

**For discussion on
16 May 2017**

**Legislative Council
Panel on Commerce and Industry**

**Copyright Exceptions for People with a Print Disability under
the “Marrakesh Treaty to Facilitate Access to Published Works for Persons
Who Are Blind, Visually Impaired or Otherwise Print Disabled”**

PURPOSE

The Government launched a three-month consultation exercise on 9 May 2017 to gauge views on areas in the relevant provisions in the Copyright Ordinance (Cap. 528) which might need to be amended to align with the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired, or otherwise print disabled. A copy of the consultation paper is at the Annex for Members’ reference.

BACKGROUND

2. “The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled” (“Marrakesh Treaty”) came into force in September 2016. It is an international agreement concluded under the auspices of the World Intellectual Property Organization (WIPO). Its main goal is to facilitate and enhance access to copyright works in accessible forms for persons with a print disability.

3. In gist, the Marrakesh Treaty requires contracting parties to provide for limitations or exceptions in their domestic laws such that: (a) persons with print disabilities and certain organizations may perform a range of acts in relation to certain types of copyright works for the benefit of those beneficiaries without infringing copyright if certain conditions are met; and (b) exchange of accessible format copies of works produced as provided under the Marrakesh Treaty is allowed across international borders.

4. As at April 2017, 27 countries have ratified or acceded to the Marrakesh Treaty. The number is expected to rise. With the Marrakesh Treaty coming into force, there has been an increasing demand from the local community for an enhanced copyright regime in line with the Marrakesh Treaty. While the existing Copyright Ordinance (Cap. 528) has set out a series of

copyright exceptions to serve the needs of persons with a print disability, and the existing exceptions largely conform to the requirements under the Marrakesh Treaty, the Government agrees that it is the appropriate time to conduct a review of the existing copyright exceptions¹ for persons with a print disability under the Copyright Ordinance to ensure that they can comply with the latest international standards under the Marrakesh Treaty.

CONSULTATION

5. To tie in with the consultation exercise, the Government issued a consultation paper on 9 May 2017, seeking public views on a number of issues, as listed below, which require further review:

- (i) the scope of “beneficiary person”;
- (ii) the scope of “specified body”;
- (iii) the types of copyright works covered by the print disability-related exceptions;
- (iv) the acts which could be performed by persons with a print disability and/or specified bodies;
- (v) the conditions to be met under the existing provisions;
- (vi) the application of anti-circumvention of technological measures provisions; and
- (vii) cross-border exchange of accessible copies².

6. The consultation exercise will last for three months, up to 9 August 2017. During the consultation period, the Government will reach out to key stakeholders including users’ groups and copyright owners to gauge views. We will carefully consider comments received before taking a policy decision on whether and how we should amend the Copyright Ordinance to align it with the Marrakesh Treaty.

ADVICE SOUGHT

7. We look forward to the views of Members on the issues set out in the consultation paper.

**Commerce and Economic Development Bureau
Intellectual Property Department
May 2017**

¹ Sections 40A to 40F of the Copyright Ordinance, enacted in 2007, contain specific exceptions that allow for the production of specially adapted copies of copyright works for their use.
² Marrakesh Treaty adopted the defined term “accessible format copy” , whereas the existing Copyright Ordinance (Cap. 528) adopted the defined term “accessible copy”. They basically encompass the same meaning.

Review of Copyright Exceptions for Persons with a Print Disability

Consultation Paper

Purpose

1. The Marrakesh Treaty which seeks to facilitate access to published works for persons who are blind, visually impaired, or otherwise print disabled, came into force in September 2016. The Government has reviewed the relevant provisions in the Copyright Ordinance (Cap. 528) to identify areas which might need to be amended to align with the Marrakesh Treaty. The Commerce and Economic Development Bureau (CEDB) and the Intellectual Property Department (IPD) invite submissions to assist the Government in considering the need and directions of the legislative proposals required to bring the relevant regime in line with the Marrakesh Treaty.

Background

Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (“Marrakesh Treaty”)

2. The Marrakesh Treaty is an international agreement concluded under the auspices of the World Intellectual Property Organization (WIPO)¹. Its main goal is to facilitate and enhance access to copyright works in accessible forms for persons with a print disability.
3. The Marrakesh Treaty requires contracting parties to provide for

¹ WIPO is an agency under the United Nations overseeing services and policies of intellectual property, with 189 member states. Hong Kong joins the delegation of China in attending annual meetings of the Assemblies of the Members States held by WIPO.

limitations or exceptions in their domestic laws such that persons with print disabilities (identified as “beneficiary person(s)” under Article 3 of the Treaty) and certain organizations (identified as “authorized entity(ies)” under Article 2(c) of the Treaty) may perform a range of acts in relation to certain types of copyright works for the benefit of those beneficiaries without infringing copyright if certain conditions are fulfilled.

4. Under the Marrakesh Treaty, the copyright works covered by such limitations or exceptions are literary and artistic works in the form of text, notation and/or related illustrations, as well as audiobooks. The limitations or exceptions to be provided under domestic laws should allow the making and supplying of copies of such copyright works in an accessible format, i.e. any format that enables a beneficiary to have access to the content as feasibly and comfortably as someone who is not print disabled.
5. The Marrakesh Treaty also requires contracting parties to provide for exchange across international borders of accessible format copies of works produced as provided under the Marrakesh Treaty, so that contracting parties can pool their respective efforts in creating accessible formats and increase the overall number of accessible works worldwide. Specifically, the Marrakesh Treaty requires that the provisions should enable an authorized entity to distribute or make available such accessible copies to a beneficiary or authorized entity in another contracting party.
6. The Marrakesh Treaty was adopted by the Members States of the WIPO on 27 June 2013. It came into force on 30 September 2016 and as at April 2017, 27 countries have ratified or acceded to it.² The number is expected to rise. Full text of the Marrakesh Treaty is at [Annex A](#).

² Contracting Parties to the Marrakesh Treaty which have also deposited instruments of ratification or accession include Canada, Korea, Australia and Singapore. China is a signatory of the Marrakesh Treaty. Upon ratification, the Central People’s Government may apply the Marrakesh Treaty to Hong Kong in accordance with Article 153 of the Basic Law.

Exceptions currently provided under the Copyright Ordinance

7. The existing Copyright Ordinance (Cap. 528) has already set out a series of copyright exceptions to serve the needs of persons with a print disability. Sections 40A to 40F of the Copyright Ordinance, enacted in 2007, contain specific exceptions that allow for the production of specially adapted copies of copyright works for their use. Relevant provisions are at Annex B.
8. Under the existing copyright law, the making and supplying of accessible copies³ (e.g. in the form of a Braille, large-print, electronic version, or sound recording, etc.) from the whole or part of a copy of literary, dramatic, musical or artistic work for the personal use of the persons with a print disability are allowed without infringing copyright, provided that the prescribed conditions are satisfied. Persons with a print disability or persons acting on their behalf are allowed to make one single accessible copy of the copyright work for the personal use of the persons with a print disability.⁴ Specified bodies⁵ are allowed to make or supply multiple accessible copies of a commercial publication of such copyright works for the personal use of the persons with a print disability.⁶ There are also provisions covering supply of intermediate copies created during the production of accessible copies under prescribed conditions without infringing copyright.⁷
9. The existing exceptions in the Copyright Ordinance largely conform to the requirements under the Marrakesh Treaty in respect of the making of accessible copies and the types of copyright works which may be copied.
10. With the Marrakesh Treaty coming into force in September 2016,

³ Marrakesh Treaty adopted the defined term “accessible format copy”, whereas the existing Copyright Ordinance (Cap. 528) adopted the defined term “accessible copy”. They basically encompass the same meaning.

⁴ Section 40B of the Copyright Ordinance.

⁵ The meaning of “specified body” is explained in paragraph 15.

⁶ Section 40C of the Copyright Ordinance.

⁷ Section 40D of the Copyright Ordinance. A specified body may lend or transfer to another specified body an intermediate copy created during the production of accessible copies provided that the prescribed conditions are met.

there has been an increasing demand from the local community for an enhanced copyright regime in line with the Marrakesh Treaty. The Government agrees that it is the appropriate time to conduct a review of the existing copyright exceptions for persons with a print disability to ensure that they meet the latest international standards under the Marrakesh Treaty.

Areas of review

11. The Government has identified the following areas which might need to be amended to align with the Marrakesh Treaty:
 - (i) the scope of “beneficiary person”;
 - (ii) the scope of “specified body”;
 - (iii) the types of copyright works covered by the print disability-related exceptions;
 - (iv) the acts which could be performed by persons with a print disability and/or specified bodies;
 - (v) the conditions to be met under the existing provisions;
 - (vi) the application of anti-circumvention of technological measures provisions; and
 - (vii) cross-border exchange of accessible copies.

The scope of “beneficiary person”

12. Section 40A of the Copyright Ordinance defines “print disability” in relation to a person to mean:
 - (a) *blindness;*
 - (b) *an impairment of his visual function which cannot be improved by the use of corrective lenses to a level that would normally be acceptable for reading without a special level or kind of light;*
 - (c) *inability, through physical disability, to hold or manipulate a book; or*
 - (d) *inability, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for*

reading.

13. According to Article 3 of the Marrakesh Treaty, a “beneficiary person(s)” is someone who is blind, has a visual impairment or a perceptual or reading disability which cannot be improved 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 is otherwise unable through physical disability to hold or manipulate a book or to focus or move their eyes to an extent that would be normally acceptable for reading.
14. The existing scope of “print disability” under section 40A of the Copyright Ordinance is largely comparable with the scope of “beneficiary person(s)” under the Marrakesh Treaty. However, the definition of “beneficiary persons” under the Marrakesh Treaty further extends to persons with a perceptual or reading disability. The Government understands that “perceptual or reading disability” may cover dyslexia. We may consider extending the scope of the beneficiaries in our law by including “persons with a perceptual or reading disability” to align with the requirements under the Marrakesh Treaty.

We would like to know -

- 14.1 Should the Copyright Ordinance be amended to expand the scope of “beneficiary person(s)” in line with Article 3 of the Marrakesh Treaty so that people with a “perceptual or reading disability” would be covered by the relevant exception?
- 14.2 Is the generic reference to “perceptual or reading disability” clear enough for the operation of the exceptions? If not, how should the scope of “beneficiary person(s)” be better defined in the Hong Kong context? Is it necessary or practical to, say, list each specific type of perceptual or reading disability?

The scope of “specified body”

15. Section 40A of the Copyright Ordinance defines “specified body” as follows:
- (a) an educational establishment specified in section 1 of Schedule 1;*
 - (b) an educational establishment exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112);*
 - (c) an educational establishment receiving direct recurrent subvention from the Government;⁸ or*
 - (d) an organization which is not established or conducted for profit and whose main objects are charitable or are otherwise concerned with the advancement of welfare for persons with a print disability.*
16. Article 2(c) of the Marrakesh Treaty defines "authorized entity" as an entity that is authorized or recognized by the government to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis. It also includes a government institution or non-profit organization that provides the same services to beneficiary persons as one of its primary activities or institutional obligations.
17. The current definition of “specified bodies” under the Copyright Ordinance largely covers the “entities” that the Marrakesh Treaty intends to cover. That said, we welcome suggestions on whether the scope of “specified bodies” should be extended to cover other organizations that do not come within the current definition, for the objective of aligning with the Marrakesh Treaty.

⁸ By sub-paragraphs (a) to (c), Government schools, non profit-making schools (exempted from tax under section 88 of the Inland Revenue Ordinance) and schools receiving direct recurrent subvention from the Government are covered in the definition of “specified body”.

We would like to know -

17.1 Should the definition of “specified body” in section 40A of the Copyright Ordinance be expanded? If so, what other kinds of organizations should be covered for the objective of aligning with the Marrakesh Treaty?

The types of copyright works covered by the print disability-related exceptions

Scope of works

18. Current exceptions for persons with a print disability under sections 40A to 40F of the Copyright Ordinance apply to four types of copyright works, i.e. literary, dramatic, musical or artistic work.⁹ Furthermore, the exercise of the exceptions will not infringe the copyright in the typographical arrangement in the case of a published edition.
19. The works covered by the Marrakesh Treaty are literary and artistic works¹⁰ in the form of text, notation and/or related illustrations, as well as audiobooks. We consider that the scope of copyright works in our existing exception is sufficiently broad to cover the works in the Treaty, except that “works in audio form” is not currently included in the Copyright Ordinance.¹¹ To align with the Marrakesh Treaty, works in audio form, such as audiobooks, should also be included in our law.

⁹ Literary, dramatic and musical works are respectively defined in section 4 of the Copyright Ordinance. Artistic work is defined in section 5 of the Ordinance.

¹⁰ Article 2(a) of the Marrakesh Treaty refers to "literary and artistic works" as defined in Article 2(1) of the Berne Convention. In a nutshell, these works include books, pamphlets and other writings, dramatic or dramatico-musical works, choreographic works, cinematographic works and entertainments in dumb show, works of drawing, painting, photographic works, illustrations and musical compositions with or without words.

¹¹ According to the Agreed statement to Article 2(a), the definition of “works” includes works in audio form, such as audiobooks. The Marrakesh Treaty contained several Agreed Statements which are also adopted by WIPO’s Diplomatic Conference to Conclude the Marrakesh Treaty on 27 June 2013. The Agreed Statements provide further clarification and supplementary information to the main articles of the Marrakesh Treaty.

20. Separately, the Marrakesh Treaty requires that accessible copies should only be made from works that are “published or otherwise made publicly available in any media”. The position is slightly different in our copyright law in this respect. As mentioned in paragraph 8 above, specified bodies are only permitted under the existing law to make or supply multiple accessible copies of a “commercial publication” of a copyright work for the use of persons with a print disability. However, where a single accessible copy is made by a person with a print disability (or a person on his behalf) for his personal use, there is no restriction that the copyright work concerned should be published, whether commercially or otherwise. In other words, an accessible copy can be made from an unpublished work in the above circumstances. In order to align with the Marrakesh Treaty, we will need to include a condition in our law to the effect that accessible copies should only be made from works that are “published or made publicly available in any media” in all circumstances. At the same time, we can remove the existing restriction that confines the exception to a “commercial publication” of a copyright work.

We would like to know –

20.1 Should the scope of the exceptions be amended in line with the Marrakesh Treaty to cover copyright works that are published or otherwise made publicly available in any media?

*Accessible format copy*¹²

21. “Accessible copies” of copyright works are versions of works which provide improved access to those works for persons with a print disability. Section 40F(3) of the Copyright Ordinance provides that accessible copies may be in the form of –

¹² See footnote 3.

- (a) a sound recording;
- (b) a Braille, large-print or electronic version of the work; or
- (c) any other specialized format of the work.

22. Article 2(b) of the Marrakesh Treaty defines “accessible format copy” as 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 or other print disability.

23. We consider that our current exception provides for the same range of accessible format copies as set out in the Marrakesh Treaty and no amendment will be required. That said, we welcome suggestions on whether there is any particular format, which is not covered by the current definition but should be so covered for the purpose of aligning with the Marrakesh Treaty.

We would like to know –

23.1 Are there any formats which should be added to the definition of “accessible copies” in section 40F(3) of the Copyright Ordinance?

The acts which could be performed by persons with a print disability and/or specified bodies

24. As mentioned in paragraph 8 above, persons with a print disability are allowed to make a single accessible copy of certain copyright works for their personal use and specified bodies are permitted to make multiple accessible copies for distribution to persons with a print disability. In both cases, the accessible copies can only be made from a master copy of certain copyright work which is not an infringing copy possessed by the person with a print disability or the specified body.

25. The acts of making and supplying of accessible copies to the beneficiaries permitted under the existing provisions are largely comparable to the limitations and exceptions to the rights as provided under Article 4(1)(a) of the Marrakesh Treaty for

facilitating the availability of copyright works in accessible format copies for beneficiary persons.¹³ However, there is room for improvement in our existing provisions by clarifying that the act of “supplying” in the existing provisions covers “distribution” and “making available to the public”.¹⁴

26. Furthermore, under Article 4(1)(b) of the Marrakesh Treaty, a limitation or exception to the right to public performance may also be provided to facilitate access to works for beneficiary persons. This is not a mandatory requirement under the Treaty. We further understand that the scope of situations which may be addressed by the exception to the right to public performance appears to be very limited. Such situations may already be covered under other existing exceptions or permitted acts provided under the Copyright Ordinance (e.g. in the case of a performance of a dramatic work before a group consisting exclusively of persons with print disability, the performance might be covered by the existing permitted act for public performance in schools or other organizations established for charitable purpose if the prescribed conditions are met.¹⁵ Nevertheless, we would like to seek views on whether there is a need for providing for an additional exception to the right to public performance in Hong Kong.

We would like to know –

- 26.1 Do you agree that amendment should be made to clarify that supply of accessible copies to beneficiaries may include distribution as well as by way of making available to the public?
- 26.2 Is there a need to provide for an additional exception to the right of public performance in order to facilitate access to works for beneficiary persons? If so, what are the circumstances justifying that such an exception is required?

¹³ Right of reproduction, the right of distribution, and the right of making available to the public.

¹⁴ The right of making available to the public refers to the right to make available to the public a copyright work (including its copies) by wire or wireless means such as through the Internet (see section 26 of the Copyright Ordinance). An accessible copy of a copyright work may be in the form of electronic version of the work (see section 40F(3)(b) of the Copyright Ordinance) which can be made available to the beneficiaries through the Internet.

¹⁵ Sections 43 and 76 of the Copyright Ordinance.

Conditions to be met under the existing provisions

27. At present, the exercise of exceptions in sections 40B and 40C of the Copyright Ordinance is subject to a number of conditions, as follows:

- (a) To exercise the exceptions, a person with print disability or the specified body is required to make accessible copies from a master copy of certain copyright work possessed by them which is not an infringing copy;
- (b) At the time when the accessible copy is made, the maker or the specified body has to be satisfied that copies in a form that is accessible to persons with a print disability cannot be obtained at a reasonable commercial price after making reasonable enquiries;
- (c) For a specified body relying on the exceptions under section 40C, it has the further obligation to notify the copyright owner of its intention to make and supply accessible copies of copyright works or that it has already performed such acts, within a reasonable time either before or after performing such acts, unless it cannot ascertain the identity and contact details of the copyright owner after making reasonable enquiries; and
- (d) The specified body should also make a record as soon as practicable of any accessible copy made or supplied pursuant to section 40C and retain such record for 3 years.¹⁶

The above conditions are comparable to the conditions provided under Article 4(2) and 4(4)¹⁷ of the Marrakesh Treaty.

¹⁶ Sections 40B, 40C and 40E of the Copyright Ordinance.

¹⁷ Article 4(4) of the Marrakesh Treaty allows contracting parties to impose a “commercial availability” condition on the exceptions. In other words, persons with a print disability and/or specified bodies will not be able to rely on exceptions to create a certain type of accessible format copy if such format copy is commercially available under reasonable terms.

28. Such conditions have been in place since 2007 and they serve to strike a balance between adequate protection of copyright and reasonable use of copyright work. While the provisions seem to be working smoothly so far, and we intend to retain these provisions in the Copyright Ordinance, we welcome views on whether there are any concerns relating to the operation of the current conditions and whether any modifications may be required.

We would like to know -

- 28.1 Do you agree that the current conditions (such as the requirement to make reasonable enquiries as to “commercial availability” and to notify the copyright owner of intention to make or supply accessible copies) for utilizing the exceptions provided under the Copyright Ordinance should be retained?
- 28.2 If not, in what ways can we modify the terms of the conditions or requirements before one may invoke the exceptions and why?

The application of anti-circumvention of technological measures provisions

29. Under the existing Copyright Ordinance, a person who does an act which circumvents a technological measure applied to a copyright work or performance may attract legal liability.¹⁸ To ensure that the prohibitions would not hinder the development of technology and the legitimate use of copyright work, specific exceptions, subject to prescribed conditions, are provided for under sections 273D to 273F of the Copyright Ordinance. At present, the exceptions under sections 273D to 273F do not apply to the exceptions for persons with a print disability.
30. Article 7 of the Marrakesh Treaty requires contracting parties to take appropriate measures, as necessary, to ensure that when they provide

¹⁸ A technological measure used for copyright protection is any measure that acts as a barrier to prevent infringement of a copyright work, which may include access control measures or copy control measures. A person who knowingly does an act which circumvents a technological measure applied to a copyright work or performance may incur civil or even criminal liability under sections 273A to 273C of the Copyright Ordinance.

adequate legal protection and effective legal remedies against the circumvention of effective technological measures, this legal protection does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in the Marrakesh Treaty.

31. While the existing exceptions for persons with a print disability appear to run well without corresponding exemptions from anti-circumvention measures, to align with the principle enshrined in Article 7 of the Marrakesh Treaty, we consider that there is a case to amend the Copyright Ordinance to provide suitable exceptions for persons with a print disability (or the specified bodies) to circumvent technological protection measures if the copyright owner fails to provide them with access to the works.

We would like to know -

- 31.1 Whether persons with a print disability or the specified bodies have in practice any difficulties in gaining access to copyright works for the purpose of making accessible copies? If so, please briefly explain the problems encountered.
- 31.2 Whether the above difficulties could be resolved by non-legislative means such as requesting the copyright owner concerned to provide copies of the works for making the accessible copies?
- 31.3 If non-legislative means are not desirable, whether the Copyright Ordinance should be amended to exempt print disability-related exceptions from technological protection measures provisions and if so, under what conditions should the persons with a print disability (or the specified bodies) be allowed to use the exception?

Cross-border exchange of accessible copies

32. The existing print disability-related exceptions under the Copyright Ordinance only cater for the making and supplying of accessible copies to persons with a print disability for personal use. There is no dedicated provision as to other further uses of accessible copies made pursuant to the exceptions, such as exporting such copies or to

allow the importation of such copies made in other jurisdictions.

33. Articles 5 and 6 of the Marrakesh Treaty provide for cross-border exchanges of accessible format copies made pursuant to the exceptions, i.e. exporting such copies to or importing such copies from other contracting parties for use by beneficiaries. On exports of accessible format copies, the copies may be exported provided that the authorized entity exporting the copies did not know (or did not have reasonable grounds to know) that such copies would be used for other than by the beneficiaries in the other contracting party¹⁹. The above requirement concerning “lack of knowledge” could be implemented using different means, for example, by requiring the specified body to establish or verify the identity of the overseas beneficiary receiving the accessible copies to ensure that such cross-border exchange of accessible copies would only work for the benefit of the intended beneficiaries. Separately, to strike a balance between the rights of the copyright owners and the interest of the users, prior to exporting any accessible copies, specified bodies could be required to confirm with the authorized entity in the importing jurisdiction that accessible copies of such works cannot be obtained at reasonable commercial price in that jurisdiction. As regards imports of accessible format copies, the specified body could be required to take appropriate measures to satisfy itself that the accessible copies of the relevant copyright works cannot be obtained at a reasonable commercial price in the importing jurisdiction.
34. Allowing cross-border exchange of accessible copies will greatly enhance global diffusion of such copies, bringing significant benefits to the print-disabled community. We intend to add new provisions to the Copyright Ordinance to specifically allow imports and exports of accessible copies in line with the Marrakesh Treaty. We may also consider appropriate conditions to be imposed.

¹⁹ Article 5(2) of the Marrakesh Treaty.

We would like to know -

34.1 Do you agree that cross-border exchange of accessible copies should be permitted? Should any additional conditions be imposed in relation to cross-border exchange of accessible copies, so as to strike a reasonable balance between the rights of copyright owners and the users, and to avoid abuse?

Way forward and guiding principles

35. The Government invites views on the various issues identified above, and will duly consider the views received during the consultation period before taking a policy decision on whether and how we should amend the Copyright Ordinance to align it with the Marrakesh Treaty. In considering the possible options for addressing the issues and for formulating the proposed amendments to the Copyright Ordinance, we would be guided by the following broad principles –

- (a) a fair balance between protecting the legitimate interests of copyright owners and the public interest of facilitating and enhancing access to copyright works in accessible forms for persons with a print disability, should be maintained;
- (b) any copyright exception to be introduced must be fully compliant with our international obligations such as the “three-step test” requirement under Article 13 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) of the World Trade Organization²⁰; and

²⁰ Article 13 of the TRIPS Agreement provides that “Members shall confine limitations or exceptions to exclusive rights 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 rights holder.” To comply with the “three-step test”, the Administration must ensure that the exception (a) is confined to “special cases”, (b) does not conflict with a normal exploitation of the work, and (c) does not unreasonably prejudice the legitimate interests of the copyright owner. Article 11 of the Marrakesh Treaty also refers to the need to comply with international obligations including Article 13 of the TRIPS Agreement.

- (c) any proposed amendment to the Copyright Ordinance must be sufficiently clear and certain so as to afford a reasonable degree of legal certainty.

How to respond

- 36. You are invited to provide your submissions or views on the various issues set out in this consultation document on or before 9 August 2017 through the post, facsimile or email –

Mail: Director of Intellectual Property
Intellectual Property Department, the HKSAR Government
25th Floor, Wu Chung House
213 Queen's Road East, Wanchai
Hong Kong

Fax: 2574 9102

Email: mat_consultation@ipd.gov.hk

- 37. Respondents with a print disability may contact the Intellectual Property Department at 2961 6817 to arrange an alternative method of providing response.
- 38. It is voluntary for members of the public to supply their personal data when providing views on this consultation paper. Any personal data provided with a submission will only be used for the purposes of this public consultation exercise. The submissions and personal data collected may be passed to relevant Government bureaux and departments for purposes directly related to this consultation exercise. The Government bureaux and departments receiving any personal data are bound by the purposes in their subsequent use of such data.
- 39. The Government may publish the submissions made in response to this consultation paper for public viewing after the conclusion of the consultation exercise. If you do not wish your name or your

affiliation (or both) to be disclosed, please state so when making your submission.

40. Any sender providing personal data in the submission will have the rights of access and correction with respect to such personal data. Any requests for data access or correction of personal data should be made in writing.
41. An electronic copy of this document is available at the following websites –

<http://www.cedb.gov.hk/citb>

<http://www.ipd.gov.hk>

**Commerce and Economic Development Bureau
Intellectual Property Department
May 2017**

Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled*

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* This Treaty was adopted by the Diplomatic Conference to Conclude a Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities on June 27, 2013.

Preamble

The Contracting Parties,

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

Mindful of the challenges that are prejudicial to the complete development of persons with visual impairments or with other print disabilities, which limit their freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds on an equal basis with others, including through all forms of communication of their choice, their enjoyment of the right to education, and the opportunity to conduct research,

Emphasizing the importance of copyright protection as an incentive and reward for literary and artistic creations and of enhancing opportunities for everyone, including persons with visual impairments or with other print disabilities, to participate in the cultural life of the community, to enjoy the arts and to share scientific progress and its benefits,

Aware of the barriers of persons with visual impairments or with other print disabilities to access published works in achieving equal opportunities in society, and the need to both expand the number of works in accessible formats and to improve the circulation of such works,

Taking into account that the majority of persons with visual impairments or with other print disabilities live in developing and least-developed countries,

Recognizing that, despite the differences in national copyright laws, the positive impact of new information and communication technologies on the lives of persons with visual impairments or with other print disabilities may be reinforced by an enhanced legal framework at the international level,

Recognizing that many Member States have established limitations and exceptions in their national copyright laws for persons with visual impairments or with other print disabilities, yet there is a continuing shortage of available works in accessible format copies for such persons, and that considerable resources are required for their effort of making works accessible to these persons, and that the lack of possibilities of cross-border exchange of accessible format copies has necessitated duplication of these efforts,

Recognizing both the importance of rightholders' role in making their works accessible to persons with visual impairments or with other print disabilities and the importance of appropriate limitations and exceptions to make works accessible to these persons, particularly when the market is unable to provide such access,

Recognizing the need to maintain a balance between the effective protection of 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 persons with visual impairments or with other print disabilities,

Reaffirming the obligations of Contracting Parties 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 for the Protection of Literary and Artistic Works and other international instruments,

Recalling the importance of the Development Agenda recommendations, adopted in 2007 by the General Assembly of the World Intellectual Property Organization (WIPO), which aim to ensure that development considerations form an integral part of the Organization's work,

Recognizing the importance of the international copyright system and desiring to harmonize limitations and exceptions with a view to facilitating access to and use of works by persons with visual impairments or with other print disabilities,

Have agreed as follows:

Article 1

Relation to Other Conventions and Treaties

Nothing in this Treaty shall derogate from any obligations that Contracting Parties have to each other under any other treaties, nor shall it prejudice any rights that a Contracting Party has under any other treaties.

Article 2

Definitions

For the purposes of this Treaty:

(a) “works” means literary and artistic works within the meaning of Article 2(1) of the Berne Convention for the Protection of Literary and Artistic Works, in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available in any media¹;

(b) “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 or other print disability. The accessible format copy is used exclusively by beneficiary persons and it must respect the integrity of the original work, taking due consideration of the changes needed to make the work accessible in the alternative format and of the accessibility needs of the beneficiary persons;

(c) “authorized entity” means an entity that is authorized or recognized by the government to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis. It also includes a government institution or non-profit organization that provides the same services to beneficiary persons as one of its primary activities or institutional obligations².

An authorized entity establishes and follows its own practices:

(i) to establish that the persons it serves are beneficiary persons;

(ii) to limit to beneficiary persons and/or authorized entities its distribution and making available of accessible format copies;

(iii) to discourage the reproduction, distribution and making available of unauthorized copies; and

¹ Agreed statement concerning Article 2(a): For the purposes of this Treaty, it is understood that this definition includes such works in audio form, such as audiobooks.

² Agreed statement concerning Article 2(c): For the purposes of this Treaty, it is understood that “entities recognized by the government” may include entities receiving financial support from the government to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis.

- (iv) to maintain due care in, and records of, its handling of copies of works, while respecting the privacy of beneficiary persons in accordance with Article 8.

Article 3

Beneficiary Persons

A beneficiary person is a person who:

- (a) is blind;
- (b) has a visual impairment or a perceptual or reading disability which cannot be improved 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; or³
- (c) is otherwise 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;

regardless of any other disabilities.

Article 4

National Law Limitations and Exceptions Regarding Accessible Format Copies

1. (a) Contracting Parties shall provide in their national copyright laws for a limitation or exception to the right of reproduction, the right of distribution, and the right of making available to the public as provided by the WIPO Copyright Treaty (WCT), to facilitate the availability of works in accessible format copies for beneficiary persons. The limitation or exception provided in national law should permit changes needed to make the work accessible in the alternative format.

(b) Contracting Parties may also provide a limitation or exception to the right of public performance to facilitate access to works for beneficiary persons.

2. A Contracting Party may fulfill Article 4(1) for all rights identified therein by providing a limitation or exception in its national copyright law such that:

(a) Authorized entities shall be permitted, without the authorization of the copyright rightholder, to make an accessible format copy of a work, obtain from another authorized entity an accessible format copy, and supply those copies to beneficiary persons 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) the authorized entity wishing to undertake said activity has lawful access to that work or a copy of that work;
- (ii) 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 Agreed statement concerning Article 3(b): Nothing in this language implies that “cannot be improved” requires the use of all possible medical diagnostic procedures and treatments.

(iii) such accessible format copies are supplied exclusively to be used by beneficiary persons; and

(iv) the activity is undertaken on a non-profit basis;

and

(b) A beneficiary person, or someone acting on his or her behalf including a primary caretaker or caregiver, may make an accessible format copy of a work for the personal use of the beneficiary person or otherwise may assist the beneficiary person to make and use accessible format copies where the beneficiary person has lawful access to that work or a copy of that work.

3. A Contracting Party may fulfill Article 4(1) by providing other limitations or exceptions in its national copyright law pursuant to Articles 10 and 11⁴.

4. A Contracting Party may confine limitations or exceptions under this Article to works which, in the particular accessible format, cannot be obtained commercially under reasonable terms for beneficiary persons in that market. Any Contracting Party availing itself of this possibility shall so declare in a notification deposited with the Director General of WIPO at the time of ratification of, acceptance of or accession to this Treaty or at any time thereafter⁵.

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

Article 5

Cross-Border Exchange of Accessible Format Copies

1. Contracting Parties shall provide that if an accessible format copy is made under a limitation or exception or pursuant to operation of law, that accessible format copy may be distributed or made available by an authorized entity to a beneficiary person or an authorized entity in another Contracting Party⁶.

2. A Contracting Party may fulfill Article 5(1) by providing a limitation or exception in its national copyright law such that:

(a) authorized entities shall be permitted, without the authorization of the rightholder, to distribute or make available for the exclusive use of beneficiary persons accessible format copies to an authorized entity in another Contracting Party; and

(b) authorized entities shall be permitted, without the authorization of the rightholder and pursuant to Article 2(c), to distribute or make available accessible format copies to a beneficiary person in another Contracting Party;

⁴ Agreed statement concerning Article 4(3): It is understood that this paragraph neither reduces nor extends the scope of applicability of limitations and exceptions permitted under the Berne Convention, as regards the right of translation, with respect to persons with visual impairments or with other print disabilities.

⁵ Agreed statement concerning Article 4(4): It is understood that a commercial availability requirement does not prejudice whether or not a limitation or exception under this Article is consistent with the three-step test.

⁶ Agreed statement concerning Article 5(1): It is further understood that nothing in this Treaty reduces or extends the scope of exclusive rights under any other treaty.

provided that prior to the distribution or making available the originating authorized entity did not know or have reasonable grounds to know that the accessible format copy would be used for other than beneficiary persons⁷.

3. A Contracting Party may fulfill Article 5(1) by providing other limitations or exceptions in its national copyright law pursuant to Articles 5(4), 10 and 11.

4. (a) When an authorized entity in a Contracting Party receives accessible format copies pursuant to Article 5(1) and that Contracting Party does not have obligations under Article 9 of the Berne Convention, it will ensure, consistent with its own legal system and practices, that the accessible format copies are only reproduced, distributed or made available for the benefit of beneficiary persons in that Contracting Party's jurisdiction.

(b) The distribution and making available of accessible format copies by an authorized entity pursuant to Article 5(1) shall be limited to that jurisdiction unless the Contracting Party is a Party to the WIPO Copyright Treaty or otherwise limits limitations and exceptions implementing this Treaty to the right of distribution and the right of making available to the public 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 rightholder^{8,9}.

(c) Nothing in this Article affects the determination of what constitutes an act of distribution or an act of making available to the public.

5. Nothing in this Treaty shall be used to address the issue of exhaustion of rights.

Article 6

Importation of Accessible Format Copies

To the extent that the national law of Contracting Party would permit a beneficiary person, someone acting on his or her behalf, or an authorized entity, to make an accessible format copy of a work, the national law of that Contracting Party shall also permit them to import an accessible format copy for the benefit of beneficiary persons, without the authorization of the rightholder¹⁰

Article 7

Obligations Concerning Technological Measures

Contracting Parties shall take appropriate measures, as necessary, to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, this legal protection does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in this Treaty¹¹.

⁷ Agreed statement concerning Article 5(2): It is understood that, to distribute or make available accessible format copies directly to a beneficiary person in another Contracting Party, it may be appropriate for an authorized entity to apply further measures to confirm that the person it is serving is a beneficiary person and to follow its own practices as described in Article 2(c).

⁸ Agreed statement concerning Article 5(4)(b): It is understood that nothing in this Treaty requires or implies that a Contracting Party adopt or apply the three-step test beyond its obligations under this instrument or under other international treaties.

⁹ Agreed statement concerning Article 5(4)(b): It is understood that nothing in this Treaty creates any obligations for a Contracting Party to ratify or accede to the WCT or to comply with any of its provisions and nothing in this Treaty prejudices any rights, limitations and exceptions contained in the WCT.

¹⁰ Agreed statement concerning Article 6: It is understood that the Contracting Parties have the same flexibilities set out in Article 4 when implementing their obligations under Article 6.

¹¹ Agreed statement concerning Article 7: It is understood that authorized entities, in various circumstances, choose to apply technological measures in the making, distribution and making available of accessible format copies and nothing herein disturbs such practices when in accordance with national law.

Article 8

Respect for Privacy

In the implementation of the limitations and exceptions provided for in this Treaty, Contracting Parties shall endeavor to protect the privacy of beneficiary persons on an equal basis with others.

Article 9

Cooperation to Facilitate Cross-Border Exchange

1. Contracting Parties shall endeavor to foster the cross-border exchange of accessible format copies by encouraging the voluntary sharing of information to assist authorized entities in identifying one another. The International Bureau of WIPO shall establish an information access point for this purpose.
2. Contracting Parties undertake to assist their authorized entities engaged in activities under Article 5 to make information available regarding their practices pursuant to Article 2(c), both through the sharing of information among authorized entities, and through making available information on their policies and practices, including related to cross-border exchange of accessible format copies, to interested parties and members of the public as appropriate.
3. The International Bureau of WIPO is invited to share information, where available, about the functioning of this Treaty.
4. Contracting Parties recognize the importance of international cooperation and its promotion, in support of national efforts for realization of the purpose and objectives of this Treaty¹².

Article 10

General Principles on Implementation

1. Contracting Parties undertake to adopt the measures necessary to ensure the application of this Treaty.
2. Nothing shall prevent Contracting Parties from determining the appropriate method of implementing the provisions of this Treaty within their own legal system and practice¹³.
3. Contracting Parties may fulfill their rights and obligations under this Treaty through limitations or exceptions specifically for the benefit of beneficiary persons, other limitations or exceptions, or a combination thereof, within their national legal system and practice. These may include judicial, administrative or regulatory determinations for the benefit of beneficiary persons as to fair practices, dealings or uses to meet their needs consistent with the Contracting Parties' rights and obligations under the Berne Convention, other international treaties, and Article 11.

¹² Agreed statement concerning Article 9: It is understood that Article 9 does not imply mandatory registration for authorized entities nor does it constitute a precondition for authorized entities to engage in activities recognized under this Treaty; but it provides for a possibility for sharing information to facilitate the cross-border exchange of accessible format copies.

¹³ Agreed statement concerning Article 10(2): It is understood that when a work qualifies as a work under Article 2(a), including such works in audio form, the limitations and exceptions provided for by this Treaty apply *mutatis mutandis* to related rights as necessary to make the accessible format copy, to distribute it and to make it available to beneficiary persons.

Article 11

General Obligations on Limitations and Exceptions

In adopting measures necessary to ensure the application of this Treaty, a Contracting Party may exercise the rights and shall comply with the obligations that that Contracting Party has under the Berne Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Treaty, including their interpretative agreements so that:

- (a) in accordance with Article 9(2) of the Berne Convention, a Contracting Party may permit the reproduction of works in certain special cases provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author;
- (b) in accordance with Article 13 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, a Contracting Party shall confine limitations or exceptions to exclusive rights 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 rightholder;
- (c) in accordance with Article 10(1) of the WIPO Copyright Treaty, a Contracting Party may provide for limitations of or exceptions to the rights granted to authors under the WCT in certain special cases, that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author;
- (d) in accordance with Article 10(2) of the WIPO Copyright Treaty, a Contracting Party shall confine, when applying the Berne Convention, any limitations of or exceptions to rights to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.

Article 12

Other Limitations and Exceptions

1. Contracting Parties recognize that a Contracting Party may implement in its national law other copyright limitations and exceptions for the benefit of beneficiary persons than are provided by this Treaty having regard to that Contracting Party's economic situation, and its social and cultural needs, in conformity with that Contracting Party's international rights and obligations, and in the case of a least-developed country taking into account its special needs and its particular international rights and obligations and flexibilities thereof.

2. This Treaty is without prejudice to other limitations and exceptions for persons with disabilities provided by national law.

Article 13

Assembly

- 1. (a) The Contracting Parties shall have an Assembly.
- (b) Each Contracting Party shall be represented in the Assembly by one delegate who may be assisted by alternate delegates, advisors and experts.
- (c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in

conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.

2. (a) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.

(b) The Assembly shall perform the function allocated to it under Article 15 in respect of the admission of certain intergovernmental organizations to become party to this Treaty.

(c) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.

3. (a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.

4. The Assembly shall meet upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of WIPO.

5. The Assembly shall endeavor to take its decisions by consensus and shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

Article 14

International Bureau

The International Bureau of WIPO shall perform the administrative tasks concerning this Treaty.

Article 15

Eligibility for Becoming Party to the Treaty

1. Any Member State of WIPO may become party to this Treaty.

2. The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.

3. The European Union, having made the declaration referred to in the preceding paragraph at the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

Article 16

Rights and Obligations Under the Treaty

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

Article 17

Signature of the Treaty

This Treaty shall be open for signature at the Diplomatic Conference in Marrakesh, and thereafter at the headquarters of WIPO by any eligible party for one year after its adoption.

Article 18

Entry into Force of the Treaty

This Treaty shall enter into force three months after 20 eligible parties referred to in Article 15 have deposited their instruments of ratification or accession.

Article 19

Effective Date of Becoming Party to the Treaty

This Treaty shall bind:

- (a) the 20 eligible parties referred to in Article 18, from the date on which this Treaty has entered into force;
- (b) each other eligible party referred to in Article 15, from the expiration of three months from the date on which it has deposited its instrument of ratification or accession with the Director General of WIPO.

Article 20

Denunciation of the Treaty

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

Article 21

Languages of the Treaty

1. This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.
2. An official text in any language other than those referred to in Article 21(1) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, “interested party” means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Union, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

Article 22

Depositary

The Director General of WIPO is the depositary of this Treaty.

Done in Marrakesh on the 27th day of June, 2013.

[End of document]

Persons with a print disability

40A. Definitions for sections 40A to 40F

In this section and in sections 40B to 40F—

“accessible copy” (便於閱讀文本), in relation to a copyright work,

means a version which provides improved access to the work for a person with a print disability;

“lend”(借出), in relation to a copy, means to make it available for

use, otherwise than for direct or indirect economic or commercial advantage, on terms that it will be returned;

“print disability”(閱讀殘障), in relation to a person, means—

- (a) blindness;
- (b) an impairment of his visual function which cannot be improved by the use of corrective lenses to a level that would normally be acceptable for reading without a special level or kind of light;
- (c) inability, through physical disability, to hold or manipulate a book; or
- (d) inability, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for reading;

“specified body”(指明團體) means a body of any of the following descriptions—

- (a) an educational establishment specified in section 1 of Schedule 1;
- (b) an educational establishment exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112);
- (c) an educational establishment receiving direct recurrent subvention from the Government; or
- (d) an organization which is not established or conducted for profit and whose main objects are charitable or are otherwise concerned with the advancement of welfare for persons with a print disability.

(Added 15 of 2007 s. 13)

40B. Making a single accessible copy for a person with a print disability

- (1) If—
 - (a) a person with a print disability possesses a copy of the whole or part of a literary, dramatic, musical or artistic work (referred to in this section as “master copy”); and
 - (b) the master copy is not accessible to him because of the disability, it is not an infringement of copyright in the work or, in the case of a published edition, in the typographical arrangement, for one accessible copy of the master copy to be made by or on behalf of the person for his personal use.
- (2) Subsection (1) does not apply—
 - (a) if the master copy is an infringing copy;
 - (b) if the master copy is of a musical work or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of the work; or
 - (c) if the master copy is of a dramatic work or part of a dramatic work, and the making of an accessible copy would involve recording a performance of the work or part of the work.
- (3) Subsection (1) does not apply unless, at the time when the accessible copy is made by or on behalf of the person with a print disability, the maker of the copy is satisfied, after making reasonable enquiries, that copies of the relevant copyright work in a form that is accessible to the person cannot be obtained at a reasonable commercial price.
- (4) If a person makes an accessible copy on behalf of a person with a print disability under this section and charges for it, the sum charged must not exceed the cost incurred in making and supplying the copy.
- (5) Where an accessible copy which apart from this section would be an infringing copy is made or supplied in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—
 - (a) for the purpose of that dealing; and
 - (b) if that dealing infringes copyright, for all subsequent purposes.
- (6) In subsection (5), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

(Added 15 of 2007 s. 13)

40C. Making multiple accessible copies by specified bodies for persons with a print disability

- (1) If—
 - (a) a specified body possesses a copy of the whole or part of a commercial publication of a literary, dramatic, musical or artistic work (referred to in this section as “master copy”); and
 - (b) the master copy is not accessible to persons with a print disability,it is not an infringement of copyright in the work or, in the case of a published edition, in the typographical arrangement, for the specified body to make for those persons or supply to those persons accessible copies of the master copy for their personal use.
- (2) Subsection (1) does not apply—
 - (a) if the master copy is an infringing copy;
 - (b) if the master copy is of a musical work or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of the work; or
 - (c) if the master copy is of a dramatic work or part of a dramatic work, and the making of an accessible copy would involve recording a performance of the work or part of the work.
- (3) Subsection (1) does not apply unless, at the time when the accessible copies are made, the specified body is satisfied, after making reasonable enquiries, that copies of the relevant copyright work in a form that is accessible to a person with a print disability cannot be obtained at a reasonable commercial price.
- (4) The specified body must—
 - (a) within a reasonable time before making or supplying the accessible copies, notify the relevant copyright owner of its intention to make or supply the accessible copies; or
 - (b) within a reasonable time after making or supplying the accessible copies, notify the relevant copyright owner of the fact that it has made or supplied the accessible copies.
- (5) The requirement under subsection (4) does not apply if the specified body cannot, after making reasonable enquiries, ascertain the identity and contact details of the relevant copyright owner.
- (6) If the specified body charges for making and supplying an accessible copy under this section, the sum charged must not exceed the cost incurred in making and supplying the copy.

- (7) Where an accessible copy which apart from this section would be an infringing copy is made or supplied in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—
 - (a) for the purpose of that dealing; and
 - (b) if that dealing infringes copyright, for all subsequent purposes.
- (8) In subsection (7), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

(Added 15 of 2007 s. 13)

40D. Intermediate copies

- (1) A specified body entitled to make accessible copies of a master copy under section 40C may possess an intermediate copy of the master copy which is necessarily created during the production of the accessible copies, but—
 - (a) the specified body may possess the intermediate copy only for the purpose of the production of further accessible copies; and
 - (b) the specified body must destroy the intermediate copy within 3 months after it is no longer required for that purpose.
- (2) An intermediate copy possessed otherwise than in accordance with subsection (1) is to be treated as an infringing copy.
- (3) A specified body may lend or transfer an intermediate copy possessed under subsection (1) to another specified body which is also entitled to make accessible copies of the relevant copyright work under section 40C.
- (4) The specified body must—
 - (a) within a reasonable time before lending or transferring the intermediate copy, notify the relevant copyright owner of its intention to lend or transfer the intermediate copy; or
 - (b) within a reasonable time after lending or transferring the intermediate copy, notify the relevant copyright owner of the fact that it has lent or transferred the intermediate copy.
- (5) The requirement under subsection (4) does not apply if the specified body cannot, after making reasonable enquiries, ascertain the identity and contact details of the relevant copyright owner.
- (6) If the specified body charges for lending or transferring an intermediate copy under this section, the sum charged must not exceed the cost incurred in lending or transferring the copy.
- (7) Where an intermediate copy which apart from this section would be an

infringing copy is possessed, lent or transferred in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—

- (a) for the purpose of that dealing; and
 - (b) if that dealing infringes copyright, for all subsequent purposes.
- (8) In subsection (7), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

(Added 15 of 2007 s. 13)

40E. Records to be kept by specified bodies

- (1) A specified body must make a record of any accessible copy made or supplied under section 40C as soon as practicable after it is made or supplied.
- (2) The record referred to in subsection (1) must include—
 - (a) the date on which the accessible copy is made or supplied;
 - (b) the form of the accessible copy;
 - (c) the title, publisher and edition of the relevant master copy;
 - (d) where the accessible copy is made for or supplied to a body or a class of persons, the name of the body or a description of the class of persons; and
 - (e) where more than one copy of the accessible copy is made or supplied, the total number of such copies.
- (3) A specified body must make a record of any intermediate copy lent or transferred under section 40D as soon as practicable after it is lent or transferred.
- (4) The record referred to in subsection (3) must include—
 - (a) the name of the specified body to which and the date on which the intermediate copy is lent or transferred;
 - (b) the form of the intermediate copy; and
 - (c) the title, publisher and edition of the relevant master copy.
- (5) A specified body must—
 - (a) retain any record made under subsection (1) or (3) for a period of at least 3 years after it is made; and
 - (b) allow the relevant copyright owner or a person acting for him, on giving reasonable notice, to inspect and make copies of the record at any reasonable time.

(Added 15 of 2007 s. 13)

40F. Supplementary provisions for sections 40A to 40E

- (1) This section supplements sections 40A to 40E.
- (2) A copy (other than an accessible copy made under section 40B or 40C) of a copyright work is taken to be accessible to a person with a print disability only if it is as accessible to him as it would be if he were not suffering from the disability.
- (3) An accessible copy of a copyright work may be in the form of—
 - (a) a sound recording of the work;
 - (b) a Braille, large-print or electronic version of the work; or
 - (c) any other specialized format of the work.
- (4) An accessible copy of a copyright work may include facilities for navigating around the version of the work but must not include—
 - (a) changes which are not necessary to overcome problems caused by a print disability; or
 - (b) changes which infringe the moral right of the author of the work conferred by section 92 not to have the work subjected to derogatory treatment.

(Added 15 of 2007 s. 13)