retained as is (Pakistan).

[Comments on Article D continue, page 36]

ARTICLE D<sup>28</sup>

CROSS-BORDER EXCHANGE OF ACCESSIBLE FORMAT COPIES

1. Member State/Contracting Party should/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 beneficiary person 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.

[Article D continues, page 37]

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<sup>28</sup> 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 after determining the bona fide nature of the beneficiary person (Pakistan).

D.06 In Paragraph (2)(B), delete “without the authorization of the rightholder” (European Union and its Member States).

D.07 In Paragraph (2), after subparagraph (B), delete the last paragraph that reads “The Member State/Contracting Party 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” (European Union and its Member States). A separate paragraph (3)*bis* is proposed in this connection (European Union and its Member States).

D.08*bis* In Paragraph (2), delete in the second sentence “within a reasonable time and” (India).

D.08 In Paragraph (2), after subparagraph (B), include the phrase “under this article” after “making available,” to clarify that it does not refer to other things the Member State or Contracting Party may do. Also, delete the word “published” before “works,” to address the concern about capturing published and making available in media in the digital era. The paragraph will read “the Member State/Contracting Party may limit distribution or making available under this article of works which, in the applicable special format, cannot be otherwise obtained within a reasonable time and at a reasonable price, in the country of importation.” (United States of America).

[Comments on Article D continue, page 38]

[Article D, continued]<sup>29</sup>

2. A Member State/Contracting Party 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 rightholder to distribute or make available accessible format copies to authorized entities in other Member States/Contracting Parties 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 rightholder to distribute or make available accessible format copies to beneficiary persons in other Member States/Contracting Parties where the authorized entity has verified the individual is properly entitled to receive such accessible format copies under that other Member State/Contracting Party 's national law.

The Member State/Contracting Party 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.

[Article D continues, page 39]

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<sup>29</sup> 2. A Member State/Contracting Party 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/Contracting Parties 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 (European Union and its Member States).~~

2. [...]

(last paragraph) The Member State/Contracting Party may limit said distribution or making available under this Article of 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 (United States of America).

D.09 In Paragraph (3), delete reference to three-step test “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.” This proposal of deletion is absolutely conditional on the inclusion of a separate Article *Ebis* (European Union and its Member States).

D.10*bis* In Paragraph (3), add in the last sentence “and without prejudice to other exceptions to the exclusive rights of authors that are otherwise permitted by the Berne Convention or the TRIPS Agreement” (India).

D.10 In Paragraph (3), the word “likewise” should be inserted before “limited” (Brazil, United States of America). More clarification is needed regarding the insertion of this term (Ecuador). Paragraph (3) is intended to state the freedom of Contracting Parties of the Berne Convention and the other copyright treaties to adopt other exceptions and limitations that also meet the three-step test (United States of America).

D.11 It is proposed to add a new paragraph *3bis* that reads “The Member State/Contracting Party should/shall limit the exceptions or limitations provided for in this article to published works which, in an applicable special format, cannot be otherwise obtained within a reasonable time and at a reasonable price in the country of importation.” (European Union and its Member States).

[End of comments on Article D]

[Article D, continued]<sup>30</sup>

3. A Member State/Contracting Party 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.

[End of Article D]

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<sup>30</sup> 3. A Member State/Contracting Party may fulfill Article D(1) by providing any other exception or limitation in its national copyright law.

*3bis.* The Member State/Contracting Party should/shall limit the exceptions or limitations provided for in this article to published works which, in an applicable special format, cannot be otherwise obtained within a reasonable time and at a reasonable price in the country of importation (European Union and its Member States).

3. A Member State/Contracting Party may fulfill Article D(1) by providing any other exception or limitation in its national copyright law that is likewise limited to certain special cases [...] (Brazil, United States of America).

## Comments on Article E

E.01 The word “importation” and “exportation” usually means the exchange of tangible goods or products, and usually does not mean, exchanging intangible goods such as the digital format. If the word importation and exportation in this instrument include exchanging the digital format, it is better to explicitly write this point somewhere in this instrument in order to prevent ambiguity (Japan).

E.02 Delete the phrase “without the copyright rights holder’s authorization” (European Union and its Member States, United States of America). Article E should allow Member States to mirror the flexibility of their exception in relation to imports. That phrase could mean, for example, that in other articles where it is not specified, there is no need the right holders’ authorization. This article requires further discussion, in particular regarding the notion of importation in relation to copyright (European Union and its Member States).

E.03 The word “likewise” should be included in this provision after the word “shall” (United States of America).

[End of comments on Article E]

ARTICLE E<sup>31</sup>

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 should/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.

[End of Article E]

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<sup>31</sup> 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 should/shall permit a beneficiary person or an authorized entity acting on that person's behalf to import an accessible format copy (European Union and its Member States).

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 should/shall likewise permit a beneficiary person or an authorized entity acting on that person's behalf to import an accessible format copy (United States of America).

Comments on new Article *Ebis*

*Ebis.01* It is proposed to add a new Article *Ebis* which reads:

ARTICLE *Ebis*

All exceptions and limitations provided for in this instrument shall be 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 (European Union and its Member States).

*Ebis.02* Here the provision should read "shall" as it refers to the three-step test which relates to existing obligations under international agreements.  
(European Union and its Member States)

[End of comments on Article *Ebis*]

NEW ARTICLE *Ebis*<sup>32</sup>

[End of New Article *Ebis*]

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<sup>32</sup> All exceptions and limitations provided for in this instrument shall be 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 (European Union and its Member States).

## Comments on Article F

F.01 The wording of the article should change as follows:

“Member States shall ensure that beneficiaries of the exception provided by Article C are not prevented from enjoying the exception in cases where technological protection measures have been applied to a work.

A Member State may fulfill Article F(1) by permitting, under its national copyright law, circumvention of technological protection measures for the purposes of, and to the extent necessary for benefiting from an Article C exception” (Australia, Japan).

F.02 The phrase “In particular” should be added at the beginning of the second paragraph. This article should be seen in connection with the WCT and should be a matter of further discussion as it could be construed as giving technical protection measures precedence over other exceptions and limitations, which is not the case under WCT (Switzerland).

F.03 Change “the work” to “a work,” and change “Member States” to “a Member State/Contracting Party” because the intent of this article is to express the capacity of a single Member State or a single Contracting Party, not member states working together. Add “may” before “should/shall”. After “should/shall”, add “authorize competent authorities to”. The first paragraph of the Article would read “Member States/Contracting Parties may/should/shall authorize competent authorities to take appropriate measures to 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”. The second paragraph remains the same (United States of America).

F.04 Revise the title as “Obligations concerning Technological measures”, and delete paragraph (2) (India).

F.05 There are works that have fallen in the public domain and others that are still protected but can be used under certain exceptions, for instance, for scientific research purposes. Those works may be locked by the use of technological protection measure used by the rightholders which hamper the correct exercise of limitations and exceptions (Egypt).

[End of comments on Article F]

ARTICLE F<sup>33</sup>

OBLIGATIONS CONCERNING TECHNOLOGICAL 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/Contracting Parties should/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.

[End of Article F]

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<sup>33</sup> Member States shall ensure that beneficiaries of the exception provided by Article C are not prevented from enjoying the exception in cases where technological protection measures have been applied to a work.

A Member State may fulfill Article F(1) by permitting, under its national copyright law, circumvention of technological protection measures for the purposes of, and to the extent necessary for benefiting from an Article C exception (Australia, Japan).

Member States/Contracting Parties may/should/shall authorized competent authorities to take appropriate measures to 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 [...] (United States of America).

Comments on Article G

No comments were made on this Article.

[End of comments on Article G]

ARTICLE G  
RELATIONSHIP WITH CONTRACTS

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

[End of Article G]

Comments on Article H

No comments were made on this Article.

[End of comments on Article H]

ARTICLE H  
RESPECT FOR PRIVACY

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

[End of Article H]

Comment on new Article I

I.01 It is proposed to add a new Article I which reads:

“The three-step test should be interpreted in a manner that respects the legitimate interests of third parties, including

- interests deriving from human rights and fundamental freedoms;
- interests in competition, notably on secondary markets; and
- other public interests, notably in scientific progress and cultural, educational, social, or economic development” (Venezuela)

[End of comments on New Article I]

NEW ARTICLE I<sup>34</sup>

[End of New Article I and of document]

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<sup>34</sup> The three-step test should be interpreted in a manner that respects the legitimate interests of third parties, including

- interests deriving from human rights and fundamental freedoms;
- interests in competition, notably on secondary markets; and
- other public interests, notably in scientific progress and cultural, educational, social, or economic development” (Venezuela)