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**EXECUTIVE SUMMARY – SCOPING STUDY ON ACCESS TO COPYRIGHT PROTECTED
WORKS BY PERSONS WITH DISABILITIES**

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EXECUTIVE SUMMARY

The aim of the scoping study is to survey the interaction between copyright and related rights and access to protected works by people with disabilities. The scoping study explores the interaction between different types of disability and different types of protected works. It also examines the technologies that are used to create accessible formats of protected works. Following that, the study discusses the copyright implications of the interaction between disability and categories of copyrighted works and the technologies that are used to access them.

The scoping study analyzes whether the use of accessibility techniques and technologies may implicate exclusive rights in the categories of works protected by copyright and related rights. The study does not address implications already covered by the Marrakesh VIP treaty and techniques/technologies that do not conceivably implicate copyright or related rights.

The study found that member states have taken a diverse set of approaches to accessibility and copyright, both in implementations of the Marrakesh Treaty and in other copyright reform efforts. States varied significantly in terms of their coverage of specific copyrighted works and acts covered by exceptions and limitations, categories of disabilities—visual, aural, physical, and cognitive/intellectual – covered and other conditions on eligibility, identified impediments to accessibility-oriented copyright reforms, and intersections with national accessibility laws and regulations.

MEMBER STATE QUESTIONNAIRE

The study also presents the results of the member state questionnaire which was distributed in order to gather data to inform a discussion of the current state of national legal frameworks covering the topic of access by people with disabilities to works that might be protected by copyright and related rights.

As of 26 October 2017, responses to the questionnaire were submitted by twenty-three states. Four member states did not authorize the authors of the study to make their responses publicly available therefore specific references to their responses have been omitted from the study.¹ The findings of their responses to the questionnaire are summarized below. The information in this summary will be discussed in more detail in the report to be presented at SCCR/35 in November.

ADDRESSING ACCESSIBILITY IN NATIONAL COPYRIGHT STATUTES

Most of the responding states had some statutory provision to allow people with disabilities (or those persons or entities acting on their behalf) to undertake acts to make copyrighted works accessible. In addition, a majority of the states who already had a statutory provision indicated that they planned or were considering further changes—some to comply with the provisions of the Marrakesh Treaty and others more broadly. A number of other countries are in the midst of the process (or have yet to begin the process) of adopting legislation to implement the Marrakesh treaty.

¹ The following nineteen countries have authorized the use of their responses as non-confidential: Botswana, Brazil, Chile, Czech Republic, Ecuador, El Salvador, Estonia, Guatemala, Honduras, Indonesia, Serbia, Seychelles, Singapore, Slovakia, Sweden, Thailand, Turkey and United Kingdom.

SPECIFIC ACTS

All responding states with responsive statutes defined the scope of their statutes in terms of specific acts that could be performed on copyrighted works. Of those states:

- All responding states with responsive statutes, with the exception of one state, covered **reproduction** in their exceptions and limitations.
- A significant majority covered **distribution**.
- More than half covered **communication to the public** or **making available to the public**.
- Roughly half covered **adaptation**.
- Fewer than half covered **importation, exportation, or circumvention of technological protection measures**.

SPECIFIC DISABILITIES

Most responding states elaborated on the extent to which the above-referenced exceptions and limitations applied only to particular disabilities. Of those states:

- A significant majority applied the exceptions and limitations to people with **any disability**, with a few states requiring the disability to have a nexus with the need to access the work at issue or limiting the scope of eligible disabilities in other non-copyright laws.
- Of the states *not* applying the exceptions and limitations to people with any disability:
 - All of the remaining states applied their exceptions and limitations to **visual impairments**.
 - Fewer than half of the remaining states applied their exceptions and limitations to various other disabilities, including **deafness/hard of hearing, cognitive and intellectual disabilities, or motor disabilities**.

CATEGORIES OF COPYRIGHTED WORKS

Twelve of the responding states elaborated on the extent to which the above-referenced exceptions and limitations applied only to particular types of copyrighted works. Of those states:

- A minority applied their exceptions and limitations to **all types of works**;
- Of the remaining states, roughly half covered **written works**.²
- Several states covered **other categories of works**, such as audiovisual works, artistic works, and scientific works.

CONDITIONS FOR USE

The majority of the states imposed various types of conditions other than specific acts, specific disabilities or categories of copyrighted works on the exercise of limitations and exceptions. The additional conditions varied significantly and were highly specific in many cases, so a full elaboration is beyond the scope of this summary and will be included in the complete report. However, some conditions included:

² The survey used the term “written works,” which was intended to refer to “literary works.”

- Restrictions on commercial use or requirements for non-profit purposes;
- A lack of commercial availability of the relevant work in accessible formats;
- Remuneration to the copyright owner, either as a matter of course or upon request;
- Consistency with the three-step test;
- Copyright management information requirements; and
- Non-impact on existing markets for the works.

IMPEDIMENTS TO THE USE OF EXCEPTIONS AND LIMITATIONS

Fewer than half the responding states indicated impediments to the use of their existing exceptions and limitations. Some of the indicated impediments included:

- A more general lack of government support for people with disabilities;
- Difficulty working with publishers or other entities providing copyrighted works;
- A lack of awareness about the availability of the exceptions and limitations, including specifically about their cross-border operation.
- A lack of engagement from disability stakeholders as a result of limited resources and capacity-building capability.

INTERSECTION BETWEEN COPYRIGHT LIMITATIONS AND EXCEPTIONS AND RELATED DISABILITY LAWS

While much of member states' existing legislation covering copyrighted works focuses on copyright and related rights, some states also have disability and/or telecommunications legislation and/or regulations imposing accessibility requirements on certain types of works. The details vary widely and are explored more thoroughly in the complete report, but most were focused on requirements for closed captioning and sign language for audiovisual programming.

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