

## **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*

## 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)*

Mindful of the challenges that are prejudicial to the complete development of beneficiary persons,<sup>1</sup> which limits their freedom to seek, receive and impart information and ideas of all kinds, their freedom of communication, their right to education and their freedom of research,<sup>2</sup>

### *(Third)*

Emphasizing the importance of copyright protection as an incentive and reward<sup>3</sup> 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)*

Emphasizing the importance and flexibility of copyright protection as an incentive for literary and artistic creation, and for increasing the opportunities for all beneficiary persons to participate in the cultural life of the community, enjoy the arts and share scientific progress and its benefits.

### *(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 and uniform as possible,

### *(Sixth)*

Aware of the many barriers to access to information and communication experienced by beneficiary persons regarding access to published works,

### *(Seventh)*

Aware also that the majority of beneficiary persons live in developing countries,

### *(Eighth)*

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

*(Ninth)*

Recognizing the opportunities and challenges for beneficiary persons presented by the development of new information and communication technologies, including technological publishing and communication platforms that are transnational in nature,

*(Tenth)*

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 beneficiary persons,

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

Recognizing the large number of Members who, to that end, have established exceptions and limitations in their national copyright laws for beneficiary persons, and yet there is a continuing shortage of available works in accessible<sup>5</sup> formats for such persons,

*(Thirteenth)*

Recognizing that the preference is for works to be made accessible by rights holders to beneficiary persons at publication and that, to the extent that the market is unable to provide appropriate access to works for beneficiary persons, 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 beneficiary persons,

*(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,

*(Sixteenth)*

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

*(Seventeenth)*

Taking into account the importance of Member States agreeing to make commitments both of increasing<sup>6</sup> the number and range of accessible format works available to beneficiary persons 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 beneficiary persons in order to guarantee<sup>7</sup> 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)*

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 beneficiary persons.<sup>8</sup>

Have agreed as follows:

## ARTICLE A

### DEFINITIONS

For the purposes of these provisions

#### "work"

means a protected work within the meaning of the Berne Convention, whether published or otherwise made available to the public in any media<sup>9</sup>

#### "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<sup>10</sup>. The accessible format copy must respect the integrity of the original work and be used exclusively by beneficiary persons.

#### "authorized entity"

means a governmental agency, a non-profit entity or non-profit organization that has as one of its activities to assist beneficiary persons 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 eligibility of the<sup>11</sup> beneficiary persons that they serve.

<sup>12</sup>

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

#### "reasonable price for developed countries"

means that the accessible format copy of the work is available at a similar or lower price than the price of the work available to beneficiary persons in that market.

#### "reasonable price for developing countries"

means that the accessible format copy of the work is available at prices that are affordable in that market, taking into account the needs and income disparities of beneficiary persons .

“Member State”

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

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

ARTICLE B

BENEFICIARY PERSONS<sup>13</sup>

A beneficiary person is

- (a) a person who<sup>14</sup> is blind;
- (b) a person who 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) a person who 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<sup>15</sup>.

NEW 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<sup>16</sup>

## ARTICLE C

### NATIONAL LAW LIMITATIONS AND<sup>17</sup> 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, as defined in Article 8 of the WCT<sup>18</sup>, to facilitate the availability of works in accessible formats for beneficiary persons as defined herein.

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<sup>19</sup> 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.

It is understood that cooperation or partnerships with other organizations, including for profit organizations, shall be permitted<sup>20</sup>

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

3. A Member State/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 accessible<sup>21</sup> format, cannot be otherwise<sup>22</sup> obtained<sup>23</sup> 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<sup>24</sup>.

#### ARTICLE D

##### 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 or otherwise<sup>25</sup> 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<sup>26</sup> after determining the bona fide nature of the beneficiary person<sup>27</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<sup>28</sup>.

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<sup>29</sup> at a reasonable price, in the country of importation.



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.

#### ARTICLE E

##### IMPORTATION OF ACCESSIBLE FORMAT COPIES

To the extent that national law would permit a beneficiary person or an authorized entity acting on the beneficiary person's behalf to make an accessible format copy of a work, the national law should/shall likewise<sup>30</sup> permit a beneficiary person or an authorized entity acting on that person's behalf to import an accessible format copy, without the copyright rights holder's authorization.

#### ARTICLE F

##### OBLIGATIONS CONCERNING TECHNOLOGICAL MEASURES

Member States shall ensure that beneficiaries of the exception provided by Article C are not prevented from enjoying<sup>31</sup> 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.

#### 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.

#### 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.

## Explanation For Changes

- <sup>1</sup> **Change made:** Replaced “persons who have limited vision and those with print disabilities” with “beneficiary persons”.

**Change suggested by:** Australia, Brazil, United States of America

**Comments made by Australia, Brazil, United States of America at 001bis:** “Replace visually impaired persons/persons with print disabilities by “beneficiary persons”.

**WBU Comments:** This change has been reflected throughout the document
- <sup>2</sup> **Change made:** Replaced “right of access to information and communication, and also education and research” with “freedom to seek, receive and impart, information and ideas of all kinds, their freedom of communication, their right to education and their freedom of research”

**Change suggested by:** United States of America, Switzerland (merger of their suggestions)

**Comments of United States of America at footnote 1 on page 5 of SCCR/23/7:** “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”

**Comments of Switzerland at 002:** “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,”
- <sup>3</sup> **Change made:** Inserted “and reward”.

**Change suggested by:** European Union and its Member States.

**Comments of European Union and its Member States at footnote 2 on page 5 of SCCR/23/7:** “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”
- <sup>4</sup> **WBU Comment:** This paragraph should be reworded as given below since the current wording gives the false impression that most countries have good exceptions and that exceptions are not the solution.

**WBU’s suggested wording:** “Recognizing that some Members have established exceptions and limitations in their national copyright laws for beneficiary persons, while other Members have inadequate or no exceptions, and there is a continuing shortage of available works in accessible formats”
- <sup>5</sup> **Change made:** Replaced “acceptable” with “accessible”.

**Change suggested by:** United States of America

**Comments of the United States of America at 012:** In the twelfth paragraph, the word “acceptable” should be replaced by “accessible”
- <sup>6</sup> **Change made:** Replaced “to increase” with “of increasing”

**Change suggested by:** United States of America

**Comments of United States of America at 020:** In the seventeenth paragraph, replace "of Member States agreeing to make commitments both to increase" with "of increasing"

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- <sup>7</sup> **Change made:** Replaced “support” with “guarantee”  
**Change suggested by:** Spain  
**Comments of Spain at 019:** In the seventeenth paragraph, “to support” should be replaced by “to guarantee”
- <sup>8</sup> **Change made:** Inserted 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 beneficiary persons”  
**Change suggested by:** Kenya, on behalf of the African Group at 022.  
**Comments of Kenya, on behalf of the African Group at 022:** 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.”
- <sup>9</sup> **Change made:** Replaced “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” with “protected work within the meaning of the Berne Convention, whether published or otherwise made available to the public in any media”  
**Change suggested by:** Brazil, European Union, and its Member States, United States of America  
**Comments of Brazil, European Union and its Member States, United States of America at A02:** 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.”
- <sup>10</sup> **Change made:** Replaced “as a person without a print disability” with “as a person without visual impairment and print disabilities”  
**Change suggested by:** India  
**Comments of India at A06:** 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”
- <sup>11</sup> **Change made:** Inserted “eligibility of the”  
**Change suggested by:** United States of America.  
**Comments by the United States of America at A14:** 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”.
- <sup>12</sup> **Change made:** Deleted the third paragraph “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.”  
**Change suggested by:** Pakistan  
**Comments of Pakistan at A17bis:** 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

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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

**WBU Comment:** WBU strongly endorses this deletion. However, in order to provide comfort to rights holders WBU proposes the following paragraph to replace the deleted third paragraph: *An authorized entity shall take reasonable measures to ensure that the distribution of works is limited to beneficiary persons*”

<sup>13</sup> **WBU Comment:** It is important to enable family members or friends of beneficiary persons to be able to access accessible format copies solely for the benefit of beneficiary persons. WBU suggests that the following paragraph (d) is added to the definition of beneficiary persons: *(d) A person who is acting on behalf of persons covered under a, b or c who accesses an accessible format copy solely to enable the person covered under a, b, or c to access such accessible format copy.* Alternatively, wording similar to the wording used in Article C 2 (B) (“someone acting on his or her behalf”) should be inserted wherever appropriate throughout the document.

<sup>14</sup> **Change made:** Inserted “*a person who*” at the beginning of (a), (b) and (c) and deleted the same from the first line of the definition.

**Change suggested by:** Morocco

**Comments of Morocco at B03:** “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

<sup>15</sup> **Change made:** Inserted “*in the manner of a person without such a disability*”

**Change suggested by:** United States of America

**Comments of United States of America at B05:** 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

<sup>16</sup> **Change made:** Inserted new Article X

**Change suggested by:** Kenya on behalf of the African Group

**Comments of Kenya on behalf of the African Group at X01:** 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

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- WBU Comment:** WBU endorses the spirit of this article suggested by the African Group. However, WBU emphasizes that it does not support any soft law as referred to in this new article.
- <sup>17</sup> **Change made:** Inserted "Limitations and"  
**Change suggested by:** Algeria and the United States of America  
**Comments of Algeria and the United States of America at C03:** Article C should refer not only to "exceptions" but to "limitations and exceptions"
- <sup>18</sup> **Change made:** Inserted "as defined in Article 8 of the WCT"  
**Change suggested by:** Brazil  
**Comments of Brazil at C05:** 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"
- <sup>19</sup> **WBU Comment:** WBU firmly believes that the wording "or other legal sources" must be included after "obtain from another authorized entity" to enable authorized entities to obtain works in accessible formats from other legal sources such as beneficiary persons, libraries etc.
- <sup>20</sup> **Change made:** Inserted "It is understood that cooperation or partnerships with other organizations, including for profit organizations, shall be permitted"  
**Change suggested by:** Brazil and the United States of America  
**Comments of Brazil and the United States of America at C07:** 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
- <sup>21</sup> **Change made:** Replaced "special" with "accessible". Change introduced for uniformity
- <sup>22</sup> **Change made:** Inserted "otherwise"  
**Change suggested by:** Brazil, the European Union and its Member States and the United States of America at C10  
**Comments of Brazil, the European Union and its Member States and the United States of America at C10:** Paragraph (4) should read "the Member State/Contracting Party 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).
- <sup>23</sup> **Change made:** Deleted "within a reasonable time and" after "obtained"  
**Change suggested by:** India  
**Comments of India at C12:** As to Paragraph (4), it is asked what "reasonable time" means. Delete from the second sentence "within a reasonable time and"
- <sup>24</sup> **WBU Comment:** WBU strongly recommends the addition of the sentence give below. This is will ensure that a Member State cannot impose a remuneration requirement on authorized entities that export accessible format copies to countries where there is no remuneration requirement. This will benefit beneficiaries in developing countries.

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**WBU suggested wording:** *“In any case such exceptions or limitations will not be subject to remuneration when exercised to provide accessible format copies to beneficiaries in a country that does not impose remuneration on those exceptions.”*

- <sup>25</sup> **Change made:** Inserted “or otherwise”  
**Change suggested by:** Ecuador  
**Comments of Ecuador at D01:** In paragraph (1), add “or otherwise” after “export license  
**WBU Comment:** WBU supports this addition proposed by Ecuador.
- <sup>26</sup> **Change made:** Deleted “where that other Member State would permit that beneficiary person to make or import that accessible copy”  
**Change suggested by:** India  
**Comments of India at D03ter:** 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  
**WBU Comment:** WBU supports this deletion proposed by India.
- <sup>27</sup> **Change made:** Inserted “after determining the bona fide nature of the beneficiary person” after “authorized entity”  
**Change suggested by:** Pakistan  
**Comments of Pakistan at D03bis:** 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  
**WBU Comment:** WBU strongly recommends that the wording “has verified the individual is properly entitled to receive such accessible format copies under that other Member State/Contracting Party's national law” is replaced with “after determining the bona fide nature of the beneficiary person”. This is required to bring uniformity between Article D 2 B and Article D 1 after its modifications suggested by India and Pakistan as per points 28 and 29 above.
- <sup>29</sup> **Change made:** Deleted “within a reasonable time and” after “obtained”  
**Change suggested by:** India  
**Comments of India at D08 bis:** In Paragraph (2), delete in the second sentence “within a reasonable time and”.
- <sup>30</sup> **Change made:** Inserted “likewise”  
**Change suggested by:** United States of America  
**Comments of United States of America at E03:** The word “likewise” should be included in this provision after the word “shall”
- <sup>31</sup> **Change made:** Replaced “have the means to enjoy” with “are not prevented from enjoying”

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**Change suggested by:** Australia and Japan

**Comments of Australia and Japan at the first part of the F01:** 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.