

# WIPO



SCCR/15/7

ORIGINAL: English

DATE: February 20, 2007

# E

**WORLD INTELLECTUAL PROPERTY ORGANIZATION**  
GENEVA

## **STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS**

**Fifteenth Session**  
**Geneva, September 11 to 13, 2006**

**STUDY ON COPYRIGHT LIMITATIONS AND EXCEPTIONS  
FOR THE VISUALLY IMPAIRED**

*prepared by*  
*Judith Sullivan\**  
*Consultant, Copyright and Government Affairs*

---

\* The views and opinions expressed in this Study are the sole responsibility of the author. The Study is not intended to reflect the views of the Member States or the Secretariat of WIPO.

## TABLE OF CONTENTS

EXECUTIVE SUMMARY.....	9
INTRODUCTION.....	12
CHAPTER 1.....	15
PROVISION IN INTERNATIONAL TREATIES RELEVANT TO COPYRIGHT EXCEPTIONS FOR VISUALLY IMPAIRED PEOPLE.....	15
1.1 INTRODUCTION.....	15
1.2 THE BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS (THE BERNE CONVENTION).....	17
1.2.1 Reproduction.....	17
1.2.2 Adaptation.....	17
1.2.3 Distribution, including rental and lending.....	18
1.2.4 Broadcasting by wireless means.....	18
1.2.5 Other communication to the public by electronic transmission.....	18
1.2.6 Public performance.....	19
1.3 THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF PERFORMERS, PRODUCERS OF PHONOGRAMS AND BROADCASTING ORGANISATIONS (THE ROME CONVENTION).....	19
1.3.1 Reproduction.....	19
1.3.2 Adaptation.....	19
1.3.3 Distribution, including rental and lending.....	19
1.3.4 Broadcasting by wireless means.....	20
1.3.5 Other communication to the public by electronic transmission.....	20
1.3.6 Public performance.....	20
1.3.7 Fixation.....	20
1.4 THE AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (THE TRIPS AGREEMENT).....	20
1.4.1 Reproduction.....	21
1.4.2 Adaptation.....	21
1.4.3 Distribution, including rental and lending.....	22
1.4.4 Broadcasting by wireless means.....	22
1.4.5 Other communication to the public by electronic transmission.....	22
1.4.6 Public performance.....	22
1.4.7 Fixation.....	23
1.5 THE WIPO COPYRIGHT TREATY OF 1996 (THE WCT).....	23
1.5.1 Reproduction.....	24
1.5.2 Adaptation.....	24
1.5.2 Distribution, including rental and lending.....	24
1.5.3 Broadcasting by wireless means.....	24
1.5.4 Other communication to the public by electronic transmission.....	24
1.5.5 Public performance.....	25
1.6 THE WIPO PERFORMANCES AND PHONOGRAMS TREATY OF 1996 (THE WPPT).....	25
1.6.1 Reproduction.....	25
1.6.2 Adaptation.....	26
1.6.3 Distribution, including rental and lending.....	26

1.6.4 Broadcasting by wireless means .....	26
1.6.5 Other communication to the public by electronic transmission .....	26
1.6.6 Public performance .....	26
1.6.7 Fixation.....	26
1.7 EUROPEAN UNION DIRECTIVES .....	27
CHAPTER 2.....	28
EXAMINATION OF COPYRIGHT EXCEPTIONS FOR VISUALLY IMPAIRED PEOPLE IN NATIONAL LEGISLATION .....	28
2.1 INTRODUCTION .....	28
2.2 SCOPE REGARDING END BENEFICIARY .....	29
2.3 WORKS THAT MAY BE USED.....	31
2.4 PROFIT/NON-PROFIT MAKING ACTIVITY .....	32
2.5 PERMITTED/RESTRICTED ACTS COVERED .....	33
2.6 RESTRICTIONS ON WHO MAY UNDERTAKE ACTIVITY .....	35
2.7 SPECIAL FORMATS OR ANY ACCESSIBLE FORMATS.....	36
2.8 COMPULSORY LICENCE OR EXCEPTION .....	39
2.9 ACKNOWLEDGEMENT REQUIRED .....	40
2.10 OTHER CONDITIONS.....	41
2.11 OVERRIDABLE BY CONTRACT .....	44
2.12 INTERPLAY WITH DRMS .....	45
CHAPTER 3.....	47
ANALYSIS OF THE OPERATION OF DISTRIBUTION AND IMPORTATION RIGHTS.....	47
3.1 INTRODUCTION .....	47
3.2 INTERNATIONAL CONVENTIONS AND TREATIES .....	47
3.2.1 Distribution of physical copies.....	49
3.2.2 Rental and lending of physical copies.....	50
3.2.3 Electronic communication to the public resulting in permanent copies .....	51
3.2.4 Electronic communication to the public resulting in only temporary or no copies .....	52
3.3 EUROPEAN UNION LAW .....	52
3.3.1 Exhaustion of rights .....	53
3.3.2 Lending rights .....	53
3.3.3 Temporary copies.....	54
3.3.4 Liability for infringement.....	54
3.4 INTRODUCTION TO PROVISION IN NATIONAL LAW .....	55
3.5 DISTRIBUTION TO INDIVIDUALS .....	55
3.6 DISTRIBUTION TO ORGANIZATIONS.....	56
3.7 EXPORT TO INDIVIDUALS .....	57
3.8 EXPORT TO NATIONAL ORGANIZATIONS .....	58
3.9 EXPORT TO INTERNATIONAL ORGANIZATIONS .....	59
3.10 IMPORT BY INDIVIDUALS .....	60
3.11 IMPORT BY ORGANIZATIONS .....	60
3.12 EXPORT/IMPORT OF INTERMEDIATE COPIES .....	62
3.13 EXHAUSTION OF RIGHTS .....	63
CHAPTER 4.....	65
CASE STUDIES SHOWING COPYRIGHT PROBLEMS .....	65

4.1 INTRODUCTION .....	65
4.2 PRODUCTION AND NATIONAL DISSEMINATION OF ACCESSIBLE COPIES .....	65
Case study 1: Mozambique .....	66
Case study 2: Malawi .....	66
Case study 3: Chile.....	67
Case study 4: India .....	68
Case study 5: Philippines .....	70
Case study 6: Germany .....	70
Case study 7: Lithuania.....	72
Case study 8: USA .....	73
4.3 PRODUCTION AND INTERNATIONAL DISSEMINATION OF ACCESSIBLE COPIES .....	74
Case study 9: Chile.....	75
Case study 10: The Netherlands.....	75
Case study 11: Canada .....	76
Case study 12: USA and Ireland .....	77
Case study 13: New Zealand.....	78
CHAPTER 5.....	81
CASE STUDIES SHOWING EFFECTIVE SOLUTIONS .....	81
5.1 INTRODUCTION .....	81
5.2 PRODUCTION AND NATIONAL DISSEMINATION OF ACCESSIBLE COPIES .....	81
Case study 1: Kenya.....	81
Case study 2: eIFL-IP and Lesotho .....	82
Case study 3: UK.....	83
Case study 4: Brazil.....	85
Case study 5: Canada .....	86
Case study 6: USA .....	88
5.3 PRODUCTION AND INTERNATIONAL DISSEMINATION OF ACCESSIBLE COPIES .....	89
Case study 7: The Netherlands.....	89
Case study 8: Russian Federation.....	90
Case study 9: France .....	90
Case study 10: USA .....	91
Case study 11: Denmark .....	93
Case study 12: Australia.....	93
Case study 13: EUAIN.....	95
CHAPTER 6.....	97
ANALYSIS OF THE PROBLEMS AND SOLUTIONS .....	97
6.1 INTRODUCTION .....	97
6.2 THE COPYRIGHT PROBLEMS .....	98
6.3 TECHNOLOGY .....	98
6.4 THE INTERNATIONAL FRAMEWORK.....	100
6.4.1 International intellectual property treaties and conventions .....	100
6.4.2 Other international treaties and conventions .....	102
6.4.3 The work of WIPO .....	105
6.5 COPYRIGHT EXCEPTIONS IN NATIONAL LAWS .....	106
6.5.1 Are exceptions necessary? .....	106
6.5.2 Exceptions not specifically for the benefit of visually impaired people .....	108
6.5.3 Private copying by visually impaired people .....	108

6.5.4 Exceptions in developing countries.....	109
6.5.5 Detailed form of exceptions to rights.....	110
6.5.5.1 Scope regarding end beneficiary .....	110
6.5.5.2 Works that may be used .....	111
6.5.5.3 Profit/non-profit making activity .....	113
6.5.5.4 Permitted/restricted acts covered .....	113
6.5.5.5 Restrictions on who may undertake activity .....	114
6.5.5.6 Special formats or any accessible formats .....	115
6.5.5.7 Compulsory licence or exception.....	115
6.5.5.8 Acknowledgement required .....	116
6.5.5.9 Other conditions .....	116
6.5.5.10 Overridable by contract.....	117
6.5.5.11 Interplay with DRMs.....	118
6.5.5.12 Other comments .....	118
6.5.6 Do exceptions need to be the same in all countries?.....	118
6.6 IMPORT AND EXPORT OF ACCESSIBLE COPIES MADE UNDER EXCEPTIONS.....	119
6.6.1 Does this issue need to be addressed?.....	119
6.6.2 Provision in national law.....	120
6.6.3 Legislative changes in national law .....	121
6.6.4 Online delivery .....	122
6.6.5 Alternative approaches.....	122
6.7 ALTERNATIVES TO EXCEPTIONS TO FACILITATE NON-PROFIT ACCESSIBLE FORMAT PRODUCTION .....	123
6.7.1 Licensing/trusted intermediaries .....	123
6.7.2 Role of libraries including for import/export of accessible copies .....	124
6.8 AWARENESS .....	125
6.9 DIGITAL RIGHTS MANAGEMENT.....	126
6.10 COST OF ACCESSIBLE COPIES .....	127
6.11 SOLUTIONS OTHER THAN NON-PROFIT ACCESSIBLE COPY PRODUCTION UNDER EXCEPTIONS AND LICENSING .....	129
6.11.1 “Built-in” accessibility .....	129
6.11.2 Extension of print on demand .....	130
6.11.3 Sharing of e-files/deposit of e-files .....	131
6.12 AUDIO DESCRIPTION.....	131
6.13 PRINT DISABLED PEOPLE IN GENERAL.....	132
CONCLUSIONS.....	133
RECOMMENDATIONS .....	134
ANNEX 1.....	137
PRINCIPLE SOURCES OF INFORMATION ABOUT NATIONAL LAWS.....	137
ANNEX 2.....	138
FULL ANALYSIS OF SPECIFIC EXCEPTIONS FOR THE BENEFIT OF VISUALLY IMPAIRED PEOPLE IN NATIONAL LAWS.....	138
Armenia.....	138
Australia .....	138
Austria .....	141

Azerbaijan .....	141
Belarus.....	142
Belize.....	142
Brazil .....	143
Bulgaria .....	143
Cameroon .....	144
Canada.....	144
China .....	145
Croatia.....	145
Czech Republic .....	146
Denmark.....	147
Dominican Republic.....	148
El Salvador .....	148
Estonia.....	149
Fiji .....	149
Finland.....	150
France.....	151
Gabon .....	152
Georgia .....	152
Germany.....	153
Greece.....	153
Hungary .....	154
Iceland .....	154
Indonesia .....	155
Ireland.....	155
Italy.....	156
Japan.....	156
Kazakhstan .....	158
Republic of Korea .....	158
Kyrgyzstan .....	159
Latvia.....	159
Lithuania.....	160
Macau .....	161
Malaysia .....	162
Republic of Moldova.....	163
Mongolia .....	163
Netherlands.....	164
New Zealand .....	164
Nicaragua .....	165
Nigeria.....	166
Norway.....	166
Panama .....	168
Paraguay .....	168
Peru.....	169
Poland.....	169
Portugal .....	170
Russian Federation .....	171
Singapore.....	171
Slovakia.....	173
Slovenia.....	173
Spain.....	174

Ukraine .....	175
Uzbekistan .....	176
United Kingdom .....	176
United States of America .....	179
ANNEX 3 .....	183
DISTRIBUTION AND IMPORTATION RIGHTS IN NATIONAL LAWS .....	183
Armenia .....	183
Australia .....	184
Austria .....	185
Azerbaijan .....	186
Belarus .....	187
Belize .....	188
Brazil .....	189
Bulgaria .....	189
Cameroon .....	190
Canada .....	191
China .....	192
Croatia .....	193
Czech Republic .....	194
Denmark .....	195
Dominican Republic .....	196
El Salvador .....	196
Estonia .....	197
Fiji .....	198
Finland .....	199
France .....	200
Gabon .....	201
Georgia .....	201
Germany .....	202
Greece .....	202
Hungary .....	204
Iceland .....	204
Indonesia .....	205
Ireland .....	206
Italy .....	207
Japan .....	208
Kazakhstan .....	209
Republic of Korea .....	210
Kyrgyzstan .....	211
Latvia .....	212
Lithuania .....	213
Macau .....	213
Malaysia .....	214
Republic of Moldova .....	215
Mongolia .....	216
Netherlands .....	217
New Zealand .....	217
Nicaragua .....	218
Nigeria .....	219

Norway .....	220
Panama .....	221
Paraguay .....	221
Peru.....	222
Poland.....	223
Portugal .....	224
Russian Federation .....	224
Singapore.....	225
Slovakia.....	226
Slovenia.....	227
Spain.....	227
Sweden .....	228
Ukraine .....	229
Uzbekistan.....	230
United Kingdom.....	231
United States of America .....	232



## EXECUTIVE SUMMARY

This Study builds on a number of earlier studies and reports looking at the relationship between copyright and the needs of visually impaired people who are unable to read copyright works in the form in which they have been published. In particular, the Study looks at what might be the appropriate balance between the interests of right holders on the one hand, and visually impaired users of copyright works and those assisting them on the other hand where exceptions to rights are provided, but it also looks at other possible solutions to the copyright problems that have been identified.

The framework in international treaties and conventions relating to intellectual property seems to permit exceptions for the benefit of visually impaired people. Indeed, exceptions seem possible with respect to a wide range of acts restricted by copyright that might be undertaken by those making and supplying accessible copies to visually impaired people. However, the possibility of such provision is not specifically addressed and is not mandatory under these treaties and conventions, although it is widely accepted that copyright laws should provide a balance between the interests of different stakeholders. Also, especially where several different treaties and conventions need to be considered, the conditions that might apply to exceptions is quite complicated and there may be some doubt regarding exceptions to the adaptation right in particular.

In examining exceptions for the benefit of visually impaired people in national laws, 57 countries have been found that have specific provisions that would permit activity to assist visually impaired people unable to access the written word, or to assist people with a print disability more generally, by making a copyright work available to them in an accessible form. Some of the exceptions found in these countries would also permit other types of assistance for handicapped people, and two further countries have been found that have exceptions that would permit, amongst other things, audio description of broadcasts. It has not been possible in this Study to consider to what extent exceptions of other types would permit activity for the benefit of visually impaired people, such as exceptions permitting private copying, use of copyright works for educational purposes and those applying to activity in or by libraries,. But it seems unlikely that such exceptions would provide a comprehensive solution to the legitimate needs of visually impaired people unable because of copyright constraints to access the written word.

The specific exceptions found in national laws have been analysed in some detail, for example looking at how the end beneficiary is defined, what type of copyright works can be copied or otherwise used and by what type of organisation, whether or not activity must be of a non-commercial nature and what type of accessible copies can be made. The range of provision varies considerably between countries on most of the factors considered and the variation does not generally seem to have any relationship to the needs of visually impaired people in a particular country. A number of exceptions are specifically qualified by a requirement to comply with a test the same as or similar to the 3-step test found in the Berne Convention. The majority of exceptions do not provide for any remuneration to be paid to right holders for activity under the exception.

Organisations making accessible copies for visually impaired people under an exception in one country often wish to share those copies with similar organisations in other countries so that transcription work in one country does not need to be repeated in another country, and the limited resources available for assisting visually impaired people in all countries are used

more efficiently. International treaties and conventions relating to intellectual property generally permit countries to decide for themselves what provision to make on cross-border movement of copies of copyright works made under exceptions. The laws of both the exporting and importing country do, however, need to be considered regarding cross-border movement of accessible copies.

One of the difficulties in deciding whether accessible copies made under an exception in one country may be exported to another country is the lack of clarity about what types of distribution of accessible copies are within the scope of many of the specific exceptions to copyright for the benefit of visually impaired people. However, other aspects of the scope of the exceptions are also likely to be relevant, such as who may act under the exception, how to determine whether or not the requirements about the end beneficiary of the exception are met, whether requirements that a work must have been published are met, whether or not only copies made under the exception may be distributed in the country and whether the same type of accessible copies in both importing and exporting countries are permitted. In a number of countries, the interaction with more general provisions relating to import and/or export of copies that have been made without the authorisation of the right holder also seems to be relevant.

In Chapters 4 and 5 of the Study, a number of case studies illustrate both problems arising out of copyright constraints as well as effective solutions. These case studies show that at one end of the spectrum problems are as much due to lack of understanding about the needs of visually impaired people as lack of exceptions to copyright or other provision that can lead to more accessible copies being made available. At the other end of the spectrum, that is in countries with fairly comprehensive provision regarding the making of accessible copies under exceptions to copyright, there may still be problems where it is desired to move accessible copies between countries.

The difficulties in reaching licensing arrangements, both instead of or as well as undertaking activity under exceptions to copyright, both regarding activity within a country and movement of accessible copies across borders, are illustrated by several case studies. Problems include long delays in getting a response, or lack of a response at all, from right holders and there is evidence that current mechanisms cause problems for right holders as well as organisations making accessible copies. But other case studies do show licensing arrangements with right holders which are, or look likely to be, more effective and which do or will complement exceptions in useful ways. It seems probable that helpful agreements will be more likely where trust has been built up between the relevant parties. As well as provision relating to the making and distribution of accessible copies, licensing problems and solutions concerning the linked issue of access to publishers' electronic files to make the production of accessible copies easier are covered in case studies. A final case study illustrates the advantages for visually impaired people where stakeholders work together to try and build in accessibility to the written word as part of the ordinary publishing process.

The Study concludes by discussing possible solutions to copyright problems to improve access to the written word for visually impaired people. The recommendations include the following suggestions and observations:

- Collaboration between all stakeholders can help ensure that technology improves access to the written word for visually impaired people and WIPO could help facilitate and encourage such activity as well as help to raise awareness amongst all stakeholders about the

issues covered by the Study. The ideal is for accessibility to be built into the ordinary publishing process.

- Further debate about provision relating to exceptions in international treaties and conventions in the intellectual property area may be desirable in the long term, and developing countries may need further guidance about exceptions, but international agreements relevant to the rights of disabled people may already require countries to take the needs of disabled people into account when framing their copyright laws.

- Although exceptions to copyright are unlikely to deliver full accessibility to all publications for visually impaired people, they may nevertheless be justified, but need to balance the interests of all stakeholders and work in ways that encourage rather than deter more comprehensive solutions.

- Self-help access to the written word by visually impaired people may be desirable under private copying exceptions or otherwise and it would be helpful for information to be available in every country about what is possible.

- Exceptions that permit non-profit making of accessible copies by organisations assisting visually impaired people are more useful if defined in functional terms and where they are broadly drawn regarding type of accessible copy that may be made, but other provision may be needed in an exception to protect the interests of right holders and provisions should not necessarily act against right holders being entitled to a fair price for use of their works. It might be helpful for WIPO to facilitate a discussion on the scope of exceptions, particularly given the wide differences that currently exist in national laws.

- Exceptions that provide for the import and export of accessible copies across borders might be appropriate, but provision may be particularly complicated where countries do not provide international exhaustion of rights, so licensing might provide a better approach. WIPO might be able to facilitate discussions between stakeholders about licensing.

- Licensing, including collective licensing, may offer other benefits too, such as secure access to publishers' e-files, and legislative changes may be better if they support and encourage a trusted environment where licensing can be developed. Standard permission requests and licence agreements may benefit right holders as well as non-profit bodies, such as libraries for the blind, producing accessible formats.

- Conflict between the use of DRMs and exceptions to copyright may be best explored further by looking at specific exceptions for the benefit of visually impaired people, building on earlier work initiated by WIPO.

## INTRODUCTION

The importance of exceptions and limitations to copyright to provide an essential balance between the interests of right holders and users of protected material has received considerable prominence in recent years. Copyright protection has for a long time been accepted by many people as something that is essential to promote the public interest. Copyright protection provides a reward for creativity and, by enabling creators and those who have invested in creativity to gain a return on their investment, the rights granted by copyright encourage more creativity for the benefit of everyone. Most people have, however, accepted that rights must always be balanced by exceptions and limitations to rights. Rights are created by laws and those same laws must carefully define and limit those rights to provide an essential balance between the interests of right holder and users of protected material as this balance is as much in the public interest as the rights themselves.

Much of the development of the international framework for copyright protection has, however, concentrated on defining rights needed to secure the aim of encouraging and rewarding creativity. The nature and scope of exceptions and limitations to rights has been largely left to national policy makers to determine within broad permissive areas. The resulting tensions between creators and investors in creativity on the one hand and users of protected material on the other hand that have inevitably arisen where exceptions and limitations to rights have been on the agenda, do to some extent, though, reflect a distinction between these interests which is probably more theoretical than real. Creators in general are not working in a vacuum. Rather they are often building on, or being inspired by, earlier creativity. In order to create, they often need access to that earlier creativity so for at least part of the creative process they are likely to be users. In some situations, a later product of creativity actually uses earlier creative products, such as a film that includes music written for another purpose and with a screenplay developed from a previously published book. Users and creators are therefore not necessarily distinct groups having different needs and many people will at certain times be users and at other times be creators.

This Study examines the tensions resulting from copyright<sup>1</sup> in one very specific area of use, namely use of protected material by visually impaired people. This Study provides by no means the first exploration of these issues at an international level. Organisations representing the interests of visually impaired people have been lobbying for action for a number of years. For example, the World Blind Union<sup>2</sup>, the DAISY Consortium<sup>3</sup> and IFLA

---

<sup>1</sup> For convenience, copyright is the intellectual property right that is referred to throughout this Study. However, rights related to copyright may be relevant to the issues explored in many cases and the most relevant international conventions and treaties applying to both copyright and related rights are explored in Chapter 2. The presence or absence of exceptions in national laws as explored in Chapter 3 has not, however, been as thorough for rights related to copyright. Nevertheless, many of the conclusions drawn are likely to have equal validity where rights related to copyright lead to a barrier to access to the written word for visually impaired people.

<sup>2</sup> The World Blind Union represents 162 million blind and visually impaired persons from about 600 different organisations in 158 countries – see website at [www.worldblindunion.org](http://www.worldblindunion.org)

<sup>3</sup> The DAISY Consortium was formed by talking book libraries in 1996 to lead the worldwide transition from analogue to digital talking books. Members of the Consortium promote the DAISY Standard for digital talking books – see website at <http://www.daisy.org/>

Libraries for the Blind Section<sup>4</sup> published an agreed policy position in April 2004<sup>5</sup>. WIPO has itself recently published a Study on Automated Rights Management Systems and Copyright Limitations and Exceptions<sup>6</sup>, which studied exceptions for the benefit of visually impaired people and exceptions applying to distance education in particular. Exceptions for the benefit of visually impaired people were also covered in a joint WIPO and UNESCO Working Group on Access by the Visually and Auditory Handicapped to Material Reproducing Works Protected by Copyright<sup>7</sup> and a second study by the Secretariats of the Executive Committee of the Berne Union and the Intergovernmental Committee of the Universal Copyright Convention which was included in a joint report by the Secretariats<sup>8</sup>. The International Federation of Library Associations and Institutions (IFLA) published a Study as long ago as 1982 on Copyright and Library Materials for the Handicapped<sup>9</sup>.

There have in addition been various conferences and meetings where the issues relevant to this Study have been discussed and this Study has also drawn on the presentations made at those events. For example, WIPO held an information meeting on Digital Content for the Visually Impaired in 2003<sup>10</sup> at which the International Publishers Association<sup>11</sup> as well as the World Blind Union and other disability interests and national representatives gave presentations. In 2004, one of the agenda items at the World Library and Information Congress looked at the balance of copyright and licensing to give access to information for

---

<sup>4</sup> The IFLA Libraries for the Blind Section promotes national and international cooperation and encourages research and development in the area of library services for the blind and other people with print disabilities – see website at <http://www.ifla.org/VII/s31/index.htm>. IFLA is the International Association of Library Associations and Institutions

<sup>5</sup> The Policy Position agreed by the World Blind Union (WBU), the DAISY Consortium and IFLA Libraries for the Blind Section (LBS) is available at [http://www.euroblind.org/fichiersGB/joint\\_policy.htm](http://www.euroblind.org/fichiersGB/joint_policy.htm)

<sup>6</sup> Automated Rights Management Systems and Copyright Limitations and Exceptions prepared by Nic Garnett, Principal Consultant, Interight.com - see [http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=59952](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=59952)

<sup>7</sup> See UNESCO/WIPO/WGH/I/3 of 3 January 1983 for a report of the Working Group which took place on 25-27 October 1982 and UNESCO/WIPO/WGH/I/2 for the study by Mrs Wanda M Noel on the Application of the Berne Convention for the Protection of Literary and Artistic Property and the Universal Copyright Convention to Material for the Visually and Auditory Handicapped

<sup>8</sup> See Annex II of IGC (1971)/VI/11 of 12 March 1985, a report on Copyright Problems Raised by the Access by Handicapped Persons to Protected Works distributed for the Twenty-Fourth Session (9<sup>th</sup> Extraordinary) of the Executive Committee of the Berne Union and the Sixth Ordinary Session of the Committee of the 1971 Convention of the Intergovernmental Committee of the Universal Copyright Convention. The report was produced by the Secretariats with the assistance of Mrs Wanda M Noel.

<sup>9</sup> See IFLA Publications 21, Copyright and Library Materials for the Handicapped by Françoise Hébert and Wanda Noel, ISBN 3-598-20381-0

<sup>10</sup> The presentations made at the WIPO Information Meeting on Digital Content for the Visually Impaired are available at [http://www.wipo.int/documents/en/meetings/2003/digvi\\_im/digvi\\_im\\_03\\_1rev1.htm](http://www.wipo.int/documents/en/meetings/2003/digvi_im/digvi_im_03_1rev1.htm)

<sup>11</sup> The International Publishers Association has a constituency of book and journal publishers worldwide, assembled into 78 publishers associations at national, regional and specialised level – see website at <http://www.ipa-uie.org/>

print handicapped people<sup>12</sup>. These are just a few of the sources of information that have been referred to in preparing this Study.

The World Blind Union has estimated that there about 180 million blind and partially sighted people in the world. Although this figure includes many children and young people who need access to the written word in order to study for example, older people whose sight has declined as they age make up an increasingly large proportion of the total. Their preferences are more likely to be mainly a desire to access the written word for leisure reading. It is widely accepted by stakeholders of all types that it is import to increase visually impaired people's access to the written word. A figure widely quoted as the proportion of books published that are currently available in alternative formats useable by visually impaired people is no more than about 5%. Publishers and other right holders generally want visually impaired people to be able to read what they publish and visually impaired people want the barriers that prevent them reading this material removed. However, it is also widely accepted that there is no simple or single solution and that copyright is not the only relevant issue. This Study, however, concentrates on only the copyright issues and attempts to identify the problems and possible solutions to those problems.

Just as can be the case more generally though, and as has been indicated above, visually impaired people and right holders should not necessarily be considered as on opposing sides when deciding how to provide a balance in the copyright framework at either national or international level. Visually impaired people may themselves be creators as well as users of copyright material and dependent on a return on their investment in that creativity as well as access to material created by others. This Study therefore takes as its starting point that it is in the public interest to provide copyright protection for creators and those who invest in creativity, but that in general it is essential that rights for creators are balanced by appropriate limitations and exceptions to rights. As well as exploring the extent to which limitations and exceptions to rights might be appropriate in this one area, this Study does, however, consider whether there are any other ways of providing solutions that address the needs of visually impaired people as users of copyright material as well as protecting the rights of creators.

As has already been mentioned, this Study has drawn heavily on a wealth of published material relevant to the issues explored. In addition, and particularly in order to prepare the case studies in Chapters 4 and 5, a large number of people too numerous to name have been particularly helpful providing and/or checking information. The author's thanks go to all these people, including where information has not been reproduced in the Study but where it has nevertheless informed the conclusions drawn. Particular thanks, however, go to the World Blind Union, the IFLA Libraries for the Blind Section and the International Publishers Association which assisted greatly in facilitating contact with a large number of very helpful individuals and organizations.

---

<sup>12</sup> See agenda item 129 of the World Library and Information Congress: 70<sup>th</sup> IFLA General Conference and Council, August 2004 – see <http://www.ifla.org/IV/ifla70/prog04.htm#129>

## CHAPTER 1

PROVISION IN INTERNATIONAL TREATIES RELEVANT TO COPYRIGHT  
EXCEPTIONS FOR VISUALLY IMPAIRED PEOPLE

## 1.1 Introduction

Much has already been written by others about the provisions in international treaties and conventions permitting exceptions to copyright and no attempt has been made here to repeat that rigorous analysis. Authoritative contributions on this issue have considered, not only the wording of the treaties and conventions, but also a number of other factors which may have an impact on their interpretation. For the meaning of the so-called 3-step test<sup>13</sup>, which, as a result of the 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the 1996 WIPO Copyright Treaty (WCT) and the 1996 WIPO Performances and Phonograms Treaty (WPPT), is now relevant to exceptions to a number of restricted acts governed by these international treaties, this includes consideration of the WTO Panel ruling on the US “homestyle” exception and the TRIPS Agreement<sup>14</sup>.

The analysis underlying this study has involved an examination of four earlier studies in particular in order to present the summary of the current position below. A thorough evaluation of the compatibility of specific exceptions for the benefit of visually impaired people under the terms of the Berne Convention for the Protection of Literary and Artistic Works (the Paris Act of 1971) and the Universal Copyright Convention was made by Mrs Wanda M Noel in the study considered by a joint WIPO and UNESCO Working Group on Access by the Visually and Auditory Handicapped to Material Reproducing Works Protected by Copyright<sup>15</sup>. Further analysis of the relationship between different uses of protected works by handicapped people and international conventions formed part of a second study by the Secretariats of the Executive Committee of the Berne Union and the Intergovernmental Committee of the Universal Copyright Convention, assisted by Mrs Noel, which was included in a joint report by the Secretariats<sup>16</sup>.

---

<sup>13</sup> First discussed during the work leading up to the Stockholm Revision Conference of the Berne Convention and embodied in Article 9(2) of the Paris Act of that Convention providing that “It shall be a matter for legislation in the countries of the Union to permit reproduction of [literary and artistic works protected by the Convention] 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.”

<sup>14</sup> WTO Panel on Section 110(5) of the US Copyright Act: Report of the Panel, WT/DS/160/R, 15 June 2000 – see [http://www.wto.org/english/tratop\\_e/dispu\\_e/distab\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/distab_e.htm)

<sup>15</sup> See UNESCO/WIPO/WGH/I/3 of 3 January 1983 for a report of the Working Group which took place on 25-27 October 1982 and UNESCO/WIPO/WGH/I/2 for the study on the Application of the Berne Convention for the Protection of Literary and Artistic Property and the Universal Copyright Convention to Material for the Visually and Auditory Handicapped

<sup>16</sup> See Annex II of IGC (1971)/VI/11 of 12 March 1985, a report on Copyright Problems Raised by the Access by Handicapped Persons to Protected Works distributed for the Twenty-Fourth Session (9<sup>th</sup> Extraordinary) of the Executive Committee of the Berne Union and the Sixth Ordinary Session of the Committee of the 1971 Convention of the Intergovernmental Committee of the Universal Copyright Convention



More recently, Professor Sam Ricketson has prepared a study for WIPO examining limitations and exceptions in the digital environment generally<sup>17</sup>, which naturally examines the internet treaties, that is the WCT and WPPT, and the TRIPS Agreement, as well as earlier conventions. None of these later treaties were in place at the time of Mrs Noel's study. Professor Ricketson's study looks at the issue generally, and in addition considers the application of the 3-step test to specific areas of concern, including assisting visually or hearing impaired people. Finally, the very recently published study prepared for WIPO by Nic Garnett on Automated Rights Management Systems and Copyright Limitations and Exceptions<sup>18</sup> also includes a review of the relevant provisions of international law which define permissible limitations and exceptions to copyright.

In this study, there is, therefore, no exhaustive analysis of the relationship between copyright exceptions and obligations in international treaties and conventions. The following commentary only briefly highlights what the position might be for each of the relevant pieces of international law, and the constraints that these might place on the scope of exceptions specifically for the benefit of visually impaired people, drawing heavily in this respect on the analysis in the earlier studies that have been referenced above. In examining exceptions in this respect, this has included a consideration both of pure exceptions that permit activity without permission from the copyright owner and without payment of remuneration, and exceptions that are in effect compulsory licences in that there is a requirement for remuneration even though the activity does not require the permission of the right holders. Limitations which might permit certain types of material or works to not be protected by copyright at all have not been considered, as these are not really relevant to the needs of visually impaired people who potentially need access to the whole range of material that can be protected by copyright.

As is apparent from the analysis of provisions in national law below, a range of acts restricted by copyright might be undertaken in order to assist visually impaired people. The most likely restricted acts to be undertaken where exceptions to rights for the benefit of visually impaired people are provided are as follows:

- Reproduction
- Adaptation
- Distribution, including rental and lending
- Broadcasting by wireless means
- Other communication to the public by electronic transmission
- Public performance

It may not always be reasonable to provide exceptions covering these acts, or all of these acts, and this is discussed later, so this brief analysis is purely directed at noting whether in principle exceptions to these rights might be possible. In all cases, this has been done by considering general provision permitting exceptions in the relevant international conventions

---

<sup>17</sup> See SCCR/9/7 of 5 April 2003 for the WIPO Study on Limitations and Exceptions of Copyright and Related Rights in the Digital Environment, which is available at [http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=16805](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=16805)

<sup>18</sup> See SCCR/14/5 of 27 April 2006 for the WIPO Study on Automated Rights Management Systems and Copyright Limitations and Exceptions, which is available at [http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=59952](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=59952)



and treaties<sup>19</sup>. There is no provision in international treaties and conventions relating to intellectual property which specifically provides for exceptions to copyright for the benefit of visually impaired people, or disabled people more generally. However, for completeness, provision in the law of the European Union (EU) is included. This law does, of course, affect the 27 countries of the EU, as well as probably being indirectly relevant to a number of other countries, and it does include a provision which is specifically directed at disabled people.

## 1.2 The Berne Convention for the Protection of Literary and Artistic Works (The Berne Convention)

The Berne Convention governs protection for every production in the literary, scientific and artistic domain. As well as works that are clearly of this type, included, amongst other things, are dramatic works, musical compositions with or without words, cinematographic works, drawings and photographs.

### 1.2.1 Reproduction

- Article 9(2) provides a general exception to the reproduction right.
- Exceptions must comply with the 3-step test:
  - o Provision for visually impaired people is likely to be able to meet the first step, i.e. that it is a “certain special case” – it will probably need to be clearly defined and narrow in scope and reach.
  - o Any conflict with the second step will depend on what is meant by the “normal exploitation of a work” – it may be necessary to consider what markets the author does, or should be able to, control, both now and in the future, as well as whether activity under an exception avoids economic competition with the markets exploited by the author.
  - o The requirement to not “unreasonably prejudice the legitimate interests of the author” requires an exception to be proportionate – it may require consideration to be given to the payment of equitable remuneration, depending on the scope of the exception.
- An exception for the benefit of visually impaired people seems possible, but it is likely to need careful drafting to comply with the conditions.

### 1.2.2 Adaptation

- No provision in the Convention for exceptions to adaptation rights in Articles 12 and 14.

---

<sup>19</sup> The Universal Copyright Convention (UCC) has not been considered in detail as it seems most unlikely that this Convention could impose any limitation on exceptions not present in other conventions and treaties, and it is extremely rare now for a country to be bound by the UCC and not at least either the Berne Convention or the WTO TRIPS Agreement. The UCC in any case leaves the task of defining exceptions to national legislation so that limitations on the scope of permitted exceptions are imposed only by such concepts as the need to provide “adequate and effective protection”, not to exceed the “spirit” of the Convention and not to apply exceptions arbitrarily.

- No clear possibility of an exception being permitted by the minor reservations doctrine for the main adaptation right in Article 12, but it may be possible to argue this for cinematographic adaptation rights in Article 14.
- Could also argue that any adaptation that occurs when making accessible formats for visually impaired people is a species of reproduction and so covered by permissible exceptions to that right, but it is not certain whether this is acceptable.
- The possibility of exceptions for the benefit of visually impaired people is therefore currently not clear.

### 1.2.3 Distribution, including rental and lending

- These rights are not specifically provided in the Convention, other than distribution right in Article 14(1) for literary and artistic works adapted and reproduced as cinematographic works.
- Distribution, however, is linked to reproduction – when reproductions are authorised, distribution usually happens – so limitations on exceptions to the reproduction right may impliedly limit exceptions to distribution rights.
- Minor reservations doctrine can apply to Article 14, but scope of exceptions possible using this justification may be very limited.
- In general, it seems unlikely there would be a problem where exceptions permitting reproductions for the benefit of visually impaired people in compliance with the Convention, also permit restricted types of distribution of copies so made to those people.

### 1.2.4 Broadcasting by wireless means

- Article 11bis(2) permits compulsory licences for wireless broadcasting, or rebroadcasting, which could encompass exceptions with remuneration to right holders.
- No provision exists in the Convention regarding exceptions, but the minor reservations doctrine applies which would permit *de minimis* exceptions, including ones that do not have a requirement for remuneration.
- Exceptions for the benefit of visually impaired people which take the form of compulsory licences seem to be clearly permitted, but limited exceptions without remuneration may also be possible.

### 1.2.5 Other communication to the public by electronic transmission

- Some rights are provided by Articles 11 and 11bis, 11ter and 14, but this area is not comprehensively covered and there is no provision in the Convention regarding exceptions, other than possibility under Article 11bis(2) for compulsory licences for initial communication of literary and artistic works by wireless means and by communication of wireless broadcasts by wire.
- Minor reservations doctrine applies in all cases which would permit *de minimis* exceptions without remuneration.
- Unlikely to therefore be a problem with limited exceptions for the benefit of visually impaired people.

### 1.2.6 Public performance

- Rights provided by Articles 11, 11bis, 11ter and 14 but there is no provision in the Convention regarding exceptions, other than the possibility under Article 11bis(2) for compulsory licences for public performance by reception of a wireless broadcast.
- Minor reservations doctrine applies which would permit *de minimis* exceptions.
- Unlikely to therefore be a problem with limited exceptions for the benefit of visually impaired people, with or without remuneration.

### 1.3 The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (The Rome Convention)

The Rome Convention governs protection for performances given by performers, phonograms and broadcasts. Article 15(2) permits exceptions “of the same kind” as are permitted for literary and artistic works so in principle it appears possible to provide exceptions to these rights for the benefit of visually impaired people as set out above for the Berne Convention. However, Article 15(2) also limits the provision of compulsory licences to the extent compatible with the Rome Convention and the rights governed by the Rome Convention are not as extensive in some respects as those governed by the Berne Convention. The following analysis therefore only covers any differences from the Berne Convention as a result of these factors.

#### 1.3.1 Reproduction

- Protection for performers under Article 7(1) need not be by granting an exclusive right and the nature of provision may rule out the possibility of a compulsory licence.
- Exclusive rights for producers of phonograms and broadcasting organisations in respect of their broadcasts – see Articles 10 and 13 – do not provide for compulsory licences.
- An exception for the benefit of visually impaired people therefore seems possible, but probably not one delivered as a compulsory licence.

#### 1.3.2 Adaptation

- Rights not clearly provided by Rome so exceptions for the benefit of visually impaired people presumably possible at least to the extent permitted by the Berne Convention.

#### 1.3.3 Distribution, including rental and lending

- Rights not specifically provided in Rome, so as in the case of the Berne Convention, it seems unlikely there would be a problem where exceptions permitting reproductions for the benefit of visually impaired people in compliance with Rome, also permit restricted types of distribution of copies so made to those people.

### 1.3.4 Broadcasting by wireless means

- Only rights with respect to published phonograms really relevant where the right under Article 12 for performers and producers of phonograms is only to a single equitable remuneration, so compulsory licensing in general for this activity is possible.
- A compulsory licence replacing the right that broadcasting organisations are given by Article 13 to control rebroadcasting of their broadcasts appears not to be possible, but “rebroadcasting” rights are limited to simultaneous broadcasting in any case.
- An exception that takes the form of a compulsory licence applying to all subject matter may therefore need careful drafting, but exceptions to this right for the benefit of visually impaired people which do not involve remuneration are also likely to be possible as seems the case for the Berne Convention.

### 1.3.5 Other communication to the public by electronic transmission

- Scope and extent of rights required by Rome do not seem clear.
- Unlikely to be a problem providing exceptions for the benefit of visually impaired people at least to the extent compatible with the Berne Convention.

### 1.3.6 Public performance

- The right with respect to published phonograms under Article 12 for performers and producers of phonograms is only to a single equitable remuneration so compulsory licensing in general for this activity is possible.
- The right for broadcasting organisations under Article 13 only applies where public performance by reception of a broadcast is in places made accessible to the public against payment of an entrance fee, and compulsory licences generally possible too.
- Exceptions for the benefit of visually impaired people likely to be possible which could be without remuneration, at least to the extent that this is possible under Berne.

### 1.3.7 Fixation

- The nature of the protected subject matter means that Rome provides performers with the possibility of preventing unauthorised fixation of an unfixed performance (Article 7) and broadcasting organisations with an exclusive right regarding the fixation of their broadcasts (Article 13).
- There is no counterpart in Berne given the different nature of what is protected by that Convention, which makes it more difficult to understand how Article 15(2) should be interpreted for these rights.
- Conditions relating to reproduction of fixations in Articles 7 and 13 seem to condone the possibility of fixations being made under exceptions permitted by Article 15.
- Exceptions for the benefit of visually impaired people therefore seem possible.

## 1.4 The Agreement on Trade-Related Aspects of Intellectual Property Rights (The TRIPS Agreement)

The TRIPS Agreement governs protection for literary and artistic works as covered by

the Berne Convention, computer programs, compilations of data, performances given by performers, phonograms and broadcasts. Rights, and permitted exceptions to rights, for literary and artistic works are the same as for Berne as Article 9 of TRIPS requires the relevant Articles of Berne to be complied with. In addition, Article 13 of TRIPS incorporates a slightly modified version of the so-called 3-step test to limit the scope of exceptions to exclusive rights<sup>20</sup>. In some cases it is possible that this test applies to both those exclusive rights specifically set out in TRIPS and those rights incorporated by the requirement to comply with provision in the Berne Convention. Article 2(2) of TRIPS, though, probably means that this test does not permit exceptions where they would be in conflict with Berne. Also, the TRIPS 3-step test is unlikely to be cumulative with some Berne restrictions on exceptions, where there is incompatibility between the two. Finally, rights in performances, phonograms and broadcasts are governed by Article 14(6) of TRIPS that limits exceptions only to the extent permitted by the Rome Convention.

#### 1.4.1 Reproduction

- As for the Berne Convention for literary and artistic works, and in this respect Berne includes the 3-step test, but there may be differences because the test of proportionality in the last step of the 3-step test is judged with respect to authors under Berne and right holders under TRIPS.

- Not clear what limitations must apply to exceptions to protection for computer programs and compilations of data, but it seems unlikely to be more than either Berne limitations and/or TRIPS 3-step test limitations at most.

- Regarding performers' rights, the rights of producers in phonograms and the rights of broadcasting organisations in broadcasts, exceptions must be as permitted by Rome.

- An exception for the benefit of visually impaired people in respect of any of the protected subject matter seems possible, but it is likely to need to be carefully drafted to comply with the conditions.

#### 1.4.2 Adaptation

- No more clarity than in the Berne and Rome Conventions regarding permitted exceptions.

- Not clear what exceptions for the benefit of visually impaired people might be permitted, but, if any exceptions for literary and artistic works are possible, they may need to comply with the TRIPS 3-step test as well as any other conditions.

---

<sup>20</sup> Article 13 states 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 right holder". Note that the test refers to exploitation of "works" whereas not all the subject matter required to be protected by Part II, on Copyright and Related Rights, of the TRIPS Agreement appears to come within the scope of this term so the test does not clearly apply other than to TRIPS' requirements to protect "works". Note also that the 3<sup>rd</sup> step of the test is a measure of proportionality with respect to the legitimate interests of the right holder (and not the author as in the Berne Convention), which might lead to different interpretation. In particular, a right holder who is not the author is unlikely to have moral rights. In any case, the Berne Convention provisions on moral rights are not incorporated into the TRIPS Agreement.

#### 1.4.3 Distribution, including rental and lending

- Rental rights are clearly provided for computer programs, cinematographic works and phonograms – see Articles 11 and 14(4).
- No requirement to provide a non-commercial lending right.
- For works, i.e. cinematographic works and possibly computer programs, the TRIPS 3-step test is relevant to exceptions.
- Exceptions permitting rental for the benefit of visually impaired people may therefore be possible, although application of the 3-step test suggests that non-commercial loans are likely to be more acceptable, an activity which is not restricted by TRIPS in any case.
- As for the Berne and Rome Conventions, no specific distribution right is provided and exceptions permitting distribution by other means of copies that can be made under exceptions to the reproduction right are also likely to be possible.

#### 1.4.4 Broadcasting by wireless means

- For Berne works, exceptions seem in principle possible.
- For fixations of performances and phonograms, no rights are provided and for broadcasts, the right is limited to rebroadcasting where the possibility for exceptions seems to be the same as for Rome.
- TRIPS 3-step test might impose additional restrictions, but:
  - o Seems unlikely that TRIPS 3-step test is to be applied in addition to provision in Berne that permits compulsory licensing.
  - o Also, uncertain that *de minimis* requirements under minor reservations doctrine should apply as well as 3-step test.
- Exceptions to this right for the benefit of visually impaired people which do not involve remuneration as well as ones that do seem in principle possible, and for some protected subject matter there are no rights in this area in any case.

#### 1.4.5 Other communication to the public by electronic transmission

- As for the Berne Convention, there is unlikely to be a problem with exceptions for the benefit of visually impaired people, which involve remuneration or otherwise
- Rights in respect of fixations of performances, phonograms and broadcasts are not required by TRIPS in any case so TRIPS does not impose any restrictions on exceptions to these rights.
- As for broadcasting rights under TRIPS, it is not clear to what extent the TRIPS 3-step test imposes additional constraints, if any.

#### 1.4.6 Public performance

- As for the Berne Convention, there is unlikely to be a problem with exceptions for the benefit of visually impaired people.
- Rights are not required for fixations of performances, phonograms and radio broadcasts in any case and only as for the Rome Convention for television broadcasts.
- As for broadcasting rights under TRIPS, it is not clear to what extent the TRIPS 3-step test applies additional constraints, if any.

#### 1.4.7 Fixation

- As for the Rome Convention, to the extent this right applies, exceptions for the benefit of visually impaired people seem possible.

#### 1.5 The WIPO Copyright Treaty of 1996 (The WCT)

The WCT governs protection for literary and artistic works as defined in the Berne Convention and also specifically includes computer programs, and compilations of data (databases) which constitute intellectual creations by reason of the selection or arrangement of their contents. Rights, and permitted exceptions to rights, must be as in the Berne Convention for rights that are in Berne as Article 1(4) of the WCT requires the relevant Articles of Berne to be complied with. However, in addition, the WCT covers rights extending beyond those required by Berne and in Article 10 makes provision regarding limitations and exceptions in two parts. The first part is to apply a 3-step test to exceptions to the rights under the WCT<sup>21</sup>. This is probably the only provision governing exceptions to these rights where the rights are not, or not clearly, provided under the Berne Convention, i.e. the rights of distribution and rental, and certain aspects of the right of communication to the public. However, the second part is to apply a 3-step test to exceptions to rights in areas covered by the Berne Convention<sup>22</sup>, and so gives rise to some doubt about whether or not this test should be applied in addition to restrictions on the scope of exceptions that already apply to Berne. It is possible that there is no such additional limitation given in particular the last sentence of the agreed statement adopted at the 1996 Diplomatic Conference regarding Article 10(2) of the WCT<sup>23</sup>. There may, though, be more doubt where exceptions to the reproduction right in Article 9 of Berne are extended to the digital environment as envisaged in the agreed statement concerning Article 1(4) of the WCT<sup>24</sup>, especially given continuing debate about the status of

---

<sup>21</sup> Article 10(1) of the WCT specifies that “Contracting Parties may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic works under the Treaty 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.”

<sup>22</sup> Article 10(2) of the WCT specifies that “Contracting Parties shall, when applying the Berne Convention, confine any limitations of or exceptions to rights provided for therein 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.”

<sup>23</sup> The agreed statement concerning Article 10 of the WCT is as follows:

“It is understood that the provisions of Article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment.

It is also understood that Article 10(2) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention.”

<sup>24</sup> The agreed statement concerning Article 1(4) of the WCT is as follows:

“The reproduction right, as set out in Article 9 of the Berne Convention, and the exceptions permitted thereunder, fully apply in the digital environment, in particular to the use of works in digital form. It is understood that the storage of a protected work in digital form in an electronic medium constitutes a reproduction within the meaning of Article 9 of the Berne Convention.”

the second agreed statement in terms of which Treaty it relates to and whether it is binding or not.

### 1.5.1 Reproduction

- Berne Convention rights are clarified, or possibly extended, by the WCT, but the main provision governing exceptions to rights is still a 3-step test.
- An exception for the benefit of visually impaired people seems possible, but it is likely to need to be carefully drafted to comply with the conditions.

### 1.5.2 Adaptation

- As for the Berne Convention

### 1.5.2 Distribution, including rental and lending

- Exceptions to the distribution right in Article 6 are governed by the 3-step test in Article 10(1).
- Rental rights only apply to computer programs, cinematographic works and works embodied in phonograms, and for the last of these may only need to be an equitable remuneration right rather than an exclusive right – see Article 7 of the WCT.
- No requirement to provide a non-commercial lending right.
- Exceptions to rental rights are governed by the 3-step test in Article 10(1).
- An exception for the benefit of visually impaired people seems possible, but application of a 3-step test may affect the extent to which commercial distribution and rental rather than non-commercial distribution and lending can be permitted.

### 1.5.3 Broadcasting by wireless means

- This right is encompassed by the broad right of communication to the public in Article 8 of the WCT, but this must be without prejudice to Article 11bis(1)(i) and (ii) of the Berne Convention, so this right and, in view of the agreed statement relating to Article 10 of the WCT, exceptions to the right, are probably still governed by Berne.
- Exceptions for the benefit of visually impaired people which take the form of compulsory licences therefore seem to be clearly permitted, but limited exceptions without remuneration may also be possible.

### 1.5.4 Other communication to the public by electronic transmission

- As for broadcasting, some rights are provided by the Berne Convention, so permitted exceptions for these are probably still governed by Berne where exceptions seem possible.
- Exceptions to any new right, such as the making available to the public in such a way that members of the public may access works from a place and at a time individually chosen by them, will be governed by the 3-step test in Article 10 of the WCT.



- Unlikely to therefore be a problem with limited exceptions for the benefit of visually impaired people, but these may need careful drafting given the different origins of rights.

#### 1.5.5 Public performance

- Rights and exceptions are possible as in the Berne Convention as no new provision regarding these rights is in the WCT.

#### 1.6 The WIPO Performances and Phonograms Treaty of 1996 (The WPPT)

The WPPT governs protection for performers and producers of phonograms and specifically does not derogate from any obligations as a result of the Rome Convention, but it does not actually require any of the provisions of Rome to be adopted. Article 16 of the WPPT governs exceptions to rights by providing both the Rome Convention test, namely that any exceptions must be “the same kind” as those relating to literary and artistic works, and a modified 3-step test<sup>25</sup>. As for the WCT, statements agreed at the 1996 Diplomatic Conference make it clear that reproduction rights, and so exceptions to rights, apply to the digital environment, and that the agreed statement applying to Article 10 of the WCT applies *mutatis mutandis* to Article 16 of the WPPT. The full implication of these conditions is not very clear, but may depend in part on what other conventions and treaties, in particular the Berne Convention, the TRIPS Agreement and the WCT, a Contracting Party belongs to, and to what extent the 3-step test can impose restrictions on exceptions permitted in particular by the Rome Convention where provision relating to exceptions is more generous in that Convention than in the WPPT.

##### 1.6.1 Reproduction

- Exceptions to the right in Article 7 of the WPPT for performers in respect of their performances fixed in phonograms and Article 11 of WPPT for producers of phonograms seem to be limited by the 3-step test and literary and artistic work comparator test.

- As exceptions for the benefit of visually impaired people to reproduction rights for literary and artistic works seem possible, similar exceptions seem possible under the WPPT.

---

<sup>25</sup> Article 16 of the WPPT provides as follows:

“(1) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of performers and producers of phonograms as they provide for in their national legislation, in connection with the protection of copyright in literary and artistic works.

(2) Contracting Parties shall confine any limitations or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the performance or phonogram and do not unreasonably prejudice the legitimate interests of the performer or of the producer of the phonogram.”

### 1.6.2 Adaptation

- No rights appear to be provided so exceptions to any rights in national laws should not be a problem

### 1.6.3 Distribution, including rental and lending

- Exceptions to distribution and commercial rental rights must comply with the 3-step test and literary and artistic work comparator test.
- There is no requirement to provide a non-commercial lending right.
- As for the WCT, an exception for the benefit of visually impaired people seems possible, but application of the 3-step test may affect the extent to which commercial distribution and rental rather than non-commercial distribution and lending can be permitted.

### 1.6.4 Broadcasting by wireless means

- WPPT Article 15 only requires a remuneration right, so exceptions that amount to compulsory licences are possible.
- Exceptions for the benefit of visually impaired people without remuneration could be possible too by comparison with what is possible under the WCT for literary and artistic works for example, but the 3-step test also applies.

### 1.6.5 Other communication to the public by electronic transmission

- Position for other communication to the public likely to be the same as for broadcasting, other than the right of making available on demand when the WPPT Articles 10 and 14 require an exclusive right.
- 3-step and literary and dramatic work comparator tests probably both apply but may also need to have regard to the origin of some of the rights in the Rome Convention.
- As for the WCT, unlikely to therefore be a problem with limited exceptions for the benefit of visually impaired people, but these may need careful drafting given the different origins of rights under both the WCT and WPPT.

### 1.6.6 Public performance

- No new provision in the WPPT regarding these rights so the WPPT should have no affect of what exceptions are possible

### 1.6.7 Fixation

- Performers right in WPPT Article 6 is an exclusive right so may be some difference compared to the Rome Convention.
- Uncertain how a literary and artistic work comparator test would apply given the lack of an equivalent right in that area.
- Exceptions are likely to be possible for the benefit of visually impaired at least as limited by the 3-step test.

## 1.7 European Union Directives

Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (the EU copyright Directive)<sup>26</sup> governs protection in the EU relevant to the information society for works, fixations of performances, phonograms, films and broadcasts. Article 5 provides one mandatory and a number of permitted exceptions to rights. For the purposes of this study, the most relevant provision in Article 5(3)(b) provides for exceptions to the reproduction right, and the right of communication to the public for works and the right of making available to the public for other subject matter, for:

*“uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability”*

It is also possible according to Article 5(4) to provide similarly for an exception of this nature to the distribution right, so that an exception may be provided for the benefit of visually impaired people in respect of all of the exclusive rights governed by the Directive. Although the above wording about an exception might on the face of it appear rather broad, it should be noted that it is mapping out the area for a permitted exception rather than providing an exception as such. All member States of the EU choosing to provide such an exception for the benefit of visually impaired people or other disabled people must in addition ensure that the exception complies with yet another version of the 3-step test as provided in Article 5(5) of the Directive<sup>27</sup>.

The EU copyright Directive does not, however, alter some provision in earlier Directives governing permitted exceptions to rights for certain types of material. For example, exceptions to rights in databases are governed by Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (the database Directive)<sup>28</sup>.

---

<sup>26</sup> See [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&numdoc=32001L0029&model=guichett&lg=en](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&numdoc=32001L0029&model=guichett&lg=en)

<sup>27</sup> The exceptions and limitations “shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder.”

<sup>28</sup> See [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=31996L0009&model=guichett](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=31996L0009&model=guichett)

## CHAPTER 2

### EXAMINATION OF COPYRIGHT EXCEPTIONS FOR VISUALLY IMPAIRED PEOPLE IN NATIONAL LEGISLATION

#### 2.1 Introduction

A number of sources<sup>29</sup> have been searched to identify provision in national copyright laws relating specifically to the needs of visually impaired people. At the present time, significantly fewer than half of WIPO Member States have been found to have such provision<sup>30</sup>. Annex 2 tabulates all the exceptions that have been found. In the following analysis, the various ways in which the specific exceptions are provided in national laws is explored. This analysis should not, however, be used to replace knowledge of interpretation and jurisprudence in each country that has specific provision as it has not been possible in compiling this study to explore the nature and working of exceptions in this detail<sup>31</sup>.

In general, specific exceptions for the benefit of visually impaired people are directed at what is sometimes called their print disability, that is the difficulties they encounter in trying to access the written word and related material, such as diagrams, drawings and pictures. Most of the exceptions in national laws that have been found would enable one or more type of accessible version of a copyright work to be made, usually subject to various conditions, in order to address problems arising from a print disability. However, two countries<sup>32</sup>, Belize and Fiji, which do not appear to have specific exceptions to deal with a print disability, do have exceptions that permit subtitling and other modifications of copies of broadcasts for the special needs of people with a disability. These could, of course, permit audio description<sup>33</sup> for the benefit of visually impaired people to be added. They do not, though, cover likely needs for audio-description comprehensively as they do not apply to audiovisual material when it is not included in a broadcast.

The remainder of this analysis only examines exceptions capable of providing one or more solutions for those who have a print disability, but in some cases the exceptions go beyond this, for example they apply to disabled or handicapped people generally and/or the type of material that can be modified is not limited to the written word and related matter, so

---

<sup>29</sup> See Annex 1 for the principle sources of information.

<sup>30</sup> This Study does not, of course, provide a definitive list of countries which have specific exceptions to copyright for the benefit of visually impaired people as there are inevitably likely to be countries where provision does exist but it has not been identified. Moreover, in other countries specific exceptions which have been found may well have been updated more recently than the information in the sources searched so the provision that has been found no longer reflects the current position.

<sup>31</sup> In particular, reliance in many cases on translations of the original legislation is likely to mean that there are some errors in the interpretation of the scope of the exceptions that have been found.

<sup>32</sup> Some other countries which do provide specific exceptions to deal with a print disability also have an exception permitting subtitling and other modification of a copy of a broadcast, for example New Zealand, Malaysia and the United Kingdom.

<sup>33</sup> Audio description is the modification of audiovisual material by the addition of narration that describes all significant visual information such as body language, facial expression, scenery, action, costumes. It is added in the gaps between the dialogue on the normal sound track and attempts to cover anything that is important to conveying the plot of the story, event or image.

may cover modification of audiovisual material by audio-description. These and other differences, and similarities, between the 57 specific exceptions in national laws that have been found are explored further below.

However, this does not mean that it is impossible to make accessible copies for visually impaired people, or for visually impaired people to do this for themselves, in other countries as at least some of this activity is likely some of the time to fall within the scope of other exceptions. The most likely types of exceptions that could help are those provided for the purposes of education and/or private copying, but an exception such as that in Macau<sup>34</sup>, which provides for transformation necessary for the authorised use of a work, could encompass putting works into Braille or other accessible formats more generally.

It is, however, extremely unlikely that exceptions that do not specifically provide for the needs of blind or other visually impaired people would provide a comprehensive solution to the needs of those facing a print disability. This is because visually impaired people, like those who are normally sighted, will frequently wish to read as a leisure activity rather than as part of an educational process. Also, visually impaired people frequently rely on access to alternative, accessible formats of copyright works produced in some number by charitable and voluntary organisations, so it is these bodies rather than the visually impaired people themselves acting under a private copying exception which need to be able to make accessible copies without infringing copyright. In addition, the type of accessible format that is needed may not fit within the terms of a more general exception. For these reasons, as well as to keep the study to manageable proportions, there has, therefore, been no attempt to identify the extent to which other exceptions might benefit visually impaired people, but anyone wanting to explore what activity might be possible for the benefit of visually impaired people in a particular country should certainly consider looking at more general exceptions as well as the specific ones identified below.

## 2.2 Scope regarding end beneficiary

The majority of exceptions that will assist people who are unable to access the written word, or who have difficulty doing so, are specifically directed at those people, in some cases with additional conditions (as explored further below) which try to ensure that only such people can be the end beneficiaries of the exception. Quite a few exceptions that have been found do not, though, clearly include any limitation regarding meeting only the needs of visually impaired people.

Examples of exceptions of this type can be seen in Armenia, Bulgaria, China, Iceland, Lithuania, Malaysia and the Russian Federation where the end beneficiary of accessible formats that might be made is implied by the type of accessible format that might be made. Most of the countries where the end beneficiary is implied in this way only permit accessible formats that are either Braille or another specialized format for blind people. Only three countries that imply the end beneficiary do not impose that implied limitation in this way. Two countries, namely China and Iceland, impose an even narrower implied limitation on the end beneficiary as only Braille copies are permitted. Finally, the provision in Malaysia,

---

<sup>34</sup> Section 66 provides that the legal right to use a work without the author's prior consent includes by implication the right to transform it, by translation or otherwise, to the extent necessary for its authorized use

which also lacks a clear limitation regarding the end beneficiary, is different from the others as both the type of accessible format and end beneficiary have been deduced from the organisation able to undertake activity under an exception. The implication is that there is a limitation to the making of Braille copies for those visually impaired people who can read Braille. The absence of complete clarity about the end beneficiary does not, therefore, seem to result in an exception of broad scope.

Of the exceptions where the end beneficiary is more clearly defined and limited, there are many different ways of defining the end beneficiary, but some of the apparent differences may be more to do with the accuracy of translations that have been used than real. It may, therefore, be that exceptions which purport to be limited only to blind people as end beneficiaries are not so narrow as to exclude people who are partially sighted. A number of exceptions apply to disabled people generally, or people with either a physical or mental handicap, and it has been assumed that all of these will encompass activity for the benefit of people who are visually impaired. In most cases, however, there does not seem to be any attempt to define the terms that have been used to refer to the end beneficiaries, although this does not mean that courts in those countries would not construe the terms in some appropriate way.

Some countries do, however, attempt to define the terms used clearly, and generally this has been done to encompass a wide range of visual impairments, although the precise scope will depend on deciding what terms like “severe impairment” mean. Countries that adopt this approach include:

- Australia which targets people with a print disability, defined as a person without sight, a person whose sight is severely impaired, a person unable to hold or manipulate books or to focus or move his or her eyes, or a person with a perceptual disability; and
- Canada which targets people with a perceptual disability, defined as a disability that prevents or inhibits a person from reading or hearing a literary, musical, dramatic or artistic work in its original format, and includes such a disability resulting from (a) severe or total impairment of sight or hearing or the inability to focus or move one’s eyes, (b) the inability to hold or manipulate a book, or (c) an impairment relating to comprehension.

Other approaches to defining the beneficiaries of exceptions which might give some certainty about scope can be found in:

- the United States of America where a test of disability includes those who are eligible or may qualify to receive books for blind people under other legislation; and
- in France where there is a numerical measurement of the extent of the disability, measured against relevant standards.

Another, arguably more flexible, type of test where impairment other than blindness is at least partly judged against those who have normal sight or perception is provided in countries such as:

- Norway which targets blind people and people whose sight is impaired and others who due to a disability cannot perceive the work in the normal way; and
- the United Kingdom which targets a visually impaired person defined as a person (a) who is blind, (b) who has an impairment of 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) who is unable through physical disability to hold or manipulate a book, or (d) who is unable through physical disability to focus or move his eyes to the extent that would normally be acceptable for reading.

However, where a term like “normal” or “normally” needs to be construed, certainty about scope may be no more assured than by use of terms like “severe”.

Possibly the most flexible approach to who might be able to benefit from exceptions can be found in Italy where the categories of eligible disability can be adjusted by Ministerial decree, although it is unlikely to be any easier to define the scope regarding the end beneficiary with certainty in such a decree than in the legislation providing the exception.

### 2.3 Works that may be used

Perhaps the main differences between provisions regarding what works can be made accessible to visually impaired people concern whether the work has already been published or otherwise disclosed or disseminated to the public. About a third of the exceptions do not appear to require any such condition whereas the majority do, often also making it clear that publication or disclosure must have been lawful.

There are two countries, Australia and the United Kingdom, where permitted activity under exceptions sometimes requires the work to have been published and sometimes not. In Australia, making a sound recording of a literary or dramatic work does not seem to require that work to have been published, although it is necessary to find out whether a recording has already been published and, if so, undertake reasonable investigations to try and obtain a copy. If no copies of the published recording can be obtained in a reasonable time at a reasonable commercial price, the exception can be invoked. Activity under the exceptions in Australia other than to make sound recordings does seem to require the literary or dramatic work to have been published. In the United Kingdom the requirement about publication applies to all activity where organizations are making multiple copies of accessible formats for visually impaired people, but there is another exception which permits a visually impaired person to make, or have made, a single copy in an accessible format of a work that he or she lawfully possesses, and there is no requirement in this case that the work must have been published or otherwise disclosed.

It is quite common for exceptions to include a requirement that the work to be used has not been published already in a special format for visually impaired people. Examples of countries that include this sort of provision are Azerbaijan, Georgia, Kazakhstan and Kyrgyzstan, most of which also have a requirement regarding publication. All the countries that express the limitation to works that can be used by ruling out works already made in special formats for visually impaired people do, in fact, only permit Braille or other specialized formats to be produced so this limitation is quite logical. In Moldova, the test seems to be only to check that there is not a Braille copy already available, but this is logical too as only accessible formats in Braille can be made under the exception.

In some countries, the test is not so much whether there is a special format already available, but whether there is an accessible format, which could, of course, be a format that has not necessarily been made available specifically for visually impaired people, but is nevertheless capable of being accessible to them in some way. Examples of countries that include a test of this sort are as follows:

- Germany, where the exception applies to works where there is not an accessible version already available; and
- Slovenia, where the exception applies to works that are not available in the desired form.

A more developed form of this sort of test, which has already been mentioned above in connection with the making of sound recordings in Australia, involves considering how difficult and how expensive it is to obtain an accessible version that has already been made. This type of test applies to the making of other formats in Australia and also to the following countries as indicated:

- New Zealand, where the exception applies to literary or dramatic works so long as, after making reasonable efforts, it has not been possible to obtain the work in the modified form needed within a reasonable time and at an ordinary commercial price; and
- Singapore, where the exception applies to literary or dramatic works that have been published, but where the format to be made has already been published, it can only be made under the exception if satisfied after reasonable investigation that it is not possible to obtain a published copy in a reasonable time and at an ordinary commercial price.

In about half of the countries with exceptions, both countries with or without requirements about publication, activity under the exception regarding all types of copyright works seems to be possible. It is not possible to be certain in this respect as there has been no attempt for the purposes of this study to examine in depth the scope of references to “works” or “scientific, literary and artistic works”, the latter of which does, of course, match the scope of works required to be protected by the Berne Convention. Moreover, it has also not been possible to examine in detail to what extent exceptions apply to rights related to copyright, which might be relevant where it is desirable to make audio descriptions of films and broadcasts for example. On the other hand, some specific exclusions from and extensions to what falls within the scope of the works that can be used are worth noting. For example, several countries, including Australia and Bulgaria, disapply their exceptions from computer programs, the United Kingdom excludes databases and the United States of America excludes dramatic works from the provision permitting accessible copies to be made. Also, Canada excludes cinematographic works from the scope of its exception but, by contrast, Norway specifically includes an exception that applies to films. Both Japan and the United States of America have exceptions specifically directed at school textbooks and Macau has an exception specifically directed at lectures given by professors.

#### 2.4 Profit/non-profit making activity

In at least two-thirds of the exceptions profit-making or commercial activity is ruled out of the scope of the exceptions by specifically requiring that the activity be not for profit, non-commercial, not for gainful intent or similar. For a few of these countries, such as Ireland and New Zealand, this is achieved by saying that the body that is permitted to undertake the activity under the exception in order to assist visually impaired people must not be profit-making. A requirement of this type also applies to bodies undertaking activity under exceptions in Singapore and the United Kingdom, except where the body is an educational establishment. In Canada, this same type of limitation applies to activity by an organisation, but activity by individuals is also possible and is not similarly constrained. A limitation to activity by not-for-profit organisations could be achieved in, for example, Nigeria and Japan where the activity under the exception is undertaken by government approved establishments.

There are also some examples of restrictions which provide more detail about exactly what cannot lead to a profit. In particular, this could cover the supply of accessible copies to visually impaired people and/or use of such copies by visually impaired people. Examples of this more detailed type of provision are as follows:



- no more than the costs of making and supplying copies to visually impaired people can be recovered under exceptions in New Zealand and the United Kingdom;
- in El Salvador and Panama, the visually impaired people attending the communication of the works made accessible to them must do so free of charge and those involved in the event must receive no remuneration for their involvement;
- in Paraguay, Portugal and Spain, the use of the accessible copies, presumably by visually impaired people, must not be for profit-making purposes; and
- in the Republic of Korea a limitation to non-profit making activity in respect of making sound recordings probably exists by the limited scope of where sound recordings can be used.

Apart from the activity by educational establishments in Singapore and the United Kingdom mentioned above, Japan and the United States of America seem to be the only other countries that have any provision in exceptions that clearly could involve commercial entities undertaking activity. In Japan, this concerns the making of large print copies of school textbooks only, where distribution for profit-making purposes is subject to compensation. In the United States of America, this is in connection with the exception that permits publishers to comply with the requirements of State or local education agencies with respect to print instructional materials for use in schools. However, some commercial activity may also be possible in those countries which have exceptions which do not appear to expressly rule out commercial activity, although other conditions, such as compliance with the 3-step test, which is quite a common additional condition as discussed below, may rule it out.

## 2.5 Permitted/restricted acts covered

Nearly half of the exceptions that have been found only specify the reproduction of a work, although it seems unlikely that it would not also be possible to provide a visually impaired person with a work so reproduced in an accessible format, but there may be some doubt about the methods that can be used to do this. In Finland, however, although there may be doubt about permitted distribution methods for most types of accessible copies, it is made clear that sound recordings that have been made can also be lent. Under the exceptions provided in Austria, the Czech Republic, Estonia, Germany, Hungary, Latvia, Slovenia, Ukraine and the United States of America, as well as making reproductions of works, it is clearly possible to distribute the accessible copies made, and in Australia and Italy the exceptions provide for reproduction and communication to the public, with sound broadcasting being specifically possible too under a separate exception in Australia. There is scope to provide visually impaired people with accessible copies that have been made in Slovakia and Sweden by more than one method as both these countries have exceptions that apply to both distribution and communication to the public as well as reproduction, although in the case of Slovakia, distribution cannot be by sale but does include lending, and in the case of Sweden more conditions apply where there is communication to the public.

In the Dominican Republic, El Salvador and Panama, the exceptions only permit what is in effect a performance in public of a work where the end beneficiaries are at the performance. The law in France permits reproductions, and also a performance for the personal use of the end beneficiary of the exception.

Not all of the exceptions that have been found are written in terms of which of the acts restricted by copyright would not be infringed by activity under the exception. This may to some extent make it more difficult to decide what restricted acts are within the scope of the

exception, but in other ways may provide a more flexible provision that would permit the undertaking of a restricted act if it is within the scope of the activity that is described without having to decide precisely which restricted acts are involved in what is being done. This might be particularly helpful where making accessible copies for visually impaired people involves making a reproduction and adaptation of the original work as very few exceptions specifically mention that making an adaptation is permitted. Also, using words like “supply” regarding the dissemination of copies to visually impaired people could encompass both traditional distribution of physical copies and communication of copies by electronic transmission. References simply to “use” are likely to be even more flexible.

The reason that it might be relevant to be able to make an adaptation of a work is that it might be necessary to, for example, rearrange the layout of the work, describe drawings and pictures and include navigational aids, all of which might come within the scope of the restricted act of adaptation. However, it would not be reasonable to expect a specific exception for the benefit of visually impaired people to permit changes that are not necessary to overcome problems arising out of a visual impairment. Translation from one language into another is, of course, one such change that visually impaired people who are unable to understand the source language might desire, but in this respect their needs are no different from those of sighted people unable to understand the source language, so translation is not an adaptation necessary to overcome problems arising from a visual impairment. There may, of course, be other exceptions that permit translation and other forms of adaptations in appropriate circumstances for reasons other than to specifically help people who are visually impaired, and such exceptions may be capable of being enjoyed by visually impaired people as well as normally sighted people. However, there has been no attempt in this study to examine their availability and scope.

Table 1 sets out phrases that define what is permitted under some exceptions without using the language, or only partly using the language, of the acts restricted by copyright. It should be remembered, of course, that exceptions will in general include a number of other conditions of the type discussed in other sections of this Chapter, so it is not possible to undertake the activity as described by these phrases, or the acts where the language of the restricted acts is used, without also complying with those conditions.

Table 1: Exceptions defining permitted acts without using language of restricted acts

Country	How permitted/restricted acts are defined
China	“transliteration of a published work into Braille and publication of the work so transliterated”
Croatia	“use of copyright works”
Denmark	“to use and distribute copies of published works”
Iceland	“Braille editions ... may be printed and published”
Ireland	“make a copy ... and supply that modified copy”
Macau	“reproduction or any other ... use of published works” and “the right to transform, by translation or otherwise, to the extent necessary”
Malaysia	“any use of a work ... in the public interest”
Netherlands	“reproduction and publication”
New Zealand	“make copies or adaptations ... for the purpose of providing copies to persons with a print disability”
Poland	“use disseminated works”

Portugal	“reproduction or other forms of use”
United Kingdom	“make or supply accessible copies” and “supplying includes lending”

## 2.6 Restrictions on who may undertake activity

In about half of the countries with exceptions, there does not appear to be any limitation on who may undertake the permitted activity under the exceptions. However, for some other countries, there is no restriction where some types of accessible formats are made, but there are restrictions for other types of format. For example, in Japan, the Republic of Korea and Nigeria, the lack of any restriction only applies where Braille copies are made. Only bodies or organisations which are specifically authorised or designated are able to make sound recordings in Japan and Nigeria. In the Republic of Korea, there may still be no restriction on who can make sound recordings, but those recordings can only be used at facilities established for the promotion of the welfare of the blind and as prescribed by Presidential Decree. In Finland and Sweden, a greater range of copies can be made without any restriction regarding who can do this, but only institutions as defined by decree can make copies that are sound recordings.

These differences have presumably been devised to better control the making of the more sensitive types of accessible formats, although there are likely to be other conditions too that render the exceptions more limited, but perhaps more fairly balanced between the interests of visually impaired people and right holders, where the more sensitive types of accessible formats are made. The exceptions in Norway are also different regarding who can undertake the activity with the making of fixations on a device from which reproductions can be made not surprisingly, given the likely concern about misuse for this type of copy, being limited to organisations and libraries as specified by the King. It is possible that the ability to set further conditions by decree or similar device in Greece and Italy could lead to this being used to impose conditions on who can undertake activity under the exceptions even though there do not seem to be any such restrictions in the exceptions themselves.

Several countries appear to limit all activity under their exceptions to bodies that have been officially designated or authorized in some way, in particular France, Ireland and New Zealand. By contrast, Canada, Denmark and the United Kingdom appear to positively permit a wide range of bodies, as well as visually impaired people themselves, to undertake activity under their exceptions, although in each case this apparently generous arrangement is not without other conditions covered elsewhere in this Chapter.

In some exceptions, particularly those in Latvia, Malaysia, Singapore and the United States of America, bodies that are specifically and often primarily assisting people with a print disability are specified as those that can undertake the activity permitted under the exceptions, but there does not appear to be any process by which they must be officially authorised. However, for Latvia this does not seem to rule out activity by other organisations too as libraries providing services for visually impaired people are covered, and for Singapore there is supplementary provision specifically permitting educational establishments to undertake activity. Visually impaired people are also able to undertake activity for themselves in Macau where they wish to record lectures.

## 2.7 Special formats or any accessible formats

The needs of visually impaired people vary enormously. Whereas some people learn to read specialised formats using relief characters such as Braille, many more do not. This may depend on the degree of their disability, the age at which they were no longer able to read commercially available publications comfortably or otherwise, but it does mean that producing accessible formats in Braille only is most unlikely to provide a complete solution to the problem of access to the written word by visually impaired people. Suitable accessible formats for visually impaired people could therefore include large print publications, audio recordings and photographic enlargements. Technological advances mean that newer types of formats are also important, such as electronic Braille, and digital copies that are compatible with screen-reading software that reads aloud text messages appearing on a computer monitor, or with software that magnifies the size of text displayed on monitors. The increased technological solutions possible in the digital world has also given rise to development of the digital talking book, such as in the DAISY<sup>35</sup> standard specifically catering for the needs of visually impaired people (but arguably also offering a product that might be attractive to people without a disability). The latest developments mean that DAISY digital books can now be offered in a range of specifications from a simple audio copy without navigation of the book, through to fully navigable audio and/or text copies, possibly capable of being used to generate Braille copies.

Against this background of the types of accessible formats that visually impaired people might find most useful, it is therefore interesting to examine what type of formats can be made under specific exceptions to copyright that benefit visually impaired people. Of those countries examined, six exceptions, namely those in Cameroon, China, Iceland, Indonesia, Republic of Moldova and Ukraine, appear to be limited only to the production of Braille copies.

At the other end of the spectrum, 21 countries appear to have provided exceptions that are not limited, or appear not to be limited, to the making of specialised formats. This is achieved in different ways as shown in Table 2. For example, Australia defines the type of accessible copies that can be made, but the list appears to be comprehensive covering even electronic versions. Other countries, such as the Czech Republic and Germany, permit accessible formats to the extent required by the specific disability or similar wording so that any format is possible if there is a need for that format in order to achieve access by a visually impaired person. In some cases, such as Mongolia, there is simply no reference to type of accessible format, apparently implying that there is, therefore, no limitation. Although these exceptions may be generous in the types of accessible formats that could be made, there are, not surprisingly, often other limitations, which are generally more extensive than in those countries permitting only Braille or Braille and limited specialised formats to be produced.

---

<sup>35</sup> See the DAISY Consortium website - <http://www.daisy.org/> - for more information about the DAISY standard and also the presentation by Mr Francisco Javier Martinez Calvo, Board Member of the DAISY Consortium, to the WIPO Information meeting on Digital Content for the Visually Impaired – see [http://www.wipo.int/documents/en/meetings/2003/digvi\\_im/digvi\\_im\\_03\\_1rev1.htm](http://www.wipo.int/documents/en/meetings/2003/digvi_im/digvi_im_03_1rev1.htm)

Table 2: Exceptions not limiting type of accessible format

Country	Provision on accessible formats
<i>Australia</i> <sup>36</sup>	“the making ... of a sound recording of a work”, “the making ... of Braille versions, large-print versions, photographic versions or electronic versions of the work” and “the making of a sound broadcast”
<i>Austria</i>	“reproduction ... in a suitable form for a disabled person”
<i>Croatia</i>	“the work is reproduced in a manner directly related to the disability of ... people [with a disability] to the extent required by the specific disability”
<i>Czech Republic</i>	“reproduction ... to the extent required by the specific disability”
<i>Denmark</i>	“copies are specifically intended for the blind, visually impaired ... [but does not apply] to use which consists solely of sound recording” and “for the purpose of lending to the blind, the visually impaired ... it is permitted to make sound recordings”
<i>Finland</i>	“copies ... made with the purpose of rendering the text readable by visually impaired persons” and “make copies ... by sound recording”
<i>France</i>	“reproduction ... to the extent consistent with the nature of the disability”
<i>Germany</i>	“reproduce ... in formats accessible to disabled persons to the extent required by the specific disability”
<i>Greece</i>	“reproduction ... for uses which are directly related to the disability, to the extent required by the specific disability”
<i>Ireland</i>	“make a copy ... to meet the special needs of a person who has a physical or mental disability”
<i>Italy</i>	“reproduction ... directly related to the disability ... and limited to the extent required by the specific disability”
<i>Latvia</i>	“reproduce ... in a form perceivable by [visually impaired] persons and insofar as it is necessary in the case of the relevant impairment”
<i>Lithuania</i>	“reproduction ... in the form intended for people having hearing or visual impairment, to the extent required by the specific disability”
<i>Mongolia</i>	“reproduction for use by blind people”
<i>Netherlands</i>	“reproduction ... provided it is directly related to the handicap ... and is necessary because of the handicap”
<i>New Zealand</i>	“copies that are in Braille or otherwise modified for [the] special needs [of persons who have a print disability]”
<i>Poland</i>	“use directly refers to their [disabled persons’] disability”
<i>Slovakia</i>	“use exclusively to cater for the needs of handicapped people to the extent justified by their handicap”
<i>Slovenia</i>	“use is directly related to the disability and limited to its extent”
<i>Sweden</i>	“make, by means other than recording of sound, copies... that people with a disability need in order to be able to enjoy the work” and “libraries and organisations ... may by means of sound recording make such copies”

<sup>36</sup> New exceptions for the benefit of people with disabilities were announced in May 2006 – see [http://www.ag.gov.au/agd/WWW/MinisterRuddockHome.nsf/Page/Media\\_Releases\\_2006\\_Second\\_Quarter\\_14\\_May\\_2006\\_-\\_Major\\_Copyright\\_Reforms\\_Strike\\_Balace\\_-\\_0882006](http://www.ag.gov.au/agd/WWW/MinisterRuddockHome.nsf/Page/Media_Releases_2006_Second_Quarter_14_May_2006_-_Major_Copyright_Reforms_Strike_Balace_-_0882006) - but the analysis in this study is based on existing law in Australia.

<i>United Kingdom</i>	“make an accessible copy” which means “a version which provides for a visually impaired person improved access to the work”
-----------------------	---

Of the remaining countries with specific exceptions to copyright for the benefit of visually impaired people, 19 appear to be limited to the production of Braille or other specialised formats that give accessibility to visually impaired people. This limitation is expressed in many different ways as set out in Table 3. It would, of course, be for jurisprudence in the relevant country to explore to what extent expressions such as “reproduction in special ways” or “reproduction in Braille or other analogous method” would rule out the making of large print copies that could be read by anyone or sound recordings on media that can be played in standard audio equipment, but it seems likely that there would be considerable doubt in these countries in this respect.

Table 3: Exceptions permitting Braille and other special formats

Country	How specialised formats are defined
<i>Armenia</i>	“reproduction in “raised dots” prints (in Braille) or by other special ways”
<i>Azerbaijan</i>	“the reproduction in Braille or by other special means for the benefit of the blind”
<i>Belarus</i>	“reproduction in Braille or by other special means”
<i>Bulgaria</i>	“reproduction ... in Braille or another analogous method”
<i>Brazil</i>	“reproduction ... in Braille or by means of another process using a medium designed for [the visually handicapped]”
<i>Canada</i>	“make a copy or sound recording ... in a format specially designed for persons with a perceptual disability ...but [this] does not authorise the making of a large print book”
<i>Estonia</i>	“publication ... in Braille or another technical manner for the blind”
<i>Georgia</i>	“reproduction ... with relief-dotted print or of other special means for the blind persons”
<i>Hungary</i>	“reproduction ... exclusively designed to satisfy the needs of disabled persons”
<i>Kazakhstan</i>	“reproduction in Braille or by other special means for the benefit of the blind”
<i>Kyrgyzstan</i>	“reproduction ... using the Braille system or other special means for the blind”
<i>Nicaragua</i>	“reproduction ... by means of the Braille system or another specific procedure”
<i>Paraguay</i>	“reproduction of works in Braille or another specific form for the exclusive use of the visually handicapped”
<i>Peru</i>	“reproduction ... by means of the Braille system or another specific procedure”
<i>Portugal</i>	“reproduction ... employing Braille or another system for blind persons”
<i>Spain</i>	“reproduction ... using the Braille system or another specific method”
<i>Russian Federation</i>	“reproduction ... by using the Braille system or other special means for the blind”
<i>Uzbekistan</i>	“reproduction ... by relief-dot font or other means for blind persons”
<i>United States of America</i>	“reproduce ... copies or phonorecords ... in specialised formats exclusively for use by blind or other persons with disabilities”

Of the remaining countries with specific exceptions, a few other countries specifically mention the making of sound recordings in addition to Braille copies, for example Japan, the Republic of Korea and Nigeria, and there appears to be no limitation on the format of the sound recording, although there may be other limitations such as where such sound recordings can be used. On the other hand, Norway appears to permit all types of accessible formats other than sound recordings. Some other countries, such as El Salvador and Panama, appear to permit activity only to communicate a work to visually impaired people present in person at the place of communication. One country, Gabon, has an exception provision which does not specifically mention the needs of blind or visually impaired people, but it may nevertheless be capable of interpretation this way by the reference to “made ... for welfare purposes”. All of these and a few other variations on what types of accessible formats are possible are listed in Table 4.

Table 4: Exceptions specifying other types of provision on accessible formats

Country	Other provision on accessible formats
<i>Dominican Republic</i>	“public communications ... made for the benefit of blind and other disabled persons”
<i>El Salvador</i>	“communications ... made for the benefit of blind persons”
<i>Gabon</i>	“made ... for welfare purposes”
<i>Japan</i>	“reproduce in Braille”, “record on a memory by means of a Braille processing system using a computer”, “make sound recordings” and “large print”
<i>Republic of Korea</i>	“reproduce in Braille” and “make sound recordings”
<i>Macau</i>	“reproduction in Braille”, blind persons are also able to fix lectures by professors “by any means” for their exclusive use and there is a general right of transformation for those with the legal right to use a work “to the extent necessary for its authorised use”
<i>Malaysia</i>	“any use made by ... the Braille MAB Library (Braille Publishing and Library Unit)”
<i>Nigeria</i>	“reproduction in Braille ... and sound recordings”
<i>Norway</i>	“copies for use of the blind and persons whose sight is impaired ... made in a form other than a sound fixation” and “the King may decide ... on stipulated terms ... a fixation on a device that can reproduce [the work]”
<i>Panama</i>	“communications ... made for the blind and for other handicapped persons”
<i>Singapore</i>	“making ... of a record embodying a sound recording of the work” and “making ... of a Braille version, a large-print version or a photographic version, of the work”

## 2.8 Compulsory licence or exception

Perhaps surprisingly given the restrictions on exceptions that are permitted by the various international conventions and treaties as discussed above, and the almost universal requirement to comply with the 3-step test for at least exceptions to the reproduction right given the wide membership of the Berne Convention, a very large majority of the exceptions that have been found do not appear to require any payment of remuneration to right holders. Indeed, in 20 countries, the exceptions are drafted in such a way to specifically rule out the

payment of remuneration. However, this can only really be fully assessed by considering in each case what other limitations are imposed by the exception, such as permitting only very specific types of accessible formats to be made, only certain very limited types of, or limited numbers of, bodies being able to act under the exceptions, and conditions ruling out profit-making activity and activity that could compete with accessible formats that are commercially available.

In addition to the 20 countries with exceptions that specifically preclude any remuneration, 32 other countries appear to make provision in the form of a non-remunerated exception. In the case of 8 of these countries, that non-remunerated activity only applies in some circumstances though; in other circumstances there must be, or may be, the possibility of remuneration.

Only three countries, namely Austria, The Netherlands and Slovenia, appear to provide an exception that is in effect a compulsory licence with compensation for the right holders in respect of all the activity permitted under their exceptions for the benefit of visually impaired people. In addition, Australia, Denmark, Germany, Japan, Norway, Portugal and Sweden provide an exception that is a compulsory licence for at least some of the permitted activity. There are various ways the split between pure exception and compulsory licence has been made. For example, in Denmark it depends on the type of copies being made, with the compulsory licence only applying to the making of sound recordings of works and recordings of broadcasts, in Germany a compulsory licence applies other than where just single copies of a work are made, and in Japan there is only a requirement for compensation for right holders where large print copies of textbooks are made for commercial purposes. In Norway, for the exception relating to the making of a fixation on a device that can reproduce the fixation, the compensation to right holders is required to be paid by the State rather than the organisations and libraries undertaking the activity.

Three countries, namely Australia, Singapore and the United Kingdom, have provisions for at least some of the activity permitted under exceptions that are not strictly speaking compulsory licences because there is only the possibility of remuneration being paid to right holders. Under the relevant exceptions in Australia and Singapore, right holders may request payment of equitable remuneration, and in the United Kingdom, the exception can in effect be overridden by a licensing scheme that right holders choose to set up covering the same activity as that permitted under the relevant exception. Right holders are then free to seek payment under the licensing scheme if they wish.

## 2.9 Acknowledgement required

A requirement to acknowledge in some way the origin of a work that has been used only appears to be present in slightly fewer than half the exceptions that have been found. It is possible that in some countries more general provisions that would give rise to such an obligation have not been found even though they do exist. However, it does appear that in a large number of countries accessible copies could be disseminated to visually impaired people with no indication about their source being included.

Those countries that do require activity under an exception to be accompanied by an acknowledgement generally define the minimum form this should take. Most common is to require the name of the author and the source to be acknowledged. Other items that are specifically required sometimes include the title of the work, the name of the publisher, the



performer (for talking books), where or when the work was first made public and the name of the copyright owner (which might, of course, not be the same as the name of the author).

## 2.10 Other conditions

In about a fifth of the countries with specific exceptions for the benefit of visually impaired people no other conditions other than those of the type already discussed under the headings above have been found. One of the most common additional conditions is one that often overrides all the exceptions provided in the copyright law of the country, namely an additional test the same as or similar to one or more steps of the 3-step test found in the Berne Convention and elsewhere. Of course, all the countries that have been studied will have obligations under international conventions and treaties to ensure that at least some aspects of their exceptions comply with the 3-step test. However, it is not generally believed to be necessary to actually include the wording of the test in the law in order to achieve this. Many countries simply have regard to the test when drawing up exceptions and the need to comply with the test will have an impact on what specific limitations and conditions they provide within an exception. Indeed, this could explain why a number of countries that have not incorporated the 3-step test specifically into their copyright laws appear to have quite a number of conditions and limitations in addition to those discussed in the sections above.

Countries that have taken an alternative approach, that is to require the activity permitted under the exception to be undertaken only where, in addition to any specific conditions and limitations set out in the exception, the 3-step test is complied with, in general have fewer conditions and limitations specifically included in the exception. The following are the countries where a provision the same as or similar to one or more steps of the 3-step test of the Berne Convention has been found in the copyright law and which seems to be applied in addition to other requirements to those countries' exceptions for the benefit of visually impaired people:

*Armenia, Azerbaijan, Belarus, Bulgaria, China, Croatia, Czech Republic, Dominican Republic, Estonia, Georgia, Greece, Hungary, Iceland, Italy<sup>37</sup>, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Paraguay, Poland, Portugal<sup>38</sup>, Russian Federation, Slovakia<sup>39</sup>, Slovenia, Ukraine and Uzbekistan.*

Other conditions that have been found in national laws in respect of the specific exceptions for the benefit of visually impaired people are listed in Table 5. Some of the conditions that crop up in more than one country are as follows:

- keeping records that right holders may be given or inspect and/or giving notice to the right holder and/or marking copies made in some way;
- not permitting activity which would undermine the author's moral right to integrity in his or her work;
- taking steps to reduce, or specifically ruling out, use of accessible copies for purposes other than to give visually impaired people access to the work, and/or making it clear that such use, and/or the copies, will then be infringing;

---

<sup>37</sup> This only applies where works or other subject matter are made available on demand

<sup>38</sup> The 3-step test does not clearly apply to the production of Braille or other special formats for blind people; it may only apply where other accessible formats are made

<sup>39</sup> The test only seems to apply to the disposal of a copy of the work made under the exception

- a test of fairness to be applied to the activity and a requirement not to interpret provisions in an extensive manner;
- limiting the location, or the purpose, of the use by visually impaired people, such as only educational or private use; and
- complying with further regulations that might be set by the government.

Table 5: Additional conditions applying to the exception

Country	Additional condition(s)
Australia	<p>Under the exception permitting the making and communicating of accessible formats of literary and dramatic works, for non-electronic copies of those works, the user must mark copies made and make, retain and send records of activity to the collecting society; for electronic copies must give notice to the collecting society with required details of copies made or communicated, must take reasonable steps to ensure that the communication can only be received or accessed by persons entitled to receive or access it (for example, teachers or persons receiving educational instruction or other assistance provided by the relevant institution) and comply with any other prescribed requirements.</p> <p>Under the exception permitting facsimile reproduction of published editions, for published editions of works still in copyright, the exception only applies where by virtue of the first exception above reproduction of those works is permitted.</p> <p>Under the exception permitting sound broadcasts of literary and dramatic works, the user must keep records of the making of the sound broadcast which can be inspected by copyright owners.</p>
Czech Republic	Use of copies made for any other purpose than assisting people with a disability specifically forbidden.
Denmark	In order to counteract piracy rights to use lapse if an acquired copy is made available to the public. Also, there must be no more alteration of the work than that required for the permitted use.
Finland	The work must not be altered more than necessitated by the permitted use
France	The organizations undertaking the activity must provide proof of their activity in a number of specified ways
Greece	The Minister of Culture may by resolution determine further conditions
Hungary	Use must be in compliance with the requirements of fairness and not designed for a purpose incompatible with the intention of free use. Also, the provisions relating to free use shall not be interpreted in an extensive manner.
Iceland	The work may not be altered more extensively than is required for the purposes of reproduction
Ireland	Where a copy made under the provision is later made available to the public such as by selling, renting or lending, it becomes an infringing copy
Italy	As well as defining applicable disabilities, the criteria to be used to identify beneficiaries as well as other conditions applying to the exception can be set by Ministerial decree.
Japan	Under the exception permitting large print copies of school textbooks, this

	is limited to only doing so for the purposes of study by the visually handicapped children or pupils. Publisher must be informed of intention to make reproductions in the form of a textbook in large print.
Republic of Korea	For sound recordings, the exception only permits their use at facilities established for the promotion of the welfare of the blind as prescribed by the Presidential Decree and these currently appear to be limited to facilities established by various non-profit making persons/bodies and special schools for visually handicapped people
Lithuania	Activity must be for educational, teaching and scientific research purposes
Malaysia	The use must be in the public interest, compatible with fair practice and the provisions of any regulations
New Zealand	The copyright owner must be notified of the making of the copy or adaptation. Where any copy made is subsequently dealt with (other than providing to the person with a print disability), the copy becomes an infringing copy.
Norway	The King may stipulate terms for making a fixation of a work on a device that can reproduce the fixation.  The provision regarding making a fixation of a film, picture or broadcast applies only as set out in regulations issued by the King.
Paraguay	The exception must have a restrictive interpretation and must not be applicable to cases that are contrary to honest use.
Peru	Must be for the private use of blind people. The exception must have a restrictive interpretation and must not be applicable to cases that are contrary to honest use.
Singapore	Handicapped reader must use copy for research or study or for instructing himself on any matter. Only applies to copying of a handicapped reader's copy of an article in a periodical or another work if a record of the copying, complying with regulations, is made as soon as practicable.
Slovenia	The extent of exploitation of copyright works under the exception must be limited by the intended purpose and compatible with fair practice
Spain	Must be for the private use of blind people
Sweden	A work may not be changed, or made available to the public, in a manner that is prejudicial to the author's literary or artistic reputation, or altered more than is necessary for the use. Specifically requires that copies must not be used for purposes other than those set out in the exception.
United Kingdom	Under the exception permitting visually impaired people to make, or have made, copies of works they possess, accessible copies made may be transferred to other visually impaired people entitled to act under the exception, or to intermediaries who will transfer the copies to entitled visually impaired people, so long as they also have lawful possession of an inaccessible copy of the work. Where a person has an accessible copy without entitlement, or it is subsequently dealt with, the copy becomes an infringing copy. Changes which would infringe the right not to have a work subjected to derogatory treatment are not possible.  Under the exception permitting approved bodies to make multiple accessible copies, any copies made by educational establishments must only be used for their educational purposes. If the inaccessible copy is copy-protected, then the accessible copy must be too to the extent this is practicable. A copy becomes an infringing copy when held by a no longer

	entitled body or when it is subsequently dealt with. Where activity has led to infringement of copyright, the Secretary of State may by order prohibit certain approved bodies by name or type from acting under the exception, or the making of accessible copies of a certain type. Changes which would infringe the right not to have a work subjected to derogatory treatment are not possible.
United States of America	<p>Under the exception permitting authorized entities to make specialized formats, copies in specialized formats must bear a notice that any further reproduction or distribution other than in a specialized format is an infringement.</p> <p>Regarding publishers' obligations to provide electronic files of the content of print instructional material, the same condition applies. Also, the publisher must have the right to publish the print instructional materials in print format.</p> <p>Under the exception permitting the transmission of performances of literary works, for a dramatic literary work, the exception only permits a performance on a single occasion, and is specifically disapplied from more than one performance of the same work by the same performers or under the auspices of the same organization.</p>

### 2.11 Overridable by contract

Exceptions to copyright are usually defined by setting out certain types of uses that do not infringe copyright, either by describing an activity and/or by reference to carrying out one or more of the acts restricted by copyright. They are not, therefore, rights to use copyright works, rather they are merely setting out certain activities which do not infringe rights. Without additional provisions, which could be provided specifically in copyright law or which might arise out of other laws or jurisprudence, it is therefore generally possible for a potential user of a copyright work to be asked to agree a binding contractual term with the copyright owner which would deny the user the opportunity to undertake what is permitted by an exception without infringing copyright.

For copyright works that are published in traditional ways, there is, of course, unlikely to be much opportunity for a binding contract to be agreed that could have the effect of overriding an exception. Where a book is purchased in a shop or borrowed from a library, contracts with the copyright owner are not normally agreed and signed before the activity takes place. However, such contracts are more common, if not the norm, where works are made available in an online electronic database produced as a result of much investment, and that is only accessible by users who agree to make appropriate payments and comply with other contractual terms.

There is likely to be interest from both potential users of exceptions that benefit visually impaired people, and authors and others who own rights in the works that might be used under those exceptions, regarding the extent to which it is possible, or otherwise, to, in effect, have a binding contractual term that can override the possibility of activity under the exceptions. Potential users are likely to want to be able to enjoy those exceptions without being asked to agree contractual terms over access to a copyright work which would deny

them that opportunity. In other words, they are likely to want exceptions to be rights that they are always entitled to enjoy. Copyright owners on the other hand will want to be free to tailor contractual terms on access to their valuable electronic databases to prevent or minimize any activity which would undermine their investment.

This Study has therefore tried to ascertain to what extent it might be possible to override by contract the specific exceptions to copyright for the benefit of visually impaired people which have been found in national laws. In almost all cases provisions in copyright laws that deal with this one way or another have not been found at all, so the position remains unclear. Only three cases where there is some relevant provision have been found as follows:

- In Germany there appears to be a provision which stipulates that contracts are void if they would have the effect of overriding exceptions to copyright.

- In Portugal, contractual conditions that override the exception are null and void although a contract could require remuneration to be paid for the activity.

- By contrast, in the United Kingdom, it is clearly indicated that the exceptions to copyright do not affect any other right or obligation restricting the doing of any of the specified acts. Other rights or obligations could, presumably, encompass a contract preventing enjoyment of the exceptions provided for the benefit of visually impaired people.

## 2.12 Interplay with DRMs

There has been no attempt in this study to examine the relationship between digital rights management technology (DRMs), in particular technical protection measures, and exceptions to copyright in detail. This topic has already received a considerable amount of attention in past studies, in particular two that have been published recently by WIPO as follows:

- The study on Current Developments in the Field of Digital Rights Management prepared by Mr Jeffrey Cunard, Mr Keith Hill and Mr Chris Barlas<sup>40</sup>

- The study on Automated Rights Management Systems and Copyright Limitations and Exceptions prepared by Mr Nic Garnett<sup>41</sup>

However, it is worth noting here the extent to which provision that does deal with this relationship has been found during the search for specific exceptions to copyright for the benefit of visually impaired people. This is recorded in Annex 2 for each country that has an exception for the benefit of visually impaired people from which it can be seen that the majority of countries do not appear to have addressed this issue. However, a number of them have also not as yet provided any protection for right holders against devices and services used to circumvent technical protection measures or circumvention of those devices and services. Until that type of provision exists in national law there is, of course, not an issue with regard to whether or not it must still be possible to enjoy exceptions where protective technology has been applied. Anyone in those countries wishing to undertake activity permitted by an exception is not acting contrary to any law by circumventing any technical protection measures in order to do so.

---

<sup>40</sup> SCCR/10/2 Rev. published on 4 May 2004 – see

[http://www.wipo.int/documents/en/meetings/2003/sccr/doc/sccr\\_10\\_2\\_rev.doc](http://www.wipo.int/documents/en/meetings/2003/sccr/doc/sccr_10_2_rev.doc)

<sup>41</sup> SCCR/14/5 published on 27 April 2006 – see

[http://www.wipo.int/edocs/mdocs/sccr/en/sccr\\_14/sccr\\_14\\_5.doc](http://www.wipo.int/edocs/mdocs/sccr/en/sccr_14/sccr_14_5.doc)

Of the countries that have included provisions in their copyright laws to provide a mechanism for the continued enjoyment of some or all exceptions to copyright where technical protection measures have been applied to works, the majority are member States of the European Union (EU). This is hardly surprising as the 2001 EU copyright Directive made provision in Article 6.4 regarding the relationship between exceptions to copyright and technical protection measures. Only three countries which are not members of the EU, or the European Economic Area (EEA), which membership also gives rise to obligations to comply with the EU copyright Directive, have been identified that have provision in this area, namely Australia, Singapore and the United States of America. There are, though, other countries that are known to be actively revising their laws to meet the challenges posed by DRM technology, so this is a situation which is likely to see much change in the near future.

## CHAPTER 3

### ANALYSIS OF THE OPERATION OF DISTRIBUTION AND IMPORTATION RIGHTS

#### 3.1 Introduction

Although there are a number of international treaties and conventions governing the framework for national copyright laws, the underlying premise is that copyright legislation is territorial in nature. This means that each national law can generally only make provision for the precise form of rights that exist in that territory, and any exceptions to those rights only determines what activity can be undertaken in that territory without infringing copyright. Where activity is undertaken across jurisdictions, it is usually, therefore, extremely difficult to determine with certainty what parts of that activity are lawful and what parts are not. There will usually be a need to consider the law of both jurisdictions and decide which law to apply to which part of the activity. This type of consideration is often referred to as involving “private international law” or “conflict of laws” and most commentators agree that it is a very complex matter. Particularly in the absence of sufficient relevant case law, there is likely to be a considerable divergence of opinion amongst legal experts about the correct interpretation of copyright laws where accessible copies of works are moved across borders.

How the individual provisions on exceptions for the benefit of visually impaired people that have been found in national copyright laws might work when accessible copies move between different countries is, however, a very important matter for visually impaired people and those organisations assisting them. There is usually a considerable expenditure of resources when accessible copies are made, with the funding often being a charitable source, although government and other funding are sometimes involved. Some of the expenditure is likely to be on work preparatory to the actual making of individual accessible copies. For example, in order to create Braille copies, it may be necessary to scan printed text to make a digital file from which Braille copies can be produced. The expenditure per accessible copy made will therefore often be less per copy where a larger number of copies are made. Organisations assisting visually impaired people are obviously keen to realize these economies of scale where visually impaired people in more than one country wish to access the same copyright work.

This Study therefore attempts to analyse the extent to which various distributing, importing and exporting activities might be possible for all the countries for which specific exceptions to copyright for the benefit of visually impaired people have been found. This has been done in order to enable policy makers and others to discuss this important issue within WIPO on the basis of some knowledge about the range of provision which might exist. However, anyone wishing to distribute, import or export accessible copies will need to ascertain the legal position in all the relevant countries by obtaining suitable legal advice in the relevant country or countries as this study provides only a guide as to what the actual position might be at best, and not even a legal opinion.

#### 3.2 International conventions and treaties

Before considering national provision, it is first of all useful to consider what provision exists in international treaties and conventions relevant to these issues. The provision in international treaties and conventions regarding distribution rights has already been discussed in Chapter 1. For the purposes of this Chapter, references to distribution are, however, being

considered broadly so as to include any mechanism by which a print disabled person acquires on a temporary or permanent basis an accessible copy of a copyright work. Distribution as referred to in this chapter therefore includes:

- (a) distribution of physical copies that leads to a permanent change in ownership of the copy distributed;
- (b) commercial rental and non-commercial lending of a physical copy where the ownership of the copy is only transferred on a temporary basis (although in general commercial rental is unlikely to satisfy requirements in exceptions that activity be for non-commercial purposes);
- (c) dissemination of an accessible electronic copy by communication to the public via electronic transmission, such as over the internet, where the recipient of that transmission receives a digital copy which they can keep permanently; and
- (d) dissemination of an accessible copy by communication to the public via electronic transmission where technological means are used to limit the time for which the recipient can keep the accessible copy, or to permit only access with no downloading of a complete copy, such as access by viewing in large print on a screen or having text converted to speech.

There does not appear to be any provision in international treaties which dictates how copies that come into a person's possession as a result of any of these acts must be treated where the act of distribution takes place across borders, that is where the copy is exported from one country and imported into another. This is the case both when a copy is made under authorisation granted by the author or other right holder, and when a copy is made under a permitted exception to copyright in the country in which it is made.

For the purposes of this Study there has been no investigation of the provision in national laws regarding the import or export of a copy that has been made illegally in the country in which it is made, that is a copy where neither the right holder has given permission for it to be made nor where its making is permitted under a copyright exception. The normal expectation is that such a copy will be an infringing copy. If accessible copies are made for visually impaired people in any country by infringing copyright, it is hard to imagine that there can be any justification for any provision in national copyright laws that would subsequently legalise their distribution either within that country or to other countries. Those supporting easier movement around the world of accessible copies are not believed to be asking for this in any case as they would not want to condone illegal activity in any country. Rather they seek changes to laws to make it possible to produce and disseminate accessible copies entirely legally within and between countries. Legalising importation of copies made illegally would, moreover, seem to conflict with Article 16 of the Berne Convention for example, which imposes an obligation on Members of the Union to make infringing copies liable to seizure, including where copies of the work are made in countries which do not provide copyright protection for the work or no longer provide copyright protection for the work<sup>42</sup>. This provision is a perfectly reasonable approach to how such illegal copies should be dealt with in a country where copyright *does* subsist in the work.

---

<sup>42</sup> Article 16 of the Berne Convention provides as follows:

- (1) Infringing copies of a work shall be liable to seizure in any country of the Union where the work enjoys legal protection.
- (2) The provisions of the preceding paragraph shall also apply to reproductions coming from a country where the work is not protected, or has ceased to be protected.
- (3) The seizure shall take place in accordance with the legislation of each country.



For legally made copies, however, there are a number of other relevant points that need to be considered in the light of international treaties and conventions. This is done below for each of the types of distribution indicated above.

### 3.2.1 Distribution of physical copies

A right to control the distribution of physical copies is only clearly provided in the WIPO Copyright Treaty of 1996 (the WCT) and the WIPO Performances and Phonograms Treaty of 1996 (the WPPT). Footnotes in these Treaties clearly indicate that the right of distribution provided by Article 6(1) of the WCT for authors of literary and artistic works and by Articles 8(1) and 12(1) of the WPPT for performers and producers of phonograms respectively is concerned with only the distribution of physical copies<sup>43</sup>. (Other provision is made for dissemination of intangible copies). Also of note is the fact that in each case the distribution right is qualified. The qualification makes it clear that nothing in the Treaties affects a country's ability to decide for itself how and when the right of distribution is exhausted after the first sale or other transfer of ownership of the original or a copy of the work, fixed performance or phonogram where the transfer has been authorized by the author, performer or producer of the phonogram respectively<sup>44</sup>. The WTO TRIPS Agreement also leaves the issue of exhaustion of copyright up to each country to decide for itself<sup>45</sup>, but this is not as relevant as the WCT and WPPT to the distribution of physical copies as such rights are not clearly required by TRIPS.

The provision in the WCT and WPPT regarding international exhaustion, which permits countries the freedom to decide their own rules in this respect, is interesting, and how countries have exercised this freedom may well go a long way to providing the answer regarding importation of accessible copies that have been made under agreements with right holders. This provision is, though, not really relevant to deciding whether or not accessible copies made in one country under a specific exception to copyright can be imported into another country and this is believed to be the area in which there is greater interest from those making accessible copies. This is because the concept of international exhaustion in the WCT and WPPT is clearly limited to the exhaustion of the distribution right in a copy *that has been made with the authorisation of the author or other right holder*. Copies made under exceptions are not so made. The author or other right holder has not given permission for

---

<sup>43</sup> Footnote 6 of the WCT sets out an agreed statement concerning Articles 6 and 7 as follows: "As used in these Articles, the expressions "copies" and "original and copies", being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects." A similar agreed statement can be found in footnote 7 of the WPPT.

<sup>44</sup> Article 6(2) of the WCT states that "Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or other transfer of ownership of the original or a copy of the work with the authorization of the author". Similar provision can be found in Articles 8(2) and 12(2) of the WPPT regarding the distribution right granted to performers and producers of phonograms respectively.

<sup>45</sup> Article 6 of the TRIPS Agreement says that "For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights." (Article 3 concerns the provision of national treatment and Article 4 concerns obligations relating to the extension of most-favoured nation treatment to nationals of all Members.)

them to be made at all. The exception by its very nature denies them the possibility of doing so; the exception is an exception to their right to make such decisions and give or not give such authorisation.

Thus, even where a country clearly sets out how its national law is to be interpreted in relation to exhaustion of rights in copies that have been made with the consent of the right holder, this is unlikely to give a clear, or possibly even any, answer to the question of what rights might be exercised in respect of copies made under exceptions in other countries. Nevertheless, in Annex 3, which is explained further below, it has been noted where provision has been found setting out when exhaustion of rights occurs, and what form that provision takes, as this may well be helpful to those interested in cross border movements of accessible copies made under agreements with right holders.

It may be worth noting at this point exactly how the exhaustion of rights is normally interpreted as there can sometimes be misunderstandings about this. Even where a country provides for international exhaustion of rights, that is exhaustion of rights after the first sale of a copy of a work with the consent of the right holder anywhere in the world, it is only distribution rights in *that copy* of the work that are exhausted. It is then possible to distribute that copy further within that country without seeking permission from the right holder, but only that copy. Rights in another copy are not exhausted unless and until the right holder consents to distribution of this further copy somewhere in the world. Of course, in practice a right holder generally consents to distribution of a large number of copies at the same time and so any of these copies can be imported into a country which provides for international exhaustion. But rights are still not exhausted in any further copies where the right holder has not yet consented to their distribution.

### 3.2.2 Rental and lending of physical copies

Rental rights, namely loaning copies on commercial terms, are required for some types of works by Articles 11 and 14(4) of the TRIPS Agreement, Article 7 of the WCT and Articles 9 and 13 of the WPPT and this has already been explained further in Chapter 1. It is worth noting here that the WCT and WPPT clarify that for this right too it relates to physical copies only<sup>46</sup>. It is generally accepted that rental rights are not exhausted by the first rental of a copy of a work, otherwise the rental right would not be distinguishable from the distribution right discussed above. Thus, rental rights enable right holders to decide whether or not to authorize any commercial loan of a copy, regardless of whether or not that copy has already been loaned or otherwise distributed. The WCT and WPPT do not, therefore, refer to the possibility of the exhaustion of these rights as they do with respect to the distribution right. Any provision in national laws specifying whether or not international or another type of exhaustion of rights occurs is therefore unlikely to be helpful in determining whether or not accessible copies made in other countries can be imported for renting to visually impaired people because the commercial rental right, as explained above, cannot sensibly be exhausted.

Of course, it may still be theoretically possible for exceptions to the rental right to apply so that a right holder is not able to exercise the right in certain circumstances. In practice, however, it is perhaps rather unlikely that an exception to copyright for the benefit of visually impaired people would ever permit commercial rental of accessible copies as such activity

---

<sup>46</sup> See footnote 43 above.

may be hard to justify as compatible with conditions like the 3-step test. Much more likely is provision that permits non-commercial lending. International treaties and conventions are silent regarding provision of this right leaving countries free to decide whether or not to provide such rights, and if so how. However, for countries that do provide a lending right, it is again hard to imagine that it will be exhausted after the first loan for the same reasons as explained above for commercial rental.

### 3.2.3 Electronic communication to the public resulting in permanent copies

The most comprehensive right of communication to the public by wire or wireless means, including the making available to the public in such a way that members of the public may access these works from a place and at a time individually chosen by them, is, as explained in Chapter 1, provided by Article 8 of the WCT in respect of works. Articles 10 and 14 of the WPPT provide a right of making available for performances fixed as phonograms and phonograms in which performers and producers have rights respectively. Provision in earlier treaties and conventions is explained in Chapter 1.

However, none of the treaties or conventions deals with the exhaustion of these rights so in theory countries are free to make their own provision. But, as for the rental right, the right of communication to the public is not one that is generally considered to have been exhausted when a work has been communicated this way for the first time. In this respect, it is perhaps important to remember that the copy of the work that existed at the start of the communication has not, actually, been sent anywhere in that the sender still has that copy, but the recipient now has a copy too. Thus, the process of communication to the public where the recipients are permitted to keep copies leads to new copies being made. It would therefore be surprising if this right were considered to be exhausted at any point so that copies acquired as a result of a legal communication to the public can be transmitted electronically by the recipient to further members of the public who then end up with copies too. This means that a country providing for the electronic communication to the public right not to apply where a work has already been communicated this way once may not be meeting its obligations under the various treaties and conventions in respect of this right. Further communications to the public are therefore only likely to be legal either where there is further authorization from the right holders or the activity is permitted by an exception to copyright.

It is a little more difficult to interpret how the right of distribution in physical copies might be interpreted in respect of a copy made as a result of a legal electronic communication to the public. However, such copies have not been received as a result of the right of distribution in physical copies being exercised so it seems that right cannot at that point have been exhausted. The right to authorise distribution of a copy made as a result of a download from a communication to the public therefore is likely to remain with the right holders unless any activity is permitted by an exception to copyright.

There is another difficulty where electronic communication to the public occurs across borders, which is, of course, extremely common where the communication occurs over the internet. Not everyone is of the same opinion regarding who can come within the ambit of the person undertaking that communication and so who has liability where the communication is unauthorized or not otherwise permitted by law. This may be something where different countries have made different provision in any case, although it may be more common for there to be no provision leaving interpretation to case law at some point. If there is any liability other than at the start of the act of communication, then it is likely to be necessary to

interpret more than one country's provision on this right. However, an agreed statement in the WCT concerning Article 8 which provides the right of communication to the public makes it clear that the provision of physical facilities only for enabling or making a communication does not amount to the restricted act of communication to the public<sup>47</sup>.

Where a permanent copy is being made at the end of the act of communication, there is, of course, another act restricted by copyright taking place, that is the act of reproduction. Most people would probably agree that whether or not the act of reproduction is permitted by law, such as under exceptions to rights, should be determined by having regard to the country where this happens rather than the country from which the communication was sent. That does not mean that the person who sent the communication is not liable for any illegal copies made however, even if they are made in a country other than that in which that person is situated. Liability for infringement is, though, another issue on which different countries may have different provision. For example in some countries it may be only the person who actually makes an illegal copy who is liable whereas in other countries a person who authorises or in some way condones that making when they have no right to do so could also be liable for infringement. International conventions and treaties appear to offer no guidance on how to make provision on liability for infringement by unauthorised reproductions.

### 3.2.4 Electronic communication to the public resulting in only temporary or no copies

The case of an electronic communication to the public where no permanent copies are legally made by the recipient of the communication is the same as that for communications resulting in permanent copies as far as the act of communication to the public is concerned. Distribution of physical copies that are made as a result of downloading a copy from the communication is even more unlikely to be something that is legal though if no copies to keep can legally be made as a result of the communication to the public. Where a temporary copy is made, there may or may not be a difference from the situation where a permanent copy is made regarding whether or not, and if so how, the act of reproduction applies. This will depend on how reproduction is defined in the country where this happens. In this respect, an agreed statement in the WCT does make it clear that provision required by Article 9 of the Berne Convention relating to the act of reproduction does cover storage of a protected work in digital form in an electronic medium<sup>48</sup>.

### 3.3 European Union law

It is worth noting that provision in the countries of the EU must comply with certain additional requirements that are not found in international treaties and conventions. Of particular relevance to whether distribution and importation of accessible copies of copyright

---

<sup>47</sup> The agreed statement at footnote 8 of the WCT says that "It is understood that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Treaty or the Berne Convention."

<sup>48</sup> See footnote 1 of the WCT which says that "The reproduction right, as set out in Article 9 of the Berne Convention, and the exceptions permitted thereunder, fully apply in the digital environment, in particular to use of works in digital form. It is understood that the storage of a protected work in digital form in an electronic medium constitutes a reproduction within the meaning of Article 9 of the Berne Convention."

material might be permitted is the provision in Directives relating to exhaustion of rights, lending rights, the making of temporary copies and liability of internet service providers for infringement. The provision in these areas is broadly as explained below.

### 3.3.1 Exhaustion of rights

The most recent provision on exhaustion of rights is in the copyright Directive<sup>49</sup> where Article 4(2) provides that the right of distribution of either the original or copies of a work is only exhausted after the first sale or other transfer of ownership of that article in the EU which is made by the right holder or with his consent. This means that, in countries which must comply with EU Directives<sup>50</sup>, downstream physical distribution activities with an accessible copy made under a copyright exception are unlikely to be legal unless the exception covers that activity or there is an agreement with right holders as the distribution right should not have been exhausted by activity under the exception.

Recitals<sup>51</sup> state that the distribution right applies to the work or copies of the work incorporated in tangible articles and that the question of exhaustion does not arise in services such as rental and lending and online services, the latter of which includes the case where a material copy of a work is made by the user of such a service with the consent of the right holder. There is thus little flexibility for countries that must comply with EU Directives but, as explained above, this clarification regarding rental, lending and electronic communication to the public is consistent with the most logical way of viewing these rights in any case.

### 3.3.2 Lending rights

Lending rights in the EU are governed by the rental Directive<sup>52</sup>. Articles 1 and 2 of that Directive stipulate exclusive rental and lending rights for authors of works and others in respect of other protected material. Article 1 and recitals<sup>53</sup> further define “rental” and “lending”, including to make it clear that lending is making available for a limited period of time through establishments which are accessible to the public, can only involve a payment that does not go beyond what is necessary to cover the operating costs of the establishment that is making the loan and that there must be no direct or indirect commercial advantage. In countries that have provided right holders with a lending right this activity with accessible copies for visually impaired people will therefore not be possible unless it is within the scope of an exception to rights or done under an agreement with right holders. However, there is special provision in Article 5 of the rental Directive which makes it clear that the exclusive lending right could be replaced by a remuneration right which need only be paid to authors,

---

<sup>49</sup> Directive 2001/29/EC of the European Parliament and the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society

<sup>50</sup> As well as the 27 member States of the European Union (EU), this includes Norway, Iceland and Liechtenstein which are not in the EU but are members of the European Economic Area (EEA). The EU Directives in the copyright area are incorporated into the EEA Agreement. The references in Directives to exhaustion of rights as a result of activity that has occurred in the EU are then read as references to the EEA.

<sup>51</sup> See recitals 28 and 29 of the copyright Directive

<sup>52</sup> Council Directive 92/100/EEC of 19 November 1992 on rental and lending right and on certain rights related to copyright in the field of intellectual property

<sup>53</sup> See the 13<sup>th</sup> and 14<sup>th</sup> recitals of the rental Directive in particular

and that it is also possible to exempt certain categories of establishment completely from even having to pay remuneration. Moreover, lending by establishments which are not accessible to the public does not appear to be within the scope of “lending” as defined in the Directive.

### 3.3.3 Temporary copies

Article 2 of the copyright Directive defines the reproduction right as the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part. This comprehensive right is, however, limited by a mandatory exception to rights required by Article 5(1) of the Directive<sup>54</sup>, which is explained further in recital 33<sup>55</sup>. The second circumstance covered by this exception in Article 5(1)(b) will help with answers where there has been a communication to the public and no permanent copy of the material received is made. The broad reproduction right means that even an accessible copy that is viewed or otherwise accessed such as by screen reading software as the reader scrolls down the screen is likely to count as a copy, even if it is not otherwise downloaded. But, so long as the communication was legal, this copy is likely to fall within the scope of the temporary copy exception and so there is no problem even if an exception to copyright relating to accessible copies for visually impaired people is not broad enough to encompass this activity.

### 3.3.4 Liability for infringement

Article 5(1)(a) of the copyright Directive is also relevant to the liability of internet service providers for infringement where a work is communicated to the public. Recital 27 of that Directive is similar to footnote 8 of the WCT<sup>56</sup> in making it clear that provision of physical facilities to enable or make a communication is not a communication to the public as restricted by copyright, but the temporary copy exception will in addition remove many acts of caching from the reproduction right as explained more fully in recital 33<sup>57</sup>.

In addition, another, horizontal Directive<sup>58</sup>, that is one that relates generally to liability for activities in the network environment, will have relevance to the question of liability for copyright infringement where a work is communicated to the public from, through and to a

---

<sup>54</sup> Article 5(1) of the copyright Directive is as follows:

Temporary acts of reproduction referred to in Article 2 which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable:

- (a) a transmission in a network between third parties by an intermediary, or
- (b) a lawful use of a work or other subject matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.

<sup>55</sup> Recital 33 of the copyright Directive, amongst other things, says that, to the extent that they meet the conditions specified, the temporary copy exception “should include acts which enable browsing as well as acts of caching to take place, including those which enable transmission systems to function efficiently, provided that the intermediary does not modify the information and does not interfere with the lawful use of technology, widely recognized and used by industry, to obtain data on use of the information”

<sup>56</sup> See footnote 47 above

<sup>57</sup> See footnote 55 above

<sup>58</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market

country which is obliged to comply with the requirements of EU Directives. The electronic commerce Directive does not, however, do this by defining what activities are and are not infringing; to the extent that this is done in EU law it is the copyright Directive that does this. Rather, the electronic commerce Directive merely sets out in what circumstances a service provider will be liable where there is an infringement of copyright (or other illegal behaviour such as defamation and misleading advertising). Thus, if there is no infringement of copyright because the conditions set out in the temporary copy exception in Article 5(1) of the copyright Directive apply, then the electronic commerce Directive is not really relevant to those circumstances in that with no infringement it is not even necessary to consider the question of who might be liable.

### 3.4 Introduction to provision in national law

As can be seen from the above, on many of the issues that are likely to be relevant to the distribution, both within and between countries, of accessible copies made under exceptions, international conventions and treaties offer little guidance. Thus, national legislators have considerable freedom to decide on provision, subject of course to overriding principles such as making sure that exceptions to rights comply with the 3-step test. In Annex 3 of this Study there is an attempt to analyse the relevant provision in national legislation for each of the countries for which a specific exception for the benefit of visually impaired people, or disabled people more generally, has been found. In the remaining sections of this Chapter of the Study there is an analysis of what has been found using the same headings as used for identifying provision in each country in Annex 3.

### 3.5 Distribution to individuals

The different provision in exceptions regarding how accessible copies might be distributed to visually impaired people has already been discussed in Chapter 2. In all cases, of course, what can be distributed even if there is clear provision for this is limited to only the types of accessible copies that can be made under the exception and, as also discussed in Chapter 2, in a significant number of cases this is by no means any type of accessible format. A few of the specific exceptions permitting activity for the benefit of visually impaired people do not even appear to permit any dissemination of accessible copies as they seem to be limited to a performance of a work at a particular location. A number of the other exceptions do not appear to cover more than the making of accessible copies so there is doubt about what distribution methods for these copies are possible. And in a number of other cases distribution by dissemination of physical copies only appears to be possible.

There are therefore very few countries where it seems to be possible to employ any distribution method for disseminating accessible copies to visually impaired people and even in these countries other limitations in the exception will almost certainly impose limitations on what can be done in practice. In particular, the need to make sure that activity is of a non-commercial nature seems to rule out commercial rental, but other conditions such as ensuring that only those entitled to receive an accessible copy because of their visual impairment are likely to lead to restrictions on what distribution methods can be used in practice.

Examples of some of the countries that may provide the most comprehensive possibilities for distribution of accessible copies are as follows:

- Croatia because it permits “use” for the benefit of people with a disability
- Ireland because it permits “supply” of a modified copy to people with a disability
- Macau because it permits “any other non-profit making use”
- New Zealand because it permits copies to be made “for the purpose of providing persons who have a print disability” with copies
- Nigeria because the restricted act of distribution seems to be limited to commercial activity and no right of communication to the public by electronic transmission seems to exist so non-commercial distribution is possible
- Poland because it is permitted to “use” works for the benefit of disabled persons
- Sweden because it specifically permits copies to be “distributed” and certain organizations may also “communicate” copies to those with a disability

In the above list, Nigeria illustrates something that is more generally true to some extent, namely that some activities that could be used to “distribute” accessible copies may not be restricted by copyright in any case as they do not come within the scope of the economic rights. In particular, lending rights, that is loans on a non-commercial basis, are not provided in a number of countries and, even in the EU where a lending right is required under EU law, the right only extends to loans made by establishments that are accessible to the public<sup>59</sup>, which may not always apply to organizations seeking to loan the accessible copies they have made. Any lending that is not restricted by copyright can, of course, be undertaken without permission from the copyright owner even if it is not mentioned in the copyright exception permitting accessible copies to be made.

Another activity that may not come within the scope of the acts restricted by copyright is where an accessible copy is sent to just one person, such as where that copy has been made specifically for just that person. In that case because there is just one recipient there may not have been distribution or communication to the public as one person does not count as “the public”. But in practice this is unlikely to be very helpful to organisations addressing the needs of visually impaired people as in general they are likely to be making more than one accessible copy of a particular copyright work and wanting to supply copies to a number of visually impaired people.

### 3.6 Distribution to organizations

Although organizations able to make and distribute accessible copies under specific exceptions to copyright are primarily doing so in order to meet the needs of visually impaired people directly, there are occasions where an accessible copy made by one organization might be more conveniently supplied initially to another organization which then transfers this to a visually impaired person when it is needed. An example of this might be a body that makes accessible copies of material that is likely to be needed by students when that body might wish to supply, say, a school or university library with accessible copies which are in turn loaned by that library to students as they need them. The second area that has therefore been examined for all the countries with specific exceptions to copyright for the benefit of visually impaired people is whether or not distribution to such an intermediate organisation might be possible.

---

<sup>59</sup> Derogation from the public lending right is also possible so that lending may only be a remuneration right and/or may not apply to all establishments that are accessible to the public.



Where there is doubt about how an accessible copy can be distributed to individuals, there is likely to be even more doubt about distribution via an intermediate organisation as the receiving organisation will not clearly be able to distribute the copies received to visually impaired people. In a number of countries only certain types of organisations are able to act under the specific exceptions, and in others the organizations need to be designated in some way by an official process of recognition of entitlement. In these cases it seems likely that any intermediate organisation would also have to fall into such restricted categories or be designated.

Any limitations on the distribution methods that might be possible under an exception are also likely to have an impact on how accessible copies can be supplied to intermediate organizations. However, some transfers between organizations, such as interlibrary loan or permanent transfer of tangible accessible copies, arguably do not involve an act that is generally restricted by copyright and so might be possible even where an exception makes no provision for distribution. However, it may be that the wording of an exception will rule out transfer of an accessible copy to another organization even if the act of transfer is not an act restricted by copyright. An exception might be worded so that the act of making an accessible copy is only non-infringing if the copy is to go direct to a visually impaired person. Deciding whether or not interlibrary loans of accessible copies made under exceptions are possible is not, therefore, likely to be straightforward.

Of the countries indicated above as examples of countries with the most extensive provision on methods of distribution possible, only Croatia, Macau and Poland do not appear to impose any conditions on types of organization that can undertake activity other than general ones such as activity must be for non-commercial purposes. Countries such as these are therefore likely to be where distribution through intermediate organisations is most likely to be possible and is most comprehensive.

### 3.7 Export to individuals

For the purposes of this study, as explained above, there has been no examination of how the law in different countries applies to illegally made copies, that is copies which have not been made with the authorization of the right holders or under an exception to rights. For copies that have been legally made in some way, it is quite rare for there to be any specific provision in copyright law regarding the act of exporting such a copy. But it seems unlikely that an organisation entitled to make an accessible copy in one country under a specific exception to copyright for the benefit of visually impaired people will be able to export that copy to a person in another country where there is no clear provision for distribution of accessible copies made under the exception as the act of exporting is likely to fall within the scope of the restricted act of distribution. As has already been discussed in connection with the above analysis of distribution within a single country, lack of any clear provision regarding the distribution of accessible copies seems to apply in the case of quite a number of the exceptions that have been analysed and so it seems rather unlikely that exports from these countries will be legal.

On the other hand, for exceptions that do clearly permit some form of distribution, it is much more likely that distribution by a permitted means of an accessible copy to a visually impaired person in another country is possible without infringing copyright in the exporting country, so long as the recipient meets any conditions relating to the end beneficiary of the exception, such as that the published work is not accessible to them because of their visual

impairment. Although it is difficult to be certain, there are, therefore, quite a large number of countries where the export of an accessible copy made by an organisation in the source country to a visually impaired person in another country may be permitted by a distribution method that is within the scope of the exception. Examples of such countries are Australia, Belize, China, Denmark, Estonia, Fiji, Germany, Iceland, Latvia, Malaysia, Nigeria, Portugal, Singapore and the United Kingdom.

It will, of course, be necessary in addition to consider whether the import into the other country of that accessible copy is also legal in order to decide whether the accessible copy can actually be supplied to a person this way and that is discussed further below. In order to decide on the legality of both the export and the import, it is, though, first of all necessary to decide which law applies to which act. It is probably reasonable to assume that the act of exporting should be judged with respect to the law of the country in which the accessible copy has been made, ie the source country. And that the act of importing should be judged with respect to the law of the country to which the accessible copy is sent, ie the destination country. Thus, where accessible copies are supplied from one country to visually impaired people in another country the laws of both the source and destination countries are likely to be relevant, although probably in most cases only with respect to either the export or import depending on whether the country is the source country or destination country respectively.

There are a few countries that appear to provide rights that specifically permit a right holder to decide whether or not a copy of his work can be exported. Some of these countries do not appear to provide for distribution of accessible copies in the exception in any case so it is probably not very relevant that export must be specifically authorized as it is most unlikely to be within the scope of the exception in any case. Examples of such countries are Armenia, Bulgaria and Lithuania. On the other hand there are some countries that do not seem to make any provision regarding distribution in the exceptions, and also provide rights to permit control of export, but where export of an accessible copy may nevertheless be possible because there is a general right regarding export of a copy of a work for personal purposes. It appears that this right of personal export does, however, only apply where the exporter is a natural person and not an organization that has made accessible copies. Examples of countries where a natural person may export a copy of a work for personal purposes are Kazakhstan, Kyrgyzstan and the Republic of Moldova.

It is more difficult to know what the situation would be in countries that do permit some distribution under the exception but also seem to provide a specific right to control export of copies. This is likely to depend at least in part on the scope of the ability to distribute accessible copies under the exception, ie whether or not it would cover distribution by export. An example of such a country is Croatia.

A final difficulty might arise where the conditions that must be satisfied by the disabled person before he is entitled to an accessible copy would be very difficult to apply or test in another country. For example, under the exception in France a person must have a level of disability as measured against certain standards that apply in France.

### 3.8 Export to national organizations

No country has been found which makes specific provision for export of accessible copies to other organizations in other countries that are able to supply them to visually impaired people in those other countries. However, as for distribution to other organisations

in the same country, the transfer to the organisation in another country may not involve an act restricted by copyright. Of course, the receiving organization will need to have regard to law in the country in which it is situated to decide what can be done with any accessible copies it receives, and the act of importation may also be illegal under the destination country's law.

Countries discussed above in connection with export to individuals that specifically provide copyright owners with a right to control exports, and no corresponding exception to this right to permit distribution of accessible copies by export, perhaps most clearly rule out export of accessible copies to national organisations in another country. In cases where there are no rights to control exports, it may be more likely that exports of accessible copies to organizations in other countries are possible by some means, but matters other than whether or not the transfer is a restricted act will need to be considered too. Even for those countries that do provide for some distribution type activity under their exceptions, transfers by those methods to organizations in other countries may not be possible for other reasons. As well considering the status of the act of transfer, the following issues are likely to be particularly important in all cases:

- Exceptions are often clearly limited to providing assistance to a person with a print disability only. Where the action being undertaken by the person or organization in the source country does not have this as a direct or certain outcome, because it goes to an organisation rather than a print disabled person in another country and that organization is not then bound by the law of the source country regarding the end destination because it is subject only to complying with the law in the destination country, then the action being taken may not meet this criterion.

- Exceptions may be limited to bodies that are designated by some sort of official recognition procedure in a particular country or may be simply limited to actions undertaken only by organizations entitled to act under the exception. Organisations in other countries will not generally satisfy these criteria because they will have been neither designated nor have any entitlement to act in the source country, so passing accessible copies to them could go beyond the scope of the exception.

Consequently there seems to be considerable doubt regarding what, if any, activity of this nature is permitted under exceptions.

There are a few countries, however, where the breadth of the exception, such as due to the absence of any limitation to activity by a particular type of organisation, where it may be more likely that an accessible copy could be exported to an organisation in another country. For example, this may be possible in Iceland (although only for the Braille copies that can be made under the exception), Macau, Nigeria (only for Braille copies that can be made there and not sound recordings), Singapore (by some types of distribution) and Slovenia (again by some types of distribution). However in some of these countries other conditions, such as the need for activity under the exception to comply with the 3-step test may make it much less certain exactly what is possible.

### 3.9 Export to international organizations

This possibility has been included because it could, possibly, provide a means of overcoming any concern about export to national organizations. An international organization might be established to operate to standards that ensure proper respect for copyright but still facilitate the carefully controlled exchange of accessible copies between countries. However, at the moment no provision has been found in a national law that

depends on a trusted intermediary such as this and so the possibility of export of accessible copies to an international organization seems to be governed by exactly the same considerations as for export to a national organization.

### 3.10 Import by individuals

A number of countries make some provision regarding the legality of importing copies of a work into the country. In some cases there is a right to prevent imports, or sue for infringement of copyright where importation occurs, not only of copies that have been made illegally, but also copies that have been made under exceptions in other countries because the import of copies that have been produced without the right holder's permission is prohibited. Copies made under exceptions, although legal in the country in which they have been made, have not been made with the right holder's permission. Examples of countries that make provision of this type so that even a personal import of an accessible copy appears to be illegal are Armenia, Belarus, El Salvador, Greece, Lithuania, Nicaragua and Ukraine.

A large number of other countries do seem to include some provision in their national laws which could impose some restrictions on importation of accessible copies, but delivered in such a way that personal imports of an accessible copy made legally in another country would be permissible in at least some situations. Countries in this category include Australia, Azerbaijan, Belize, Bulgaria, Canada, Croatia, Denmark, Estonia, Fiji, Finland, Georgia, Hungary, Iceland, Ireland, Italy, Japan, Kazakhstan, Republic of Korea, Kyrgyzstan, Macau, Malaysia, Republic of Moldova, New Zealand, Nigeria, Norway, Paraguay, Peru, Russian Federation, Singapore, the United Kingdom and the United States of America. There are in some cases, however, limitations to this ability for a person to import an accessible copy for their personal use without this being prohibited and without infringing copyright. For example, the following limitations to the ability to import an accessible copy for personal use have been identified:

- Importation is only permitted where the copy being imported was made under an exception in the source country similar to that in destination country. Provision of this type seems to exist in Denmark, Japan, Macau and Nigeria
- Importation is only permitted for importation of a copy for personal use when it is imported in personal baggage. Provision of this type seems to exist in Paraguay and Peru

A final group of countries does not seem to include any provision that would restrict importation by an individual for their personal use. Although it is not usually really clear one way or another, personal imports of accessible copies may well be permitted in these cases. Countries where personal imports might be permitted for this reason include Austria, Brazil, China, Czech Republic, Dominican Republic, France, Gabon, Germany, Indonesia, Latvia, Mongolia, The Netherlands, Panama, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden.

### 3.11 Import by organizations

Importation of accessible copies by organizations entitled to act under specific exceptions for the benefit of visually impaired people in the destination country is much less clearly legal in most of the cases where some import restrictions have been identified as discussed above. Not surprisingly, imports by organizations seem even less likely to be

possible than imports by individuals in those countries where import restrictions seem to prevent even personal imports.

Importation by organisations of accessible copies in the second category explored above for imports by individuals, that is where there are import restrictions but these do not apply to personal imports, also often appears to be unlikely to be legal. Some of the reasons for this are as follows:

- Copies cannot generally be imported for the purposes of distribution where they have been made without the permission of the copyright owner, and this would apply to copies made under an exception in the source country. (The same restrictions on importation often also apply where copies have been made with the consent of the copyright owner.) Were an organisation to import an accessible copy, it would then seem impossible to subsequently supply it to a visually impaired person legally by any means that involves “distribution”. Countries where this situation might arise include Azerbaijan, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Republic of Moldova, Russian Federation and Singapore.

- Copies are defined as “infringing copies” if the person or body that made them could not have made them in the destination country, and such copies cannot be legally imported, except for private and domestic use. Even if the copies have been made legally under an exception in the source country, it may be argued that they were made by a person/body unable to make them in the destination country as the person/body in the source country is not entitled to enjoy exceptions in the destination country as they are operating under the law in place in the source country. Countries where this situation might arise include Belize, Canada, Fiji, Ireland, Republic of Korea and the United Kingdom.

- Only certain types of accessible copy can be made under the exception in the destination country so it seems unlikely that other types of copy could be imported by organizations. A country where this situation might arise is Iceland as only Braille copies can be made under the exception in Iceland.

However, there are some countries where import restrictions do exist but at least some activity that involves importation of accessible copies by organisations seems to be possible as indicated below:

- Australia and Denmark – it may be possible to import copies of a type that would have been permitted to be made and by a body permitted to act under the exception in the destination country

- Bulgaria – imports may be possible if not in “commercial quantities”

- Canada and Estonia – imports may be possible so long as the quantities involved are small enough and so do not count as importation for sale, distribution or other dealing

- Italy – imports may be possible so long as they are not done for gainful intent and no more than 50 copies are imported

- New Zealand – imports may be possible so long as the importing organisation is a body prescribed by regulations in New Zealand, the copy was made under an exception in the source country and is of a type that could have been made in New Zealand

- Nigeria – it may be possible to import copies so long as copies are ones that could have been made in Nigeria and, for sound recordings, the importing organisation is approved in Nigeria

- USA – imports of Braille copies and a very small number of copies for non-commercial loan may be possible

For the countries where there do not appear to be specific provisions restricting imports, importation of accessible copies by organisations may be permitted. It is, though, perhaps somewhat less likely to be legal than for personal imports by individuals. However, the

following may be particularly relevant to whether or not imports by an organisation to supply accessible copies to visually impaired people in the destination country are legal in these circumstances:

- Where an exception in the destination country does not clearly provide for distribution of accessible copies, it may be that the importation of such a copy by an organisation is not illegal, but it may then be impossible to legally supply it to visually impaired people. Countries where this situation might arise include Brazil, Dominican Republic, Mongolia, Panama and Spain.

- Where an exception in the destination country only permits certain types of accessible copy to be made, there would be no defence to infringement for distribution of other types of copy, so importation of copies that could not have been made in the destination country could be a problem. In China and Indonesia for example only Braille copies can be made under the exception and so it seems unlikely that an organisation could import and supply other types of accessible copy to visually impaired people.

- A similar situation might arise where there is a requirement in the exception in the destination country that only a work that has been lawfully published can be made in an accessible format. Importation of accessible copies of a work that has been published in the source country but not in the destination country might not be possible.

- Where an exception in the destination country permits distribution of accessible copies in general rather than only distribution of copies made under the exception it seems more likely that an organisation would be able to import accessible copies. Slovenia seems to be an example of a country that has an exception that permits distribution of accessible copies without them necessarily being copies made in Slovenia. On the other hand, Slovakia seems to be an example of a country that has an exception that permits reproduction for the purposes of distributing only those copies to the end beneficiaries and so distribution of copies not made under the exception in Slovakia may not be permitted.

Exactly what can be imported by organizations therefore seems to be very complicated and a clear answer to this question does not seem to exist in the majority of countries studied. As indicated above, it is, of course, in addition necessary to assess the effect of any restrictions in law on export from the source country as well as import into the destination country in order to decide whether or not any particular movement between countries of accessible copies is permitted.

### 3.12 Export/import of intermediate copies

An organization making accessible copies of a work will often have gone through a number of intermediate stages in order to produce the copy that can be read by visually impaired people. An intermediate copy might, therefore, be a digital copy carrying appropriate coding to enable a Braille copy to be produced when required. Rather than make a very large number of Braille copies, the organization might prefer to produce only a few copies to meet current demand but store the expensively produced intermediate copy to use should there be a future demand for more Braille copies. In addition, where another organisation is acting to create the same type of accessible copies of the same work, it would find it very useful to be able to obtain and use the intermediate copy made by the first organization rather than devote its own scarce resources to make accessible copies from scratch.

Very few national laws recognize the usefulness of intermediate copies, and possible exchange of intermediate copies between organisations entitled to make accessible copies

under specific exceptions to copyright for the benefit of visually impaired people. None seem to contemplate an exchange of intermediate copies between organisations in different countries. Whether or not export or import of intermediate copies might be possible in general therefore seems to be governed by the same sort of factors as arise regarding export and import of accessible copies. However, it might be even more unlikely that intermediate copies can be exported or imported where, as is the case in the vast majority of countries, specific exceptions do not even make any specific provision regarding the making and use of intermediate copies within a country.

Of those countries that specifically provide for the making and use of intermediate copies, the following might be how export and import of those copies would be assessed under their laws:

- Australia: Provision on intermediate copies is limited to activity that is solely for the purposes of doing what is permitted under the Australian exception so export of intermediate copies may be unlikely to be legal as it would not be to an organization that can enjoy the Australian exception. Import of an intermediate copy may be possible so long as it is to an organization permitted to make such a copy in Australia.

- France: No provision has been found regarding intermediate copies made by organizations making accessible copies under exceptions. The publishers' electronic copies that may be required to be stored centrally under the exception seem unlikely to be transferable to other countries.

- United Kingdom: Provision permitting loan or transfer of intermediate copies would probably not permit their export as an organization in another country is not acting in the UK and so does not have the required entitlement to make accessible copies under the UK exception before it can receive an intermediate copy. Importation only seems possible where the copy is not an "infringing copy" and, as explained above, this includes the test of whether or not the person or body that made the intermediate copy could have made it in the destination country.

### 3.13 Exhaustion of rights

As explained above in connection with the discussion about international treaties and conventions and European Union law, provision on exhaustion of rights is unlikely to be relevant to the legality of imports and exports of copies made under exceptions to copyright. Exhaustion of rights occurs where rights can no longer be exercised because they have been exercised *by or with the consent of the owner of the rights*. Activity under an exception is not undertaken by or with the consent of the owner of rights. It is, rather activity which does not need that consent because it does not infringe copyright.

In Annex 3 provision that has been found in each country regarding exhaustion of rights to distribution in a tangible copy has, however, been noted. For countries where provision has been found, there is the expected range from international exhaustion after the first sale or transfer of ownership of a copy by or with the consent of the copyright owner anywhere in the world, through regional exhaustion for countries in the EU and/or party to the EEA Agreement, to national exhaustion where rights are only exhausted after the first sale or transfer of ownership of a copy by or with the consent of the copyright owner in that country. In some countries rules on exhaustion vary for different types of work. Many countries make it clear that rental (and in some cases lending) rights are not however exhausted and a few countries such as Bulgaria and Italy specifically make it clear that the distribution right in

tangible copies is not exhausted for copies made with the right holder's consent by recipients of an electronic communication of the work to the public.



## CHAPTER 4

### CASE STUDIES SHOWING COPYRIGHT PROBLEMS

#### 4.1 Introduction

In this chapter, a number of case studies are presented that illustrate some of the copyright and related problems concerning the production and dissemination of accessible copies of works for visually impaired people. The following chapter illustrates some of the solutions to these problems. However, this does not necessarily mean that everything is worse in the countries that have been used to illustrate the problems than in the countries used to illustrate the solutions. Indeed, in a number of cases there is more access to accessible format material in countries that have been chosen to illustrate problems than in countries that have been chosen to illustrate solutions.

In most, if not all, countries, there are good things and less good things, and, indeed, even in setting out some problems in this chapter, many positive and useful activities are also identified. Moreover, each case study does not necessarily capture all that is happening or all the problems in a particular country. The purpose of these case studies is therefore to facilitate a constructive debate about what can and should be done to give better access to copyright works for visually impaired people, and what might not be so helpful. These case studies certainly do not mean that the issues identified only need to be considered in the countries referred to.

#### 4.2 Production and national dissemination of accessible copies

In many countries in the world where there are no specific exceptions to copyright, the production and dissemination of accessible copies of copyright works is always likely to be difficult in some respects. As noted earlier, some activity may fall within the scope of other exceptions, such as those permitting private copying and activity for educational purposes, and there may be agreements with some copyright owners covering some other activity. But it is perhaps unlikely that such a patchwork of provision would provide a comprehensive solution to access to any copyright work that might be desired by a visually impaired person.

In some countries, of course, the lack of specific exceptions to copyright for the benefit of visually impaired people is not seen as a problem as there is very little understanding of the restrictions that might arise because of copyright protection, and often also very little recognition of the needs of visually impaired people as well. In order to discuss the copyright problems that countries, organizations or individuals are aware of, it might, though, be helpful to have an understanding about this lack of awareness. When countries do become more developed, they are likely to gain a greater understanding of both the needs of visually impaired people and the constraints on activity to assist them that might arise because of copyright protection. If any copyright problems have not by that time been addressed, there is then likely to be a corresponding increase in the reported scale of copyright problems throughout the world.

## Case study 1: Mozambique

Libraries in general are very few in Mozambique and there are no libraries at all for visually impaired people. Some material does exist in Braille, but it is unlikely to have a local source. The beginning of a greater recognition of the needs of visually impaired people is, however, emerging. For example, in June 2006 a currency with a change in the face value was launched and it is possible to find information about this in Braille.

At this point in time there is, therefore, no particular concern in Mozambique about any problems due to copyright with the production and dissemination of accessible formats of copyright works for visually impaired people. At some point in the future as recognition of the needs of those with a visual impairment continues to grow it does, however, seem very likely that copyright will become a problem.

In other countries without specific exceptions to copyright for the benefit of visually impaired people, there is already likely to be more recognition that this can lead to problems. It might be expected that, even where there is good awareness of the nature of copyright protection, and so the restrictions that this will lead to regarding the production of accessible copies for visually impaired people, some will simply ignore copyright and go ahead with the making of accessible copies without permission. Some might argue that this is an understandable reaction where a person has a real and pressing need to access a copyright work for educational purposes for example. It is perhaps in the circumstances, therefore, more surprising to find that respect for copyright can often take precedence over people's urgent and pressing problems with access to copyright material as a result of a visual impairment.

## Case study 2: Malawi

Moses, a visually impaired secondary school teacher in Malawi, says that it is difficult to access books in a suitable format. He is able to obtain some material from the Montfort Education Centre for the Blind. But he does not have much choice about the books he can use. He has to make do with the limited amount of material available and structure his teaching round that.

Chancellor College of the University of Malawi has modern computer equipment with scanners so that it is possible for blind students to have books read to them using screen reading software for scanned text. The equipment could also be easily used to transcribe books into Braille, which some students would find more useful to support their studies. But, although there has been investment in this multipurpose and up-to-date equipment, it is currently underused because Braille transcription activities are not taking place for fear of contravening copyright law.

However, there is recognition in Malawi at a high level of the needs of visually impaired people in the education system. In the absence of specific copyright exceptions for the benefit of visually impaired people, the Ministry of Education, through the Director of Education responsible for Special Needs Education, is responsible for negotiating permission to transcribe books into Braille. As the Malawi Institute for Education is the main publisher of core texts for primary and secondary education, the negotiations are in-house and permission is

given by the Minister of Education normally after no more than about three months.

Problems do, however, occur where books are privately published, and the situation could be exacerbated if planned changes to the printing of textbooks go ahead with this being done in the future under Ministry contract with private publishers. Moreover, publishers have been reluctant to make electronic copies of their works available to the Director responsible for Special Needs Education so that Braille copies can be produced as they fear that this might undermine their business models. They fear that the Directorate will make money out of electronic copies so that there should be a payment for supply of such copies.

There are likely, however, to be countries where the failure to provide a specific exception to copyright for the benefit of visually impaired people could lead to some activity that is illegal. This may be in situations where, despite lobbying for exceptions because there is good recognition amongst those trying to assist visually impaired people of the constraints arising from copyright protection, no action takes place. Where campaigns to seek changes to the law have been unsuccessful, copyright is increasingly likely to be perceived as a frustrating impediment to the making of a real difference for visually impaired people unable to read the printed word. This may be particularly the case where there is very limited activity possible under other exceptions such as those in the library, educational or private copying areas. However, there are also countries with no specific exceptions for visually impaired people and very limited exceptions in other areas, and where the needs of visually impaired people have been recognized, but where activities to help them are carefully limited to comply with copyright constraints.

### Case study 3: Chile

The Library for Blind People of Santiago de Chile<sup>60</sup> is a non-profit making organization dedicated to the conversion of written material into audio tapes. These are used by visually impaired people for entertainment, cultural and/or educational purposes. In the educational area publishers have authorized some audio taping of books for the tapes to be put in the Congress National Library to help blind students from all of the country. But Chilean copyright law does not support the activities of the Library for Blind People, or other libraries. Other agreements with authors and publishing houses have been difficult to reach, sometimes due to difficulties in tracing the right person, so that in many cases legal activity to make accessible copies for visually impaired people is not possible. It is not even possible to charge a small amount to cover the costs of the audio tapes that are made as this would be deemed to have a commercial purpose.

Other exceptions to copyright in Chile offer no real assistance with the making of accessible copies. There are no specific exceptions applying to libraries. Also, there is no private copying exception which could permit visually impaired people to create accessible copies for personal use. Although there is an exception permitting use of copyright works in educational places, this cannot be relied upon by libraries such as the Library for Blind People of Santiago de Chile as the library does not function as an educational place.

Although problems for those wishing to assist visually impaired people by making accessible copies are therefore very significant in Chile, there are signs that changes in the law might be

<sup>60</sup> See website at <http://www.bibliociegos.cl/>

forthcoming in the future. Early lobbying for adjusting the balance of exceptions in the copyright law in Chile has not been successful. But in 2006 the Minister for Culture, Mrs. Paulina Urrutia, speaking of a new project looking at a number of issues in the copyright area, has emphasized the necessity of having a well balanced copyright law.

In some countries, there may be recognition at government level that copyright law should be amended to meet the needs of visually impaired people, but still problems in reaching agreement on the precise form of such an amendment. However, when there is such high level official recognition that a change to the law is appropriate, it is not really unusual for there to be differences of opinion in the detail. This will inevitably lead to some delay before legislative changes are finally worked out and put in place, but in such a scenario a country is much closer to an effective solution. It may nevertheless be useful to consider a case study of the sort of issues that might lead to those differences of opinion.

#### Case study 4: India

The Copyright Office at the Ministry of Human Resource Development, Government of India, has been conducting a consultation exercise on updating copyright law to keep pace with developments at national and international level, particularly with the rapid advance of technology<sup>61</sup>. This consultation is accompanied by a number of proposed amendments to copyright law in India. One of the proposals is an amendment to Section 52 of the Copyright Act, 1957 (which covers certain acts which are not an infringement of copyright) to provide for the needs of people with a disability. The proposal would make the following activity possible without infringing copyright:

*“The reproduction, issue of copies or communication to the public of any work in a format, including sign language, specially designed only for the use of persons suffering from a visual, aural or other disability that prevents their enjoyment of such works in their normal format.”<sup>62</sup>*

In India, there are a number of not-for-profit bodies that are actively working for the visually challenged. Seven of these organizations have been collaborating on the problems that copyright restrictions impose on their activities and what changes to the law would be desirable. The seven organizations, which have worked together as the Publication Access Coordination Committee (PACC), are as follows:

- Blind Graduates’ Forum of India, Mumbai
- Blind Persons’ (Men's) Association, Mumbai
- Dr K M Shah Self Vision Centre, Ramnarian Ruia College, Mumbai
- Helen Keller Institute for the Deaf and Deafblind
- Indian Association for the Visually Handicapped
- National Association for the Blind, India
- Xavier’s Resource Centre for the Visually Challenged, St Xavier’s College,

Mumbai

<sup>61</sup> The Copyright Office consultation, including detailed elaboration of some of the amendments proposed to the Copyright Act, 1957, as amended to 1999, can be found on the Office’s website at <http://copyright.gov.in/Logon.aspx>

<sup>62</sup> See proposed Section 52(1)(za) on page 33 of the elaborated amendments to copyright law proposed in India at <http://copyright.gov.in/View%20Comments.pdf>

These organizations have now submitted a joint response to the Copyright Office consultation<sup>63</sup>.

PACC has gone into considerable detail about why there needs to be an exception to copyright. For example, it has highlighted the difficulties encountered when seeking permission from copyright holders to make material available in alternative formats, especially when those approached for permission are unfamiliar with the needs of visually impaired people. PACC has, however, also acknowledged India's obligations to comply with requirements in the Berne Convention regarding exceptions and limitations to copyright. PACC also addresses possible concerns that publishers might have with changes to the law to meet the needs of visually impaired people.

PACC does, though, query whether the amendment to copyright law proposed by the Copyright Office is the right approach. The Copyright Office's proposal restricts activity to the making of only those accessible formats specially designed for people with a disability. PACC on the other hand feels that restricting the exception to copyright this way would deny disabled people the opportunity to benefit most effectively from the solutions that technological advances have brought, and could in the future bring, to their problems with access to the written word. The wording of the exception to copyright proposed by PACC does not, therefore, require an accessible format to be "special", but, rather, seeks to limit the exception by clearer restriction of the type of person who can benefit from any accessible copies made under the exception. The PACC proposal is as follows:

*"The adaptation, reproduction or issue of copies, or communication to the public of any work in any format, including sign language, specially designed or not, but intended exclusively for the use of persons suffering from a visual, aural or any other disability that prevents the perusal or understanding or comprehension or enhanced enjoyment of such work in their normal form."*

PACC has also identified the benefits of an obligation imposed on publishers to provide an e-copy of their work, perhaps to a central repository, and the usefulness of provision that would permit importation of accessible formats made in other countries.

At the time of writing this report, it is not known what other stakeholders have said on this issue in their responses to the consultation exercise. The final decisions made by the Government of India will, of course, have to take into account all the views that have been received, but this case study does illustrate some of the different ways in which copyright exceptions might be limited, and the usefulness of a well-informed debate in making decisions on the final form of any legislative provision.

In some countries the absence of a copyright exception may exist alongside a failure to reach comprehensive agreements with publishers even though there have been some efforts to achieve such agreements. Where neither of these exists despite attempts to introduce them, it may, of course, simply be that there are other pressing priorities in the countries, or publishers have a legitimate fear that copyright material might be abused. It can also be the case that

---

[Footnote continued from previous page]

<sup>63</sup> The full response can be found on the website of Xavier's Resource Centre for the Visually Challenged – see <http://www.xrcvc.org/files/CopyrightSuggestions.pdf>

needs are reevaluated as campaigning for solutions to access problems progresses so that eventual solutions may be better designed. But until that happens, of course, the unmet needs of visually impaired people regarding access to copyright material continue to be a problem.

#### Case study 5: Philippines

Resources for the Blind<sup>64</sup>, a non-profit, non-government organization seeking to produce materials for blind readers in the Philippines, has been campaigning for some years for an amendment to copyright law to underpin the making of accessible formats. With political backing from a Congressman, the campaign came near to a successful solution at one point, but the death of that person has inevitably delayed progress. During the years of campaigning, though, Resources for the Blind has revised and developed its ideas about the needs of visually impaired people in the Philippines. It now recognises that, as well making accessible copies in the Philippines, it would be very useful to have access to the accessible formats already in existence in other countries. This cannot, of course, be delivered by legislative change in the Philippines alone. Resources for the Blind is therefore now backing an agreement or arrangements at an international level.

In the absence of a legislative solution in copyright law in the Philippines, some activity to make accessible formats is possible under agreements with publishers. The Department of Education has permission to reproduce the textbooks that it purchases in Braille. But Resources for the Blind has not been able to get a blanket agreement to reproduce copyright material in Braille. There is as yet no solution in sight. Any solution is likely to need to address the publishers' general reluctance to grant permission to Braille producers to reproduce published material because of concerns about possible misuse of any digital copies made.

This report has identified nearly 60 countries which do have exceptions to copyright for the benefit of visually impaired people. Even in countries that do provide exceptions to copyright, problems can, though, arise as a result of the nature of that provision or for other reasons. Indeed, in some cases the very change from no specific provision in copyright law to the provision of a new specific exception to copyright can lead to problems if the change is not sensitive to the reality of what is already happening in the country.

#### Case study 6: Germany

A new provision was introduced into German copyright law in 2003 which helpfully permits the reproduction of a copyright work to make any accessible format for a disabled person. This recognition in copyright law of the needs of visually impaired people has been welcomed by many who have been assisting these people with access to the written word. The new exception in many ways formalised activity making Braille copies that had been undertaken by some special libraries in Germany for several decades. Arguably the activity was impliedly licensed by right holders as no-one appeared to be objecting to the activity. Although the new exception to copyright is helpful in clearly legalising the activity that was formerly taking place with no clear legal basis, the new exception makes remuneration to the author obligatory. A payment of 12 Euro must now be paid for each title produced regardless of the type of

<sup>64</sup> See website at <http://www.blind.org.ph/about/aboutus.html>

accessible copy. Thus the charge applies to Braille copies as well as any other format.

An exception coupled with remuneration is not clearly incompatible with the obligations that Germany must comply with under international and EU law and so it is not necessarily wrong for the exception to be formulated this way. However, the new exception coupled with the required payment for any type of accessible copies, including those in very specialised formats such as Braille, is reducing the number of works that the special libraries can put into accessible formats given their limited resources. The effects of the new exception and so perceptions about copyright are therefore considerably more negative than might have been the case if funding issues had been handled more sensitively.

Most people would agree that advances in technology can bring benefits to a country. Digital technology leads to many new and exciting ways of delivering copyright material to the population in general. Technological innovation can also provide new solutions to meet the needs of visually impaired people. Indeed, recognition of the benefits of digital CD recordings incorporating navigational aids and facilities such as bookmarking so that visually impaired people are able to “leaf” through and otherwise access a talking book with the same ease that a sighted person can use a printed one was behind the creation of the DAISY Consortium and development of the DAISY format as an international standard for talking books<sup>65</sup>.

But advances in technology which benefit the many do not necessarily go hand-in-hand with benefits for people with a disability. Indeed, standard technology has usually been developed in a way that is incompatible with the needs of visually impaired people. Adaptive technology may in the end be created so that visually impaired people can interact with the standard technology, such as a Braille display device that translates the text appearing on a computer screen into Braille characters, or screen-reading software that reads aloud text messages appearing on a screen. But adaptive technology is usually one step behind standard technology. Countries that are technologically advanced do not always, therefore, demonstrate similar sophistication in how they deliver solutions to the needs of visually impaired people and others who have a print disability for access to the written word. A case study demonstrating the more limited benefits for visually impaired people derived from new technology compared to technological developments generally was included in Nic Garnett’s study on Automated Rights Management Systems and Copyright Limitations and Exceptions. That case study<sup>66</sup> looked at the Republic of Korea which has one of the most advanced technological infrastructures in the world.

A very common concern in those countries where an exception to copyright permits accessible copies to be made is the expense and time taken to make accessible copies where the activity must start from the published work that is available only as a paper copy. There is not surprisingly a desire to have access to an electronic file of the work which the publisher will invariably have produced in order to print copies of the work in conventional ways. Lack

---

<sup>65</sup> See the DAISY Consortium website - <http://www.daisy.org/> - for more information about the DAISY standard and also the presentation by Mr Francisco Javier Martinez Calvo, Board Member of the DAISY Consortium, to the WIPO Information meeting on Digital Content for the Visually Impaired – see

[http://www.wipo.int/documents/en/meetings/2003/digvi\\_im/digvi\\_im\\_03\\_1rev1.htm](http://www.wipo.int/documents/en/meetings/2003/digvi_im/digvi_im_03_1rev1.htm)

<sup>66</sup> See pages 44 and 45 of the WIPO study at

[http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=59952](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=59952)



of access to such an e-text is not strictly speaking a copyright problem as copyright subsists in the content that is recorded as an e-text and the exception to copyright has already given access to this content, albeit it can only be found recorded as words on paper. Solutions that require a particular form of a work to be made available so that people are better able to enjoy an exception to copyright could, though, be delivered by law, but they are not really removing a barrier to the making of accessible copies arising out of copyright protection.

Given that ease of making accessible copies is, however, something that is increasingly linked with copyright issues where agreements with copyright owners exist or are emerging, it is probably worth noting both problems and solutions that address the issue of access to a suitable electronic file of a copyright work.

### Case study 7: Lithuania

The Lithuanian Library for the Blind (LAB)<sup>67</sup> has been very active in producing talking books for the blind since 1962 and more recently has started producing books in Braille and large print to meet the needs of those who need them for education, teaching or scientific research purposes. This activity can take place under the exception to copyright so long as the works have already been published and it is undertaken non-commercially. At the moment, about 300 talking book titles are produced each year, 30 titles of books in Braille and 17 titles of talking magazines, as well as ongoing activity to digitize old talking books. However, this still amounts to a tiny proportion of all reading material published annually in Lithuania so LAB has been working on ways to maximize the number of titles it can produce in accessible formats given its limited resources.

By far the easiest and fastest way to produce a book in Braille is to work from an e-text file. When LAB started producing Braille titles in 1999, it approached several Lithuanian publishing houses seeking e-texts from which to work. Publishers and authors are not obliged by law in Lithuania to hand any electronic file they possess to LAB, but many do so under agreements with LAB, persuaded by LAB's assurance that only Braille copies will be made and that the number of such copies will be small.

However, in some cases publishers feel insecure about providing e-texts even with these assurances, fearing that the e-texts will be misused and their commercial interests may suffer. In some cases, publishers have therefore refused to provide e-texts or required LAB to contact the authors too. In other cases a publisher has not archived the published work themselves as an e-text so they have nothing to hand over. In addition, in some cases the format of the publisher's e-text is not appropriate for easy conversion to, say, a Braille copy. In all of these cases, LAB must make its own e-text as a preliminary stage in producing an accessible format, by keyboarding or scanning the words from the copy of the work printed on paper. This is a time consuming and expensive process which could be avoided completely if there were an archive of all e-texts from all the publishing houses in the country with the e-text being a file appropriate for alternative format publishing to which LAB has access.

More recently LAB has sought permission from publishers for the e-texts to be made available for reference reading by blind professionals using computers with speech synthesizers. Although permission is sometimes forthcoming, the problems indicated above regarding

---

<sup>67</sup> See website at <http://www.lass.lt/en/lab/index.htm>



agreements to receive e-texts for Braille production also apply to this activity.

In some countries there have been exceptions to copyright for a long time that seem to provide fairly broadly for the needs of visually impaired people, and these exceptions may even exist alongside agreements with copyright owners enabling even more useful activity to improve access to the written word for people with a visual impairment. But, if the way an accessible copyright work is provided is not user-friendly enough for the visually impaired reader, then problems are likely to remain. Also, having the ability to do things that would otherwise infringe copyright in order to gain access to the printed word may not always be the best way of meeting the needs of visually impaired people, so it is worth noting how a number of everyday situations can, through lack of properly assessing the needs of visually impaired people, give rise to problems that perhaps could have been avoided. Finally, confused, or even the absence of, opinions on the legality of import and export of accessible copies, which is considered further below, seems to be quite widespread even where other copyright issues are well understood and provided for.

#### Case study 8: USA

A blind graduate student, calling herself Kestrell, has recently finished a Masters thesis. She has created and maintained a website as a resource for visually impaired readers<sup>68</sup>. She has herself found blogs written by other blind computer users as a useful source of advice on the technology used by those with a visual impairment. Her experiences as a visually impaired student has led her to catalogue a number of concerns that she has encountered, some of which are included in this case study.

##### *Special formats and special equipment*

Where special formats are required to be made under an exception, or agencies making accessible copies for visually impaired people choose for other reasons to use special formats, there seems to be a danger that each agency will use a different format, albeit it might be in some way related to a common standard like DAISY. Each special format may require special software or a different hardware reader. Although visually impaired students may be able to get equipment needed to access special formats on long term loan, many of the models are of low quality and often the student has difficulty finding other knowledgeable blind computer users from whom they can obtain advice about the technology. Kestrell has encountered these problems with her study material, and also insufficient functionality to meet her study needs, such as the ability to do in-text searches and cut and paste excerpts and quotes. She claims that as an undergraduate 99% of the time she chose to purchase and scan her own books in order to have full access to the text. She questions whether it is right for blind readers to expect the same level of functionality as sighted readers or whether copyright should be able to restrict a blind reader's ability to use text compared to what is possible for a sighted reader, i.e. what is the right balance between functionality and copyright protection?

##### *Choice of electronic file*

Almost any electronic format other than plaintext and RTF can be a problem according to Kestrell. PDF files can be produced to be accessible to visually impaired people, but many of those producing such files do not seem to do this, perhaps because they have never received appropriate instruction. Fear of infringing copyright may also lead people to choose security

<sup>68</sup> See the Blind Bookworm website at <http://www.panix.com/~kestrell/>

settings, both for PDF files and commercial formats, that lock out screen readers and Braille displays. Kestrell found her undergraduate university producing PDF course documents which were inaccessible to her due to high security settings. When she approached the head of the library, she was told that it would be illegal to post the documents any other way because they would then be able to be copied. She has also encountered problems of electronic documents that are such poor scans that OCR, the process by which images of text are converted to alphabetical text which a screen reader or Braille display can read, does not enable them to be used.

*End-user licence agreements and swapping accessible files with students abroad*

Kestrell is concerned about the number of times she has had to sign copyright agreements with the same agency in order to continue using their service to obtain accessible formats. She is concerned about the underlying message that as a digital format user her intentions are always treated as suspect. She has received requests from blind readers in Canada and India for accessible files she has. However, she is very conscious of the end-user licence agreements she has signed with agencies that have supplied her with accessible copies and is careful to respect these by not swapping e-texts or e-books with anyone from another country.

Kestrell is, though, concerned that whether or not it is, or always is, illegal to exchange electronic texts with people in other countries is far from clear. She believes that uncertainties and concern about copyright violations has meant that blind students have sometimes been denied access to electronic versions of course material due to fears that they will be tempted to give the electronic versions to others. She has even found publishers and lawyers who do not seem to be able to give clear answers on the legality of the exchange of accessible electronic texts with those in another country.

#### 4.3 Production and international dissemination of accessible copies

Countries which have had exceptions to copyright for the benefit of visually impaired people for some time, and/or which have organizations with longstanding facilities for transcribing printed material to accessible formats, are increasingly looking at what is happening to help visually impaired people in other countries too. Digital technology in particular has led to greater recognition than before of the economies of scale where efforts in one country to make accessible formats can also benefit another country. The expensive process of transcribing a book into an accessible format usually involves the creation of an intermediate digital file from which actual copies in an accessible format such as Braille are relatively easy and cheap (compared to the creation of the digital file) to make. A significant number of countries have, however, encountered copyright restrictions as an impediment to international sharing of accessible copies.

These restrictions, illustrated by the five case studies below, apply either to the import of accessible copies, or the export of accessible copies, or both. Although there is much repetition of the problems and concerns between these case studies, it is nevertheless important to be aware that it is not in just one or two or even a few countries that those helping visually impaired people face hurdles when there is a desire to import and/or export accessible copies. Rather, there are widespread problems and concerns. These case studies are in any case only illustrative as it would be very easy to find many more examples of concern about this issue. Moreover, at least some of the case studies show that the current complexities of seeking permission where it is desired to move accessible copies across

borders are not just considered to be a problem for disability organizations. It is clear that publishers may also not always be well served by the current situation.

#### Case study 9: Chile

The Library for Blind People of Santiago de Chile<sup>69</sup> claims to have neither imported audio tapes made in other countries nor exported the material it produces to other countries because it does not want to do anything which might give rise to trouble with copyright. The Library has not had the opportunity to make agreements with publishers and other copyright owners to permit the sending of accessible copies it has made to another country and so avoids international shipping of titles. This is despite the many requests for titles in accessible formats that the Library has had from blind people in other Latin-American countries. The Library has had to decline these requests with great regret. The Library recognizes that not only would cross-border exchanges of accessible material help visually impaired people, but also that it would be beneficial to the activity that the Library can undertake. Charges could be made for the material provided to visually impaired people in other countries and this would have a beneficial impact on the resources the library has for making more accessible material.

#### Case study 10: The Netherlands

Dedicon Netherlands<sup>70</sup> is responsible for production and development of accessible information for people with a print impairment. Dedicon also carries out a number of coordinating tasks and services for the Alternative Reading Libraries in the Netherlands. Dedicon has for sometime been successfully producing alternative format leisure and study material for use by people with a print disability in the Netherlands. It is also able, subject to certain conditions, to export this material to libraries for the print impaired in other countries. This activity is underpinned by agreements with publishers and legislation as explained more fully in Chapter 5.

The material produced by Dedicon is primarily copies of Dutch language books and magazines published in the Netherlands. However, increasing numbers of Dutch students with a print disability are requesting access to material in English which already exists in a suitable format in libraries abroad. In the past Dedicon has often been able to obtain accessible copies in an analogue form, such as talking books recorded on cassettes, from other countries through inter-library loans. However, the change to digital accessible copies, such as copies in the DAISY format, has led to more uncertainty and caution about the legality of this sort of activity. In the absence of international regulations or comprehensive agreements with publishers, some libraries fear that publishers might bring claims for infringement of copyright where accessible copies are loaned across borders.

The result is that often the only way that Dedicon is able to supply the needs of students with a print impairment in the Netherlands is to make the accessible copies itself even when the copies already exist in a suitable format in other countries. The effect of this is that Dedicon spends time and uses its scarce resources to repeat work converting material to an accessible format when that work has already been undertaken in another country. Given that one of the

<sup>69</sup> See website at <http://www.bibliociegos.cl/>

<sup>70</sup> See website at <http://www.dedicon.nl/catalogus.do?objectId=88084&parentId=71>

important purposes of the DAISY-CD was to have a common international standard for accessible copies across many countries, including to facilitate international library loans, this is of particular concern. The DAISY format, which has been developed using digital technology to give visually impaired people the benefits of high quality copies with good navigation, could have made loans between countries easier. Instead the spread of DAISY-CDs is leading to new difficulties and concerns for Dedicon and its partner libraries in other countries.

#### Case study 11: Canada

The CNIB Library<sup>71</sup> in Canada has a long tradition of assisting people with a perceptual disability by providing material in alternative accessible formats. Canadian copyright law provides helpful provision to facilitate this which is discussed in more detail in a case study in the next chapter. However, the sort of problems that the Library has encountered with regard to export of accessible copies to other countries and import of accessible copies made elsewhere into Canada illustrate problems likely to be encountered in many countries.

Users of the accessible formats created as a result of activity under the exception to copyright in Canada must fall within the scope of the definition of perceptual disability in the Canadian Copyright Act. This will also be the case where the accessible material has been placed in the CNIB Digital Library. CNIB Library clients who travel or reside outside of Canada temporarily may continue to access online works by logging into the CNIB Digital Library via an authenticated IP address. However, individuals and patrons of libraries in other countries are denied access to the CNIB Digital Library because there is no way to ensure that a person has a legal right to use the alternative format work in his or her country.

A number of other countries do, of course, also have exceptions to copyright that permit the making of accessible copies for disabled people and in some cases the exceptions may even have a similar scope to that in Canada. However, some differences in terms of types of work that may be copied, accessible formats that can be made and the eligibility criteria for a disabled person to be able to use the accessible formats made are invariably present. For example, the definition of perceptual disability in the Canadian Copyright Act includes people with an impairment relating to comprehension, whereas exceptions in other countries often only cover people with physical disabilities. With the varying scope of national exceptions, extending access to its Digital Library to patrons of trusted partner libraries in other countries remains difficult for the CNIB Library.

Other activity crossing borders involves seeking permissions from copyright owners where the CNIB Library's experiences are worth noting. The CNIB Library has found international permission seeking both complex and resource intensive. Publishers are also not necessarily well-served by the lack of a standard process for alternative format producers to seek permission. At the moment, the language of the requests varies widely and can be confusing to publishers, especially where an organization in one country requests permission to use a work in an alternative format already produced by a different organization in another country.

Situations where the CNIB Library has encountered the need to seek permissions even though there is an exception to copyright in place in Canada are as follows:

<sup>71</sup> See website at <http://www.cnib.ca/library/>

- The CNIB Library collection includes commercial online e-texts and audio book services. Extending access to these across borders is complicated by product-specific licences.
- The CNIB Library sometimes acquires works in alternative formats from a foreign producer and must apply to the copyright owners for permission, either where the foreign producer is limited by its domestic copyright legislation or by its own agreements with publishers from supplying copies in response to an overseas request.
- Where foreign libraries wish to acquire copies or a master of a work in an alternative format from the CNIB Library, they are asked to show proof to the CNIB Library of copyright clearance or legislative exception in their own countries. The CNIB Library may also need to obtain the permission of the publisher in Canada if the master was produced using a file obtained through an agreement with a publisher.

Some of the reasons that the CNIB Library has encountered that make seeking permission particularly complicated are as follows:

- It may sometimes be difficult to identify the right holder in a particular jurisdiction. In particular, where there are subsidiary sales agreements between publishers, it may be unclear whether permission is required from the originating publisher, from the subsidiary rights holder in the country where the alternative format work has been produced, or the subsidiary rights holder in the country where the work is being acquired.
- In some cases an alternative format work has been produced from an edition that is not available in the country where it is being acquired, but a parallel edition has been produced in that second country. The subsidiary rights holder may have adapted the original work to appeal to readers in a different market, but the differences may be quite minimal so that there is a desire not to expend additional resources making an alternative format of the parallel edition, but use the alternative format of the foreign edition. It is then necessary to identify which are the right holders from which permission is needed for acquiring the alternative format of the foreign edition.

Negotiating all these complexities and difficulties is difficult even for a body like the CNIB Library which has considerable experience of copyright issues. The publishers approached for permission are also not necessarily well served by the complexities. The CNIB Library is aware of a least one large publisher which would like a streamlined approach to permission seeking.

#### Case study 12: USA and Ireland

Recording for the Blind and Dyslexic® (RFB&D®)<sup>72</sup> has its origins in the US after the end of World War II when the New York Public Library's Women's Auxiliary started recording college textbooks for returning servicemen who had been blinded in combat. Today the RFB&D is the nation's premier educational library hosting the world's most significant collection of recorded textbooks in its Princeton, NJ-based master library and supporting 29 recording studios across the US. RFB&D serves 141,660 members, distributing 258,918 titles in 2005.

As far as activity in the US is concerned, RFB&D has very few problems. It qualifies as an authorized entity under the exception to copyright in Section 121 of US copyright law and as such can produce and distribute content in specialized formats to blind or other persons with

<sup>72</sup> See website at <http://www.rfbd.org/>

print disabilities, such as dyslexia, in the US. However, RFB&D has been advised that the copyright exception applies only to distribution in the US as the exception cannot have an extraterritorial effect. Distribution in other countries outside the US would be governed by the legislation of the individual country, not by US legislation. Although some countries may allow import, RFB&D is not authorized under existing US copyright law to export titles to those countries.

RFB&D is nevertheless happy to try and meet the needs of the international community and is actively exploring all strategies for doing so. This includes the possibility of sale of submasters of digital books. As an interim measure, RFB&D has also begun to look at ways of establishing supplies to people in other countries by distributing digital books through interlibrary loans. RFB&D has also promised that until June 30, 2007, when available, it will convert new digital titles to analogue copies on cassette upon request from international members.

RFB&D recognizes the benefit to all of a global library approach to serve people with a print disability and supports a solution to improve supply to international members. RFB&D has not yet, however, approached individual publishers for permission to distribute accessible books abroad for several reasons:

- Resources are currently being directed as a priority to the process of making the transition to an all digital collection of titles.
- With 30,000 digital titles in the RFB&D collection, it would take very significant resources to seek out individual permissions.
- As requests from foreign students are for material that is almost always needed very urgently for study purposes, by the time a request from a foreign student or agency is received, there is insufficient time to obtain permissions to meet the identified need.

Organisations in a number of countries have reported concerns about the lack of availability of digital books from RFB&D given its very comprehensive collection compared to those in their own countries. Obtaining material from RFB&D which already has accessible copies of requested material in a suitable format would avoid duplication of effort and expenditure of scarce resources. Once such organisation is the National Council for the Blind of Ireland (NCBI)<sup>73</sup>. NCBI has encountered similar problems when trying to borrow DAISY books from the RNIB in the UK which no longer offers international loans of audio cassettes. NCBI is, however, able to borrow 4-track and 2-track cassettes and Braille copies from the Library of Congress in the US.

### Case study 13: New Zealand

The Royal New Zealand Foundation of the Blind (RNZFB)<sup>74</sup> has an accessible format library and production facilities for making audio, Braille, electronic text and large print materials. The RNZFB has been making audio recordings since 1966 and during this long period about half of the output has been of books published outside New Zealand. Audio copies have been traditionally circulated to users on cassette, but the RNZFB has more recently transitioned to production to the DAISY standard. The RNZFB has about 5,500 borrowers of its accessible

[Footnote continued from previous page]

<sup>73</sup> See website at <http://www.ncbi.ie/index.php>

<sup>74</sup> See website at <http://www.rnzfb.org.nz/>



material.

With the introduction of digital formats and DAISY in particular, it is technically very much easier and quicker to obtain audio recordings from overseas. Also, where it is possible to access electronic files, Braille production is easier. As a result of the advantages that digital technology brings to the making of accessible formats, the RNZFB sees itself refocusing the work of its recording studios more on material published in New Zealand.

From the perspective of the RNZFB, the improvements offered by a move to more use of digital technology has also driven huge improvements in international cooperation relating to the production of alternative formats. The last one or two years in particular have been significant in this respect. This cooperation does, of course, also make economic sense as libraries working for blind people are invariably under-resourced.

Activity in New Zealand undertaken by the RNZFB falls within the scope of the exception to copyright in New Zealand copyright law. The RNZFB is a body that has been prescribed as required by the legislation in order to benefit from the exception. The exception is fairly broadly drawn and is very helpful to the RNZFB so long as it is careful to make accessible material available only to people with a print disability. The exception does not require remuneration to be paid to right holders.

The main problem for the RNZFB is, therefore, where it wishes to import material from another country. As New Zealand is a relatively small country, there would be considerable benefits to the RNZFB if it were easily able to import accessible copies made in another country. There are a number of countries which are likely to have already expended considerable resources on producing accessible copies of titles that are wanted by print-disabled people in New Zealand. The RNZFB would therefore in particular like to see legislative provision that would enable interchange of material between New Zealand, the UK, USA, Canada and Australia. At the moment, the legality of export and import of accessible copies is either not clear or clearly illegal, which means that they can only be imported by the RNZFB if rights can be cleared with publishers.

The RNZFB does have quite a lot of experience of trying to clear rights to import material produced in another country. Indeed, it has found that some publishers are excellent at responding positively to permission requests within days. However, there is no consistency and other publishers take a very long time to respond or do not reply at all. To illustrate this point, in the 2005-2006 financial year that ended on 30 June 2006, the RNZFB selected 103 titles in the DAISY format that had been produced by the RNIB in the UK for conversion to 4-track cassette. (The RNZFB is still running a 4-track cassette library whilst finalizing circulation by post on CD Rom or internet delivery of its digital library collection.) The RNIB had already succeeded in obtaining worldwide rights for 65 of these titles leaving 38 titles for which copyright clearance for this activity was needed. After writing to copyright owners between January and March 2006 seeking permission, this was obtained reasonably promptly for 10 of the titles, six being from the same publisher. All of the remaining 28 copyright permission letters were still unanswered as of 26 October 2006.

All of this makes it more difficult for the RNZFB to know what titles it might be able to offer to its users and when these might be available. In order to make obtaining permission easier, the RNZFB has tried hard to build up good relationships with people in the copyright clearance sections of some publishing houses as this increases understanding and so improves

the speed of response. However, relationships can be too easily broken when personnel at the publishing house change and then it may take a long time to reach the same level of understanding again.



## CHAPTER 5

### CASE STUDIES SHOWING EFFECTIVE SOLUTIONS

#### 5.1 Introduction

As already explained in Chapter 4, case studies used to illustrate effective solutions to copyright problems do not necessarily mean that there are no problems in the countries chosen, or that everything is better in these countries than those countries used to illustrate problems, or that this is the only activity in these countries. Indeed, in some cases there is a case study for a particular country both in this Chapter and the previous Chapter. Just as for those case studies used to illustrate problems, therefore, the case studies in this Chapter are offered more to illustrate issues and help inform a constructive debate in and between all countries rather than focus on particular countries.

#### 5.2 Production and national dissemination of accessible copies

The evidence available suggests that copyright issues are more likely to be understood and effective solutions delivered where the needs of visually impaired people are recognized in a fairly developed way. Underlying effective copyright solutions as much as copyright problems are, therefore, developments that lead to a better understanding of the role that accessible formats play in giving visually impaired people access to the printed word.

##### Case study 1: Kenya

Recognition of the needs of visually impaired people in Kenya was given a significant boost when a librarian in Kenya went blind in the late 1990s. He remained in employment after receiving rehabilitation training, but, more significantly, the needs more generally of visually impaired people unable to read the printed word were subsequently considered at a national level. The Kenya Society for the Blind (KSB) and the National Library Service in Kenya (NLS) discussed the possibility of developing 'Braille Corners' in Public Libraries in Kenya. As a result of a grant from the Department for International Development in the UK, managed through the British Council, the UK Royal National Institute for the Blind was able to run workshops in Kenya to familiarize NLS Management and Librarians with the needs and requirements of visually impaired people. Then, Braille Corners housed in Public Libraries at Provincial and District level across Kenya began to be rolled out.

At the present time there are 42 Braille Corners serving over 10,000 registered users. Books can be borrowed by the registered user visiting the library, which provides other facilities for users, in particular a Perkins Braille. Where a registered user is unable to visit the library, a family member may collect books for them so long as the family member can present the registered membership card.

The Nairobi Main Library has 900 titles available in Braille, large print and audio and the stock increases each year. This Library has developed additional services for schools. There are 15 schools within 200km of the library that benefit from an outreach service under which a new stock of accessible books are delivered to each school each month and the old ones are retrieved and recycled to other schools where there are visually impaired children.

As well as better awareness of the issues relating to copyright and the needs of visually impaired people in individual countries, it is worth noting that a number of organizations have international agendas that mean they engage in work to raise awareness. The World Blind Union (WBU) is, of course, a very important organisation in the context of issues relevant to visually impaired people. The WBU has for some years been campaigning for better solutions to copyright concerns and more information can be found about this activity, which is led by the WBU Working Group on Copyright<sup>75</sup>.

Libraries play a very important role in many countries serving the needs of visually impaired people regarding access to information, acting as producers of accessible formats as well as offering library services. It is not surprising, therefore, that the International Federation of Library Associations and Institutions (IFLA) also plays a very active role in international copyright issues through its Committee on Copyright and Other Legal Matters<sup>76</sup>. The case study below does, however, illustrate the international activity to raise awareness in the particular area of electronic resources and particularly in transition and developing countries given that it is probably in these cases that levels of appropriate awareness are particularly low.

#### Case study 2: eIFL-IP and Lesotho

EIFL.net is an independent foundation that leads, negotiates, and advocates for the wide availability of electronic resources by library users in transition and developing countries. In 2005, eIFL.net launched eIFL-IP<sup>77</sup>, aimed at the library community in eIFL member countries to build capacity and expertise about intellectual property issues in those communities. Underlying the work of eIFL-IP is concern that lack of awareness about IP, and particularly copyright, amongst the library community can lead to the introduction of unfair laws, particularly where better-resourced right holder interests are able to hold national seminars and conferences to raise the profile of issues, such as piracy and enforcement, of concern to them. The work of eIFL-IP is therefore to raise awareness about IP and to use the eIFL network to create national and regional expertise in copyright issues for libraries. EIFL-IP also monitors the latest developments in the relevant areas of IP, and provides tools, resources and specialist advice about IP for the library community.

EIFL-IP has engaged in a number of copyright related campaigns, and supports the investigation of copyright issues affecting blind and visually impaired people within the framework of the WIPO Standing Committee on Copyright and Related Rights. It knows that it is difficult to get information in many developing countries about copyright which may restrict access to alternative format material for visually impaired people because of a lack of awareness of the issues and because the focus may be on the day-to-day work in providing library and information services in often difficult circumstances. However, when some of these other problems have been resolved, copyright issues that have remained unaddressed then come to the fore, but by that time it may be too late to find satisfactory solutions.

<sup>75</sup> See WBU website at <http://www.worldblindunion.org/>

<sup>76</sup> See IFLA website at <http://www.ifla.org/act-serv.htm>

<sup>77</sup> The eIFL-IP website can be found at [http://www.eifl.net/services/services\\_ip.html](http://www.eifl.net/services/services_ip.html)

This is why eIFL-IP sees its work to raise awareness about copyright as very important so that copyright solutions to any problems can be built in to the law or otherwise, as the provision of accessible copies for visually impaired people is increased. Raising awareness can be difficult where there may be a lack of library capacity and where library associations, that in other countries might take the lead on copyright issues, are not in a position to do so. Therefore one of the most important jobs for eIFL-IP is to raise awareness amongst librarians in developing countries about the relevance of copyright to their activities and how fair and balanced solutions are needed to, amongst other things, ensure that visually impaired people can have access to the printed word. eIFL-IP has trained more than 90 librarians from 55 developing and transition countries in three regional workshops on copyright and related issues. The workshops were held in Uganda in November 2005, Estonia in December 2005 and Ukraine in May 2006.

eIFL-IP also provides individual advice through the network that has been established. One recent example of this involves the library of the National University of Lesotho (NUL). Lesotho is ranked by the UN as a Least Developed Country and has one of the highest rates of HIV-Aids infection in the world. NUL started taking blind students about six years ago. When visually impaired students come to the library with a request for a book they would like to read, the book is checked out to the Special Unit where it is transcribed into a Braille copy for that student. There is no exception to copyright specifically permitting such assistance to visually impaired people, but there is a broad private copying exception in copyright law which should cover transcription to provide a personal copy in response to a request from a student. However, eIFL-IP is aware of the limitations of relying on such exceptions alone which may restrict re-use of the material by the library for the benefit of other blind students. eIFL-IP has highlighted the wealth of information available in Braille and other accessible formats, in particular digital, in other countries and the advantages of avoiding duplication of effort if material is shared, but that in order to benefit from the sharing, suitable provision needs to be made in copyright law in Lesotho.

Some countries have a long history of providing accessible material to visually impaired people, albeit that provision has been far from comprehensive. This does not necessarily mean that there were not problems that needed to be solved. Solutions can sometimes be a combination of both legislative and other provision as illustrated by the following case study.

### Case study 3: UK

Before 2003, UK producers of accessible copies for visually impaired people had to seek permission from right holders for every title they wished to transcribe into an alternative format. The National Library for the Blind (NLB)<sup>78</sup>, which is just one of the organizations making accessible formats in the UK, was making mostly Braille books for loan or sale, mostly of the more readily available popular end of the market, that is of material that sighted people could obtain readily. As well as being lengthy, the process of obtaining permission often gave rise to other problems. Some of these problems were as follows:

- Referral of the request from the publisher to another person was common, for example referral to literary agents, other publishers and authors. In some cases no-one was sure who actually held the rights.
- Sometimes there was a complete misunderstanding about what the NLB was trying

<sup>78</sup> See website at <http://www.nlb-online.org/>

to do, and also confusion if a publisher had already given permission to another alternative format producer for a different format.

- On some occasions publishers seemed to simply ignore permission requests despite several reminders.

- There was inconsistency about payments, with most giving permission seeking nothing, but a few asking for payment.

- Collections of short stories and poetry could be particularly difficult with some publishers insisting that permission should be sought from all the contributors, a scenario which amounted to a deterrent to transcribe such material.

- Permissions could include various and differing restrictions, such as on geographical extent of loans, number of copies that could be made and time before permission would need to be sought again.

Some of these problems had been eased for some material before 2003. Some of the larger publishers had started to offer blanket permission, but many problems still remained and the process of seeking permission was a huge administrative burden for the NLB and other accessible format producers.

Legislative change to copyright law in the UK, which came into force in October 2003, has greatly eased the situation for the NLB and other producers of alternative format material which are making multiple accessible copies of copyright works. The legislative change introduced an exception to copyright to enable such activity, but at the same time leaving it open to right holders to set up a licensing scheme to override the exception so long as the licensing scheme is not more restrictive in what is permitted than the exception. The Copyright Licensing Agency (CLA) has set up a licensing scheme covering the making of alternative formats of books and journals<sup>79</sup>. (A separate scheme operated by the Music Publishers Association (MPA) exists for sheet music<sup>80</sup>.) This scheme is in some ways more generous about what is permitted than the exception and benefits right holders and alternative format producers in other ways too.

One of the conditions of the licensing scheme is that information about all material in an alternative accessible format must be entered onto the Revealweb database, which is available via the internet<sup>81</sup>. This means that those needing a particular type of accessible copy of a particular work are able to find out whether it already exists and, if so, which organization has produced it. The database also allows those who are planning to produce an accessible format to check what is already in production so that they can avoid duplication of effort. Revealweb also helps right holders who wish to know what additional access to their copyright works is taking place. Revealweb gives the CLA in just one place access to information about what accessible copies have been made. Revealweb is supported and managed by RNIB<sup>82</sup> and NLB with funding from other organizations.

---

[Footnote continued from previous page]

<sup>79</sup> See licensing scheme on CLA website at <http://www.cla.co.uk/licensing/vip.html>

<sup>80</sup> See licensing scheme on MPA website at

[http://www.mpaonline.org.uk/Music\\_Licensing/Copyright\\_Licensing\\_for\\_Visually\\_Impaired\\_People/index.html](http://www.mpaonline.org.uk/Music_Licensing/Copyright_Licensing_for_Visually_Impaired_People/index.html)

<sup>81</sup> See the website at <http://www.revealweb.org.uk/>

<sup>82</sup> See website at <http://www.rnib.org.uk/xpedio/groups/public/documents/code/InternetHome.hcsp>

Building on the legislative changes in the UK, a government-backed (but not government-funded) Feasibility Project has recently been initiated to investigate the potential for bringing about a significant increase in accessible book products for blind and partially sighted people. The Project has partners from the RNIB, NLB, right holder organizations including the Publishers Association and the Publishers Licensing Society and other trade bodies including the Booksellers Association and Book Industry Communication. All the partners are committed to work on the Project as they support the overall objective of increasing the availability of accessible products. The aim of the Project is to investigate the extent to which material which is published can be made available by publishers to the RNIB in digital form for conversion into large print, Braille and audio accessible copies. Ideally this will include making content in digital form available before publication where there is likely to be demand for accessible copies so that accessible copies can be ready by the time of publication. It will include looking at the feasibility of bringing these accessible products into mainstream bookshops as well as delivering them to visually impaired people through existing distribution methods and new online services.

As in the Chapter looking at case studies of problems, linked to copyright issues and the making of accessible formats for visually impaired people is a desire to have access to electronic files from publishers in order to make the process of transcription easier, and so enable more activity for the same resources which are invariably scarce and often have a charitable origin. The following two case studies further illustrate some effective solutions that are being developed in this respect.

#### Case study 4: Brazil

Brazilian copyright law permits Braille and other accessible formats for visually impaired people to be made so long as the activity is non-commercial. The Dorina Nowill Foundation for the Blind<sup>83</sup> is a charity which acts under the exception to copyright to produce in particular Braille and audio-books. It is probably Latin America's largest producer of Braille books and is the largest Brazilian producer of audio-books. As well as supplying books to visually impaired people in Brazil, the Foundation produces an audio-magazine which is sent to Portuguese-speaking visually impaired people in Portugal, the United States of America and France.

Accessible copies are distributed by the Foundation in Brazil either direct to visually impaired people known to the Foundation, or indirectly through other organisations. For accessible copies in an electronic format, distribution is carefully controlled with the recipients agreeing a contract. The contract does not permit further reproduction from the accessible copy and makes the recipient liable for any infringement of copyright that might occur as a result of unauthorised use of the accessible copy.

The work of the Foundation has for many years been facilitated by agreements that have been reached with publishers. Under these agreements, publishers have been supplying the Foundation with electronic files of school books used up to 8<sup>th</sup> grade so that the Foundation can use these as the starting point for making accessible copies rather than a printed text which would need to be scanned. Whereas scanning is reasonably easy for leisure reading material, educational material which includes diagrams, tables and so on is much more difficult to scan

---

<sup>83</sup> See website at [www.fundacaodorina.org.br](http://www.fundacaodorina.org.br)

satisfactorily.

For other educational material there have been more problems reaching agreement on access to electronic files. The Foundation has only been able to reach agreement with some publishers. A comprehensive solution involving an agreement with the RRO (Reprographic Rights Organisation) in Brazil for books and journals used in higher education is, however, now in the pipeline and is expected to be agreed soon. Under this agreement, the RRO will maintain a databank of electronic files which the Foundation will be able to access in order to produce encrypted files in electronic Braille or DAISY formats. The Foundation will then be able to send CDs of these encrypted files to visually impaired students who will be able to read the files, either on a screen or using screen-reading software. It will, however, not be possible to copy the encrypted files. The agreement will provide a solution to the security concerns of publishers by building in safeguards such as encryption. The electronic database will also be of benefit to the RRO as a way of modernising its licensing of photocopying. It will be possible for the RRO to use the database as the source of copies of extracts of text which are sold to students generally.

#### Case study 5: Canada

CNIB is a nationwide, community-based, registered charity committed to public education, research and the vision health of all Canadians. The CNIB Library<sup>84</sup> offers people across Canada access to thousands of titles in Braille, printbraille, talking books, descriptive video, newspapers and magazines, as well as access to telephone, reference and online services. CNIB is Canada's largest producer of alternative format materials.

Before 1997, the Library and others making accessible formats for visually impaired people in Canada had to rely on licences with publishers. However, individual licences with publishers for each title to be made into an accessible format had by this time been replaced by a helpful licensing scheme administered by CanCopy (now Access Copyright) that allowed the CNIB Library to produce, for a flat annual fee of \$500, any title in an alternative format.

In 1997 a new exception was introduced into Canadian copyright law so that a non-profit organization acting for the benefit of people with a perceptual disability can make a copy or sound recording of a work in a format specially designed to meet the needs of that person without infringing copyright. Although the exception has some limitations, particularly because it does not permit the making of large print works and audio-described cinematographic works and it does not apply if the work is commercially available<sup>85</sup> in a format specially designed to meet the needs of a person with a perceptual disability, it has nevertheless reduced the number of times that the CNIB Library must request permission to make alternative formats by roughly 90%.

The CNIB Library is now acting under the exception to copyright to update some analogue accessible formats to digital copies as well as making accessible copies of works acquired for the first time. Its retroactive activity includes converting 4-track audiocassette tape to the DAISY format or hard copy Braille to electronic Braille. A second exception in Canadian

<sup>84</sup> See website at <http://www.cnib.ca/library/index.htm>

<sup>85</sup> "Commercial availability" means "available on the Canadian market within a reasonable time and for a reasonable price and may be located with reasonable effort"



copyright law relating to maintenance or management in general of a library's permanent collection is also helpful sometimes. This exception<sup>86</sup> permits a work to be copied in an alternative format if the original is currently in an obsolete format or the technology required to use the original is unavailable.

A number of organizations in Canada have, however, recognised that efficient and fast supply of alternative format material to people in Canada with a perceptual disability can be improved even more. The development of an electronic Clearinghouse for alternative format production was first envisaged in 1998 and this idea has been developed and evolved since then culminating most recently in a pilot project. Underlying the idea of a Clearinghouse is the desire to significantly reduce the time delay for the production of alternative formats as well as to increase the number of works that can be made available in alternative formats. A key objective of the Clearinghouse pilot project was to create a mechanism whereby publishers can make their electronic files available to alternative format producers such as the CNIB Library, but in a way where the files are safeguarded against unauthorized use. Another key objective was development of a standard licence agreement between publishers and alternative format producers to streamline rights management and simplify provision of electronic files so that, for example, publishers should only be asked to provide any title once.

Eight publishers and six alternative format producers signed the Standard Agreement of the Clearinghouse pilot project. The pilot project was conducted by the Canadian Library Association with the active participation of a number of other organisations representing publishers, educators and print-disabled people. There was a strong consensus amongst participants that the pilot project was beneficial and, although a number of problems were identified that need to be addressed<sup>87</sup>, the Clearinghouse as built for the pilot project is believed to be an important first step that should continue with modifications.

It is not uncommon to find that provision of accessible texts and solutions to copyright problems are more common where the material is needed for an educational purpose. Bookshare.org in the USA, which is examined in more detail in a case study below, is one of the biggest providers of accessible textbooks. Another example is the work being undertaken by *Arbeitsgemeinschaft für Lehr-und Lernmittelerstellung für Sehgeschädigte* (ALLS) in Austria which maintains relationships with publishers to obtain digital versions of e-texts for conversion into Braille. ALLS is also developing its role as a trusted intermediary in the provision of digital accessible formats to visually impaired students. More information about the work of ALLS can be found in a report<sup>88</sup> published by the EUAIN Consortium<sup>89</sup>. Of course, activity to provide accessible formats for educational use may to a certain extent fall within the scope of general exceptions to copyright for educational purposes and this study has not been able to explore in detail to what extent such exceptions are helpful. However,

---

[Footnote continued from previous page]

<sup>86</sup> See Section 30.1(1)(c) of the Copyright Act as amended to 3 March 2006 at <http://laws.justice.gc.ca/en/C-42/230536.html#rid-230548>

<sup>87</sup> See the Final Report of the Pilot Project for an Electronic Clearinghouse for Alternative Format Production published by the Canadian Library Association at [http://www.cla.ca/top/releases/CH\\_Pilot\\_FINAL%20REPORT\\_EN.pdf](http://www.cla.ca/top/releases/CH_Pilot_FINAL%20REPORT_EN.pdf)

<sup>88</sup> See pages 37 and 38 of Chapter 4 of the EUAIN report on Accessing & Protecting Content by N. Garnett, D Mann & M White – also available on the EUAIN website at <http://www.euain.org/modules/wfsection/index.php?category=254>

<sup>89</sup> EUAIN, the European Accessible Information Network – see <http://www.euain.org/>

there is at least one case where specific provision in copyright law, linked to other legislative provision, has been introduced to improve access to material for visually impaired and other disabled school children and other initiatives are being explored for students in tertiary education.

#### Case study 6: USA

The Individuals with Disabilities Education Improvement Act (IDEA) of 2004 in the US has introduced a number of provisions relating to the education of children with a disability. One provision establishes the National Instructional Materials Access Center (NIMAC)<sup>90</sup>. This Center has the following statutory obligations:

(a) To receive and maintain a catalog of print instructional materials prepared in the National Instructional Materials Accessibility Standard (NIMAS) made available to the Center by the textbook publishing industry, State educational agencies, and local educational agencies.

(b) To provide access to print instructional materials, including textbooks, in accessible media, free of charge, to blind or other persons with print disabilities in elementary schools and secondary schools, in accordance with such terms and procedures as NIMAC may prescribe.

(c) To develop, adopt and publish procedures to protect against copyright infringement, with respect to the print instructional materials provided to the Center under obligations placed on publishers by other provisions in the legislation.

These other provisions in the legislation require a State or local educational agency that chooses to coordinate with NIMAC to contract with a publisher of print instructional material, either to require the publisher to provide electronic files of the content of that material in the NIMAS standard to NIMAC, or to purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats. The 2004 Act also amends US copyright law so that a publisher does not infringe copyright by acting as required to provide electronic files of the content of print instructional material to NIMAC.

This package of legislative change is designed to make text books for school children more accessible and matches obligations on publishers with assurances to protect against copyright infringement. The Association of American Publishers (AAP) was an active participant in the forum that led to the passage of the IDEA legislation.

There are now other initiatives being pursued in the US involving collaboration with publishers to improve the availability of text books in accessible formats. The AAP announced in March 2006 the launch of the Alternative Format Solutions Initiative (AFSI)<sup>91</sup>. AFSI is aimed at material used in tertiary education and involves three stages as follows:

(1) Researching problems with current systems to aid in developing practical, collaborative solutions;

(2) Identifying individual solutions that, together, will form a coordinated national accessible materials solutions framework; and

(3) Assuring that solutions continue to evolve by embracing new technologies and aligning with the needs of the rapidly changing post-secondary environment.

<sup>90</sup> See website at <http://www.nimac.us/>

<sup>91</sup> See AAP press release at <http://www.publishers.org/press/releases.cfm?PressReleaseArticleID=321>



AFSI will be exploring whether a voluntary system and/or a legislative solution is needed. Colleges and universities, students, disabled student support services, professionals, national and state disability advocacy groups and technology providers will all be involved in AFSI with the aim of creating a national framework to provide print-disabled post secondary students with specially-formatted course materials on a timely basis.

### 5.3 Production and international dissemination of accessible copies

In the previous Chapter a number of case studies showed the enormous concern about wasted resources where it is difficult or impossible to move accessible copies made in one country and needed in another country to that other country. As the following case studies show, there are some countries where the situation with regard to import and export of accessible copies is better. This may be due to legislative provision, helpful agreements with publishers or a combination of these.

#### Case study 7: The Netherlands

Dedicon Netherlands<sup>92</sup> has been producing alternative format material under an agreement with the Federation of Dutch Publishers (NUV). Under the agreement there is no distinction between types of accessible format, although there is a small distinction between leisure titles and study material as the latter are exempt from a licence fee. The NUV has advised all members to cooperate and allow production and distribution of material in alternative formats for people with a print disability. In turn, Dedicon is required to ensure that accessible copies are only used by people with a print disability, although this covers not only visually impaired people but also people with other handicaps such as spasm or dyslexia.

To make production of text files and Braille copies easier, Dedicon is, in addition, able to request a digital file from publishers. Publishers either give these files to Dedicon or sell them for a small fee. Although acquiring the digital files is often helpful to Dedicon, a standard format for the files which is easy to convert to the accessible formats needed would be even more helpful.

Despite the comprehensive agreement between Dedicon and NUV, some problems were, however, encountered in the production of some accessible formats. For example, publishers were sometimes reluctant to agree to the distribution of accessible digital texts of leisure reading material. The changes to copyright law in the Netherlands made in September 2004 have removed all the barriers by providing a new exception to copyright which mirrors the agreement between Dedicon and NUV. The new legislation makes the quick production and delivery to print impaired people of new books in accessible formats possible in all cases. Dedicon continues to pay publishers a small licence fee for leisure reading books.

As well as producing accessible material for use by handicapped people in the Netherlands, Dedicon is also able to assist print impaired people in other countries. Dutch is, however, not a widely spoken language but there is some demand for books and magazines in Dutch from people in Belgium (Flanders) and Dutch emigrants in the USA, Canada, Australia and New

<sup>92</sup> See website at <http://www.dedicon.nl/catalogus.do?objectId=88084&parentId=71>

Zealand. Foreigners with a print impairment are allowed to subscribe to the Dutch library for the print impaired services. Dedicon has an arrangement with NUV which permits it to sell accessible copies of books to libraries for the print impaired abroad. However, under the arrangement these copies are exclusively for use by people with a print disability. This safeguard prevents activity that would be detrimental to publishers.

#### Case study 8: Russian Federation

The making of accessible copies for visually impaired people in the Russian Federation is underpinned by an exception to copyright. This permits reproduction of publications in Braille or other special formats for visually impaired people so long as the activity is undertaken on a not-for-profit basis. The exception does not permit electronic copies to be made as these are not a special format for the blind, but is otherwise comprehensive in its coverage so that talking books as well as Braille copies of any published material can be made for example.

With some leadership from the Russian State Library for the Blind<sup>93</sup> in Moscow, there is a well-developed and professionally run network of 72 libraries for the blind across the country. These Russian Special Libraries for the Blind make full use of what is permitted by the exception to copyright producing copies of books in alternative formats for their visually impaired readers. These copies are sent where they are needed throughout the country, without the users being required to pay. The efficient distribution system for accessible copies made by this network of libraries also covers users in a number of other countries, including Germany, Israel, the USA and Australia.

#### Case study 9: France

BrailleNet<sup>94</sup> is a not-for-profit agency that was created in France in 1997 in order to develop ways in which the internet could be used for social, educational and cultural inclusion of visually impaired people. Of particular relevance to the making of accessible copies of copyright works for visually impaired people is the BrailleNet internet server “*Hélène*”<sup>95</sup>. This server is managed by BrailleNet to gather together in one place source files of published material which are provided by publishers and prepared e-files as supplied by specialized centres which produce adapted material for visually impaired people. The server collects francophone works across all areas of publishing, including literature, textbooks and documentation. The server is managed by INRIA, “*Institut National de Recherche en Informatique Appliquée*” (Grenoble) and CCR, “*Centre de Calcul et de Recherche*” in *Université Pierre et Marie Curie* (Paris), supported by the French Ministry of Culture and Communication and funded by private sponsors. BrailleNet is a partner of CNEA, “*Comité National de l’Edition Adaptée*”, which represents most of the main francophone transcribers producing material in alternative formats for visually impaired people.

The files stored on the “*Hélène*” server can be used by certified organizations in order to adapt the material for visually impaired people. For example, the e-files can be used to produce large print or Braille books. Security features are built into the access arrangements to protect

<sup>93</sup> See website at <http://www.rgbs.ru/en/std/>

<sup>94</sup> See website at <http://www.brailenet.org/>

<sup>95</sup> See website at <http://www.serveur-helene.org/>

the interests of publishers.

BrailleNet has contractual agreements with publishers regarding acquisition and use of the e-files for the server “*Hélène*”. These contracts grant rights to make accessible copies for the whole world because the server is a network accessible via the internet. In practice, given the material that is covered, most of the partners of BrailleNet are French, but some are located in other countries, including Belgium, Switzerland, Canada and some countries in Africa.

The contract between BrailleNet and publishers has been developed to recognise the needs and concerns of both parties. One of the key features of the contractual agreement is, as already indicated, the granting by publishers of world-wide rights for representation and reproduction of the e-files available on the server “*Hélène*”. Other important aspects of the contract are as follows:

- BrailleNet promises not to modify or correct the content of an e-file supplied by a publisher. Where a visually impaired user needs an e-file modified in order to access the content, such as in order to read figures in a textbook, then a new e-file is created without destroying the original e-file.
- Where an e-file cannot be provided, the publisher authorizes BrailleNet to provide access to the content of a copyright work in another way such as by manual keyboarding or optical scanning.
- A catalogue of e-files is available on the BrailleNet website.
- BrailleNet only allows access to e-files by specialized centres’ authorized users or organizations providing people with a visual impairment access to copyright works.
- All files of works protected by copyright are transmitted to the recipient by e-mail in an encrypted form.
- BrailleNet promises to keep the security of its server updated in line with the most recent technical innovation.
- BrailleNet will supply publishers with a list of users and downloaded works.
- BrailleNet will refuse access, or withdraw access, to files on the server if there is any doubt about use of the files, such as use in a way that infringes copyright or use that breaches the contract.
- A royalty is payable to the publisher for each alternative format copy produced.

From the server “*Hélène*”, at the beginning of 2006 BrailleNet opened a digital library for visually impaired people<sup>96</sup> with the cooperation of a few volunteer publishers. Another contract has been written which gives technical guarantees for the author and publisher and establishes a new frame of use for the files. Registration with and borrowing from the library are free of charge for users; other details are being developed during the first year of operation.

#### Case study 10: USA

A nonprofit enterprise, Benetech, sponsors the Bookshare.org<sup>97</sup> initiative in the USA. Bookshare.org was set up as an online community through which books that have been scanned by members and supporters can be shared with others who are visually impaired or otherwise print-disabled. This activity removes significant duplication of effort and is possible

[Footnote continued from previous page]

<sup>96</sup> See website at <http://www.bibliotheque-helene.org>

<sup>97</sup> See the website at <http://www.bookshare.org/web/Welcome.html>

because Bookshare.org can act under the special exception to rights in US copyright law that permits, subject to certain conditions, the reproduction of publications into specialized formats for disabled people. Bookshare.org also obtains original digital copies of books directly from publishers and these, together with the files of scanned books are converted by the organization into DAISY digital talking books and BRF digital Braille. This accessible material is then distributed to schools, libraries and end users who have a print disability.

The activities of Bookshare.org were examined in considerable detail in a case study<sup>98</sup> in the recent WIPO study on Automated Rights Management Systems and Copyright Limitations and Exceptions. That case study explained how Bookshare.org has gone beyond the requirements of the exception to copyright to ensure broad support for the project, including by working with the Association of American Publishers. This explanation includes details about a security strategy that has seven elements to minimize the risk of abuse whilst maximizing the benefits to people with a disability. Briefly, these seven elements are as follows:

- Users must show they qualify by supplying signed certification completed by an appropriate professional.
- Users must sign a contractual agreement forbidding copyright infringement by redistribution of material.
- Accessible copies include a copyright notice acknowledging the source and forbidding further reproduction or distribution and use by people who are not Bookshare.org users.
- Books are supplied with encryption and users are supplied with a custom decryption program which only decrypts content delivered for that user.
- Downloaded material is fingerprinted when it is decrypted by a user so that the source of any subsequent copyright violations can be traced.
- Bookshare.org maintains a database of all transactions, encryption codes and fingerprints.
- A security program monitors all transactions and can suspend a user detected to be undertaking excessive downloading or other unusual activity.

To date, Bookshare.org's activities have largely been confined to supplying digital books within the US as it is underpinned by the US copyright exception. However, Bookshare.org is actively working to expand its operations to be able to circulate accessible books outside the US. It already has global rights on roughly 2000 titles granted by two large publishers and will be launching its international service in the near future. Although 15-25,000 titles of current titles would be a more useful collection size, broadly equivalent to a medium-sized bookshop, 2000 titles is a good and useable start to Bookshare.org's international operation. Initially at least, books are expected to be supplied to mainly libraries outside the US rather than direct to end users as partnerships with libraries will enable appropriate certification of disability as well as the ability to provide customer service. Bookshare.org's experience of getting agreements with publishers to role out new services is largely positive and it has just initiated a partnership with the Lex Mundi Pro Bono Foundation which is working on publisher agreements in New York and London. Where there has been active engagement in discussions, Bookshare.org has been quite successful in getting agreements. There are limitations, however, largely in getting into discussions in the first place.

---

[Footnote continued from previous page]

<sup>98</sup> See page 51 of the study at [http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=59952](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=59952)

Copyright exceptions and agreements with publishers may sometimes complement each other in such a way as to bring further clarity and reassurances about activity under the exception, or even to extend what might otherwise be permitted under the exception alone. The following case study is a further illustration of this.

#### Case study 11: Denmark

Danish copyright law allows the Danish National Library for the Blind (DBB)<sup>99</sup> to produce and distribute Braille and other accessible formats to visually impaired people, people with dyslexia and other people who have a handicap that prevents them from reading printed material. This exception applies to any books that have been published in Denmark (but not books that have only been published abroad). Distribution is possible only to individuals who have been able to document the character of their disability in writing. In addition end users have to agree in writing that everything they receive from the DBB is for strictly personal use and will be destroyed after use. Membership of the library does not depend on nationality and so the DBB is able to distribute to individuals in other countries too.

As well as relying on the copyright exception, the DBB has an agreement with publishers and reports a high level of trust between publishers and the DBB which has been established over a long period. The trust that exists depends on maintaining good practice and ongoing channels of communication and negotiation. The agreement with publishers means that talking books on cassettes, Braille books and Braille music can be distributed to both disabled individuals and institutions serving the blind and other disabled people, both in Denmark and abroad. The agreement with publishers does not permit electronic books and digital talking books to be distributed to organizations, but does provide effective measures to prevent possible abuse of the materials produced by the DBB. Each electronic book and digital talking book has a unique ID and records are kept by the DBB so that any abuse can be traced back to the individual who has been supplied with the accessible copy. The reassurances that these provisions provide for publishers may be in part why some publishers at least are willing to provide their electronic files to the DBB.

In the following case study, a legislative change to copyright law is in the pipeline that might provide a solution to the movement of accessible copies across borders in some cases. It is too early to be sure exactly how it might work, and it may help solve a number of other concerns as well as those relating to cross-border movement of accessible copies. But it seems worth including as a case study here as it is provided in a country that already has fairly comprehensive provision in exceptions to copyright for the making of accessible copies, but these are not to be swept away and replaced by the new provision, but rather kept to remain working alongside the new provision.

#### Case study 12: Australia

The Vision Australia Information and Library Service (VAILS)<sup>100</sup> produces accessible copies in audio and Braille under a statutory licence that is established by Australian copyright law. Most of VAILS' clients use audio material from a collection that includes cassettes and CDs

<sup>99</sup> See website at <http://www.dbb.dk/English/default.asp>

<sup>100</sup> See website at <http://www.visionaustralia.org.au/info.aspx?page=514>



from commercial suppliers, audio books in DAISY format or on cassette that have been produced by other print disability organisations in both Australia and overseas, and audio books in DAISY format that have been produced by VAILS. VAILS is not permitted under the statutory licence to make audio copies of a title that is already available commercially in that form. Also, the provision in Australian copyright law does not apply to musical works, so if a Braille copy of these is needed, it is only possible to make this by seeking permission from the music publisher.

In addition VAILS has encountered the same sort of problems that many other organisations seeking to assist visually impaired people have encountered when trying to develop co-operative collection policies involving the exchange of material in accessible formats across borders. Australian copyright law does not clearly deal with such international exchanges. Often, in order to obtain material from an overseas organization, VAILS must obtain permission from the copyright holder. As an example, recently an exchange of Braille files between print disability organizations based in Australia and the UK took nearly six months to achieve. This was due to lack of response from the copyright holder despite repeated approaches to seek permission.

The Australian Copyright Act is currently being revised to deal with several issues, including certain concerns with exceptions to rights. Consultation exercises have covered, amongst other things, whether or not additional provision should be made for fair use of a copyright work, and if so, what form this should take. Not surprisingly, Vision Australia and other organizations representing disabled people have lobbied for additional provision that would overcome at least some of the problems they have encountered with the limitations in the current legislation.

In September 2006, the Attorney General in Australia released draft legislation to be introduced to Parliament, including proposals on copyright exceptions<sup>101</sup>. This proposal includes a new exception to copyright covering four specific types of use, one of which is use by or for a person with a disability. The use would enable a disabled person to obtain a reproduction or copy of the work or other subject-matter in another form, or with a feature, that reduces the difficulty the person had reading, viewing or hearing the work in a particular form. Activity that might have a commercial advantage is, though, specifically ruled out. Otherwise, the scope of the exception is left to the courts to interpret in a flexible way as any activity under the exception must meet a test that is very similar to the Berne 3-step test.

This new exception would not replace the existing exceptions in Australian law enabling certain activity for the benefit of disabled people. Where activity falls within the scope of what they permit, including where there is a requirement to pay remuneration to the copyright owner, then the activity continues to be covered by that exception and remuneration continues to be payable. The new exception, rather, complements existing provision covering the making of accessible copies for visually impaired people, perhaps dealing with some of the difficulties identified above that have been encountered by VAILS. There is at this juncture no guarantee that the new copyright legislation will be ratified, but, assuming it passes into law in

---

[Footnote continued from previous page]

<sup>101</sup> An exposure draft of the Copyright Amendment Bill 2006 dealing with exceptions and other digital agenda review measures was published in September 2006 – see <http://www.ag.gov.au/agd/WWW/agdhome.nsf/Page/RWPCC1088C809F10F7ACA2571E800095372>

due course, it may, though require interpretation by the courts before its full utility can be appreciated.

Copyright problems when making accessible copies of copyright works do not, of course, arise where visually impaired people are able to access material in the form in which it is published by the original publisher. This built in accessibility might be the case more and more in the future where the publication is an e-book that has been made fully accessible to a visually impaired person. Or there might be more cases where various formats, at least some of which are accessible to visually impaired people, are simultaneously published by the publisher. The last case study therefore looks at a European organization that believes that accessibility should be built in from the start of the publishing process and is working in various ways towards this objective.

### Case study 13: EUAIN

The EUAIN<sup>102</sup> Project (European Accessible Information Network) has already been mentioned and material that has been published as a result of this project is a source of information about much relevant activity that is taking place in Europe, some of which is also already covered in other case studies in this report. EUAIN receives funding from the European Commission but it is a time-limited project with funding finishing in April 2007. It has the aim of promoting e-Inclusion as a core horizontal building block in the Information Society. Thus, the existence of EUAIN is itself an example of how collaborative activity can improve understanding about the needs of print disabled people with respect to accessible material. EUAIN also explores copyright issues that might need to be addressed in order to achieve greater accessibility. The EUAIN project partners are committed to the provision of accessible information and include publishers, service providers and academic institutions.

EUAIN provides extensive resource for those concerned about accessible information on its web portal. For example, by advertising and promoting accessibility standards, EUAIN helps those developing information products to build accessibility for those with a print disability into the system right from the beginning, instead of the traditional approach of adding those features later.

Amongst other things, EUAIN partners share their experiences to demonstrate how the aim of building in accessibility from the start has been met (or what problems have been encountered). Recent case studies available on the EUAIN Training and Resource Centre<sup>103</sup> include:

- the simultaneous release in the UK of a popular work of fiction in normal print, large print, Braille, audio and digital talking book by collaboration between the RNIB, publishers and others;
- work by the Dutch Library for the Blind to convert 37 newspapers automatically to accessible XML formats, making them available at the same time if not before the printed editions;
- the Cairn project, set up by two French and two Belgian publishers, supported by others, to unify access to scientific journals in human and social sciences on the internet.

<sup>102</sup> See website at <http://www.euain.org/>

<sup>103</sup> See the case studies at [http://wiki.euain.org/doku.php?id=wiki:case\\_studies](http://wiki.euain.org/doku.php?id=wiki:case_studies)

The case studies give detailed information about what is being done, including information about the accessible information processes used, the standards, software and so on.



## CHAPTER 6

### ANALYSIS OF THE PROBLEMS AND SOLUTIONS

#### 6.1 Introduction

Most people would agree that visually impaired people should have the right to read. Not all visually impaired people do, however, want to read, or are able to read, even if material is available in an accessible format. Visually impaired people are no different from people with normal sight in the variation in their desire, need and ability to read. And just like people with normal sight, visually impaired people who want to read may want to do so for a variety of reasons, for example, as part of an educational activity, for leisure or in order to obtain information.

There are, of course, many reasons that might mean that any person cannot read a text, such as they do not have the ability to do so, the text has not actually been made available to the public, they cannot afford to buy the text even though it is available in a suitable format, they have no access to a library from which they might loan the text because their local library has not acquired the text even though it exists in a suitable format, or the text is in a language that they cannot understand. This Study has not looked at how hurdles such as these, which are no different in a general sense from those faced by the general population, might arise and might be solved.

This Study has, rather, concentrated on issues that apply particularly to visually impaired people, or issues that apply with a much greater impact on visually impaired people than on those with normal sight, but there are even issues in this category that go beyond the scope of this Study. This Study therefore takes as its starting point the problems faced by visually impaired people who want, or need, to read for any purpose and are only unable to do so because of the absence of an accessible copy of the material they want to, or need to, read. More specifically, it has sought to understand and suggest possible solutions to address these issues where the reason there is concern about the absence of accessible copies is directly related to copyright. However, in order to understand the impact of legislative changes on copyright laws, and decide whether this action is always the most appropriate solution to concerns about copyright, it is necessary to consider some issues that are less directly related to copyright. This Chapter therefore does cover somewhat wider ground than the strict scope of the title of the Study.

Issues that are not covered by this Study are not necessarily unimportant. For example, a visually impaired person may for a variety of reasons be unable to afford to purchase a book they would like to read even though that book has been published in a suitable accessible format. Another issue might be where a visually impaired person lost his sight later in life and he may not have had sufficient rehabilitation to enable him to read accessible formats such as Braille. And the charitable and public sector resources devoted to the production of accessible material are always likely to be limited even where this activity can be carried out in the most cost-effective way without any constraints arising from copyright. This Study does not explore issues such as these, but that does not mean that they are not issues deserving of proper consideration and debate in addition to the issues raised by this Study.

## 6.2 The copyright problems

By talking about copyright “problems” or “barriers” there is no intention to suggest that copyright should not exist. The World Blind Union, which has been at the forefront of lobbying for solutions to copyright problems where visually impaired people are unable to access copyright works presented as the written word, has stressed that copyright is a “legitimate form of moral and economic protection for creators of content and for those who add value to creative work”<sup>104</sup>. This Study has, therefore, taken as its starting point that rights for authors and publishers in works expressed as the written word are justified and necessary. The Study only seeks to explore whether or not the legislative and other copyright framework that exists both nationally and internationally strikes the right balance between the legitimate interests of publishers and other right holders on the one hand and the needs of visually impaired people and those trying to assist them to access the written word on the other hand.

The “problems” identified below are an attempt to pinpoint issues that arise from an examination of the international conventions, national laws and case studies discussed in the earlier chapters of the Study. As well as analysing the “problem”, this Study in most cases offers some comments about possible solutions. In some cases it may be, however, that there is not really a “problem” that should be solved. This may sometimes be because there is not enough evidence at the moment to decide whether or not there is a difficulty. At other times it may be that the “problem” is not necessarily something that should be or needs to be solved, that is, it is not really a problem. But in all cases the analysis and suggestions about solutions are provided to facilitate debate as it is unlikely that there are no other approaches to these issues than those suggested in this Study.

## 6.3 Technology

Technology is not in itself a problem. Indeed, it may provide many of the solutions to other problems. That is one of the reasons it is helpful to consider this issue first. It is, however, how technology is or could be used that needs to be considered as technology does not without someone deciding how it is to be used prevent or facilitate any activity. References to “technology” do, moreover, need to be construed broadly as both hardware, and software that operates or interacts with the hardware, are relevant.

It is clear that the development of the information society and the increasing spread of digital material both on the internet and otherwise has dramatically changed how the issues raised by this Study might be addressed. Technology has opened enormous doors of opportunity to make material accessible to all as it is delivered to consumers by publishers. Technological developments also permit significant enhancement of the services provided by those assisting visually impaired people, particularly the libraries for the blind which are major producers of accessible material. These libraries can now produce and make a wide range of digital accessible formats and have available a range of methods for distributing those formats to visually impaired people both on- and off-line.

---

<sup>104</sup> See David Mann’s presentation on behalf of the World Blind Union to the WIPO SCCR Information Day on 3 November 2003 - [http://www.wipo.int/documents/en/meetings/2003/digvi\\_im/pdf/digvi\\_im\\_03\\_mann.pdf](http://www.wipo.int/documents/en/meetings/2003/digvi_im/pdf/digvi_im_03_mann.pdf)

But at the same time as increasing opportunities to solve the problem of access by visually impaired people, technology gives rise to threats to right holders from illegal uses that can dangerously undermine their return on investment in creation of copyright works comprising the written word. These threats are not just theoretical. The music industry was the first to experience widespread illegal use of its protected material as a result of technological advances. Those publishing the written word already understand the damage that can be caused to their industry too by those engaged in illegal and widespread dissemination of protected material over the internet.

Any solutions to copyright problems as a result of how technology is used therefore need to be based on a full understanding of the position of all stakeholders. It does not make sense to develop policy only having regard to the needs and views of visually impaired people, but nor does it make sense to develop policy only having regard to the needs and views of publishers and other right holders.

In any debate about technology, it is, of course, also important to involve those who develop the technology<sup>105</sup>. If they do not understand the needs of both visually impaired people and publishers, they are much less likely to provide technological developments that can meet everyone's needs satisfactorily. No-one benefits if technological developments lock visually impaired people out of access to the written word when this has happened through simple lack of understanding of needs. Organisations assisting visually impaired people often argue that adaptive technology which gives visually impaired access to the written word is always one step behind standard technology. There is also concern that some standard market products with built in modifications to enhance accessibility are more nominal than effective<sup>106</sup>. However, with full cooperation and mutual understanding, these problems are more likely to be avoided.

Linked to technology is development of standards and interoperability. Case study 8 of Chapter 4 exploring the experiences of a visually impaired person demonstrates the frustration felt where an array of similar but not quite the same accessible formats is used with a matching array of equipment that interacts with them being needed. No doubt this sort of frustration is widespread.

Technology seems to provide the opportunity to provide solutions to the needs of visually impaired people in three different ways:

- where a visually impaired person can take an inaccessible printed text and convert it to an accessible text for themselves, such as by using Optical Character Recognition (OCR) technology and scanning devices in order to obtain access to the text using a screen reader or an electronic Braille display;
- facilitating the publication of e-books and other digital media that provide accessibility for visually impaired people as well as those without an impairment;

---

<sup>105</sup> Pages 29 to 31 of the WIPO Study on Automated Rights Management Systems and Copyright Limitations and Exceptions prepared by Nic Garnett elaborates on work by two technology companies in particular involved in the process of enabling people with a print disability to access information – see [http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=59952](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=59952)

<sup>106</sup> See for example the presentation given by Francisco Javier Martinez Calvo on behalf of the DAISY Consortium to the WIPO Information Meeting on Digital Content for the Visually Impaired in November 2003 – see [http://www.wipo.int/documents/en/meetings/2003/digvi\\_im/pdf/digvi\\_im\\_03\\_calvo.pdf](http://www.wipo.int/documents/en/meetings/2003/digvi_im/pdf/digvi_im_03_calvo.pdf)

- improving the quality, ease of manufacture and distribution of accessible copies made by non-profit bodies for visually impaired people and also to improve the ease of use by visually impaired people who receive the copies so made.

In each case, though, right holders will have a legitimate interest in either:

- ensuring that technological developments do not also make it easier to use protected material illegally and in ways that are damaging to their interests;  
or, if that is not possible,
- the development of security measures that can be used with new technological developments to prevent illegal activity.

These needs may be conflicting in that it may often be easier to develop technological solutions to meet the needs of visually impaired people without meeting the needs of publishers and other right holders or vice versa. Technology developers therefore have the challenge of accommodating all these needs and are only likely to get it right if they have a full understanding of the different perspectives. Sharing information about current accessibility technology, standards and security technology as well as co-operation between all stakeholders to make sure that developments and improvements in these areas are compatible with each other could therefore be useful. This sort of collaboration could enhance the likelihood that technology will facilitate any other initiatives to address copyright barriers and the needs of visually impaired people. This information sharing and cooperation could be facilitated by Governments at national level, but the EUAIN Project explained in case study 13 of Chapter 5 is a good example of how this sort of collaboration could be facilitated at a more international level. There may be a role for WIPO to explore how best to facilitate information sharing and collaboration as technology is developed to increase the chances that it will facilitate the delivery of secure access for visually impaired people to the written word.

## 6.4 The international framework

Chapter 1 of the Study examined the framework of international treaties and conventions relating to intellectual property that would govern provision of exceptions to copyright for the benefit of visually impaired people in national copyright laws. In order to reach conclusions on possible solutions to any problems relating to the international legal framework, it may also be necessary to be aware of treaties and conventions which do not specifically make provision for intellectual property rights.

### 6.4.1 International intellectual property treaties and conventions

There is no provision in any international treaty and convention relating specifically to copyright, or more generally to intellectual property, that refers to the needs of visually impaired people. Countries are, of course, able to take the needs of visually impaired people into account when drawing up their copyright laws. Moreover, for a long time there has been international recognition of the need to provide balance in laws between the interests of right holders and users. (As has already been mentioned, though, these are not necessarily distinct groups of people as right holders can be users and vice versa.) International treaties and conventions in the area of intellectual property do permit exceptions to rights to be provided, and in some cases specify the areas that these exceptions might apply to and conditions that must apply. But there is no obligation to take the needs of visually impaired people into

account when drawing up copyright laws, or even for that matter, any specific obligations to provide balance in any areas.

The analysis in Chapter 1 nevertheless examined what exceptions for the benefit of visually impaired people might be possible. That analysis looked at the main treaties and conventions and a wide range of restricted acts and types of protected material to try and ascertain whether such exceptions could be provided. For example, it may well be that the making of an accessible copy of a literary work involves making both a reproduction and an adaptation of the original. The different distribution methods for getting accessible copies to visually impaired people could involve one of several different acts restricted by copyright. One of the conclusions that might be drawn from this analysis is that, where there is no specific provision for exceptions in a particular area, such as is the case with exceptions for the benefit of visually impaired people, and an exception to quite a few different restricted acts and/or types of protected material is justified, it is very difficult to be certain about exactly what is permitted. Deciding how to apply the different conditions, or even whether they are all consistent with each other, is complicated. For example, whether or not remuneration must be available to right holders, and whether or not the 3-step test and/or other specific conditions apply, is sometimes debatable. International conventions do not seem to have been drawn up with the legislator delivering exceptions to copyright in mind. Particularly for an exception that might need to have a wide scope in terms of the acts restricted by copyright it applies to, absolute certainty about compliance with the conventions and treaties may therefore be difficult to deliver.

It might, therefore, be sensible to try and improve the clarity of what provision for exceptions to rights for the benefit of visually impaired people is compatible with international conventions and treaties. This could cover not only whether or not exceptions to all rights for all types of protected material are permitted, but also what conditions should apply to exceptions. Indeed, there are some who have argued that there needs to be a more explicit balance between rights and access within the international context by making the role of limitations and exceptions to copyright a more central part of the structure and operation of the international copyright system<sup>107</sup>. One way of doing this would be for certain exceptions to rights to exist in international treaties and conventions as a minimum provision that should be provided in national laws. This could be further developed by making some exceptions have the nature of rights for users, that is make the permitted activity such that it cannot be legally overridden by contractual or other means. This might better enshrine the balance between the interests of users and public access on the one hand and the wide range of rights that are provided for copyright owners in international conventions and treaties on the other hand. These are all interesting ideas that are worthy of further debate, especially as and when any new treaty proposals are brought forward, but they do, of course, raise issues that go beyond exceptions specifically for the benefit of visually impaired people. Any rapid agreement on the way forward is therefore unlikely to be forthcoming.

---

<sup>107</sup> See for example the paper on The International Copyright System: Limitations, Exceptions and Public Interest Considerations for Developing Countries by Ruth L Okediji, Issue Paper No. 15, UNCTAD – ICTSD Project on IPRs and Sustainable Development, published in March 2006 – see <http://www.iprsonline.org/unctadictsd/docs/ruth%202405.pdf>. UNCTAD is the United Nations Conference on Trade and Development and ICTSD is the International Centre for Trade and Sustainable Development

In practice, the international framework may not be an impediment to appropriate provision on exceptions, especially when international treaties and conventions relating to copyright are considered in the light of other international requirements elaborated below. A large number of countries have introduced exceptions to copyright for the benefit of visually impaired people into their national laws and these exceptions cover a range of restricted acts and protected material. This pragmatic approach to exception provision may therefore be the best way forward at least for the moment. Of course, this leaves the difficulty of what type of conditions should apply to any exception provision. What conditions might be appropriate is discussed in more detail below, but many countries appear to have concluded that it is appropriate to apply the 3-step test to their exceptions, either explicitly or by carefully limiting the scope of the exception in various ways.

Such an approach is effectively the same as that adopted by the EU in the 2001 copyright Directive. Although member States of the EU must also comply with international conventions and treaties to which they are party, the EU copyright Directive has, by setting out in some detail the areas to which exceptions to rights might apply, attempted to bring greater consistency to exception provision in the EU. As explained in Chapter 1, the EU copyright Directive permits exceptions to the reproduction, communication to the public and distribution rights<sup>108</sup> for the benefit of people with a disability, subject to certain conditions and also complying with a version of the 3-step test.

#### 6.4.2 Other international treaties and conventions

Disability issues in general have had some considerable prominence in the work of the United Nations. The Universal Declaration of Human Rights (UDHR)<sup>109</sup> contains several provisions relevant to these issues. First of all, Article 19<sup>110</sup> provides, amongst other things, the “right to seek, receive and impart information. Article 27<sup>111</sup> provides, amongst other things, that “everyone has the right freely to participate in the cultural life of the community”. These provisions support the need to provide solutions to the difficulties encountered by visually impaired people with access to the written word. Without such solutions, visually impaired people encounter difficulties receiving information and are more limited in how they can participate in cultural life. It could therefore be argued that copyright constraints that give rise to these problems should therefore be addressed.

---

<sup>108</sup> These are the rights governed by the EU copyright Directive. This does not necessarily mean, therefore, that there cannot be an exception also to other rights, particularly the public performance right.

<sup>109</sup> See <http://www.unhcr.ch/udhr/lang/eng.htm> for the text of the UDHR

<sup>110</sup> Article 19 of the UDHR provides as follows:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

<sup>111</sup> Article 27 of the UDHR provides as follows:

“(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”

However, it can also be argued that the UDHR underpins rights to property in any copyright work. Article 27 also provides the “right to protection of the moral and material interests resulting from any scientific, literary or artistic production” and Article 17<sup>112</sup> provides a right to own property and that “no-one shall be arbitrarily deprived of his property”. In order to comply with the UDHR, there therefore needs to be some balancing between what is required to meet all of these obligations. It may be, however, that the UDHR does go further than the copyright-specific international treaties and conventions in that the access needs of visually impaired users of copyright material are within the ambit of “rights” rather than merely optional provision.

One of the outcomes of the United Nations Decade of Disabled Persons, which ran from 1983 to 1992, was the adoption by the General Assembly of Standard Rules on the Equalization of Opportunities for Persons with Disabilities<sup>113</sup>. This is also relevant to a full consideration of the international framework. Rule 5 on accessibility, amongst other things, calls on States to undertake measures to provide access to information and communication. The Rule provides further guidance on the meaning of this by referring, for example, to use of appropriate technologies to provide access to written information and documentation for persons with visual impairment, encouraging the media, especially television, radio and newspapers, to make their services accessible, and ensuring new computerized information and service systems offered to the general public are either initially accessible or adapted to be accessible.

More recently, an Ad Hoc Committee was established by the General Assemblies of the United Nations and this Committee has just adopted the draft text of a Convention on the Rights of Persons with Disabilities<sup>114</sup>. This draft text should be sent by the Ad Hoc Committee to the General Assembly for final adoption after a drafting group has ensured uniformity of terminology throughout the draft text and harmonisation between the versions in the official UN languages.

The draft text of the Convention on the Rights of Persons with Disabilities goes further than the Standard Rules on issues relevant to access to the written word by people with a visual impairment. The provisions most relevant to the relationship between commercial publishers of the written word and visually impaired people unable to access that material, and also those who develop relevant technology, are in Articles 9, 21 and 30, in particular the following parts of these Articles:

*“Article 9 - Accessibility*

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others (...) to information and

---

<sup>112</sup> Article 17 of the UDHR provides as follows:

“(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.”

<sup>113</sup> See <http://www.un.org/esa/socdev/enable/dissre00.htm>

<sup>114</sup>The Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities adopted the draft text of the Convention at its 8<sup>th</sup> Session in August 2006 - see <http://www.un.org/esa/socdev/enable/rights/ahc8adart.htm#art9>



communications, including information and communications technologies and systems(...). These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

(...)

(b) Information, communications and other services, including electronic services (...)

2. States Parties shall also take appropriate measures to:

(a) Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of .... services .... provided to the public;

(b) Ensure that private entities that offer .... services which are .... provided to the public take into account all aspects of accessibility for persons with disabilities;

(c) Provide training for stakeholders on accessibility issues facing persons with disabilities;

(...)

(f) Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;

(g) Promote access for persons with disabilities to new information and communication technologies and systems, including the Internet;

(h) Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.”

*“Article 21 - Freedom of Expression and Opinion, and Access to Information*

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise their right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice, including by:

(...)

(c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;

(d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;”

*“Article 30 - Participation in Cultural Life, Recreation, Leisure and Sport*

1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

(a) Enjoy access to cultural materials in accessible formats;

(b) Enjoy access to television programmes, films, theatre, and other cultural activities, in accessible formats;

(...)



2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.

3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.”

As well as setting out in some detail what must be done or encouraged in order to provide visually impaired people with access to information and the ability to participate in cultural life, the relationship with intellectual property rights is also addressed by this draft text. Article 30(3) arguably delivers in the clearest way to date a requirement for a balance between the rights of copyright owners and the access needs of visually impaired people when drawing up copyright law. This does not, though, appear to broaden the scope of permitted exceptions to copyright. Article 30(3) does call for steps taken to be “in accordance with international law”. Rather, the new provision appears simply to ensure that providing a balance when framing copyright law is essential, that is, it will no longer just be an option under this draft text to take into account the needs of visually impaired people.

#### 6.4.3 The work of WIPO

WIPO, has, of course, already recognised that human rights generally need to be considered in the context of developments in the area of intellectual property. An overview on Human Rights and intellectual property has been published by WIPO<sup>115</sup>. The conclusion drawn there is that the issue “is complex” and that some suggest there are conflicts between intellectual property systems and the need to protect other human rights, including the right to participation in cultural life. WIPO organised a Panel Discussion on Intellectual Property and Human Rights<sup>116</sup> in November 1998. Not surprisingly, issues covered extended well beyond copyright and exceptions to rights. Perhaps of most relevance to copyright issues is a paper written for this Discussion on Intellectual Property and the Right to Culture<sup>117</sup>. This, amongst other things, explores US copyright law where rights are limited by the fair use provision, which balances an intellectual property right against societal interests. This paper concludes that

*“The principles of fair use in the copyright context foster the very creativity copyright law was designed to protect. This paper examines these tensions, comments on the balances struck, and concludes that the balancing provides a robust right to culture.”*

Given the developments in the area of human rights for disabled people, in particular the agreement on a draft text for the Convention on the Rights of Persons with Disabilities, it may be that it would be helpful to those developing their national copyright laws if WIPO were to organise or facilitate further discussions on the relationship between copyright and the

---

<sup>115</sup> See <http://www.wipo.int/tk/en/hr/>

<sup>116</sup> The Panel Discussion was organised by WIPO in collaboration with the Office of the United Nations High Commissioner for Human Rights – see <http://www.wipo.int/tk/en/hr/paneldiscussion/>

<sup>117</sup> Intellectual Property and the Right to Culture by Ms Christine Steiner – see <http://www.wipo.int/tk/en/hr/paneldiscussion/papers/pdf/steiner.pdf>

rights of disabled people. This could help everyone decide how best to provide the balance between the interests of different stakeholders, something that now appears to be an essential requirement in this area rather than just an option.

Another area of work that WIPO undertakes is providing assistance for developing countries which are introducing copyright laws for the first time or amending their copyright legislation. This work, amongst other things, is likely to involve advice about how to interpret the various international conventions and treaties. The Tunis Model Law on Copyright for Developing Countries, developed by WIPO and UNESCO in 1976, was undoubtedly drawn up to assist this work. However, it is clear that technological developments and changing needs in many areas mean that a Model Law such as this must be revised and updated from time to time. The development by WIPO of a new provision in its draft copyright law relating to use of copyright materials by visually impaired people<sup>118</sup> is therefore helpful. It may be, however, that the scope of this provision should be reviewed and revised if necessary in the light of suggestions made below about the type of provision that would be appropriate in national laws.

## 6.5 Copyright exceptions in national laws

### 6.5.1 Are exceptions necessary?

The main purpose of this Study has been to look at the role of specific exceptions to copyright for the benefit of visually impaired people. As has already been acknowledged, this area has previously been examined by a number of others and the suggestions made here draw on this earlier analysis as well as the extensive examination of national laws in Chapter 2 of this Study. However, before considering the detail of how exceptions might be provided, it is useful to consider whether exceptions to copyright are, in fact, necessary.

Right holders have often argued against exceptions to copyright, including exceptions for the benefit of visually impaired people, whereas users generally argue in favour of exceptions. The analysis of the international framework above suggests that in the case of visually impaired people, exceptions to copyright might be an obligation rather than an option. However, that might only be the case if exceptions are the only way of ensuring access to the written word for visually impaired people. If accessibility is delivered in other ways, then there do not necessarily have to be specific exceptions to rights in order to balance the conflicting interests. Increasingly, accessibility is something that can be built in to new business models for publishing and this may be sufficient to deliver any obligation to deliver accessibility.

---

<sup>118</sup> The provision in the WIPO draft copyright law is as follows:

“Notwithstanding the provisions of Sections 6(1)(a) and (d), it shall be permitted without authorisation of the author or other owner of copyright to reproduce a published work for visually impaired persons in an alternative manner or form which enables their perception of the work, and to distribute the copies exclusively to those persons, provided that the work is not reasonably available in an identical or largely equivalent form enabling its perception by the visually impaired; and the reproduction and distribution are made on a non-profit basis.

The distribution is also permitted in case the copies have been made abroad and the conditions mentioned above have been fulfilled.”

Indeed, even in those countries which do have exceptions to rights, and where non-profit organisations and libraries are very active in investing in the production of material in accessible formats, action under exceptions alone is likely to always fall far short of the ideal. Non-profit bodies generally depend on charitable or government support to cover their very significant costs in making and distributing accessible copies. Funds from such sources are always likely to be limited and only ever be enough to permit transcription work for a small proportion of what is published. This is likely to be so even taking into account the significant benefits from technological advances and so on that facilitate the work of these bodies. The ideal, which is supported by all stakeholders, of enabling visually impaired people to be able to read all books in whatever way they need to have appropriate access, and at the same time as those with normal sight, is not something that exceptions alone are ever likely to deliver.

However, accessibility for all for all published material at the time it is published is unlikely to be widespread for some considerable time. It is not reasonable to expect visually impaired people to wait for this to be delivered, if indeed this is ever delivered comprehensively. Visually impaired people have needs now that cannot be ignored and exceptions do provide some solutions to some of their problems. Without exceptions, the making of alternative formats for visually impaired people in a systematic and general way is only likely to be possible where licences have been granted by right holders. A number of the case studies illustrate the problems with that approach. In addition, the presentation on “Copyright protection as access barrier for people who read differently” given by J W Roos, the then Director of the South African Library for the Blind, at the 70<sup>th</sup> IFLA General Conference and Council in 2004, elaborates six reasons why permission seeking has given rise to much trouble and in some cases almost insurmountable difficulties for libraries for the blind engaged in accessible format production<sup>119</sup>.

Of course, improvements could be made to licensing arrangements and this is considered further below. Indeed, there are some promising signs of improvements in the area of licensing. But progress does seem to be quite slow and in many countries there is little sign that licensing arrangements are even an agenda item for cooperation between users and right holders. It would be difficult to argue that exceptions to rights which could deliver real, albeit limited, benefits very quickly should not in such circumstances be pursued at the moment.

Even if exceptions are not successful in solving the problem of access for visually impaired people in a comprehensive way, exceptions can have another benefit as well as permitting some limited assistance to visually impaired people. Exceptions can be a very public acknowledgement of the need to balance rights for copyright owners against the interests of users and as a result can empower users in discussions and negotiations about more comprehensive solutions.

If it is accepted that exceptions alone will never provide the comprehensive solution providing accessibility to the written word that visually impaired people want and deserve, then there does, however, need to be some sensitivity in how exceptions are drawn up. Exceptions that deter action by publishers to make their material accessible when they publish it will not be helpful. Exceptions which make it more difficult for licensing arrangements to

---

<sup>119</sup> See pages 3 and 4 of the paper at <http://www.ifla.org/IV/ifla70/papers/147e-Roos.pdf>

provide other useful assistance until that ideal is comprehensively delivered are also unlikely to be the best way forward. Exceptions therefore need to identify those areas where publishers' interests will not be unfairly damaged by action under exceptions and perhaps build in ways of positively encouraging co-operation by right holders to deliver more comprehensive solutions.

### 6.5.2 Exceptions not specifically for the benefit of visually impaired people

As has already been mentioned, exceptions that are directed towards other uses, that is exceptions that do not specifically target the needs of visually impaired people or disabled people more generally, may often be helpful to those trying to help visually impaired people or visually impaired people trying to help themselves. It has not been possible in this Study to explore how such exceptions might help, but any country considering legislative action may want to consider what provision already exists in this way. The most likely types of exceptions to be useful are exceptions relating to library use, educational use and personal or private use. That such exceptions might be helpful has, of course, been recognised before. Indeed, the International Federation of Library Associations' Study published in 1982 on Copyright and Library Materials for the Handicapped included a section on special provisions for analogous purposes<sup>120</sup>. Although that study included this section more to argue that special provision has been deemed socially desirable in many areas and so it is logically consistent to also defend special provision for the benefit of the handicapped, it did also recognise that production of material for handicapped people for an educational purpose may be possible under exceptions for educational purposes. There is, in fact, no reason why a visually impaired person, or those helping to meet the needs of visually impaired people, cannot act under any exception so long as they can meet the conditions in that exception. However, it seems extremely unlikely that any combination of exceptions not specifically directed at the needs of visually impaired people would meet all their legitimate needs for access to the written word. For example, an organisation which does not offer public library services but which makes and distributes on a non-profit basis multiple copies of leisure reading material in an accessible format is unlikely to be able to act under other exceptions that are typically provided.

### 6.5.3 Private copying by visually impaired people

It may be worth considering in a little more depth the role of private copying exceptions in meeting the needs of visually impaired people. As will be seen in the discussion below about the details of specific exceptions to copyright for the benefit of visually impaired people, not all of these will actually permit visually impaired people to make accessible copies for themselves. Modern technology has, however, provided new ways for visually impaired people to read the book, magazine and so on that is sitting on a library shelf, that has been handed out in a classroom, or that can easily be bought in a bookshop, albeit all these copies are inaccessible. For some visually impaired people, it may be enough to just make enlarged copies of the pages by photocopying. For other visually impaired people more sophisticated technology such as scanning and Optical Character Recognition Software

---

<sup>120</sup> See section 6.2 starting on page 28 of IFLA Publications 21, Copyright and Library Materials for the Handicapped by Françoise Hébert and Wanda Noel, ISBN 3-598-20381-0

(OCR) can permit the content to be converted to a personal copy that is accessible via a screen magnifier, synthetic speech or a refreshable Braille display. In some cases the assistive technology available may mean that only an ephemeral copy of the original work is made, but in other cases there is likely to be a permanent copy. Although personal self-help may be possible by the visually impaired person themselves, in other cases it may be that someone else, such as a teacher or parent, will need to assist the visually impaired person if they are unable to operate the scanner or photocopier because of their impairment.

In a number of countries, this activity by or for individual visually impaired people may fall within the scope of a private copying exception. Where only ephemeral copies are made, there may be other exceptions, or provision in copyright law, that means making these does not infringe copyright. Where this self-help activity is not currently legal, it may be appropriate, however, to make sure that it is, either by clarification of a private copying exception, or specific provision directed at individual visually impaired people, or by appropriate breadth of a broader exception for the benefit of visually impaired people, or otherwise. Any new exception provision is likely, of course, to need careful drafting to ensure that it is appropriately targeted and limited. The issues that need to be considered are likely to be just the same as those for exceptions permitting multiple copies of accessible material to be made for visually impaired people as discussed below.

This personal self-help to achieve accessibility can have the advantage for the visually impaired person that there is little or no delay in acquiring an accessible copy. Also, for material for which there is very little demand in an accessible format, enabling personal self-help by visually impaired people could be the most cost-effective solution for all. As well as addressing copyright issues to facilitate personal self help, it may be helpful to ensure that stakeholders collaborate on future technological developments that provide self-help solutions. These need to maximise the ease of use for individual visually impaired people as well as take into account security concerns that right holders may have.

Where visually impaired people are permitted under exceptions of any sort to make personal copies of material they cannot otherwise access, it would be useful for that information to be made widely available. It may be that visually impaired people will otherwise fail to utilise quite simple solutions that could quite quickly meet their access needs. Visually impaired people do need to understand what is not legal as well as what is legal though. Governments generally have a role, often in collaboration with others, to make appropriate advice and information available.

#### 6.5.4 Exceptions in developing countries

One of the interesting things to emerge from this Study is the greater preponderance, and greater sophistication, of exceptions for the benefit of visually impaired people in developed countries compared to developing countries. This is perhaps surprising, but may be partly explained by the much lower levels of understanding about the needs of visually impaired people in general in developing countries such as illustrated by case study 1 of Chapter 4. Although there has been no exhaustive analysis of exceptions in general, there are, however, some concerns that developing countries are less likely to provide an appropriate range of exceptions to rights when introducing copyright laws than developed countries. WIPO may need to consider further whether there is in general less balance provided in copyright laws in developing countries compared to developed countries and, if true, why this might be the case. It could be, for example, that developing countries become too influenced

by the perspective of right holders who are better resourced in presenting their case than the user community. It may be that making exceptions only optional in international copyright treaties and conventions is also relevant as developing countries concentrate more on delivering the rights that are not optional. It may be worth considering whether any developed country would in practice ever think exceptions are just an option, so what more could be done to make sure developing countries understand and put into place a balanced framework of rights and exceptions to rights just as most developed countries do.

#### 6.5.5 Detailed form of exceptions to rights

The suggestions about the detailed form that exceptions to rights might take are considered below under the same headings used to analyse provision in national law in Chapter 2. The suggestions take into account what might be necessary to comply with conditions in international conventions and treaties such as the 3-step test. The suggestions are also given with a view to making provision as useful as possible for visually impaired people and at the same time being sensitive to publishers' concerns.

##### 6.5.5.1 Scope regarding end beneficiary

It is important that any exception to rights is limited to a "special case". There are two reasons for this. The first is that an exception will almost certainly have to comply with the 3-step test, although as discussed in Chapter 1 this will depend on which restricted acts and what protected material the exception applies to, and what international conventions and treaties a country belongs to. However, it is difficult to imagine scenarios for most countries where a useful exception could be constructed without having to have regard to the 3-step test. The second reason is really linked to the first in that the 3-step test exists to protect the interests of right holders. However, even without the 3-step test, in order to encourage right holders to cooperate in other ways with solutions to the access needs of visually impaired people, it seems desirable to make sure that any exception is limited in this way.

An exception that is carefully limited to assisting visually impaired people by permitting only them to be provided with accessible copies made under the exception does appear to be a "special case". However, not all exceptions that have been found in national laws appear to clearly specify an end beneficiary of the exception. Implying the end beneficiary by limiting activity to certain types of accessible formats may be less transparent, especially if formats that could be used by the wider population can be produced.

In addition, it may be necessary to define the term used to specify the end beneficiary. This is already done in some detail in the exceptions in some countries, but different approaches have been adopted. A medical definition of visual impairment may not be that helpful except for a person who has no sight at all. Saying that a visual impairment is severe or trying to set a standard of disability as a certain percentage does not necessarily target the exception at those people who cannot read in a normal way the material that is already commercially available. A medical definition can have the effect of excluding some visually impaired people who cannot access what is available, or even, though probably much less likely, including some visually impaired people who could read what is commercially available. Neither of these seems satisfactory.

The best way to define the end beneficiary is likely to be by using a functional definition. A functional definition would be based on a person's inability to read the material that has already been published. It may, of course, be necessary to say that a person who can read satisfactorily using corrective lenses is not to be included, and it may be necessary to rely on a comparative test, such as can the person read in a way that is normally accepted as reasonable? But a test directed at the functional inability to read effectively what has already been published does seem to ensure that an exception is both a special case and targeted at exactly those people who need to be helped.

#### 6.5.5.2 Works that may be used

In the examination of national laws, there are three main criteria that seem to have been used to define what copyright works may be used under the exception, although only some countries make provision for all three criteria. The criteria are as follows:

- the type of copyright work that may be used;
- whether or not the work must have already been published;
- whether or not activity can take place under the exception for a work that is already available in an accessible format.

Regarding the type of copyright work that may be used, many countries appear to permit use of the full range of works that must be protected under the Berne Convention, namely "scientific, literary and artistic works". It is less clear to what extent works such as films may be put into accessible formats by audio description, but this is discussed in more detail below. There are a few countries that clearly seem to exclude certain types of works that would fall within the scope of the works as defined in the Berne Convention and WIPO Copyright Treaty, such as computer programs, dramatic works and databases. Whereas it might be reasonable to accept that visually impaired people should not be entitled to have an accessible copy of a computer program that is only available to others in machine-readable code or a dramatic work that has only been made available to the public by being performed on stage, a computer program may have been published in a notation readable by humans and the script of a play may have been published in a book, so it is less easy to see why exclusions such as these are reasonable. It is even harder to imagine why it is reasonable to exclude activity with databases as visually impaired people may need to consult these in an accessible form just as much as other people.

In order to meet all the needs of visually impaired people, it therefore seems appropriate to cover a wide range of copyright works. An exception needs to permit anything presented as the written word to be made accessible, whether or not it has been printed, or is only available by viewing on a screen. Also, pictures, drawings, tables and so on may need to be made accessible by enlargement, description or other devices, and sheet music may need to be made accessible for use by visually impaired musicians. Where there are concerns that activity might then be undertaken that could undermine a right holder's interest, such as where a work has only been made available to everyone as a recording of the spoken or sung word which visually impaired people can listen to satisfactorily, then it would be better to devise other ways of limiting the exception rather than ruling out any activity with the sort of work that might have been spoken or sung, but which might also have been made available in written form.

The majority of exceptions in national laws examined only apply to works that have been lawfully published. Where an exception permits an organisation to make and distribute

multiple copies of a work in accessible formats this seems to make sense. Otherwise, an exception could lead to “publication” of a work before the copyright owner has exercised his right to decide whether or not to do this, albeit that the work will have been published only amongst a special section of the population, namely visually impaired people. It is less clear that there needs to be any limitation to already published works where only a single copy of a work is being made in an accessible format in response to the needs of an individual visually impaired person. If that person has a lawful copy of something that is not accessible to them, and the material has not been published, it may be reasonable for them to make, or have made, an accessible copy for their personal use.

If there is a restriction in the exception to works that have been published, this does then beg the question of where the publication must have taken place. How a country makes provision in this respect may in part depend on how their copyright law in general applies to works published in other countries, in other words, the extent to which the law provides for international exhaustion of the relevant rights. This issue is something that may need to be considered much more carefully also when deciding on provision for import and export of accessible copies.

A number of countries have exceptions which do not permit a work to be used where there is already an accessible format available to visually impaired people. Such a provision may be essential if the aim is to encourage publishers to produce accessible copies for everyone. If they do so, but no-one buys those accessible copies because other copies can be made and distributed without any payment to the publisher under an exception, this might be contrary to the 3-step test in any case.

The way this sort of provision works does, however, vary between countries and it is not always clear precisely what the effect of the test will be. In some cases, it might be that once there is a commercially available accessible format of any sort, then no other accessible formats can be made. This could mean that where there is a commercial large print edition, then it is not possible to make an accessible format in Braille for those visually impaired people who cannot read large print. In other cases it could mean that different formats from those that are commercially available could still be made under the exception if that is what is needed by at least some visually impaired people. But, if the exception excludes using works to make an accessible format where that format is commercially available, there could still be problems. For example, there might be a commercially available audio recording, so no accessible audio recordings can be made under the exception even if the commercial recording is not accessible as it has no navigational aids, without which a visually impaired person cannot use it. A test that is to exclude activity with a work where there are commercially available accessible copies therefore needs to be devised with care to avoid unintended effects. As well as taking into account the needs of publishers and other right holders, by not undermining their investment in commercial accessible formats, it is also necessary to be aware that the needs of visually impaired people vary enormously and there is no one format that is accessible to them all.

Some countries have a much more developed test of when it is not possible to use a work to make an accessible copy. In a few countries, the test is not just whether or not there is a commercially available accessible copy, but also whether it has been possible to obtain that copy after reasonable investigation or efforts, in a reasonable time and at an ordinary commercial price. Precisely what all these parts of the test mean in practice is no doubt debatable. Whether or not the last part of the test, the requirement to look at the price of the



commercial accessible copy, is fair is something that is considered further below in looking at cost issues generally.

#### 6.5.5.3 Profit/non-profit making activity

Many exceptions in national laws limit activity under the exception to things that are non-commercial in some way and those that are not so limited explicitly may still be so limited because the exception is expressly to be construed as restricted by the 3-step test. Sometimes the non-commercial limitation is delivered by requiring the body that acts under the exception to be non-profit making, sometimes any charges made for accessible copies are capped by not allowing a profit to be made and sometimes both restrictions apply. In general it does, however, seem appropriate that any commercial activity should be ruled out of the exception. In quite a number of countries and for some types of accessible formats such as audio recordings and large print, there may be significant market opportunities to increase commercial production to provide for the expanding needs of those with failing sight as the average age of the population increases. This alternative format production might not be undertaken by the original publisher, but, rather, under licence by a specialist producer of alternative formats. An exception that permitted commercial activity would therefore potentially lead to activity that directly conflicts with the publishers own production of accessible formats and/or deny the original publisher the opportunity to license commercial alternative format production by others.

In a few countries there appears to be a test that would prevent use of accessible copies by visually impaired people if their use has a profit-making purpose. This test seems much harder to justify. A visually impaired person may be unable to access a copyright work that is needed for a number of reasons and one of those reasons may be that they need to read the work as part of their job. Without an accessible copy that person is put at a disadvantage compared to an employee with normal sight. There seems no reason why in principle an exception to copyright could not facilitate their need to have an accessible copy just as where a person needs an accessible copy for study or leisure activities. Other provisions, such as a requirement to purchase an accessible copy if one is commercially available rather than act under the exception as discussed above, are probably more appropriate ways of limiting what can be done under an exception.

#### 6.5.5.4 Permitted/restricted acts covered

In Chapter 1, the compatibility of exceptions with international conventions and treaties was considered with respect to a number of acts restricted by copyright. This was because it seems likely that an exception will need to provide not only for the making of accessible copies, but also their distribution to visually impaired people, either as physical copies, or by electronic delivery. Quite surprisingly, therefore, nearly half of the exceptions that have been found in national laws only seem to provide an exception to the reproduction right. Some exceptions do specifically provide for distribution and/or communication of the accessible copies to visually impaired people and a few use terms such as “use” and “supply” which may be broad enough to cover a variety of distribution methods. In order to avoid misunderstandings, it would seem preferable for an exception to clearly define how accessible copies may be distributed to visually impaired people. In order to avoid difficulties, it would seem preferable that both hard copy and electronic delivery methods should be possible. Regarding the latter, this may, of course, give rise to considerable concern from right holders

as it does mean that very valuable digital copies will have been made. However, rather than restrict the ability of visually impaired people and those organizations working to help them from benefiting from the advantages of new delivery mechanisms, it may be better to build other safeguards into the exception.

When accessible copies are made, as well as involving a reproduction of the copyright work, this may also involve an adaptation. This might be the case, for example, where information that is presented in non-verbal ways such as in graphs, diagrams or pictures, needs to be described or labelled differently in order to make it accessible. It may also be necessary to add navigational aids to digital files so that visually impaired people can find the right page or paragraph number easily. Although it may be helpful for those making accessible copies under an exception to know to what extent modifications such as these are possible, few exceptions in national laws seem to address this sort of issue specifically.

Connected to this issue is whether or not moral rights in a work might be infringed by the making of accessible copies, particularly the integrity right, that is the right to object to derogatory treatment of a work. Authors may be particularly concerned where such changes are made. There is unlikely to be a problem with an exception limited to meeting the needs of visually impaired people as they do not require any changes to the content of a work, only the way it is presented. This may, though, be a more important issue that should be considered where an exception extends to disabled people more generally.

#### 6.5.5.5 Restrictions on who may undertake activity

A significant number of exceptions that have been found do not restrict who can undertake activity under the exception, although limitations may, of course, be implicit by requiring activity to be not-for-profit for example. Some countries do limit the actual or type of organisations that might act under the exception. Where activity can only be undertaken by some organisations, there might be a registration or designation process to name them. In some cases there are more limitations on who can undertake activity for some formats that can be made than for others. What sort of provision is appropriate here may in the end depend on what other conditions apply to activity under the exception. Limiting activity to only certain types of or certain named organisations could make it easier to make sure that activity does not damage the legitimate interests of right holders.

However, technology has made it easier for organisations that do not have a long tradition of helping visually impaired people to offer such assistance now. For example, educational establishments in the past may have obtained accessible copies for their visually impaired students and teachers from just a few not-for-profit bodies specializing in their production. Educational establishments may, though, now have facilities to make the copies themselves which clearly reduces the delay in delivering accessible copies to those who need them. Exceptions that limit activity to organizations which have as a primary mission helping people with a disability could in particular rule out much assistance that could be given to visually impaired people by mainstream schools and libraries for example. Such limitations could also work contrary to other policy objectives, such as educating people with a disability in the same institution as others as far as possible. It may therefore be appropriate to define who can undertake the activity under the exception widely and rely on other means to protect publishers' interests.

#### 6.5.5.6 Special formats or any accessible formats

There are wide differences between the types of accessible format that can be made under the exceptions that have been found in national laws. At one end of the spectrum, only Braille copies can be made and at the other end of the spectrum, there is no limitation to a particular type of format. With the latter type of provision, there is usually some attempt to define the formats permitted, such as by permitting formats to the extent required by the disability or ones that give improved access to the work, but in general provisions of this type appear to permit any accessible format to be made (subject to the other conditions in the exception of course) if that format has the effect of making a work accessible. What is “accessible” probably needs to be measured as a functional test, such as a copy that permits a person with a visual impairment to read the copyright work as flexibly and comfortably as a person without an impairment.

Technological changes have, of course, given rise to new formats that can help visually impaired people. Indeed, the DAISY Consortium was established and the DAISY format was created to standardize the form of digital talking books drawing on mainstream technological standards such as HTML, XML, MP3 and SMIL files. The DAISY format began as a format for talking books but has developed into a digital book capable of presentation to a visually impaired person as text or Braille as well as a talking book. The DAISY digital book makes it as easy to “leaf” through the book as a printed one; pages, chapters and paragraphs can be easily located; and bookmarks can be used so that a visually impaired person can return to the point they got to just as a person with normal sight can mark where they are up to in a printed book.

The DAISY digital book is very flexible and brings welcome improvements to the reading experiences of visually impaired people. However, it is not a format that is likely to fall within the scope of those exceptions limited to “special” formats as quite a number of exceptions found in national laws appear to be. Indeed, one of the advantages of the DAISY format is that it provides a digital book that many people without a visual impairment might enjoy having. It is not surprising, therefore, that right holders may be concerned about activity under an exception that could give rise to such a universally useful format in circulation, but it would seem unfair to deny visually impaired people the chance to benefit from such useful formats. It may therefore be entirely appropriate for exceptions to permit any accessible format to be made but at the same time there may need to be far more stringent conditions of other types applying than to exceptions which only permit Braille copies to be made.

#### 6.5.5.7 Compulsory licence or exception

International conventions and treaties in general do not provide guidance on whether or not an exception to rights should be accompanied by remuneration for right holders, that is whether or not the provision must be in effect a compulsory licence or can be a pure exception permitting activity without any compensation to right holders. However, it may well be that the need to take into account the conditions in the 3-step test will mean that some types of exception are more likely to be acceptable if right holders receive fair compensation. There does not appear to be anything that makes it easier to decide how to construct an exception for the benefit of visually impaired people in this respect than in any other area.

Countries which have exceptions in their national laws have therefore had to make their own decisions about whether remuneration for right holders should be provided in return for use of their protected material for the benefit of visually impaired people. Not surprisingly, the World Blind Union argues that, so long as the additional cost of creating accessible material lies with the disabled individual or voluntary organization, compensation to rights holders may not be justified. This argument may not be supported by right holders as they may with some justification say that it is not necessarily fair to expect them to forego royalty income for use of their property because making accessible copies is expensive; governments perhaps should support the needs of visually impaired people more if meeting their needs is costly, but right holders may still deserve payment for use of their property. In practice, though, many right holders who have agreed licensing deals over the making of accessible formats have not sought royalty payments and this is obviously welcome to those trying to meet the needs of visually impaired people.

It has not been possible to determine the reasons that underpin the choices that countries which have exceptions have taken on whether to provide an exception in the form of a compulsory licence or a pure exception. However, case study 6 of Chapter 4 about a relatively new exception to copyright does illustrate the concern where decisions about this appear not to have taken into account longstanding practices. Perhaps surprisingly, though, a large majority of countries have chosen a pure, non-remunerated exception. Of the remaining countries, most require payment to right holders for at least some formats, or production of a certain number of copies. But perhaps the most interesting provision is to be found in three countries that have neither a compulsory licence exception nor a pure, non-remunerated exception. They make provision under which there is only the possibility of remuneration being paid to right holders, that is right holders have to take some action in order to be paid. This could be a useful compromise approach in that it could ensure that the needs of visually impaired people are met as activity under the exception is possible, but this would not be at the expense of alienating right holders who can have no stake in the process. As right holders have, though, to be proactive if they want to seek possible remuneration, it could facilitate useful discussions between stakeholders, which could solve problems that cannot be addressed by exceptions alone. Of course, right holders who are able to seek remuneration for activity under an exception may be happy to forego that payment. This might especially be the case if, as a result of discussions about the possibility of remuneration, right holders are reassured because they understand better the limited nature of activity under the exception.

#### 6.5.5.8 Acknowledgement required

Authors generally value their moral rights highly, including the paternity right, that is the right to be named as the author. They are likely to want anyone who reads their work to know that they are the author of that work. It is, therefore, quite surprising that less than half the exceptions that have been found in national laws appear to require an acknowledgement. As this seems to be an entirely non-contentious and reasonable requirement to include, it may be something that should be required in more countries.

#### 6.5.5.9 Other conditions

A significant number of countries require the exception they have provided to be limited by something the same as or very similar to the 3-step test. In terms of ensuring that the

legitimate interests of right holders are taken into account in activity under the exception this is no doubt very reassuring. But those undertaking activity under the exception must have considerable doubt about what, in fact, is the effect of having to comply with the 3-step test as well as any conditions more explicitly set out in the exception. It may be that governments make information available locally to help people understand what they can and cannot do, as without such help, this legislative solution to the balancing act that the 3-step test requires legislators to undertake may not be that helpful. It may, rather, be better to set out specific conditions applying to activity under the exception in some detail to make what can and cannot be done more transparent. There is an argument, though, that having a broad exception but making it subject to the 3-step test, is more flexible as it can adapt to changing needs and circumstances more readily than an elaborated exception. This is an issue that does, of course, have more general implications than exceptions for the benefit of visually impaired people and the best way to meet the obligations imposed by the 3-step test may therefore be worthy of further debate in the context of exceptions more generally.

A number of other conditions applying to exceptions for the benefit of visually impaired people have been found in national laws and these are set out in some detail in Chapter 2. It may be that some of these conditions, such as record keeping of copies made and setting out what happens when copies made under the exception are used for purposes other than meeting the needs of visually impaired people, would be useful alternatives to the imposition of the 3-step test. The difficulty here as elsewhere is, of course, to identify conditions that are reasonable in that they do not make it too difficult to help visually impaired people access the written word, but they do give some reassurance to right holders.

#### 6.5.5.10 Overridable by contract

As has been discussed above, there has been some debate in general about the balance between exceptions and rights in international treaties and conventions and whether certain exceptions should themselves be expressed as rights for users. This is likely to be a sensitive and difficult issue where it may be very hard to reach agreement at either international or national level on the issue with respect to exceptions for the benefit of visually impaired people in isolation from a wider consideration of exceptions. Only three countries appear to have any specific provision at all relevant to the exceptions for the benefit of visually impaired people, although it may be that local case law which has not been examined is particularly relevant to whether or not exceptions can be overridden by contract.

There are reasons why it might be more important to consider this issue now than in the past though. When copyright works in the form of the written word were published only on paper, much of the balance in the copyright framework may have been provided simply because it was not possible to easily stop many uses. It may be that the digital environment has given rise to a time when some exceptions to rights in a copyright work have themselves to be in the form of rights that cannot be overridden by contract or other means. The use of DRMs makes the balance that may have existed in the paper world even more different. These issues have, of course, been elaborated in more detail in the recent WIPO Study on Automated Rights Management Systems and Copyright Limitations and Exceptions<sup>121</sup>.

---

<sup>121</sup>See for example pages 15-16 of the WIPO Study on Automated Rights Management Systems and Copyright Limitations and Exceptions prepared by Nic Garnett – see [http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=59952](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=59952)

#### 6.5.5.11 Interplay with DRMs

Few countries outside the European Union and the USA appear to have made any provisions regarding the relationship between exceptions and use of DRMs. However, in many cases countries do not seem to have provided any protection for right holders against circumvention of DRMs either. This issue has, moreover, been addressed in considerably more detail in the two recent WIPO Studies as identified in Chapter 2 and elsewhere. Some other issues relevant to DRMs are, however, noted below.

#### 6.5.5.12 Other comments

Other provision has been found in a few national copyright laws that may be particularly helpful to those making accessible copies under exceptions. A few countries make some provision for the sharing of accessible copies and/or intermediate copies made in the production of accessible copies. Such provision may well help to reduce the costs of production of accessible copies, but any additional movement of valuable digital copies of works does, of course, need to have regard to rights holders' legitimate interests. One country makes some provision about deposit of electronic files by publishers to help those making accessible copies under the exception.

#### 6.5.6 Do exceptions need to be the same in all countries?

It is clear that there are significant differences in the exceptions that have been provided in national laws for the benefit of visually impaired people. International standardization of such exceptions has been called for by some as a way of making it easier to transfer accessible copies between jurisdictions. It is not clear that this alone would in fact deliver this objective. The issue of import and export of accessible copies is discussed in more detail below.

However, it does seem that there could be some benefit if WIPO were to facilitate a discussion at international level of the best way to deliver exceptions for the benefit of visually impaired people. It may be that exceptions should not vary as much as they do because some of the variations mean that the needs of visually impaired people and the interests of publishers are not being dealt with in the most effective way. Of course, what material is published and what people want to read varies significantly between countries, and the level of technological development is by no means uniform across the world so not all visually impaired people are able to use accessible digital copies for example. But the case studies, such as case 2 of Chapter 4, show that even in developing countries technology may be available to address the needs of visually impaired people some of the time. And even in the most technologically advanced countries some visually impaired people still want a Braille book printed on paper. Differences between countries may not, therefore, be such as to justify markedly different provision in an exception to copyright for the benefit of visually impaired people.

A discussion about exceptions in this area would not only help those countries which do not at this time have such exceptions, but also help those countries which do have exceptions, but where they may be rather restrictive or insufficiently clear in certain respects. Some exceptions were no doubt devised sometime ago before technological developments led to new and more useful ways of presenting copyright material in accessible forms and so do not

necessarily permit the most up-to-date types of accessible formats to be made. However, any discussion must, of course, have regard to the best way to deliver access for visually impaired people without jeopardizing the legitimate interests of right holders who face significant threats from illegal use of their material in the digital world.

## 6.6 Import and export of accessible copies made under exceptions

### 6.6.1 Does this issue need to be addressed?

The World Blind Union, DAISY Consortium and IFLA Libraries for the Blind Section all argue that the ability to move accessible copies between jurisdictions would allow the costs of making accessible copies to be reduced. The effort and cost of making a master copy with appropriate mark-up from which accessible copies can be made would not have to be repeated in each country where that accessible copy is needed. This would in turn enable the number of titles available in accessible formats to be increased as the limited resources that can be devoted to this activity would not be wasted in unnecessary, repetitive work. Right holders are likely to be sympathetic to these arguments as they understand the high costs of making accessible copies. Indeed, for titles that are likely to be read by only a few visually impaired people, the high cost is no doubt part of the reason why there are not more commercially available accessible formats.

Most stakeholders would therefore probably agree that it can be useful to export and import accessible copies over borders, but there may be less agreement about what, if anything, needs to be done that is not already happening to facilitate this. Case studies 9 to 13 of Chapter 4 do, however, illustrate the current difficulties in undertaking this activity under agreements with publishers. Indeed, it is clear that the current difficulties in reaching agreements do not necessarily serve publishers well any more than visually impaired people. However, case studies 7, 9 and 10 of Chapter 5 illustrate activity under agreements with publishers that is permitting, or will permit, international exchange of accessible copies in at least some situations in a much more useful way. It does, though, still appear with one exception that a considerable effort is likely to be devoted to the reaching of agreements with publishers even if agreement is fairly readily forthcoming. The exception is case study 7 of Chapter 5 where an agreement that permits accessible copies to be sold to libraries for the print impaired abroad has been reached with the organisation representing publishers nationally rather than with individual publishers.

Some have argued that the introduction of exceptions to copyright in more countries in recent years may have made the problem of international exchange of accessible copies worse. Prior to exceptions being in place, agreements with publishers may have permitted at least some activity making accessible formats in a country, and these agreements could also cover international sharing of copies made. With the advent of more exceptions underpinning the making of accessible copies, and fewer agreements with publishers, and in the absence of provision in national laws permitting export and import of accessible copies, there is more of a problem. An advantage envisaged by the DAISY Consortium was easier cross border flow of titles, but the increase in exceptions in national laws under which it might be possible to make DAISY digital books is now restricting the very thing that adoption of the DAISY standard was supposed to help.

It does, therefore seem that this issue needs to be addressed, but it is much more difficult to decide what the solution should be.

## 6.6.2 Provision in national law

A detailed analysis of provision in the laws of those countries that have specific exceptions to copyright for the benefit of visually impaired people is provided in Chapter 3. This Chapter started, however, by looking at relevant provision in international conventions and treaties relating to intellectual property. Regarding the latter, the conclusion was that international treaties and conventions offer little guidance regarding what provision can or should be made on the distribution of accessible copies made under exceptions both within and between countries. National legislators are generally able to decide for themselves what, if any, provision to make, only having regard to overriding principles such as the 3-step test.

Chapter 3 then considered the types of distribution that can happen within a country with accessible copies made under the specific exceptions to copyright. This involves looking at both distribution of an accessible copy made by an organisation to a visually impaired person and distribution of accessible copies from one organisation to another where the second organisation then distributes the accessible copies to visually impaired people. The overall conclusion is that in many countries it is far from clear what distribution methods are possible. It does, though, need to be remembered that some types of “distribution” may not fall within the scope of acts that are restricted by copyright, such as some or all acts of lending and interlibrary loans. What is possible in any country will therefore depend on how the acts restricted by copyright are defined as well as what is permitted by exceptions to rights. If there is, though, a lack of clarity regarding activity taking place within a country, then it may be even more doubtful that organisations, such as libraries for the blind, in those countries will be able to export accessible copies they have made, or import accessible copies made elsewhere for distribution to visually impaired people in their countries.

Even in countries where at least some distribution of accessible copies is clearly possible, there is a need to consider provisions in national laws specifically directed at the act of exporting or importing copies of a work. The act of exporting or importing as such is not a separate right that must be granted to right holders in order to comply with international conventions and treaties, but nevertheless some countries do make provision in this area in addition to rights covering distribution. However, specific rights to control exports are much less common than ones to control imports. The act of exporting does, though, probably fall within the scope of a distribution right. For exceptions that permit distribution, it may, therefore, be legal to export an accessible copy (by whatever distribution means are permitted by the exception of the exporting country) to a visually impaired person in another country, so long as any conditions are met, such as it is known that the visually impaired person satisfies the definition of the end beneficiary in the law of the exporting country.

Exporting is only half of what needs to be considered. It seems reasonable to assume that the act of exporting must be tested against the law in the country from which the accessible copy is being exported. However, the country in which the recipient of the accessible copy resides may make provision in its law governing what may, or may not, be imported. The act of importing will need to be legal as well as the act of exporting. It seems reasonable to assume that it will be the law of the country into which the accessible copy is being imported that will be relevant here. There are more countries that make provision limiting importation both of copies made illegally and copies made without the authorisation of the right holders. The latter would seem to include copies made quite legally under an exception. Nevertheless, there are quite a large number of countries that do not seem to restrict personal imports, and arguably a copy sent from one country direct to an individual



visually impaired person in another country is a personal import. It may therefore be that there can be quite a lot of international movement of accessible copies direct to visually impaired people which is legal, but it may not be that easy to be certain of this and it is always likely to require two different copyright laws to be interpreted.

Export and import of accessible copies from and to organisations, such as libraries for the blind working in different countries, is likely to be more complicated. The actual transfer between the organisations may not be an act of distribution, but it may be caught by provisions applying to exports and/or imports. Moreover, passing an accessible copy to another organisation may fall outside the scope of an exception and distribution to visually impaired people by the receiving organisation of any copies it receives from abroad may not fall within the scope of the exception in the receiving country. Chapter 3 has, however, noted some countries where at least some activity may be possible. Moreover, case study 11 of Chapter 5 shows how a combination of legislative provision and agreement with publishers seems to have brought more clarity to the international transfer of accessible copies and case study 12 of Chapter 5 shows how legislative changes being considered might ease the situation.

### 6.6.3 Legislative changes in national law

The new provision on an exception to copyright for the benefit of visually impaired people in the WIPO draft copyright law that has been mentioned earlier does address the desire to ease the cross border movement of accessible copies. However, as can be seen from Chapter 3 and the above analysis, the factors that are relevant to the import and export of accessible copies are complex. Countries wishing to deliver the result expressed in the second paragraph of the proposed exception in the draft law<sup>122</sup> may need to consider whether this will actually work to make things better very carefully. For example, it may not work if import and export provisions still exist in the laws of the importing and exporting countries as the reference to “distribution” may only cover what happens within a country. Also, the importing country may not readily know whether the conditions in the first paragraph have been fulfilled in the exporting country. And, indeed, it may be that some of the conditions must be fulfilled in the importing country too.

For some countries, there could be a particular problem with an exception that is limited to reproducing works that have been “published”. For countries that provide for international exhaustion of the right given to copyright owners to decide whether a copy should be published, it may not be a problem. A copy that has been published with the consent of the right holder anywhere in the world can probably be brought into the country perfectly legally and so the work may also count as “published” in that country even if the copyright owner has not published any copies in that country. Thus, even if a work must have been “published” in both the exporting and importing country, so long as a work has been “published” in the country where the accessible copy has been made, then it may also count as “published” in the country into which the accessible copy is being imported.

---

<sup>122</sup> The second paragraph of the proposed exception in the WIPO draft law is as follows:

“The distribution is also permitted in case the copies have been made abroad and the conditions mentioned above have been fulfilled”

The position is very different for countries that do not provide for international exhaustion of rights. International conventions and treaties do, of course, make it clear that countries are free to decide what provision they make in this respect. Right holders may therefore quite legally have published a work in one country which is not yet available to the public in another country and importation of an accessible copy of the published work from the first country to the second could be illegal if an exception in the second country only applies to published works. What provision is appropriate regarding distribution of accessible copies made abroad where a country does not provide for international exhaustion of rights may, therefore, need to be considered very carefully. It would be necessary, for example, to decide to what extent a provision in copyright law should permit accessible copies made in another country to be circulated, even on a not-for-profit basis, and even where they benefit visually impaired people, but where there are no copies in normal circulation within the country.

The World Blind Union has justified provision permitting export and import of accessible copies to enable access to the world stocks of accessible copies because of the acute shortage of accessible materials. This is very understandable, but it also seems sensible to ensure that any legislative provision is carefully and sensitively drawn, taking into account how it relates to provision on exhaustion of rights in particular.

#### 6.6.4 Online delivery

In the above discussion, the concepts are largely ones that make sense where there are physical copies. These copies may be books printed on paper, or they may be digital copies on discrete carriers such as CDs and DVDs. Of course, increasingly works are published online and distributed by communication to the public. It is, moreover, very likely that the desire for ease of movement round the world of accessible copies for visually impaired people is also increasingly likely to effectively equate with electronic dissemination of those copies rather than physical movement. This is not surprising and is, presumably, exactly the sort of thing the DAISY standard aims to facilitate. However, it does mean that any legislative provision needs to be tested against exactly what is encompassed by the communication to the public right and in which countries which activity must be judged. It also means that publishers would need to be especially reassured that any electronic transmission of very valuable electronic copies of their works would be handled securely by those who understand the importance of this.

#### 6.6.5 Alternative approaches

Although legislative solutions to the difficulties with moving accessible copies between countries are probably not impossible to deliver, there do seem to be some very difficult issues that need to be addressed. Moreover, the wide variation in provision in specific exceptions for the benefit of visually impaired people in national copyright laws could make useful provision difficult to deliver in the short term.

A better solution might therefore be to build on the positive and useful work that has taken place in some countries to clear rights to permit international exchange of accessible copies. This could provide more effective and less complex answers to issues like how to deal with different countries' provisions on exhaustion of rights. Indeed, even where a work has been published in two countries, it may not always have quite the same content, as has

been noted for example in case study 11 of Chapter 4. It might be difficult to make legislative provision that permits the slightly different parallel edition to be imported because it already exists in an accessible form in another country, but an agreement with publishers might readily permit this.

Licensing is discussed in more detail below, as it may well provide effective solutions to other problems too. Some of these are, though confined to individual countries so that national licensing arrangements may be appropriate. However, for international exchange of accessible copies, it may be better to engage stakeholders at the international level. The World Blind Union together with the IFLA Libraries for the Blind Section are the obvious stakeholders to represent the interests of visually impaired people and those, such as libraries for the blind, making accessible copies. It may be that as well as the International Publishers Association, it would be sensible to explore whether the International Federation of Reprographic Rights Organisations (IFFRO) is able to deliver collaboration between national RROs, which may be well placed to facilitate collective licensing of the necessary rights, especially as they represent publishers as well as authors and other rights holders. As with any licensing arrangements, successful outcomes are more likely if an environment of trust and mutual understanding of everyone's needs can be created. At the international level, it may therefore be appropriate for WIPO to facilitate discussions, at least initially.

## 6.7 Alternatives to exceptions to facilitate non-profit accessible format production

### 6.7.1 Licensing/trusted intermediaries

Licensing to permit activity for the benefit of visually impaired people is likely to be helpful both to cover what happens within a country and, as discussed above, how accessible copies might move between countries. This is likely to be the case even where legislative provision provides for much useful activity. In the case studies, a number explore what is happening in countries that have reasonably good provision of copyright exceptions, but where licensing arrangements are still permitting other useful activities. The problem with licensing is, of course, that it is not always easy to find or engage with the right copyright owners and more useful blanket or collective licensing agreements are not always possible.

One case study, namely in case 3 of Chapter 5, may provide an interesting model to encourage right holders to engage with the process of licensing, but at the same time remove barriers that prevent alternative format production for visually impaired people. In that case a new exception for the benefit of visually impaired people has been provided but it is possible for right holders to establish a licensing scheme that overrides the exception. If a licensing scheme exists, then accessible format production must take place under that, thus giving right holders the ability to retain control over use of their copyright works. They are, however, specifically prevented from establishing a licensing scheme that is more restrictive than what can be done under the exception. Whereas most exceptions to copyright do mean that right holders lose control over use of their works, this model avoids this. Right holders are able to retain control if they want. There is in effect an incentive for right holders to engage with those who would otherwise be able to act under the exception. In fact right holders have opted to set up licensing arrangements and these have, moreover, in some respects delivered more generous provision for the benefit of visually impaired people than the exception. The relationships and trust that have been established as a result of licensing are now being built upon to try and resolve issues such as access to the publishers' e-files for those making accessible copies.

Where countries feel it is appropriate to introduce or amend exceptions to copyright for the benefit of visually impaired people, they may, therefore, want to devise approaches that can work alongside licensing rather than act against licensing. Licensing, or licensing in combination with exceptions, may well be capable of delivering more useful assistance to visually impaired people than exceptions alone can deliver. Collective licensing in particular is clearly a helpful way to resolve many of the difficulties with reaching agreement on licensing that have been identified in case studies in Chapter 4. Seeking permission is a cumbersome process for those acting to assist visually impaired people by making accessible copies. But it is a cumbersome and time-consuming process for right holders too, especially if, as is often the case, they eventually give permission free of charge. Collective licensing therefore benefits, and is trusted by, publishers as well as users of copyright material.

Case study 4 of Chapter 5 illustrates progress that is being made to get better access to publishers' electronic files in order to make it easier to produce alternative format material. A charity that in particular makes Braille and audio books has been working with the Reprographic Rights Organisation (RRO) in the country to obtain access to electronic files of books and journals used in higher education. Under the agreement now being finalised, the RRO will establish a databank of electronic files from publishers. This will be accessible to facilitate the production of alternative format material, with suitable security features built in to properly protect the interests of right holders. However, the RRO also benefits from the electronic database as it will be able to use it to modernise its licensing of photocopying more generally.

Whilst collective licensing may be the ideal both at national and international levels, it may be that in the short term some of the difficulties and delays in seeking permission could be solved by other means. Publishers are often approached by more than one organisation wishing to make, distribute, import or export an accessible copy or gain access to an electronic file. This must be confusing for everyone, but particularly the publisher who may think he has already given permission. Publishers may find it easier if organisations seeking permission use a standardised permission request form and if an agreement for producing/using/importing/exporting accessible formats or for acquiring and using an e-text also takes a standardised form. It may be that this is a role for the World Blind Union, the DAISY Consortium and IFLA Libraries for the Blind Section to develop at an international level, or the equivalent bodies at national level. It would, of course, make sense for any standardised texts in due course to be discussed and agreed with right holders' organisations, and they would no doubt welcome this engagement if the groups working for visually impaired people are able to ensure that standardised texts once agreed are actually used by all.

#### 6.7.2 Role of libraries including for import/export of accessible copies

Whilst national licensing arrangements for national activity might be the easiest to agree in the short term, there is no reason why in the longer term even national activity to produce accessible formats could not be done under a more international arrangement. Import and export of accessible copies would clearly be easier with an international arrangement. One of the keys to any licensing arrangement is, though, as has already been said, the development of trust. Right holders need to be reassured that those making alternative formats control their circulation responsibly and protect copyright appropriately.

The libraries that come under the umbrella of the IFLA Libraries for the Blind Section can clearly have a very important role in this respect. The use of the word “library” to describe these organisations may be a little misleading. These libraries are major producers of accessible material as well as having more usual library functions in giving visually impaired people access to this material. They have much knowledge about copyright. They are well placed to ensure that libraries use the same standards to facilitate interlibrary loan. Standards and security measures need to be developed side by side and internationally rather than nationally so security features work, but they do not frustrate interlibrary loans. At some point, of course, standards and security features need to be discussed with right holders as they are more likely to agree appropriate arrangements to facilitate interlibrary loans and subsequent provision of accessible copies to visually impaired people if these features meet their concerns about misuse of electronic copies.

The libraries can also make sure that data on what accessible titles exist is shared internationally. And they can also record data about use and circulation of accessible copies. Indeed, the suggestions made at the WIPO Information meeting by the representative of the IFLA Libraries for the Blind Section<sup>123</sup> have a lot to commend them. These can be summarised as follows:

- create a trusted environment for controlled circulation, fair use and protection of IP
- report on use and circulation
- co-operate in the field of developing IP protection mechanisms
- consult and cooperate in “publishing for all”

## 6.8 Awareness

In a number of places the issue of appropriate awareness and understanding has already been mentioned. Some initiatives to address this will obviously need to be geared to particular national circumstances. But it may be that WIPO could undertake some activity, or some more activity building on what is already being done, to assist with the development of suitable awareness amongst some constituencies. The following are the main stakeholder groups that might need to be targeted:

- *Governments*: Several of the case studies, such as 1, 2, 3 and 5 of Chapter 4, illustrate the importance of awareness about copyright and the needs of visually impaired people in governments. In developing countries in particular, as has been noted above, there may in many cases be less balance in copyright laws than in developed countries. WIPO may have a particularly important role in ensuring that governments understand the issues. This can sometimes be difficult where copyright policy is developed by one ministry, perhaps that leading on trade and investment policy, without input from other ministries leading on things like education and social exclusion.

- *Publishers*: Some publishers might benefit from greater awareness of the needs of visually impaired people, particularly so that they are more likely to develop material in accessible formats themselves, but also so that they understand and trust the role of licensing, and respond positively to licensing requests and requests for access to e-files. It may be useful to develop a toolkit covering the key issues that those who need to engage with publishers can draw on as necessary.

---

<sup>123</sup> See the presentation by Ms Marijke Van Bodengraven, Chair, Libraries for the Blind Section, IFLA at the WIPO Information Meeting on Digital Content for the Visually Impaired in November 2003 – see [http://www.wipo.int/documents/en/meetings/2003/digvi\\_im/digvi\\_im\\_03\\_1rev1.htm](http://www.wipo.int/documents/en/meetings/2003/digvi_im/digvi_im_03_1rev1.htm)

- *Technology and software producers*: Although there are some good examples of high levels of awareness of the needs of visually impaired people amongst this group of stakeholders, this is probably not uniform. There is a need for better awareness of the issues here so that new technology is developed with accessibility in mind from the outset, but also taking into account the security needs of publishers. Security solutions must work so that new technology and software used by publishers makes copyright works available in a way that is both fully accessible but safely secure.

- *Libraries/organisations making accessible formats*: These organisations must be fully aware of their own roles as publishers, but also as the guardians of the valuable copyright owned by right holders. It may be appropriate to improve mechanisms for knowledge sharing about copyright and alternative format production as well as the benefits of collaboration, both with each other and with publishers and technology/software producers. Case study 2 of Chapter 5 illustrates awareness raising activity particularly directed at transition and developing countries which may be an area where particular additional efforts are needed for this constituency.

- *Visually impaired people*: Case study 8 of Chapter 4 about the experiences of a visually impaired person illustrates that visually impaired people also need to have greater awareness about various issues. That case study illustrates the usefulness of self-help blogs to better understand the relevant technology. However, it may be that governments should take more of a lead in making sure that visually impaired people know what they can and cannot do under exceptions to copyright and also how they might best utilise the technology available.

## 6.9 Digital rights management

This study has not examined in detail the use of DRMs to protect digital content and the relationship with copyright and exceptions to rights. It is clear that content creators generally recognise the role of DRMs to protect their content against unauthorised use which in the digital environment is all too easy to use in ways that can be very damaging to a right holder's ability to obtain a return on their investment in content creation. On the other hand, users of protected content are often concerned that DRMs lock up content to deny use which they argue should be possible. This may or may not be use that falls within the scope of permitted exceptions to rights and the distinctions here are not always readily appreciated by users.

Much has already been written about these issues so it is not proposed to go into enormous detail in this Study. In particular two recent WIPO Studies that have looked at issues surrounding DRMs have already been mentioned. The Study on Automated Rights Management Systems and Copyright Limitations and Exceptions concludes that there do not exist any DRM systems capable of automating the full range of rights management processes customarily required by copyright law. In other words, it is not possible for DRMs to provide for the full range of exceptions to rights.

Of course some countries do provide legislative solutions to deal with the relationship between DRMs and exceptions such as those for the benefit of visually impaired people, but it is probably too early to tell how effective these might be. Designing a DRM to permit use under an exception for the benefit of visually impaired people might in some ways be easier than for some other exceptions as it must permit use of the whole work rather than just a certain proportion as under a fair use or fair dealing exception. There would still be a problem knowing whether the use is by or for a visually impaired person rather than someone else though. It may be that it is more realistic for a DRM to be made, however, that permits

text to be read out by speech recognition software or converted to a refreshable Braille display, but not anything else. Whether this would provide sufficient accessibility for a visually impaired person is something that all stakeholders, including those developing technology, need to discuss. Where a work is only published in a digital form protected by DRM it may be reasonable to limit what a visually impaired person can do with that work just as DRM will limit what a person without any impairment can do. For example, perhaps there is no reason to permit a visually impaired person to have access to a paper Braille or large print copy any more than a sighted person has a paper copy of the text that has only been published electronically protected by DRMs.

WIPO could certainly facilitate further study of and collaboration on the difficult issues raised by DRMs and enjoyment of exceptions for the benefit of visually impaired people. It may be that by pinpointing the problems and possible solutions for one very specific exception such as this, wider solutions to the way forward where there is an interaction between DRMs and exceptions might be found.

#### 6.10 Cost of accessible copies

The World Blind Union has made a case for visually impaired people to have access to the same material as their fellow citizens at no additional cost to the individual. It is not the purpose of this Study to explore who should pay for the cost of making accessible copies where there are solutions to the copyright restrictions that might otherwise prevent this. This is, though, clearly an issue that needs to be considered as there can certainly be significant costs in making accessible copies.

However, it is worth exploring in this Study to what extent right holders should be expected to forego the chance to claim copyright royalties for any accessible copies made. Also, and linked to how copyright is exercised by right holders, it is right to cover in this Study the extent to which right holders who make accessible copies available themselves should be able to charge what they consider to be an appropriate amount to get a reasonable return on that investment, even if this means that it costs more to buy an accessible copy than an inaccessible copy.

A number of countries that do have exceptions to copyright for the benefit of visually impaired people do combine them with mechanisms by which right holders can be or are paid a royalty for any accessible copies made. Other countries have exceptions that do not require such a payment. There does not seem to be anything inherently wrong with either approach. In general the exception provision that has been made is governed by the 3-step test but this does not necessarily require a royalty payment to accompany an exception. It may, though, be easier to argue compliance with the test in some situations where right holders receive compensation for activity under an exception. Of course, exceptions vary too in the extent of the activity possible. The scope of what is permitted under an exception is likely to be a very important factor in deciding whether or not right holders should receive a royalty. As for any exception, determining the right balance between the interests of right holders and users is difficult with no precise rules about issues such as compensation.

It may be worth making the point, though, that it is not necessarily fair that right holders, by foregoing a copyright royalty on accessible copies, should be expected to help solve the burden of providing visually impaired people with accessible copies at a price that is no more than that paid by the population at large for copies of those works. Copyright is a

form of intellectual property that gives the owner of that property a number of rights. An exception takes away from the value of one or more of those property rights in that, when the exception applies, the right can no longer be exercised by the right holder in the area covered by the exception. This may, of course, be perfectly fair to do, and, indeed, exceptions are widely accepted as essential to provide a necessary balance between the interests of right holders and others. But, as with a removal or reduction in value of a physical property right that might be imposed by law, it may in some cases be appropriate for an exception to an intellectual property right to be accompanied by compensation.

Where right holders have exercised the rights under copyright by making accessible copies themselves, these copies will not necessarily be sold at the same price as copies that are inaccessible. Probably the most likely reason for this is that it has been more expensive to make the accessible copies and the right holder is simply setting a price designed to get a return on the investment in making those copies. If this is the case, then once again it is not necessarily wrong for a publisher to set a higher price for accessible copies. In other words, the publisher should not necessarily be expected to undertake this activity at a loss. Indeed, if the publisher cannot obtain a reasonable return on his investment, then he is unlikely to make accessible copies in the first place and that is not particularly helpful to visually impaired people.

Of course, there are other possible approaches to pricing, such as publishers spreading any extra cost of making accessible copies over the price charged for all copies, payment of public subsidies to publishers making accessible copies so that they can charge the same price for all copies, providing visually impaired people with an allowance to cover their extra costs in purchasing accessible copies, or publishing electronic copies that have built in accessibility which are charged at the same price for everyone. Government funding would clearly be involved in some of these options and it may be perfectly reasonable to expect governments to devote some resources to assisting visually impaired people.

There are certain things that might be done to try and reduce costs. Making sure that publishers have a better understanding about the market for various types of accessible copies is more likely to mean they are prepared to invest in the technology and expertise needed to make certain types of copies so that these can be made more efficiently and cheaply. There are some good examples, such as those mentioned in case study 13 of Chapter 5 about the EUAIN Project, where publishers and disability organisations are collaborating so that a good range of accessible copies are made when a new work is published, some made by the publisher, and some made by others.

However, it is unlikely that such collaboration will expand as much as everyone would like if publishers feel they are under an obligation to charge the same price for all copies whatever their cost of production. In this respect, those exceptions for the benefit of visually impaired people in national laws that include a test of both whether or not an accessible copy is commercially available, and also whether that copy is available at an ordinary commercial price, could also provide a disincentive to publishers' own development of accessible formats if they cannot make an economic return on their investment when charging an "ordinary commercial price". The ideal might therefore be that visually impaired people should not have to pay more for the copyright works they access than anyone else, but the best way of delivering this and who should pay the cost of this needs to be discussed with an open mind by all concerned.



## 6.11 Solutions other than non-profit accessible copy production under exceptions and licensing

Although this Study looks in particular at how exceptions to copyright have been provided in national laws, and considers how they might work more effectively, it may be unduly narrow and prescriptive to conclude that copyright exceptions, or licensing of activity similar to what might be possible under exceptions, alone provide all the solutions where people have been prevented from making accessible copies due to copyright constraints. Indeed, without understanding the limitations of a regime with appropriate copyright exceptions, or licensing, in meeting the needs of visually impaired people, it may be difficult to decide the most appropriate way to draw up such exceptions or agree licensing.

### 6.11.1 “Built-in” accessibility

In addressing their right to read, few visually impaired people want to be treated as a special case. Rather, they would like access to the same material as everyone else at the same time and at the same price as everyone else. In an ideal situation, they do not want to have copyright barriers removed to make, or have someone else make, copyright works accessible from an inaccessible published version. Rather, they want the published version to be accessible to them in the first place.

An ideal scenario might be, therefore, where all published material is published in a form, or different forms, so that it is accessible to people with a print disability. A publisher can build in accessibility from the start in this way in a number of ways. How accessibility might be built in may, of course, vary depending on the nature of the publication that is to be made available to everyone. But the concept of Universal Design is not a new one; for example, it has been considered at the level of the United Nations in the context of accessibility issues much wider than access to the printed word, but including in particular accessibility of websites<sup>124</sup>.

If a publication takes the form of a digital e-book to be sold on a discrete carrier such as a DVD which in order to be read needs to be loaded into a suitable reader, or as a digital download file that can be copied onto a reader, then it could be designed to be compatible with assistive technologies. Of course, there will still be some visually impaired people who cannot access such a publication, but there will also be some normally sighted people who cannot access the book too. Anyone who does not have access to the right technology for interacting with an e-book would not be able to access an e-book regardless of whether or not they have a visual impairment. If a publisher has, however, chosen to make their publication available only as an e-book, and has made sure that it is fully compatible with the assistive technology widely available to visually impaired people, it might, however, be argued that the

---

<sup>124</sup>Consideration of Accessibility to Information and Communication has taken place since the adoption of Rule 5 of the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities – see <http://www.un.org/esa/socdev/enable/disacc.htm>. In particular the Manila Design Recommendations on Accessible Information and Communication Technologies – see <http://www.un.org/esa/socdev/enable/manilarecom.htm> - and the WorldEnable Validator (Beta version) which is a technical implementation of the [Manila Accessible ICT Design Recommendations](http://www.manilaaccessibleictdesign.org/) – see <http://www.worldenable.net/wevalidator.htm> - recognise the increased access for people with a disability where appropriate standards of Universal Design are adopted.

publisher has indeed built in appropriate and full accessibility for visually impaired people from the start and there is no further problem that needs to be solved.

It is clear from the case studies, however, that built in accessibility for an e-book may not be as straightforward to deliver as suggested above. Technology changes rapidly and standards are not uniform. Digital rights management that publishers are bound to want to use on their valuable e-publications could cause particular problems. Another particular problem for material that has been published in a language that is spoken by few people in the world is that text-to-speech software even if it exists for that language may not be of such good quality as for widely spoken languages.

It could therefore be all too easy for an e-book to be developed with the intention that it will be completely accessible to visually impaired people, but the practice could be that visually impaired people find that their e-book reader and the assistive technology they have is not the most recent version available and doesn't work satisfactorily with this new e-publication. Of course, if the e-book is only compatible with a new reader that everyone must buy if they want access, and the new reader is equipped with the right assistive technology, then visually impaired people are not disadvantaged compared to the general population. But if others are able to rely on their existing equipment and technology to read the new e-book, but visually impaired people are not, they will then not surprisingly argue that the material is not accessible to them. They will argue that it is not reasonable that only they should have to purchase new equipment and technology and say that they are not able to afford to keep pace with the ever changing and different standards of technology and equipment needed to access this latest publication in a way that is accessible to them.

Built in access for visually impaired people right from the start does, nevertheless, seem to be a highly desirable way forward, but stakeholders need to be aware of the problems due to lack of standards, ever-changing technology, use of DRMs and so on, as well as possible solutions, in order to ensure built in accessibility is not just a theoretical solution. In this respect, the work of EUAIN which, as already mentioned, is described in case study 13 of Chapter 5, brings together a range of stakeholders to explore issues such as these. This is perhaps an example of a way forward more generally and work of this nature should perhaps be promoted more widely by governments and international agencies. It seems to be in everyone's interests that a desire to build in access from the start is both encouraged and facilitated by ensuring that what this requires in practice is widely understood and adopted.

#### 6.11.2 Extension of print on demand

There is currently much debate about new print on demand services that are being developed. The idea that customers are able to go into a shop, or visit a website, to purchase a book that is only printed when their order is received at the moment seems unlikely to replace the advance printing for sale of the most popular books that people want to read. Print on demand will, however, enable titles to be offered to consumers that they might not otherwise have access to, such as out of print publications where there is little demand for the title.

Print on demand is, of course, designed to meet the needs of people who can read normally. What is being offered is a title printed in ordinary typeface on ordinary paper. However, as the concept of print on demand becomes more established, it may make sense to make sure that the opportunities for adapting what is on offer to give greater access to visually impaired people are not missed. At its simplest level, if a visually impaired person requests a

copy from a print on demand service, then it would make sense to ensure that it is possible to have the copy printed in large print if this could give access to the visually impaired person. This carries no extra risk for the publishers as the visually impaired customer has exactly the same type of product as the sighted customer, namely text printed on paper.

Extension of print on demand to offer visually impaired customers other types of accessible copy on demand, particularly digital copies, may be more difficult as it will raise concern about whether or not it will be too easy to make illegal copies from those copies. The adoption of Extensible Mark-up Language for computer-based book production purposes does, however, permit the production of a book in more than one format from one digital source. It is likely to offer opportunities to produce different formats, whether Braille, synthetic speech or enlarged typefaces, potentially available on demand. Those developing new business models such as print on demand could certainly explore the extent to which equivalent services could be developed for visually impaired people.

### 6.11.3 Sharing of e-files/deposit of e-files

Permitting those who produce accessible formats in the non-profit sector under exceptions to rights access to publishers' electronic files can greatly assist the production of accessible formats. Although one country does appear to have made some provision in this respect in its copyright law, this does not appear to be clearly a copyright problem. This does not mean that a legislative solution is never appropriate though. Indeed, case study 6 of Chapter 5 illustrates how legislation relating to education of people with disabilities is aimed at addressing the production of accessible formats of educational texts from a central deposit of publishers' e-files. Moreover, case studies 7 of Chapter 4, and 4 and 5 of Chapter 5 specifically look at problems due to lack of access to these e-files and licensing solutions that are being developed to enable access. It would make sense that any activity that looks at licensing issues generally, also considers whether access to publishers' e-files can be facilitated too. However, all stakeholders do need to be aware that these files are what the International Publishers Association has described as the publishers' "Crown Jewels". Any exchange of these files is therefore only likely to be possible in a system built on trust and understanding, with, of course, extremely effective security measures to protect publishers' interests.

### 6.12 Audio description

Making accessible formats of films with audio description has not really been covered in detail in this Study. Few countries currently seem to have exceptions to copyright that would permit this. Audio description of the moving image is, of course, important to some visually impaired people. Without some description of what is happening in the film, which is included in the gaps between the normal dialogue in the film, visually impaired people may not enjoy the film as much as someone who is able to see all the action.

It is far from clear that permitting audio description of commercially released films on DVDs by making appropriate provision in an exception to rights is ever going to provide a sufficient solution for visually impaired people. So long as films are released in sequential windows, with the theatrical release in the cinema first, visually impaired people are always going to get the audio described film after everyone else. By far the best solution seems to be to encourage greater commercial availability of audio description, both during theatrical

release and with copies made available subsequently on DVDs, on demand and so on. Indeed, many DVDs already include audio description as an option. The problems that have been raised, namely that further modification is still needed to an audio described DVD so that a visually impaired person can actually access the audio description, may be better solved by making sure that those who provide the commercial copies fully understand that this is a need.

Although countries may want to consider whether or not they should provide exceptions that would permit audio description of the moving image when they introduce other exceptions to rights for visually impaired people, it may make more sense to encourage a better understanding of the needs of visually impaired people and so facilitate voluntary solutions to those needs.

### 6.13 Print disabled people in general

This Study has concentrated on visually impaired people, but many countries make provision that extends to other print disabled people. In many cases those who have a physical disability such as quadriplegia or multiple sclerosis so that they cannot hold or manipulate a book have needs very similar to those of visually impaired people regarding their problems in accessing the written word. They will obviously not find tactile formats useful though. People with a perceptual disability such as dyslexia may also be easy to consider and provide for in a similar way to visually impaired people. In all these groups, there is no desire to have the words of the copyright work modified, although there may be a need to describe accompanying pictures and drawings and provide navigational aids. But essentially the content of the copyright work is not modified; there are only changes to the form of presentation. There is really no threat, therefore, to the moral rights of the author, in particular the author's integrity right, the right not to have the work subjected to derogatory treatment.

Another group that is covered by exceptions in some countries may be a little different though. People with a mental handicap may need to have the words of a copyright work simplified in order to understand it. This could give rise to concerns about moral rights as well as the economic rights in the copyright work and could therefore raise issues not considered in this Study.

Deaf people do not really have a print disability as they can access the written word, but they will face problems with multimedia material where print is combined with other types of presentation. They may in particular have a need to have audiovisual material subtitled, which could also be difficult due to copyright barriers. Countries may therefore wish to consider whether copyright issues for all disabled people should be addressed as there is probably as much need to do this for these groups of disabled people as for visually impaired people in order to comply with the Standard Rules and draft new UN Convention on the Rights of Persons with Disabilities.

## CONCLUSIONS

This Study has brought together a number of issues and ideas that have been discussed and considered in a number of fora over a number of years. However, the analysis of different countries' laws, and particularly the examination of provisions relevant to the import and export of accessible copies, is hopefully more extensive, and so more helpful, than anything done previously. Of course, fully understanding how countries' laws are constructed and how they work is exceedingly difficult, and there could be much debate about the accuracy of what is recorded in this Study. This Study has not, though attempted to tabulate the similarities and differences in order to give anyone legal certainty about the copyright framework in any particular country. As has already been said, that has not been possible in this Study and people will need to refer to local experts for that. However, by looking broadly at how different laws might be constructed, it is hoped that a constructive debate about the issues raised in this Study can be taken forward.

The rights and needs of both visually impaired people and those who create, and invest in the creation of, copyright works are equally important, but, as in many areas, a balance needs to be struck between these sometimes conflicting interests. However, the barriers faced by visually impaired people who cannot access the written word are enormous, but fortunately the outlook for solving these problems is in many ways better than in the past. This is in part due to the new opportunities for providing accessibility as a result of technological advances and in part due to the legislative changes and other actions that have taken place in a number of countries in recent years. But problems still remain. Hopefully, it will be easier to find constructive ways forward in this area than in many others as stakeholders of all types generally agree that it is right to aim for a situation where visually impaired people are not unable to read published material because of their visual impairment.

This Study has identified some possible solutions and recommendations in Chapter 6. These are summarized below for ease of reference. In most cases, it is likely that a combination of the possible solutions will be most appropriate. What this combination should be will no doubt require further debate. It is hoped that the debate about what should be done in the light of this Study will, however, lead to more progress in delivering a "right to read" to visually impaired people.

## RECOMMENDATIONS

### *Technology*

(a) Collaboration and information exchange needs to be encouraged and facilitated between all stakeholders to ensure that technological developments help to deliver secure access of the written word to visually impaired people. WIPO could have a role in achieving this.

### *The international framework*

(b) International treaties and conventions relating to copyright provide a framework that is complex and confusing for those drawing up exceptions to rights for the benefit of visually impaired people, but they do not oblige countries to make any provision. Further debate is desirable on this issue in the long term.

(c) International agreements relevant to the rights of disabled people may in any case require countries to take the needs of visually impaired people into account when framing their copyright laws.

(d) WIPO could facilitate further discussion about copyright and the rights of disabled people as well as developing its draft model law for developing countries in the light of the recommendations in this Study.

### *Copyright exceptions in national laws*

(e) Exceptions to copyright are never likely to deliver full accessibility to all publications of the written word for visually impaired people, but they may nevertheless be justified until much more material is published in accessible forms. Exceptions need to balance the different interests and not deter the delivery of more comprehensive solutions.

(f) Exceptions of a more general nature, particularly private copying exceptions, may permit some useful activity to provide access for visually impaired people. Governments should consider making sure that self-help activity by visually impaired people to access written material falls within the scope of an exception. They should also consider how to make information available about what self-help activity might be possible under private copying exceptions or otherwise.

(g) WIPO should consider whether any additional action should be taken to make sure that developing countries fully understand the role of exceptions in balancing rights provided by copyright to copyright owners.

(h) Detailed provision in national laws on exceptions to rights for the benefit of visually impaired people should be as useful as possible for visually impaired people, but should also take into account publishers' concerns. Definitions of the end beneficiaries of exceptions and formats that may be produced are more useful if they are functional and broadly drawn. Exceptions need to permit distribution of accessible copies made, but must not permit digital copies to leak out to the general population.

(i) It may not be necessary for exceptions for the benefit of visually impaired people to be coupled with compensation for right holders, but exceptions which encourage the possibility of licensing arrangements with right holders may help deliver an environment that can build up trust which is useful to solve other problems.

(j) Exceptions do not necessarily need to be the same in all countries, but there might currently be more differences between exceptions than is justified. It would be helpful for WIPO to facilitate a discussion about exceptions in this area, particularly how best to deliver access for visually impaired people without jeopardizing the legitimate interests of rights holders.

*Import and export of accessible copies made under exceptions*

(k) International conventions do not seem to restrict what provision can be made regarding export and import of accessible copies made under exceptions to copyright. It is very complicated to decide what is currently legal, particularly because the laws of at least two countries need to be considered.

(l) More explicit provision in national laws might be appropriate regarding export and import of accessible copies given the considerable benefit this could bring to visually impaired people, but this could be particularly complicated where countries do not provide international exhaustion of rights. Any provision needs to take into account the needs of right holders as well as any benefits for visually impaired people so as not to deter collaboration to increase world stocks of accessible formats in other ways too.

*Alternatives to exceptions to facilitate non-profit accessible format production*

(m) Licensing might be a better approach to deliver international exchange of accessible formats and WIPO might be able to facilitate discussions between stakeholders, perhaps involving the International Federation of Reprographic Rights Organisations as well as the International Publishers Association to represent right holders.

(n) Legislative changes should support and encourage licensing arrangements generally as these can deliver additional benefits such as access to publishers' e-files. However, this is more likely to occur if trust and mutual understanding can be developed. Collective licensing societies such as RROs can have a useful role as intermediaries trusted by all stakeholders.

(o) The development of standard permission requests and standard licence agreements could help even where there is no collective licensing and there could be a role for the World Blind Union, the DAISY Consortium and IFLA Libraries for the Blind Section to make proposals on this for eventual agreement with other stakeholders.

(p) Libraries for the blind have an important role in developing a trusted environment where IP is protected, security mechanisms are developed and standardized and records are kept to facilitate international agreement with right holders on interlibrary loans.

*Awareness*

(q) It may be appropriate for WIPO and others to undertake activity to raise awareness of the issues addressed by this Study amongst a range of stakeholder groups, including governments, publishers, technology and software producers, libraries and other organisations making accessible formats and visually impaired people.

*Digital rights management*

(r) How to address the conflict between use of DRMs and exceptions to copyright might be best explored further by looking specifically at exceptions for the benefit of visually impaired people. This can build on work that has already been done on this issue.

*Cost of accessible copies*

(s) The ideal might be that visually impaired people should not have to pay more to access a copyright work than anyone else, but how to deliver this fairly is more complicated. Provisions in copyright law should not necessarily act against right holders being paid a fair price for use of their copyright works.

*Solutions other than non-profit accessible copy production under exceptions and/or licensing*

(t) Solutions other than exceptions to rights and licensing of non-profit accessible format production need to be encouraged. Ideally, publishers will increasingly publish accessible formats and new business models such as print on demand should be devised wherever possible with the needs of visually impaired people in mind.

(u) Those making accessible formats are obviously greatly assisted by access to publishers' e-files, but these are very valuable to publishers and any licensing or other arrangements covering access to them must build in very effective security measures.

*Audio description*

(v) Audio description of moving image material may be best delivered by voluntary solutions as a result of a better understanding of the needs of visually impaired people.

*Print disabled people in general*

(w) Extension of exception provisions beyond visually impaired people to other disabled people could be considered, but different approaches might be needed for different types of disability.

[Annexes follow]



## ANNEX 1

### PRINCIPLE SOURCES OF INFORMATION ABOUT NATIONAL LAWS

The principle sources of information used to identify the content of national laws were:-

- the WIPO collection of laws for electronic access (see <http://www.wipo.int/clea/en/index.jsp>)
- the WIPO survey of laws of countries which had ratified WCT and/or WPPT by 1 April 2003 (see [http://www.wipo.int/documents/en/meetings/2003/sccr/pdf/sccr\\_9\\_6.pdf](http://www.wipo.int/documents/en/meetings/2003/sccr/pdf/sccr_9_6.pdf))
- the collection of national copyright laws provided by UNESCO (see [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=14076&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=14076&URL_DO=DO_TOPIC&URL_SECTION=201.html))
- the papers relating to the WIPO information meeting on digital content for VIPs, November 2003 (see [http://www.wipo.int/documents/en/meetings/2003/digvi\\_im/digvi\\_im\\_03\\_1rev1.htm](http://www.wipo.int/documents/en/meetings/2003/digvi_im/digvi_im_03_1rev1.htm))
- the EUAIN summary of exceptions and limitations in EU laws (see <http://www.euain.org/modules/wfsection/index.php?category=252>)
- the WIPO study on automated rights management systems and copyright limitations and exceptions (see [http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=59952](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=59952))
- the legal reference material published by the Coalition for Intellectual Property Rights (see [http://www.cipr.org/legal\\_reference/index.htm](http://www.cipr.org/legal_reference/index.htm))
- the collection of intellectual property laws published by SICE, the Foreign Trade Information System (see [http://www.sice.oas.org/int\\_prop/ipnale.asp](http://www.sice.oas.org/int_prop/ipnale.asp))
- listing by the Harvard Law School of web resources on foreign laws (see [http://www.law.harvard.edu/library/services/research/guides/international/web\\_resources/foreignA.php](http://www.law.harvard.edu/library/services/research/guides/international/web_resources/foreignA.php))

ANNEX 2

FULL ANALYSIS OF SPECIFIC EXCEPTIONS FOR THE BENEFIT OF VISUALLY IMPAIRED PEOPLE IN NATIONAL LAWS

Armenia

Scope regarding end beneficiary	Impliedly limited to those requiring Braille and other specialized formats designed for blind people
Works that may be used	Lawfully disclosed work, but not those created especially in special ways for the blind
Profit/non-profit making activity	Non-profit-making
Permitted/restricted acts covered	Reproduction
Restrictions on who may undertake activity	None found
Special formats or any accessible formats	Braille and other special ways for the blind
Compulsory licence or exception	Exception - stipulates no remuneration
Acknowledgement required	Author's name and source of borrowing
Other conditions	Exception must not conflict with the normal exploitation of the work and must not prejudice the legitimate interests of the right holder
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Articles 13 and 12, Law on Copyright and Neighbouring Rights adopted by the National Assembly on 8 December 1999*

Australia<sup>125</sup>

For each aspect studied, the analysis of the provisions for Australia has been split into three as follows:

1. Making and communicating accessible formats of literary and dramatic works
2. Making accessible formats by facsimile reproduction of published editions
3. Making sound broadcasts of literary and dramatic works

Scope regarding end beneficiary	1. Person with a print disability, either by the provision of assistance by the institution acting under the provision or otherwise. Print disability is defined as a person without sight,
---------------------------------	---

<sup>125</sup> New exceptions for the benefit of people with disabilities were announced in May 2006 – see [http://www.ag.gov.au/agd/WWW/MinisterRuddockHome.nsf/Page/Media\\_Releases\\_2006\\_Second\\_Quarter\\_14\\_May\\_2006\\_-\\_Major\\_Copyright\\_Reforms\\_Strike\\_Balace\\_-\\_0882006](http://www.ag.gov.au/agd/WWW/MinisterRuddockHome.nsf/Page/Media_Releases_2006_Second_Quarter_14_May_2006_-_Major_Copyright_Reforms_Strike_Balace_-_0882006) - but the analysis in this study is based on existing law in Australia.

	<p>a person whose sight is severely impaired, a person unable to hold or manipulate books or to focus or move his or her eyes, or a person with a perceptual disability</p> <p>2. As for 1</p> <p>3. Broadcasts are for persons who by reason of old age, disability or literacy problems are unable to handle books or newspapers or to read or comprehend written material as it is to this audience that holders of a print disability radio licence are authorised to broadcast</p>
Works that may be used	<p>1. Literary or dramatic works when sound recordings are made so long as no sound recordings of the work have been published, or, if published, only if satisfied after reasonable investigation that it is not possible to obtain a copy of the recording in a reasonable time and at an ordinary commercial price; published literary or dramatic works when other accessible formats are made, but only if satisfied after reasonable investigation that it is not possible within a reasonable time and at an ordinary commercial price to obtain the particular accessible format to be made. But does not apply to computer programs</p> <p>2. Published editions of literary or dramatic works or any out of copyright works</p> <p>3. Published literary or dramatic works may be broadcast</p>
Profit/non-profit making activity	All cases. No limitation found
Permitted/restricted acts covered	<p>1. Reproduction or communication</p> <p>2. Reproduction<sup>126</sup></p> <p>3. Making of a sound broadcast</p>
Restrictions on who may undertake activity	<p>1. By or on behalf of a body administering an institution assisting persons with a print disability. The Attorney-General may, by notice published in the Gazette, declare an institution to be one assisting persons with a print disability</p> <p>2. As for 1</p> <p>3. Person holding a print disability radio licence for those making a sound broadcast</p>
Special formats or any accessible formats	1. Sound recording, Braille, large print, photographic (which means the work produced as a film-strip or a series of separate

<sup>126</sup> The copyright in a published edition that exists separately in Australian law from the copyright in literary etc works would not, in any case, be infringed by communication of the copied work in an accessible format to the public.

	<p>transparencies) or electronic</p> <p>2. As for 1</p> <p>3. Sound broadcast</p>
Compulsory licence or exception	<p>1. Remuneration must be paid to the relevant collecting society for reproduction and communication of literary and dramatic works</p> <p>2. Exception for reproduction of published editions</p> <p>3. Exception for making of sound broadcasts but copyright owners can seek equitable remuneration</p>
Acknowledgement required	All. No requirement found
Other conditions	<p>1. For non-electronic copies of literary and dramatic works, must mark copies made and make, retain and send records of activity to collecting society; for electronic copies must give notice to the collecting society with required details of copies made or communicated, must take reasonable steps to ensure that the communication can only be received or accessed by persons entitled to receive or access it (for example, teachers or persons receiving educational instruction or other assistance provided by the relevant institution) and comply with any other prescribed requirements</p> <p>2. For published editions of works still in copyright, exception only applies where by virtue of 1, reproduction of those works is permitted</p> <p>3. Must keep records of making of sound broadcast which can be inspected by copyright owners</p>
Overridable by contract	All. No provision found
Interplay with DRMs	<p>1. (and part of 2.) The provisions relating to DRMs that would prevent enjoyment of the exceptions are not applied, subject to certain conditions being met, to supply of a circumvention device or service to a person acting for a body administering an institution assisting persons with a print disability for use for that purpose.</p> <p>3. No provision found.</p>

Other comments	1. Certain intermediate activity in making and supplying accessible copies is infringement free - institutions assisting persons with a print disability are also permitted, subject to certain conditions, to make a reproduction or communication for use solely in making or communicating reproductions for persons with a print disability
----------------	---

*Reference: Copyright Act 1968 as amended up to Act No. 9 of 2006. See sections 47A, 112, Part VB, Division 3, 116A and 10*

#### Austria

Scope regarding end beneficiary	Disabled person
Works that may be used	Published works so long as it is not possible, or it is substantially difficult, on account of their disability for the disabled person to access a published work
Profit/non-profit making activity	Only activity for non-commercial purposes
Permitted/restricted acts covered	Reproduction and distribution
Restrictions on who may undertake activity	None found
Special formats or any accessible formats	Any suitable form which is not met by works already published
Compulsory licence or exception	Appropriate remuneration to be paid to the author
Acknowledgement required	No requirement found
Other conditions	None found
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Section 42d of Federal Law on Copyright and Related Rights as amended in 2003*

#### Azerbaijan

Scope regarding end beneficiary	Impliedly limited to those requiring Braille and other specialized formats designed for blind people
Works that may be used	Lawfully disclosed works, but not those created especially in special ways for the blind
Profit/non-profit making activity	Only activity without gainful intent
Permitted/restricted acts covered	Reproduction
Restrictions on who may undertake activity	None found
Special formats or any accessible formats	Braille or other special means for the benefit of the blind
Compulsory licence or exception	Exception - stipulates no remuneration

Acknowledgement required	Name of the author and source
Other conditions	Use must not unjustifiably prejudice the normal exploitation of the work and without valid reason violate the legitimate interests of the author
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Article 19.6 of Law on Copyright and Related Rights as entered into force on 8 October 1996*

Belarus

Scope regarding end beneficiary	Impliedly limited to those requiring Braille and other specialized formats designed for blind people
Works that may be used	Any work other than those created especially in special ways for the blind
Profit/non-profit making activity	No limitation found
Permitted/restricted acts covered	Reproduction
Restrictions on who may undertake activity	None found
Special formats or any accessible formats	Braille or by other special means for the benefit of the blind
Compulsory licence or exception	Exception - stipulates no remuneration
Acknowledgement required	Name of the author and source
Other conditions	Exception must not cause ungrounded damage to normal use of the work or groundlessly restrain legitimate interests of the author (of other right-owner)
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Articles 19 and 17 of the Law on Copyright and Related Rights No. 194-3 of 11 August 1998, as amended up to the Law of the Republic of Belarus No. 183-Z of 4 January 2003*

Belize

Scope regarding end beneficiary	People who are hearing-impaired, or physically or mentally handicapped in other ways
Works that may be used	Television broadcasts or cable programmes
Profit/non-profit making activity	Only activity by a body not established or conducted for profit
Permitted/restricted acts covered	Make copies and issue copies to the public for the purposes of providing copies to end beneficiaries
Restrictions on who may undertake activity	Designated bodies

Special formats or any accessible formats	Copies which are sub-titled or otherwise modified for the special needs of the end beneficiaries
Compulsory licence or exception	Exception
Acknowledgement required	No requirement found
Other conditions	None found
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Section 83 of the Copyright Act as amended on 31 December 2000*

#### Brazil

Scope regarding end beneficiary	Visually handicapped people
Works that may be used	Literary, artistic or scientific works
Profit/non-profit making activity	Must be done without gainful intent
Permitted/restricted acts covered	Reproduction
Restrictions on who may undertake activity	No restrictions found
Special formats or any accessible formats	Braille or by means of another process using a medium designed for visually handicapped users
Compulsory licence or exception	Exception
Acknowledgement required	No requirement found
Other conditions	None found
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Section 46.I(d) of Law No. 9610 of 19 February 1998 on Copyright and Neighboring Rights*

#### Bulgaria

Scope regarding end beneficiary	Impliedly limited to those requiring Braille and analogous specialized formats
Works that may be used	Works that have been disclosed, but not computer programs
Profit/non-profit making activity	Must not be done for gainful purposes
Permitted/restricted acts covered	Reproduction
Restrictions on who may undertake activity	No restriction found
Special formats or any accessible formats	Braille or another analogous method
Compulsory licence or exception	Exception – stipulates no payment of compensation
Acknowledgement required	No requirement found
Other conditions	The exception must additionally not conflict with the normal exploitation of the work and not prejudice the legitimate interests of the copyright holder

Overridable by contract	No provision found
Interplay with DRMs	Specific provision states that removal, damage, destruction or disruption of technological means of protection in order to act under the exception cannot be done without the consent of the copyright holder

*Reference: Articles 24(1)10, 24(2), 23 and 25a of the Copyright and Neighbouring Rights Act No. 56/29.06 1993 as amended on 1 January 2003*

#### Cameroon

Scope regarding end beneficiary	Blind people
Works that may be used	Works published with the authorization of the author
Profit/non-profit making activity	No limitation found
Permitted/restricted acts covered	Reproduction
Restrictions on who may undertake activity	No restrictions found
Special formats or any accessible formats	Braille only specified
Compulsory licence or exception	Exception
Acknowledgement required	No requirement found
Other conditions	None found
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Section 29(1)(g) of Law No. 2000/011 of 19 December 2000 on Copyright and Neighbouring Rights*

#### Canada

Scope regarding end beneficiary	Person with a perceptual disability, that is a disability that prevents or inhibits a person from reading or hearing a literary, musical, dramatic or artistic work in its original format, and includes such a disability resulting from (a) severe or total impairment of sight or hearing or the inability to focus or move one's eyes, (b) the inability to hold or manipulate a book, or (c) an impairment relating to comprehension
Works that may be used	Literary, musical, artistic or dramatic work other than a cinematographic work and not where a work or sound recording is commercially available in a format specially designed to meet the needs of the person with a perceptual disability
Profit/non-profit making activity	Where an organisation undertakes activity,



	the organisation must be non-profit making
Permitted/restricted acts covered	Make a copy or sound recording
Restrictions on who may undertake activity	Person at request of person with a perceptual disability or non-profit organization acting for his or her benefit
Special formats or any accessible formats	Formats specially designed for persons with a perceptual disability, but not large print books
Compulsory licence or exception	Exception
Acknowledgement required	No requirement found
Other conditions	None found
Overridable by contract	No provision found
Interplay with DRMs	No provision found
Other comments	Exception also permits translation, adaptation or reproduction in sign language, but this is not really relevant to those with a visual impairment

*Reference: Section 32 of the Copyright Act (R.S., 1985, c. C-42)*

#### China

Scope regarding end beneficiary	Impliedly limited to those requiring Braille copies
Works that may be used	Published work and specifically applies also to rights of publishers, performers, producers of sound recordings and video recordings, radio stations and television stations
Profit/non-profit making activity	No limitation found
Permitted/restricted acts covered	Transliteration into Braille for publication in Braille
Restrictions on who may undertake activity	No restriction found
Special formats or any accessible formats	Braille only specified
Compulsory licence or exception	Exception – specifically rules out payment of remuneration
Acknowledgement required	Name of author and title of work
Other conditions	Other rights enjoyed by the copyright owner by virtue of the Copyright Law must not be prejudiced
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Article 22 of Copyright Law of the People's Republic of China as amended up until 27 October 2001*

#### Croatia

Scope regarding end beneficiary	People with a disability
Works that may be used	Disclosed copyright works

Profit/non-profit making activity	Non-commercial activity only
Permitted/restricted acts covered	Use for the benefit of people with a disability, specifically reproduction
Restrictions on who may undertake activity	No restriction found
Special formats or any accessible formats	Reproduction in a manner directly related to the disability and to the extent required by the specific disability
Compulsory licence or exception	Exception
Acknowledgement required	No requirement found
Other conditions	Uses under the exception must not conflict with normal exploitation of the work or unreasonably prejudice the legitimate interest of the author
Overridable by contract	No provision found
Interplay with DRMs	Those applying DRMs are obliged to provide special measures or conclude contracts so that the exception can be enjoyed (except in respect of computer programs and works made available on demand on agreed contractual terms). If right holders fail to comply, use will be by the application of measures provided by the Minister.

*Reference: Article 86, 80 and 98 of Copyright and Related Rights Act of 2003*

#### Czech Republic

Scope regarding end beneficiary	People with a disability
Works that may be used	Published work
Profit/non-profit making activity	Non-commercial activity
Permitted/restricted acts covered	Reproduction and distribution
Restrictions on who may undertake activity	Anyone who makes, or has made, a reproduction for the benefit of a person with a disability
Special formats or any accessible formats	Reproduction to the extent required by the specific disability
Compulsory licence or exception	Exception
Acknowledgement required	No requirement found
Other conditions	Use of copies made for any other purpose specifically forbidden. Also activity under the exception must not conflict with a normal exploitation of copyright or unreasonably prejudice the legitimate interests of the author.
Overridable by contract	No provision found

Interplay with DRMs	The provisions protecting use of DRMs must specifically not be prejudiced by the exception
---------------------	--

*Reference: Articles 37(2)(c), 29, 30 and 43-45 of Law No. 121/2000 Coll. of 7 April 2000 on Copyright, Rights Related to Copyright and on the Amendment of Certain Laws as amended to 21 January 2005*

Denmark

Scope regarding end beneficiary	Blind, visually impaired and deaf people, people suffering from a speech impediment and people unable to read printed text on account of a handicap
Works that may be used	Published works
Profit/non-profit making activity	Activity for commercial purposes not permitted
Permitted/restricted acts covered	Use such as reproduction and distribution, which includes communication to the public, but not distribution by rental
Restrictions on who may undertake activity	Activity possible by visually impaired and other specified disabled people themselves, institutions that assist such people as their particular purpose and other bodies so long as they specifically arrange for use to be by visually impaired and other specified disabled people.
Special formats or any accessible formats	Use specifically intended for those with the disability
Compulsory licence or exception	Exception except for making of sound recordings which can only be made for lending and are subject to remuneration to the author and making of sound or visual recordings of broadcast works which must come under an extended collective licence.
Acknowledgement required	Indication of source required
Other conditions	In order to counteract piracy rights to use lapse if an acquired copy is made available to the public. Also, there must be no more alteration of the work than that required for the permitted use.
Overridable by contract	No provision found
Interplay with DRMs	Request to Copyright License Tribunal can be made where DRMs prevent enjoyment of exception and circumvention may be possible where Tribunal order not complied with, but does not apply to works made available on demand under agreed contractual terms

Other comments	Copies made may be acquired by others and further copies may be made, including back-up copies, but only if all activity is necessary for use by the acquirer and as limited by use for those with the disability.
----------------	--

*Reference: Sections 17, 11 and 75c of the Copyright Act consolidated in Act No. 164 of 12 March 2003*

#### Dominican Republic

Scope regarding end beneficiary	Blind and other handicapped people
Works that may be used	Scientific, literary or artistic works
Profit/non-profit making activity	Must have non-profit making aims
Permitted/restricted acts covered	Communication to the public
Restrictions on who may undertake activity	No restriction found
Special formats or any accessible formats	Reproduction not permitted so no accessible formats can be made
Compulsory licence or exception	Exception
Acknowledgement required	The author's name; the title and other data to identify the work
Other conditions	The exception must not conflict with the normal exploitation of the work or unreasonably prejudice the legitimate interests of the copyright owner
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Articles 44, 30 and 31 of Law No. 65-00 on Copyright of 21 August 2000*

#### El Salvador

Scope regarding end beneficiary	Blind and other handicapped people
Works that may be used	All works of the mind including literary, scientific, artistic, musical and dramatic works
Profit/non-profit making activity	People must attend communication free of charge and remuneration to those involved in the event not permitted
Permitted/restricted acts covered	Communication to the public only where end beneficiaries present at place of communication
Restrictions on who may undertake activity	No restriction found
Special formats or any accessible formats	Reproduction not permitted so no accessible formats can be made
Compulsory licence or exception	Exception – stipulates no remuneration
Acknowledgement required	No requirement found
Other conditions	None found

Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Article 44 of the Law on the Promotion and Protection of Intellectual Property, (Decree No. 604 of 15 July 1993)*

Estonia

Scope regarding end beneficiary	Blind people
Works that may be used	Works made available to the public except those created especially for the blind
Profit/non-profit making activity	Use must be for a non-commercial purpose
Permitted/restricted acts covered	Reproduction and distribution
Restrictions on who may undertake activity	No restrictions found
Special formats or any accessible formats	Braille or another technical manner for the blind
Compulsory licence or exception	Exception – stipulates no remuneration
Acknowledgement required	Name of the author, title of the work and source of the publication must be acknowledged
Other conditions	Activity must not conflict with the normal exploitation of the work or unreasonably prejudice the legitimate interests of the author
Overridable by contract	No provision found
Interplay with DRMs	Right holders must adjust their application of DRMs to permit uses permitted by exception where a person has legal access to the protected work. Any failure to reach agreement with right holders about use under the exception can be referred to the Copyright Committee for a decision, but anyone disagreeing with that decision can refer the matter to the courts.

*Reference: Sections 19, 17, 80<sup>3</sup> and 87 of the Copyright Act of 11 November 11 1992, as last amended by the Act of 29 October 2004*

Fiji

Scope regarding end beneficiary	People who are hearing-impaired, or physically or mentally handicapped in other ways
Works that may be used	Television broadcasts or cable programmes
Profit/non-profit making activity	Only activity by a body not established or conducted for profit
Permitted/restricted acts covered	Make copies and provide copies to end beneficiaries
Restrictions on who may undertake activity	Designated bodies

Special formats or any accessible formats	Copies which are sub-titled or otherwise modified for the special needs of the end beneficiaries
Compulsory licence or exception	Exception
Acknowledgement required	No requirement found
Other conditions	None found
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Section 185 of the Copyright Act 1999*

#### Finland

Scope regarding end beneficiary	Visually impaired people and, for lending of sound recordings, also people who, because of some other physical disability or illness, are unable to use books in the conventional manner
Works that may be used	Published literary or musical works
Profit/non-profit making activity	No limitation found
Permitted/restricted acts covered	Reproduction – making copies; lending for sound recordings
Restrictions on who may undertake activity	No restriction other than for making copies by sound recording which is limited to institutions defined by decree
Special formats or any accessible formats	Text readable by visually impaired persons
Compulsory licence or exception	Exception
Acknowledgement required	General requirement to name author on copies made and also source; name of the author and performer specifically required for talking books
Other conditions	The work must not be altered more than necessitated by the permitted use
Overridable by contract	No provision found
Interplay with DRMs	No provision found <sup>127</sup>

*Reference: Articles 17 and 11 of the Copyright Act, as amended on 9 October 1998*

<sup>127</sup> Amendments to the law that come into force on 1 January 2006 do make provision for the enjoyment of exceptions where DRMs have been applied, other than where works have been made available on demand on agreed contractual terms, but at the time of writing this study, only a copy of the law in Finnish has been located and it has not been possible to ascertain the precise details of changes made in this and other areas

France

Scope regarding end beneficiary	People with a motor, psychological, hearing or visual disability which must be at least 50% assessed against specified relevant standards
Works that may be used	A work that has been disclosed
Profit/non-profit making activity	Use on a non-commercial basis
Permitted/restricted acts covered	Reproduction and performance for the personal use of the end beneficiaries
Restrictions on who may undertake activity	Disabled people or organisations listed by the relevant administrative authority.
Special formats or any accessible formats	Use to the extent consistent with the nature of the disability
Compulsory licence or exception	Exception
Acknowledgement required	No specific provision for this exception
Other conditions	The organizations undertaking the activity must provide proof of their activity in a number of specified ways
Overridable by contract	No provision found
Interplay with DRMs	Except for works made available on demand on agreed contractual terms, right holders are required to take measures to ensure effective implementation of the exception where the beneficiaries have lawful access to the work and the exception does not conflict with the normal exploitation of the work or unreasonably prejudice the legitimate interests of the right holders. Also an Authority is established to regulate, and to provide conciliation and adjudication, regarding the interaction between DRMs and exceptions, with recourse to the courts if necessary
Other comments	Electronic copies of books to be used by those entitled to act under the exception may be required to be deposited by publishers as specified by decree with guarantees for the confidentiality of the files and security of access

*Reference: Articles L122-5 and L331-5 to L331-21 of the Intellectual Property Code as amended to 1 August 2006*

Gabon

Scope regarding end beneficiary	Reference to “welfare purposes” could permit assistance to people with a disability, including people who are visually impaired
Works that may be used	Work lawfully made available to the public
Profit/non-profit making activity	Activity that is free of charge necessary
Permitted/restricted acts covered	Communications which includes performance, broadcasting and communication to the public by other means
Restrictions on who may undertake activity	No restriction found
Special formats or any accessible formats	Limited to activity strictly for welfare purposes
Compulsory licence or exception	Exception
Acknowledgement required	No requirement found
Other conditions	None found
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Article 33 of Copyright Law*

Georgia

Scope regarding end beneficiary	Impliedly limited to those needing relief dotted print or other special means for blind people
Works that may be used	Lawfully published work other than those specially created for use by blind people
Profit/non-profit making activity	No specific limitation found
Permitted/restricted acts covered	Reproduction
Restrictions on who may undertake activity	No restriction found
Special formats or any accessible formats	Relief dotted print or other special means for blind people
Compulsory licence or exception	Exception – stipulates no royalty payment
Acknowledgement required	Author’s name and source must be acknowledged
Other conditions	In addition activity must not conflict with the normal exploitation of the work or unreasonably prejudice the legitimate interests of the copyright holder
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Articles 23 and 18 of Law of Georgia on Copyright and Neighbouring Rights*



Germany

Scope regarding end beneficiary	Disabled people
Works that may be used	Works where there is not an accessible version already available
Profit/non-profit making activity	Activity must be on a non-commercial basis
Permitted/restricted acts covered	Reproduce and distribute
Restrictions on who may undertake activity	None found
Special formats or any accessible formats	Formats accessible to disabled persons to the extent required by the specific disability
Compulsory licence or exception	Exception for making single copies; otherwise appropriate remuneration to be paid to the author
Acknowledgement required	Indication of source required
Other conditions	None found
Overridable by contract	Contractual conditions which prevent enjoyment of exceptions are void.
Interplay with DRMs	Right holders must assist beneficiaries of exception to enable use as permitted. Beneficiary, or associations of disabled persons, may sue right holder who refuses to exercise this duty, but sanctions when this happens are limited to injunctive relief; an administrative fine is also possible. Provision does not apply to works made available on demand on agreed contractual terms.

*Reference: Articles 45a, 63 and 95b of Copyright Act as amended on 10 September 2003*

Greece

Scope regarding end beneficiary	Blind and deaf-mute people
Works that may be used	A work
Profit/non-profit making activity	Only non-commercial uses
Permitted/restricted acts covered	Reproduction
Restrictions on who may undertake activity	None set out but could be imposed by ministerial resolution
Special formats or any accessible formats	Formats directly related to the disability and specifically required by the disability
Compulsory licence or exception	Exception, although compensation could be required by ministerial resolution
Acknowledgement required	No requirement found
Other conditions	The Minister of Culture may by resolution determine further conditions. Also activity must not conflict with a normal exploitation of the work or unreasonably prejudice the legitimate interests of the right holder
Overridable by contract	No provision found
Interplay with DRMs	In the absence of voluntary measures, lack of

	enjoyment of exception due to DRMs should be settled by mediation or dispute is settled by Court of Appeal, but provision does not apply to works provided on demand on agreed contractual terms
Other comments	The Minister of Culture may by resolution apply the provision to other categories of disabled people

*Reference: Articles 28A, 28C and 66A of Law 2121/1993 as amended to 10 October 2002*

#### Hungary

Scope regarding end beneficiary	Disabled persons
Works that may be used	A work that has been disclosed to the public
Profit/non-profit making activity	Non-commercial activity only
Permitted/restricted acts covered	Reproduction and distribution
Restrictions on who may undertake activity	No restriction found
Special formats or any accessible formats	Exclusively designed to satisfy the needs of disabled persons
Compulsory licence or exception	Exception – free use specified
Acknowledgement required	No requirement found
Other conditions	Use must not conflict with the normal exploitation of the work or unreasonably prejudice the legitimate interests of the author, and it must be in compliance with the requirements of fairness and not designed for a purpose incompatible with the intention of free use. Also, the provisions relating to free use shall not be interpreted in an extensive manner.
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Articles 41(1) and 33 of Act No. LXXVI of 1999 on Copyright as amended in 2001*

#### Iceland

Scope regarding end beneficiary	Impliedly limited to visually impaired people
Works that may be used	Published literary or musical works
Profit/non-profit making activity	No specific limitation found
Permitted/restricted acts covered	Printing and publishing
Restrictions on who may undertake activity	No restrictions found
Special formats or any accessible formats	Braille only and must not be altered more than necessary in order to reproduce
Compulsory licence or exception	Exception
Acknowledgement required	Where a work is made public, the source and name of the author must be acknowledged as

	appropriate
Other conditions	Activity must not prejudice the rights of the author and the work may not be altered more extensively than is required for the purposes of reproduction
Overridable by contract	No provision found
Interplay with DRMs	No provision found
Other comments	Works may also be photographed in schools for people with speech and hearing impediments

*Reference: Articles 19 and 26 of Copyright Act No. 73 of 29 May 1972 as last amended by Act No. 60 of 19 May 2000*

#### Indonesia

Scope regarding end beneficiary	Blind people
Works that may be used	Scientific, artistic and literary works
Profit/non-profit making activity	Must not be for a commercial purpose
Permitted/restricted acts covered	Reproduction
Restrictions on who may undertake activity	No restrictions found
Special formats or any accessible formats	Braille only
Compulsory licence or exception	Exception
Acknowledgement required	Source must be fully cited
Other conditions	None found
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Article 15d of the Law of the Republic of Indonesia Number 19 Year 2002 Regarding Copyright*

#### Ireland

Scope regarding end beneficiary	A person who has a physical or mental disability
Works that may be used	A work
Profit/non-profit making activity	A designated body must not be established or conducted for profit
Permitted/restricted acts covered	Make and supply copies and adaptations
Restrictions on who may undertake activity	A body designated by the Minister
Special formats or any accessible formats	Modifications to meet the special needs of a person who has a physical or mental disability
Compulsory licence or exception	Exception
Acknowledgement required	No provision found
Other conditions	Where a copy made under the provision is later made available to the public such as by selling, renting or lending, it becomes an infringing copy

Overridable by contract	No provision found
Interplay with DRMs	Protection of DRMs must not prevent enjoyment of exception and circumvention of DRM to enjoy exception permitted

*Reference: Sections 104, 106 and 374 of Copyright and Related Rights Act, 2000*

#### Italy

Scope regarding end beneficiary	People with a disability in categories as defined by Ministerial decree
Works that may be used	Works and protected subject matter
Profit/non-profit making activity	Only activity of a non-commercial nature
Permitted/restricted acts covered	Reproduction and communication to the public
Restrictions on who may undertake activity	None specified, but could be set by Ministerial decree
Special formats or any accessible formats	Acts directly related to the disability and only to the extent required by the disability
Compulsory licence or exception	Exception, although remuneration could possibly be set by Ministerial decree
Acknowledgement required	No specific requirement found, although could be set by Ministerial decree
Other conditions	As well as defining applicable disabilities, the criteria to be used to identify beneficiaries as well as other conditions applying to the exception can be set by Ministerial decree. Also, where works or other subject matter are made available on demand, the exception must not conflict with the normal exploitation of the work or subject matter and must not unreasonably prejudice the right holders.
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Article 71bis and 71nonies of the Law for the Protection of Copyright and Neighbouring Rights, as amended on 9 April 2003*

#### Japan

For each aspect studied, the analysis of the provisions for Japan has been split into two as follows:

1. Making Braille copies/records and sound recordings for visually handicapped people
2. Making large print copies from school textbooks for visually handicapped children and pupils

Scope regarding end beneficiary	1. Visually handicapped people
---------------------------------	--------------------------------

	2. Visually handicapped children or pupils
Works that may be used	1. A work that has been made public 2. School textbooks
Profit/non-profit making activity	1. No limitation found, but establishments designated by Order for the purposes of making sound recordings could be limited 2. No limitation but distribution of large print textbooks for profit-making purposes is subject to compensation
Permitted/restricted acts covered	1. Reproduction and public transmission but not broadcasting or wire diffusion for Braille copies/records; making and lending for sound recordings 2. Reproduction and distribution
Restrictions on who may undertake activity	1. No restriction for Braille copies/records; Braille libraries and other establishments for the promotion of the welfare of the visually handicapped, designated by Cabinet Order for sound recordings 2. No restriction found
Special formats or any accessible formats	1. Braille, including electronically recorded Braille; sound recordings 2. Large print
Compulsory licence or exception	1. Exception 2. Exception for non-profit-making activity; subject to compensation to the copyright owners as fixed by the Commissioner of the Agency for Cultural Affairs for profit-making activity
Acknowledgement required	1. Indication of the source, including name of the author required 2. Indication of the source, including name of the author required
Other conditions	1. No other conditions found 2. Provision limited to making large print copies for the purposes of study by the visually handicapped children or pupils. Publisher must be informed of intention to make reproductions in the form of a textbook in large print
Overridable by contract	1. and 2. No provision found
Interplay with DRMs	1. and 2. No provision found

*Reference: Articles 37, 33bis and 48 of Copyright Law as amended to 9 June 2004*

Kazakhstan

Scope regarding end beneficiary	Impliedly limited to those requiring Braille or other special formats used by blind people
Works that may be used	Works except those created in special formats for blind people
Profit/non-profit making activity	Activity must be without gainful intent
Permitted/restricted acts covered	Reproduction
Restrictions on who may undertake activity	No restriction found
Special formats or any accessible formats	Braille or other special means for the benefit of blind people
Compulsory licence or exception	Exception – stipulates no remuneration
Acknowledgement required	Author's name and source must be acknowledged
Other conditions	Use must not unjustifiably prejudice the normal exploitation of the work and unjustifiably prejudice the legitimate interests of the author
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Articles 19 and 16 of the Law on Copyright and Neighbouring Rights as entered into force on 10 June 1996*

Republic of Korea

Scope regarding end beneficiary	Blind people
Works that may be used	Works that have been made public
Profit/non-profit making activity	No limitation for Braille; for sound recordings, a limitation to non-profit making activity probably exists by the scope of where recordings can be used
Permitted/restricted acts covered	Reproduction
Restrictions on who may undertake activity	No restriction for Braille copies; for sound recordings, no restriction on reproduction but there is a restriction on where use can take place – must be at facilities established for the promotion of the welfare of the blind as prescribed by Presidential Decree.
Special formats or any accessible formats	Braille copies or sound recordings
Compulsory licence or exception	Exception
Acknowledgement required	Indication of source, including the author's name, required
Other conditions	For sound recordings, the exception only permits their use at facilities established for the promotion of the welfare of the blind as prescribed by the Presidential Decree and these currently appear to be limited to facilities established by various non-profit

	making persons/bodies and special schools for visually handicapped people
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Articles 30 and 34 of Copyright Act No. 3916 of 30 December 1989 as last amended by Act No. 5015 of 6 December 1995*

Kyrgyzstan

Scope regarding end beneficiary	Impliedly limited to those requiring Braille and other special formats for blind people
Works that may be used	Lawfully published works, except those created in Braille or other special formats
Profit/non-profit making activity	No limitation found
Permitted/restricted acts covered	Reproduction
Restrictions on who may undertake activity	No restriction found
Special formats or any accessible formats	Braille copies or those produced by other special means for blind people
Compulsory licence or exception	Exception – stipulates no payment of remuneration to author
Acknowledgement required	Indication of author's name, work used and source required
Other conditions	Use must not unjustifiably prejudice the normal exploitation of the work or without valid reason violate the legitimate interests of the author
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Articles 19 and 16 of the Law on Copyright and Related Rights of as amended on 6 November 1999*

Latvia

Scope regarding end beneficiary	Visually and hearing impaired people
Works that may be used	A work
Profit/non-profit making activity	Must be activity for non-commercial purposes
Permitted/restricted acts covered	Reproduction and distribution
Restrictions on who may undertake activity	Organisations for the visually and hearing impaired and libraries providing services to such people are specifically permitted to undertake this activity and others are not barred other than by limitations imposed by conditions
Special formats or any accessible formats	Any format that permits a visually or hearing impaired person to use it and insofar as it is necessary in the case of the relevant

	impairment
Compulsory licence or exception	Exception – stipulates no remuneration
Acknowledgement required	No requirement found
Other conditions	Use must not conflict with the normal exploitation of the work or unjustifiably limit the lawful interests of the author
Overridable by contract	No provision found
Interplay with DRMs	Organisations specifically permitted to undertake activity are able to request author to give access to DRM protected work, but the author may refuse to do so if use would be contrary to the normal exploitation of the work or unjustifiably limit the lawful interests of the author; failure to reach agreement can be referred to a mediator

*Reference: Articles 19, 20 and 18 of Copyright Law as amended on 22 April 2004*

Lithuania

Scope regarding end beneficiary	Impliedly limited to those requiring special formats for visually (and hearing) impaired people
Works that may be used	Lawfully published works other than those created in special formats for visually (and hearing) impaired people
Profit/non-profit making activity	Activity for non-commercial purposes
Permitted/restricted acts covered	Reproduction
Restrictions on who may undertake activity	No restriction found
Special formats or any accessible formats	Reproduce ... in the form intended for people having hearing or visual impairment, to the extent required by the specific disability
Compulsory licence or exception	Exception – stipulates no payment of remuneration
Acknowledgement required	Source and name of the author required
Other conditions	Activity must not conflict with the normal exploitation of a work or prejudice the legitimate interests of the author or other owner of copyright. Also, activity must be for educational, teaching and scientific research purposes.
Overridable by contract	No provision found



Interplay with DRMs	Users of the exception must be provided with adequate means to be able to enjoy the exception, other than where works have been made available on demand. Right holders are required to supply information to an institution as authorized by the Government about any voluntary measures permitting enjoyment of exceptions. Users may refer any disputes to the Council for mediation and where parties do not accept a mediator's proposal, the dispute can be settled by the court
---------------------	--

*Reference: Articles 22, 19 and 75 of Law on Copyright and Related Rights of 5 March 2003*

#### Macau

For each aspect studied, the analysis of the provisions for Macau has been split into two as follows:

1. Making copies in Braille or another system for blind people
2. Fixation of lectures by blind people

Scope regarding end beneficiary	1. Impliedly limited to those who require Braille or another system for blind people 2. Blind people
Works that may be used	1. Published works 2. Lectures by professors
Profit/non-profit making activity	1. Non-profit making use only 2. No limitation found
Permitted/restricted acts covered	1. Reproduction and other uses, and including any transformation necessary 2. Fixation
Restrictions on who may undertake activity	1. No restriction found 2. Blind people for their exclusive use
Special formats or any accessible formats	1. Copies in Braille or another system for blind people 2. Fixation by any means
Compulsory licence or exception	1. and 2. Exception
Acknowledgement required	1. and 2. No requirement found
Other conditions	1. and 2. No other conditions found
Overridable by contract	1. and 2. No provision found
Interplay with DRMs	1. and 2. No provision found

*Reference: Articles 65 and 66 of Decree-Law No. 43/99/M of 16 August 1999*

Malaysia

For each aspect studied, the analysis of the provisions for Malaysia has been split into two as follows:

1. Activity by the Braille MAB Library
2. Subtitling and other modifications of television broadcasts

Scope regarding end beneficiary	<ol style="list-style-type: none"> <li>1. Impliedly limited to those who require Braille copies</li> <li>2. People who are deaf, hard of hearing or physically or mentally handicapped in other ways</li> </ol>
Works that may be used	<ol style="list-style-type: none"> <li>1. A work</li> <li>2. Television broadcasts</li> </ol>
Profit/non-profit making activity	<ol style="list-style-type: none"> <li>1. Only non-profit making use and no admission fee can be charged for the showing, performing or playing of the work used</li> <li>2. Only activity by non-profit making bodies permitted</li> </ol>
Permitted/restricted acts covered	<ol style="list-style-type: none"> <li>1. Any use that is in the public interest</li> <li>2. Making of copies and issuing copies to the public</li> </ol>
Restrictions on who may undertake activity	<ol style="list-style-type: none"> <li>1. Use by the Braille MAB Library (Braille Publishing and Library Unit)</li> <li>2. Bodies and institutions which the Minister may by Order prescribe</li> </ol>
Special formats or any accessible formats	<ol style="list-style-type: none"> <li>1. Likely to be Braille copies</li> <li>2. Copies with subtitles or other modifications for the end beneficiaries</li> </ol>
Compulsory licence or exception	<ol style="list-style-type: none"> <li>1. and 2. Exception</li> </ol>
Acknowledgement required	<ol style="list-style-type: none"> <li>1. and 2. No requirement found</li> </ol>
Other conditions	<ol style="list-style-type: none"> <li>1. The use must be in the public interest, compatible with fair practice and the provisions of any regulations</li> <li>2. No other conditions found</li> </ol>
Overridable by contract	<ol style="list-style-type: none"> <li>1. and 2. No provision found</li> </ol>
Interplay with DRMs	<ol style="list-style-type: none"> <li>1. and 2. No provision found</li> </ol>

Other comments	1. A fairly general exception permitting use of works in the public interest applies to, amongst other things, public libraries and educational, scientific or professional institutions as the Minister may by order prescribe, and the Braille MAB Library has been prescribed so it has been assumed that it is undertaking activities for the benefit of visually impaired people and would be able to make Braille copies under this general exception.
----------------	--

*Reference: Section 13 of the Copyright Act 1987 as amended on 15 August 2000*

#### Republic of Moldova

Scope regarding end beneficiary	Blind people
Works that may be used	Published works except those created in Braille
Profit/non-profit making activity	No limitation found
Permitted/restricted acts covered	Reproduction
Restrictions on who may undertake activity	No restriction found
Special formats or any accessible formats	Braille only
Compulsory licence or exception	Exception – stipulates no remuneration
Acknowledgement required	Author's name and source must be mentioned
Other conditions	The use must not prejudice normal exploitation of the work nor the rights and legitimate interests of the authors
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Article 22 of the Law of the Republic of Moldova on Copyright and Neighbouring Rights as amended on 28 July 2004*

#### Mongolia

Scope regarding end beneficiary	Blind people
Works that may be used	Part of a work which has been made available to the public
Profit/non-profit making activity	No restrictions found
Permitted/restricted acts covered	Reproduction
Restrictions on who may undertake activity	No restrictions found
Special formats or any accessible formats	Any format to be used by blind people
Compulsory licence or exception	Exception – stipulates no remuneration
Acknowledgement required	The source and author's name must be mentioned
Other conditions	No other conditions found
Overridable by contract	No provision found

Interplay with DRMs	No provision found
---------------------	--------------------

*Reference: Article 16 of Law of Mongolia on Copyright as amended on 21 May 1999*

#### Netherlands

Scope regarding end beneficiary	Handicapped individuals
Works that may be used	Literary, scientific or artistic works
Profit/non-profit making activity	Non-commercial activity only
Permitted/restricted acts covered	Reproduction and publication
Restrictions on who may undertake activity	No restrictions found
Special formats or any accessible formats	Formats directly related to the handicap and necessary because of the handicap
Compulsory licence or exception	Fair payment to the author or right holder required
Acknowledgement required	No requirement found
Other conditions	No other conditions found
Overridable by contract	No provision found
Interplay with DRMs	Government orders may establish rules obliging right holders to provide the means to benefit from the exception, provided the user has lawful access to the work and it has not been supplied on demand on agreed contractual terms
Other comments	In addition to the above provision, lending of works put into circulation by or with the consent of rights holders is exempt from payment of remuneration where the lending is by libraries funded by the Libraries for the Blind and Visually Impaired Fund and to blind and visually impaired people registered with the libraries.

*Reference: Articles 15i, 15c and 29a of the Copyright Act 1912 as amended on 20 January 2006*

#### New Zealand

For each aspect studied, the analysis of the provisions for New Zealand has been split into two as follows:

1. Making of Braille and other accessible copies
2. Subtitling and other modifications of television broadcasts

Scope regarding end beneficiary	1. A person with a print disability, which is defined as a person who is (a) blind, or (b) suffers a severe impairment of his or her sight, or (c) is unable to hold or manipulate books, or (d) is unable to focus or move his or
---------------------------------	--

	her eyes, or (e) suffers a handicap with respect to visual perception 2. People who are deaf or hard of hearing, or physically or mentally handicapped in any other way
Works that may be used	1. Literary or dramatic works so long as, after making reasonable efforts, it has not been possible to obtain the work in the modified form needed within a reasonable time and at an ordinary commercial price 2. Television broadcasts or cable programmes
Profit/non-profit making activity	1. and 2. Any body prescribed to undertake the activity must not be established or conducted for profit. Any person required to pay for the accessible copy must not be charged more than the cost of production and a reasonable contribution to the general expenses of the prescribed body.
Permitted/restricted acts covered	1. Make copies or adaptations and provide copies to the end beneficiaries 2. Make and issue copies to the public
Restrictions on who may undertake activity	1. and 2. A body prescribed by regulations
Special formats or any accessible formats	1. Braille copies or copies with other modifications for the special needs of people with a print disability 2. Copies that are subtitled or otherwise modified for the special needs of the end beneficiaries
Compulsory licence or exception	1. and 2. Exception
Acknowledgement required	1. and 2. No requirement found
Other conditions	1. The copyright owner must be notified of the making of the copy or adaptation. Where any copy made is subsequently dealt with (other than providing to the person with a print disability), the copy becomes an infringing copy 2. No other conditions found
Overridable by contract	1. and 2. No provision found
Interplay with DRMs	1. and 2. No provision found

*Reference: Sections 69 and 89 of the Copyright Act 1994 consolidated up to Amendment 2005 No. 33*

Nicaragua

Scope regarding end beneficiary	Visually impaired people
Works that may be used	A work
Profit/non-profit making activity	Non-profit making activity only permitted
Permitted/restricted acts covered	Reproduction

Restrictions on who may undertake activity	No restrictions found
Special formats or any accessible formats	Copies made using the Braille system or another specific procedure
Compulsory licence or exception	Exception
Acknowledgement required	No requirement found
Other conditions	No other conditions found
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Article 34 of the Law on Copyright and Related Rights as entered into force on 31 August 1999*

### Nigeria

Scope regarding end beneficiary	Blind people regarding Braille copies; disabled people for sound recordings
Works that may be used	Published works
Profit/non-profit making activity	No limitation found, although Government approved establishments might be limited to non-profit making ones
Permitted/restricted acts covered	Reproduction
Restrictions on who may undertake activity	For sound recordings, activity must be by institutions or other establishments approved by the Government for the promotion of the welfare of other disabled persons
Special formats or any accessible formats	Braille copies or sound recordings
Compulsory licence or exception	Exception
Acknowledgement required	No requirement found
Other conditions	No other conditions found
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Second Schedule of the Copyright Act (Consolidation Ch. 68) 1988 (1999) No. 47 (No. 42)*

### Norway

For each aspect studied, the analysis of the provisions for Norway has been split into three as follows:

1. Making accessible formats of literary, scientific or musical works for blind and other disabled people
2. Making a fixation, on a device that can reproduce the fixation, of literary and scientific works for disabled people
3. Making a fixation of a film, picture or broadcast for disabled people

Scope regarding end beneficiary	1. Blind people, people whose sight is impaired and others who due to a disability cannot perceive the work in the normal way
---------------------------------	---

	<p>2. Disabled people 3. Disabled people</p>
Works that may be used	<p>1. Published literary, scientific or musical works other than where others have made accessible formats especially for the end beneficiaries 2. Published literary or scientific works (with any associated artistic works or photographs) 3. A published film or picture or transmitted broadcast programme (which essentially does not consist of a musical work)</p>
Profit/non-profit making activity	<p>1, 2. and 3. Only non-commercial activity permitted</p>
Permitted/restricted acts covered	<p>1. Reproduction 2. Making a fixation 3. Making a fixation</p>
Restrictions on who may undertake activity	<p>1. No restrictions specified 2. Organisations and libraries as specified by the King 3. No restrictions specified, but regulations made by the King could impose restrictions</p>
Special formats or any accessible formats	<p>1. A form other than a sound fixation 2. A fixation on a device that can reproduce the fixation A fixation with or without sound 3. In all cases the copy must not prejudice the character of the work</p>
Compulsory licence or exception	<p>1. Exception 2. Remuneration paid to the author by the State 3. Person making the fixation must fulfill the conditions for an extended collective licence</p>
Acknowledgement required	<p>In all cases source acknowledgement is required</p>
Other conditions	<p>1. No other conditions found 2. The King may stipulate terms 3. Provision applies only as set out in regulations issued by the King</p>
Overridable by contract	<p>No provision found</p>
Interplay with DRMs	<p>Right holders must ensure that the exceptions 1. and 2. above can be enjoyed and, as a result of a petition to the Board established by the Ministry, right holders can be ordered to permit enjoyment of the exceptions, or, if this is still not possible, circumvention of DRMs to enjoy the exception can be ordered. The provision does not apply to works made available on demand on agreed contractual terms, or to computer programs. The King may decide that some libraries, archives and</p>

	museums should receive information to enable circumvention for legal copying.
Other comments	The general exception permitting private copying (section 12) specifically permits disabled people to use outside assistance by those not acting for gain in order to copy musical works or films, where this is necessary because of the disablement

*Reference: Sections 17, 17a, 17b, 11, 53b and 12 of Act No. 2 of 12 May 1961 relating to Copyright in Literary, Scientific and Artistic Works, Etc, as amended up until 17 June 2005*

#### Panama

Scope regarding end beneficiary	Blind and other handicapped people
Works that may be used	Works
Profit/non-profit making activity	End beneficiaries must be able to attend communication free of charge and none of the participants in the activity must receive specific remuneration
Permitted/restricted acts covered	Communication to the public
Restrictions on who may undertake activity	No restrictions found
Special formats or any accessible formats	Reproduction not permitted so no accessible formats can be made
Compulsory licence or exception	Exception – stipulates no payment of remuneration
Acknowledgement required	No requirement found
Other conditions	No other conditions found
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Article 47 of Law No. 15 of 8 August 1994*

#### Paraguay

Scope regarding end beneficiary	Visually handicapped people
Works that may be used	Works that have already been disclosed
Profit/non-profit making activity	Reproduction must not be with gainful intent and copies must not be used for profit-making purposes
Permitted/restricted acts covered	Reproduction
Restrictions on who may undertake activity	No restrictions found
Special formats or any accessible formats	Braille or another specific form for the exclusive use of visually handicapped people
Compulsory licence or exception	Exception – stipulates no payment of remuneration
Acknowledgement required	No requirement found
Other conditions	Activity must also not conflict with the



	normal exploitation of the work or unreasonably prejudice the legitimate interests of the author. Also, the exception must have a restrictive interpretation and must not be applicable to cases that are contrary to honest use.
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Articles 39 and 45 of Law No. 1328/98 on Copyright and Related Rights*

Peru

Scope regarding end beneficiary	Blind people
Works that may be used	Works which have been lawfully disclosed
Profit/non-profit making activity	Limited to non-profit making activity
Permitted/restricted acts covered	Reproduction
Restrictions on who may undertake activity	No restrictions found
Special formats or any accessible formats	Copies made by the Braille system or another specific procedure
Compulsory licence or exception	Exception
Acknowledgement required	No requirement found
Other conditions	Must be for the private use of blind people. The exception must have a restrictive interpretation and must not be applicable to cases that are contrary to honest use.
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Articles 43 and 50 of Copyright Act - Legislative Decree No. 822 of 23 April 1996*

Poland

Scope regarding end beneficiary	Disabled people
Works that may be used	Works that have been disseminated
Profit/non-profit making activity	There must be no profit-making nature
Permitted/restricted acts covered	Use generally so long as required by disability
Restrictions on who may undertake activity	No restrictions found
Special formats or any accessible formats	No restrictions specified other than anything done must be required by and arise out of the nature of the disability
Compulsory licence or exception	Exception
Acknowledgement required	The full name of the author and source must be identified
Other conditions	The use must not conflict with the normal exploitation of the work or violate the rightful interests of the author
Overridable by contract	No provision found

Interplay with DRMs	No provision found
---------------------	--------------------

*Reference: Articles 33<sup>1</sup>, 34 and 35 of Act of 4 February 1994 on Copyright and Related Rights, as amended up to 5 February 2005*

Portugal

Scope regarding end beneficiary	Blind people; people with a disability
Works that may be used	Lawfully published works
Profit/non-profit making activity	Reproduction and use or activity must be for non-profit making purposes
Permitted/restricted acts covered	Reproduction or other forms of use; communication and distribution to the public
Restrictions on who may undertake activity	No restrictions found
Special formats or any accessible formats	Braille or another system for blind people; formats directly related to the disability and to the extent necessary because of the disability
Compulsory licence or exception	Exception, although there may be a possibility of equitable remuneration in some cases
Acknowledgement required	Name of the author, publisher and the work must be indicated at least for activity under the exception permitting more general types of format
Other conditions	Use must not conflict with the normal exploitation of the work or unreasonably prejudice the legitimate interests of the right holders (although this condition does not clearly apply to production of Braille and other special formats).
Overridable by contract	Contractual conditions that attempt to override at least the more general provision not specifying types of formats are null and void, although there is the possibility of remuneration in a contract
Interplay with DRMs	Right holders must adopt voluntary measures so that the beneficiaries of at least the more general exception can continue to enjoy the permitted activity. A person lawfully able to access a work who is prevented by DRMs from enjoying the exception can apply to the General Inspector of Cultural Activities, or failing that the Commission of Mediation and Arbitration. The provision does not apply to works made available on demand on agreed contractual terms.

Other comments	The exception in Article 80 relating to Braille and other special format production appears to have been recently supplemented by new, wider, and overlapping provision in Article 75(2)(i).
----------------	--

*Reference: Articles 80, 75, 76, 221 and 222 of the Copyright and Related Rights Code, as amended on 24 August 2004*

Russian Federation

Scope regarding end beneficiary	Impliedly limited to those needing to access copies in Braille or other special formats for blind people
Works that may be used	Legitimately published works, other than works specially created in Braille or other special formats for blind people
Profit/non-profit making activity	Only non-profit making activity permitted
Permitted/restricted acts covered	Reproduction
Restrictions on who may undertake activity	No restrictions found
Special formats or any accessible formats	Use of the Braille system or other special means for the blind
Compulsory licence or exception	Exception – stipulates no payment of royalty
Acknowledgement required	Indication of author's name and source required
Other conditions	Activity under the exception must not cause unjustified harm to the normal use of the work and must not unreasonably prejudice the lawful interests of the author
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Articles 19 and 16 of the Law of the Russian Federation No. 5351 of 9 July 1993 on Copyright and Neighbouring Rights, as amended on 20 July 2004*

Singapore

Scope regarding end beneficiary	Handicapped readers, which means (a) a blind person; (b) a person suffering severe impairment of his sight; (c) a person unable to hold or manipulate books or to focus or move his eyes; or (d) a person suffering from a perceptual handicap
Works that may be used	Literary or dramatic works that have been published, but where the format to be made has already been published, it can only be made under the exception if satisfied after reasonable investigation that it is not possible

	to obtain a published copy in a reasonable time and at an ordinary commercial price
Profit/non-profit making activity	An institution other than an educational institution acting under this exception must not be conducted for profit, direct or indirect, of an individual or individuals
Permitted/restricted acts covered	Reproduction
Restrictions on who may undertake activity	Applies to making copies, by or on behalf of the body administering an institution assisting handicapped readers, which includes educational institutions
Special formats or any accessible formats	Sound recording, Braille version, large print or photographic version (which is a copy as a film-strip or series of separate transparencies designed to meet the needs of handicapped readers)
Compulsory licence or exception	Exception except where a copyright owner requests payment for the making of a handicapped reader's copy of a work when equitable remuneration becomes payable, as determined by the Copyright Tribunal in the absence of agreement
Acknowledgement required	No requirement found
Other conditions	Handicapped reader must use copy for research or study or for instructing himself on any matter. Only applies to copying of a handicapped reader's copy of an article in a periodical or another work if a record of the copying, complying with regulations, is made as soon as practicable.
Overridable by contract	No provision found
Interplay with DRMs	Circumvention of DRMs by an institution assisting handicapped readers is possible in order to have access to the work to determine whether to acquire a copy of the work, but only if the act does not lead to an infringement of the copyright in the work or otherwise violate a provision of any other written law. The Minister may by Order exclude the operation of the anti-circumvention provisions if enjoyment of the exception has been adversely impaired or affected.

Other comments	It is specifically stated that nothing in the exception shall affect the right of the owner of copyright in a work to grant a licence authorizing the copying by the body administering an institution assisting handicapped readers
----------------	--

*Reference: Sections 54 and 261D of the Copyright Act (Chapter 63)*

#### Slovakia

Scope regarding end beneficiary	Handicapped people
Works that may be used	Works that have been disclosed
Profit/non-profit making activity	Activity must not gain any direct or indirect economic advantage
Permitted/restricted acts covered	Reproduction, distribution other than by sale but including lending, communication to the public
Restrictions on who may undertake activity	No restrictions found
Special formats or any accessible formats	Use exclusively to cater for the needs of handicapped people to the extent justified by their handicap
Compulsory licence or exception	Exception – stipulates no obligation to pay remuneration to the author
Acknowledgement required	The author's name, the publisher, title and source must be acknowledged
Other conditions	Disposal of a copy of the work made under the exception may not conflict with a normal exploitation of the work and may not unreasonably prejudice the legitimate interests of the author
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Sections 29, 25 and 38 of the Copyright Act, as entered into force on 1 January 2004*

#### Slovenia

Scope regarding end beneficiary	People with a disability
Works that may be used	Works that are not available in the desired form
Profit/non-profit making activity	Activity must not be for direct or indirect economic advantage
Permitted/restricted acts covered	Reproduction and distribution
Restrictions on who may undertake activity	No restrictions found
Special formats or any accessible formats	Use is directly related to the disability and limited to its extent

Compulsory licence or exception	Equitable remuneration must be paid
Acknowledgement required	No requirement found
Other conditions	The extent of exploitation of copyright works under the exception must be limited by the intended purpose and compatible with fair practice, and must not conflict with normal use of the work, or unreasonably prejudice the legitimate interests of the author
Overridable by contract	No provision found
Interplay with DRMs	Right holders must make available to a person in lawful possession of a work the means to enjoy the exception that is prevented by DRMs. If a right holder fails to do this, the dispute can be referred to mediation. The provision does not apply to works made available on demand on agreed contractual terms.

*Reference: Articles 47a, 46 and 166c of the Copyright and Related Rights Act, as amended on 11 May 2004*

Spain<sup>128</sup>

Scope regarding end beneficiary	Blind people
Works that may be used	Works that have been disclosed
Profit/non-profit making activity	Copies must not be put to profit-making use
Permitted/restricted acts covered	Reproduction
Restrictions on who may undertake activity	No restriction found
Special formats or any accessible formats	Reproduction by the Braille system or another specific method
Compulsory licence or exception	Exception
Acknowledgement required	No requirement found
Other conditions	Must be for the private use of blind people
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Article 31 of Royal Legislative Decree 1/1996, as amended on 7 January 2000*

Sweden

Scope regarding end beneficiary	People with a disability
Works that may be used	Literary and musical works and works of visual art, in all cases so long as the work has been made public

<sup>128</sup> A draft law proposes coverage of all disabled people, but the above analysis is based on the law in force in January 2000

Profit/non-profit making activity	Activity under the exception must not be for commercial purposes
Permitted/restricted acts covered	Reproduction, distribution and subject to certain conditions, communication to the public
Restrictions on who may undertake activity	No restriction except for communication of any work to those with a disability, and making, distribution and communication of a sound recording, when the activity can only be undertaken by libraries and organizations as decided by the Government
Special formats or any accessible formats	Copies that people with a disability need in order to be able to enjoy the work, although there are limitations on who can make sound recordings
Compulsory licence or exception	Exception except for distribution and communication by libraries and organizations where the person with a disability may keep a copy, and the distribution of more than a few copies by anyone of any other accessible format - for both of these the author has a right to remuneration
Acknowledgement required	The name of the author and source must be stated
Other conditions	A work may not be changed, or made available to the public, in a manner that is prejudicial to the author's literary or artistic reputation, or altered more than is necessary for the use. Specifically requires that copies must not be used for purposes other than those set out in the exception.
Overridable by contract	No provision found
Interplay with DRMs	For a work a person is entitled to use, at the request of the user, the Court may order the right holder to make it possible for the user to enjoy the exception, and failure to comply incurs a fine. The provision does not apply to works made available on demand on agreed contractual terms.

*Reference: Articles 17, 11, 3 and 52f of Act on Copyright in Literary and Artistic Works, as amended up to 1 July 2005*

Ukraine

Scope regarding end beneficiary	Blind people
Works that may be used	Disclosed works
Profit/non-profit making activity	No limitation found
Permitted/restricted acts covered	Issue works, and also implies reproduction

Restrictions on who may undertake activity	No restriction found
Special formats or any accessible formats	Braille only
Compulsory licence or exception	Exception
Acknowledgement required	The author's name and source must be indicated
Other conditions	Activity must not prejudice the use of a work or unjustifiably limit the author's legitimate interests
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Articles 21 and 15 of the Law on Copyright and Related Rights of 2001*

#### Uzbekistan

Scope regarding end beneficiary	Blind people
Works that may be used	Published works other than those specially created for blind people
Profit/non-profit making activity	Activity must not lead to a profit
Permitted/restricted acts covered	Reproduction
Restrictions on who may undertake activity	No restriction found
Special formats or any accessible formats	Relief-dot font or other means for blind people
Compulsory licence or exception	Exception – specifies free use
Acknowledgement required	The author's name and source must be indicated
Other conditions	Activity must not harm the normal use of the work nor hurt the legal interests of the author
Overridable by contract	No provision found
Interplay with DRMs	No provision found

*Reference: Article 28 of the Law of the Republic of Uzbekistan of 30 August 30 1996 N 272-I on Copyright and Neighbouring Rights as amended to 15 December 2000*

#### United Kingdom

For each aspect studied, the analysis of the provisions for the United Kingdom has been split into three as follows:

1. Making of accessible copies of works that visually impaired people have in their possession or have lawful access to
2. Making of accessible copies by approved bodies for supply to visually impaired people
3. Making of subtitled or otherwise modified copies of broadcasts for supply to people with a disability

Scope regarding end beneficiary	1. Visually impaired people which means a person (a) who is blind, (b) who has an impairment of visual function which cannot
---------------------------------	--



	<p>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) who is unable through physical disability to hold or manipulate a book, or (d) who is unable through physical disability to focus or move his eyes to the extent that would normally be acceptable for reading.</p> <p>2. As for 1.</p> <p>3. People who are deaf or hard of hearing, or physically or mentally handicapped in other ways</p>
Works that may be used	<p>1. Literary, dramatic, musical or artistic works (other than databases) or published editions, which a visually impaired person has in their lawful possession and which are not accessible to him because of the impairment and where no copies in a form accessible to him are commercially available.</p> <p>2. Commercially published literary, dramatic, musical or artistic works (other than databases) or published editions, where the body making copies has lawful possession of a copy and where there are no commercially available versions in a form that is accessible to the same degree as those accessible copies to be made.</p> <p>3. Television broadcasts, including those delivered by cable</p>
Profit/non-profit making activity	<p>1. Any charge by a person making and supplying an accessible copy to a visually impaired person must not exceed the cost of doing this.</p> <p>2. Approved body other than an educational establishment must be non-profit making. Any charge for supplying an accessible copy must not exceed the cost of making and supplying the copy.</p> <p>3. Only activity by designated bodies which must not be established or conducted for profit</p>
Permitted/restricted acts covered	<p>1. Reproduction</p> <p>2. Reproduction and supply to a visually impaired person where there is no commercially available version accessible to that person; supply includes lending</p> <p>3. Reproduction and issue or lend copies to the public</p>
Restrictions on who may undertake activity	<p>1. The visually impaired person only where he has lawful possession or use of an</p>

	<p>inaccessible copy, or someone making an accessible copy on his behalf.</p> <p>2. An approved body, which is an educational establishment or a body not conducted for profit, where that body has lawful possession of an inaccessible copy</p> <p>3. A designated body</p>
Special formats or any accessible formats	<p>1. Any accessible copy, which means a copy that gives improved access to a work for a visually impaired person and can include facilities for navigating, but not changes not necessary to overcome the visual impairment. Also, recording a performance of a musical work is specifically ruled out.</p> <p>2. As for 1.</p> <p>3. Copies that are subtitled or otherwise modified for the special needs of the end beneficiaries</p>
Compulsory licence or exception	<p>1. Exception</p> <p>2. Exception, but subject to licensing where copyright owners operate a licensing scheme notified to the Secretary of State.</p> <p>3. Exception, but subject to licensing where a licensing scheme has been certified</p>
Acknowledgement required	<p>1. Sufficient acknowledgement and a statement that a copy is made under the exception are required.</p> <p>2. As for 1.</p> <p>3. No requirement found</p>
Other conditions	<p>1. Accessible copies made may be transferred to other visually impaired people entitled to act under the exception, or to intermediaries who will transfer the copies to entitled visually impaired people, so long as they also have lawful possession of an inaccessible copy of the work. Where a person has an accessible copy without entitlement, or it is subsequently dealt with, the copy becomes an infringing copy. Changes which would infringe the right not to have a work subjected to derogatory treatment are not possible.</p> <p>2. Copies made by educational establishments must only be used for their educational purposes. If the inaccessible copy is copy-protected, then the accessible copy must be too to the extent this is practicable. A copy becomes an infringing copy when held by a no longer entitled body or when it is subsequently dealt with. Where activity has led to infringement of copyright, the Secretary</p>

	<p>of State may by order prohibit certain approved bodies by name or type from acting, or the making of accessible copies of a certain type. Changes which would infringe the right not to have a work subjected to derogatory treatment are not possible.</p> <p>3. No other conditions found</p>
Overridable by contract	<p>1. 2. and 3. General provision makes it clear that exceptions do not affect any other right or obligation restricting the doing of any of the specified acts</p>
Interplay with DRMs	<p>1. 2. and 3. A person who has lawful access to a work and is unable to enjoy the exceptions because of DRMs, other than in respect of a computer program, can make a complaint to the Secretary of State who can order the copyright owner to make available a means of carrying out the permitted acts. Failure to comply with the order is a breach of statutory duty which is actionable before the courts. The provision does not apply to works made available on demand on agreed contractual terms.</p>
Other comments	<p>1. None</p> <p>2. Subject to various conditions, approved bodies may hold, and lend or transfer to other approved bodies, intermediate copies necessarily created during the production of accessible copies.</p> <p>3. None</p>

*Reference: Sections 31A to 31F, 74, 28 and 296ZE of the Copyright, Designs and Patents Act 1988 as amended up to 31 December 2003*

#### United States of America

For each aspect studied, the analysis of the provisions for the United States of America has been split into three as follows:

1. Making of specialized formats by authorized entities
2. Publishers' obligations to provide electronic files of the content of print instructional material
3. Transmission of performances of literary works to blind and other handicapped people

Scope regarding end beneficiary	<p>1. Blind people or other persons with disabilities, which is defined as people who are eligible, or may qualify, to receive books</p>
---------------------------------	--

	<p>or other publications in specialized formats under earlier legislation<sup>129</sup> on the provision of books for blind adults.</p> <p>2. Blind people or other persons with disabilities in elementary or secondary schools</p> <p>3. Blind and other handicapped persons</p>
Works that may be used	<p>1. Previously published, non-dramatic literary work, but not standardized, secure or norm-referenced tests and related testing material, or computer programs, other than the portions in conventional human language that are displayed to users when the program is in use</p> <p>2. Print instructional materials for use in elementary or secondary schools</p> <p>3. Literary works which must have been published at least ten years from the date of the performance in the case of dramatic literary works</p>
Profit/non-profit making activity	<p>1. Activity must be by a non-profit organization or governmental agency</p> <p>2. Publishers activity in general not limited in this respect by this provision, but publishers acting under this exception are complying with a requirement of a State or local education agency in respect of the content used</p> <p>3. No direct or indirect commercial advantage permitted from the performance and also limitations from type of body permitted to make a transmission</p>
Permitted/restricted acts covered	<p>1. Reproduction and distribution</p> <p>2. Create and distribute copies to the National Instructional Materials Access Centre</p> <p>3. Performance and transmission</p>
Restrictions on who may undertake activity	<p>1. Activity must be by an authorized entity, which is a non-profit organisation or governmental agency that has a primary mission to provide specialized services relating to training, education or adaptive reading or information access needs of blind or other persons with disabilities</p> <p>2. Activity by publisher of print instructional materials</p> <p>3. The transmission must be made through the facilities of a governmental body, a non-commercial educational broadcast station, a</p>

<sup>129</sup> An Act to provide books for adult blind, approved March 3, 1931 (2 U.S.C. 135a; 46 Stat. 1487)

	radio subcarrier authorisation or a cable system
Special formats or any accessible formats	<ol style="list-style-type: none"> <li>1. Specialised formats, that is Braille, audio or digital texts, exclusively for use by blind people or people with other disabilities</li> <li>2. Copies of electronic files as described in legislation relating to individuals with disabilities and education and that contain the contents of print instructional material<sup>130</sup>, so long as the content is required by any State or local educational agency. The copies must then be used solely for reproduction and distribution of the contents in specialized formats, which has the same scope as for 1. With the additional possibility of large print formats exclusively for use by blind people or people with other disabilities</li> <li>3. Copies are not made – exception permits a transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap</li> </ol>
Compulsory licence or exception	<ol style="list-style-type: none"> <li>1. Exception</li> <li>2. Exception</li> <li>3. Exception</li> </ol>
Acknowledgement required	<ol style="list-style-type: none"> <li>1. Must include a notice of the copyright owner and the date of the original publication</li> <li>2. As for 1.</li> <li>3. No requirement found</li> </ol>
Other conditions	<ol style="list-style-type: none"> <li>1. Copies in specialized formats must bear a notice that any further reproduction or distribution other than in a specialized format is an infringement.</li> <li>2. As for 1. Also, the publisher must have the right to publish the print instructional materials in print format</li> <li>3. For a dramatic literary work, the exception only permits a performance on a single occasion, and is specifically disappplied from more than one performance of the same work by the same performers or under the auspices of the same organisation</li> </ol>
Overridable by contract	All. No provision found
Interplay with DRMs	All. Those people entitled to enjoy the exceptions who are, or are likely to be,

<sup>130</sup> The electronic files described in sections 612(a)(23)(C), 613(a)(6), and section 674(e) of the Individuals with Disabilities Education Act that contain the contents of print instructional materials using the National Instructional Material Accessibility Standard (as defined in section 674(e)(3) of that Act)

	<p>adversely affected by the prohibition of circumvention of DRMs in a 3 year period succeeding the time the matter is considered and ruled upon by the Librarian of Congress may be able to benefit from those rulings. Every 3 years, the Librarian makes a determination in a rulemaking proceeding which can disapply the anti-circumvention provisions for 3 years from specified classes of copyright works. The Librarian of Congress can only take such action after consultation as stipulated in the law, and after examining various specified matters. In addition, it is specifically provided that nothing in the section providing protection against circumvention of copyright protection systems affects rights, remedies, limitations, or defenses to copyright infringement, including fair use, under US copyright law. Finally, subject to a number of conditions and safeguards to minimize misuse of the provision, a nonprofit library, archive or educational institution may gain access to a commercially exploited protected work for the sole purposes of deciding whether to acquire a copy of the work without violating the anti-circumvention provisions.</p>
Other comments	The provision relating to transmission of performances of literary works also applies to deaf or other handicapped persons who are unable to hear the aural signals accompanying a transmission of visual signals

*Reference: Sections 121, 110 and 1201 of United States Code – Title 17, as amended to 3 December 2004*

ANNEX 3  
DISTRIBUTION AND IMPORTATION RIGHTS IN NATIONAL LAWS

Notes:

1. In all cases the study has considered to what extent the activities indicated might be permitted for non-commercial purposes only as any activity for commercial purposes seems most unlikely to be compatible with international conventions and treaties.

2. In the table below, the items identified mean the following:

- a. **Distribution to individuals** means distribution of accessible copies legally made by an organisation permitted to act under a specific exception to assist visually impaired people within the jurisdiction;
- b. **Distribution to organisations** means distribution of accessible copies legally made by an organisation permitted to act under a specific exception within the jurisdiction to another organisation within the same jurisdiction which assists visually impaired people;
- c. **Export to individuals** means export of a legally made accessible copy by an organisation entitled to make it under a specific exception to an individual visually impaired person in another country;
- d. **Export to national organisations** means export of legally made accessible copies by an organization entitled to make them under a specific exception to an organisation assisting visually impaired people which operates in the other country;
- e. **Export to international organisations** means export of legally made accessible copies by an organisation entitled to make them under a specific exception to organisations assisting visually impaired people which operate internationally;
- f. **Import to individuals** means import of an accessible copy legally made in another country under a specific exception direct to a visually impaired person;
- g. **Import to organisations** means import of accessible copies legally made in another country under a specific exception to an organisation assisting visually impaired people; and
- h. **Export/import of intermediate copies** means export of legally made intermediate copies (that is copies necessarily created during the process of making accessible copies of a copyright work) to organisations in other countries which will use them to make accessible copies for visually impaired people and/or import of legally made intermediate copies from another country by an organisation which will use them to make accessible copies for visually impaired people.

Armenia

Distribution to individuals	Not clear what distribution methods are possible. Distribution right in tangible copies seems to cover lending as well as commercial rental so not even clear whether lending permitted
Distribution to organisations	May be possible by some means, but subsequent distribution to visually impaired people not clear as distribution does not

	appear to be mentioned in exception
Export to individuals	Probably not permitted as the right holder has a specific right to prohibit the export (and import) of copies produced without his permission <sup>131</sup> and the exception does not specifically cover export
Export to national organizations	Unlikely to be permitted for same reason as for export to individuals
Export to international organisations	Same as for export to national organisations
Import by individuals	Given specific right to prohibit imports as well as exports of copies made without permission, as indicated above, does not appear to be legal.
Import by organisations	Same as for import to individuals
Export/import of intermediate copies	Nothing clearly permitted and right to prohibit import/export as indicated above makes it very doubtful that this is legal
Exhaustion of rights	Right of distribution in tangible copies seems to be exhausted after first time it is exercised by the right holder and this seems to therefore permit importation of copies made with the right holder's consent in other countries

*Reference: Law on Copyright and Neighbouring Rights adopted by the National Assembly on 8 December 1999*

#### Australia

Distribution to individuals	Distribution of accessible copies by any means seems possible other than commercial rental of sound recordings. "Lending" does not appear to be a restricted act so would be possible even with sound recordings, but may be limited to loans involving no payment other than a returnable deposit.
Distribution to organisations	Distribution to visually impaired people via other organisations assisting them does not appear to be ruled out.
Export to individuals	No particular restriction found. Probably permitted
Export to national organizations	Probably not permitted as exception is very clearly limited solely to assistance to persons with a print disability and difficult to be sure of satisfying this where such a person is not the recipient
Export to international organisations	Same as for export to national organisations

<sup>131</sup> See Article 12



Import by individuals	No provision found that appears to make it illegal for individuals to import accessible copies legally made in other countries so probably permitted
Import by organisations	Provision on importation/exhaustion of rights is complicated, but it may be possible for organizations to import accessible copies that they would have been permitted to make in Australia <sup>132</sup>
Export/import of intermediate copies	Provision on intermediate copies <sup>133</sup> limited to activity that is solely for purposes of exercising Australian exception applying to making and communicating accessible copies to visually impaired people so export of intermediate copies unlikely to be legal as would not be to an organization that can enjoy the Australian exception. Import may be possible so long as to organization permitted to make such a copy in Australia
Exhaustion of rights	Provision varies depending on the type of article, but importation of articles made with the permission of the right holder in another country is often permitted, although in the case of books, only if the book is not published in Australia within 30 days of the first publication overseas <sup>134</sup> .

*Reference: Copyright Act 1968 as amended up to Act No. 9 of 2006*

#### Austria

Distribution to individuals	Distribution of tangible copies by any means seems to be permitted, but probably not by communication to the public by electronic transmission
Distribution to organisations	Probably possible to distribute to other authorized organizations and then by same means as for distribution to individuals to end beneficiaries
Export to individuals	Probably permitted
Export to national organizations	Less likely to be permitted
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted

<sup>132</sup> See for example section 10 defining an “infringing copy” and section 37 defining infringement by importation for sale or hire

<sup>133</sup> See section 135ZQ

<sup>134</sup> See paragraphs 9.5 to 9.9 of the Short Guide to Copyright Law in Australia - <http://www.ag.gov.au/copyright/shortguide#9>

Import by organisations	Less likely to be permitted
Export/import of intermediate copies	No provision found. Probably not permitted
Exhaustion of rights	Distribution right in a tangible copy is exhausted after the first sale or other transfer within the EEA by or with the consent of the copyright owner, but the rental right is not exhausted and the lending right gives continuing entitlement to remuneration <sup>135</sup>

*Reference: Federal Law on Copyright and Related Rights as amended in 2003*

#### Azerbaijan

Distribution to individuals	Not clear what distribution methods are possible. Distribution right in tangible copies does not seem to cover lending (but does cover commercial rental) so lending seems possible
Distribution to organisations	May be possible by some means, but subsequent distribution to visually impaired people not clear as distribution does not appear to be mentioned in exception
Export to individuals	No particular restriction found. Could be permitted, although doubt exists because of lack of permission to distribute in the exception
Export to national organizations	No particular restriction found so could be possible by means not restricted by copyright given lack of provision for distribution in the exception
Export to international organisations	Same as for export to national organisations
Import by individuals	Could be permitted as no provision preventing personal imports found
Import by organisations	Given specific right to prohibit imports of copies for the purposes of distribution when made with or without permission of the right holder, importation of accessible copies by organisations does not appear to be legal <sup>136</sup>
Export/import of intermediate copies	No provision found. Unlikely to be legal

<sup>135</sup> See Sections 16 and 16a

<sup>136</sup> See Article 15.2

Exhaustion of rights	Subsequent distribution, other than rental, of tangible copies which have been published and lawfully put into circulation by sale is permitted, but this does not seem to apply to copies made overseas as there is a specific right to authorise importation for the purposes of distribution, including copies made with the authorisation of the right holder <sup>137</sup>
----------------------	--

*Reference: Law on Copyright and Related Rights as entered into force on 8 October 1996*

Belarus

Distribution to individuals	Not clear what distribution methods are possible. Distribution right in tangible copies does not seem to cover lending (but does cover commercial rental) so lending seems possible
Distribution to organisations	May be possible by some means, but subsequent distribution to visually impaired people not clear as distribution does not appear to be mentioned in exception
Export to individuals	No particular restriction found. Could be permitted, although doubt arises because of lack of permission to distribute in the exception
Export to national organizations	No particular restriction found so could be possible by means not restricted by copyright given lack of provision for distribution in the exception
Export to international organisations	Same as for export to national organisations
Import by individuals	A right to control imports seems to be very broad <sup>138</sup> and copies imported without the consent of the right holder are counterfeit <sup>139</sup> so even imports of accessible copies by individuals seems unlikely to be permitted
Import by organisations	Even more unlikely to be legal than import by individuals
Export/import of intermediate copies	No provision found. Unlikely to be legal

<sup>137</sup> See Article 15.3 and 15.2

<sup>138</sup> See Article 16

<sup>139</sup> See Article 39

Exhaustion of rights	If tangible copies have been put into circulation in Belarus by sale or other transfer of ownership with the consent of the author, then further distribution is not restricted other than by commercial rental, but provision of broad importation right does not seem to give rise to exhaustion of rights until consent for first distribution in Belarus has been given <sup>140</sup> .
----------------------	--

*Reference: Law on Copyright and Related Rights No. 194-3 of 11 August 1998, as amended up to the Law of the Republic of Belarus No. 183-Z of 4 January 2003*

#### Belize

Distribution to individuals	Distribution to end beneficiaries by issuing of tangible copies <sup>141</sup> to the public, which includes rental, seems possible but lending also seems possible as lending right not found.
Distribution to organisations	May not be impossible for distribution to be through another organisation, but would have to be another body designated to act under the exception
Export to individuals	No particular restriction found so could be possible
Export to national organizations	Unlikely to be possible because exception only permits activity involving designated bodies and bodies overseas would not be designated
Export to international organisations	Same as for export to national organisations
Import by individuals	An accessible copy made elsewhere is likely to be an “infringing copy” as it is unlikely to have been made by a body able to make it in Belize. However, it is not an infringement of copyright to import copies for private and domestic use so import of accessible copies by individuals is probably legal, even where the accessible copies are of a type not permitted to be made in Belize <sup>142</sup>
Import by organisations	There is no exception to the importation of infringing copies by organisations so likely to be illegal
Export/import of intermediate copies	No provision found. Unlikely to be legal

<sup>140</sup> See Article 16

<sup>141</sup> The provision in Belize only relates to copies of television broadcasts or cable programmes and so would cover audio-described copies of these made for visually impaired people but not any types of accessible copies made for people with a print disability.

<sup>142</sup> See sections 3 and 33

Exhaustion of rights	Definition of “infringing copies” means that exclusive licence agreements can be established to make it illegal to import copies made with the consent of the right holder overseas.
----------------------	--

*Reference: Copyright Act as amended on 31 December 2000*

#### Brazil

Distribution to individuals	Not clear what distribution methods are possible. Distribution right in tangible copies may not cover lending so this may be possible <sup>143</sup>
Distribution to organisations	May be possible by some means, but subsequent distribution to visually impaired people not clear as distribution does not appear to be mentioned in exception
Export to individuals	Export to individuals may be possible
Export to national organizations	No particular restriction found so could be possible by means not restricted by copyright given lack of provision for distribution in the exception
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted
Import by organisations	Could be possible although could be problems with subsequent distribution
Export/import of intermediate copies	No provision found. Unlikely to be legal
Exhaustion of rights	Not clear when rights are exhausted

*Reference: Law No. 9610 of 19 February 1998 on Copyright and Neighboring Rights*

#### Bulgaria

Distribution to individuals	Not clear what distribution methods are possible. Distribution right in tangible copies seems to cover lending as well as commercial rental so neither clearly possible.
Distribution to organisations	May be possible by some means, but subsequent distribution to visually impaired people not clear as distribution does not appear to be mentioned in exception
Export to individuals	Export to individuals may be possible
Export to national organizations	Export of a large number of copies unlikely to be possible as export (and import) of copies in

---

<sup>143</sup> See Articles 5 and 29

	“commercial quantities”, either legally or illegally made, is a restricted act <sup>144</sup> .
Export to international organisations	Same as for export to national organisations
Import by individuals	Import of accessible copies likely to be legal as would not be in “commercial quantities”
Import by organisations	Could be possible if not in large numbers
Export/import of intermediate copies	No provision found. Unlikely to be legal
Exhaustion of rights	Distribution right in tangible copies only exhausted with first sale or other transfer of ownership authorized by the right holder in Bulgaria, but right to authorise rental is not exhausted and exhaustion does not apply to copies made with the right holder’s consent by recipients of an electronic communication of the work <sup>145</sup> .

*Reference: Copyright and Neighbouring Rights Act No. 56/29.06 1993 as amended on 1 January 2003*

Cameroon

Distribution to individuals	Not clear what distribution methods are possible. Distribution right in tangible copies does not seem to cover lending (but does cover commercial rental) so lending seems possible
Distribution to organisations	May be possible by some means, but subsequent distribution to visually impaired people not clear as distribution does not appear to be mentioned in exception
Export to individuals	No particular restriction found. Could be permitted, but could only be Braille copies as only those permitted to be made under exception in Cameroon. Doubt arises about legality because of lack of permission to distribute in the exception
Export to national organizations	No particular restriction found so could be possible by means not restricted by copyright given lack of provision for distribution in the exception

---

[Footnote continued from previous page]

<sup>144</sup> See Article 18(2)11

<sup>145</sup> See Article 18a

Export to international organisations	Same as for export to national organisations
Import by individuals	Import of “forged objects” not permitted <sup>146</sup> , but accessible copies made overseas may not count as such so could be permitted
Import by organisations	Could also be permitted but again depends on meaning of “forged objects”
Export/import of intermediate copies	No provision found. Unlikely to be legal
Exhaustion of rights	Not clear when distribution rights are exhausted

*Reference: Law No. 2000/011 of 19 December 2000 on Copyright and Neighbouring Rights*

Canada

Distribution to individuals	Not clear what distribution methods are possible. Distribution right in tangible copies does not seem to cover lending (but does cover commercial rental of sound recordings and computer programs) so lending seems possible
Distribution to organisations	May be possible by some means, but subsequent distribution to visually impaired people not clear as distribution does not appear to be mentioned in exception
Export to individuals	No particular restriction found. Could be permitted, but doubt arises about legality because of lack of permission to distribute in the exception
Export to national organizations	No particular restriction found so could be possible by means not restricted by copyright given lack of provision for distribution in the exception
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted as definition of how copyright is infringed by importation seems to require copies to be imported for sale, distribution or other dealing and so does not seem to apply to importation by an individual for his own use <sup>147</sup> .
Import by organisations	Importation of single copies may be permitted for same reasons as importation by individuals, but importation of multiple copies less likely to be permitted. Provision on infringement by importation also only applies to infringing copies or copies that

<sup>146</sup> See Section 81(1)(a)

<sup>147</sup> See section 27

	would infringe copyright if made in Canada by the person who made it, but the latter could apply as organizations making accessible copies in other countries are not likely to be entitled to make copies in Canada as the Canadian exception does not apply to them.
Export/import of intermediate copies	No provision found. Unlikely to be legal
Exhaustion of rights	Definition of “infringing copy” and infringement by importation <sup>148</sup> appear to provide for some situations where rights are not exhausted in Canada such as where a copy is made in another country by an exclusive licensee, who is not the same person authorized to exercise the rights in Canada, and the copies are imported for distribution and sale, i.e. not private imports. Also, there is specific provision relating to parallel imports of books ruling out imports of books legally made in other countries but not authorized for importation into Canada and which could not be legally made in Canada by the person importing them, although regulations can provide differently for situations such as remaindered books and special orders <sup>149</sup>

*Reference: Copyright Act (R.S., 1985, c. C-42)*

## China

Distribution to individuals	Exception permits publication which probably includes distribution of tangible copies otherwise than by rental. Rental does not seem to be clearly limited to only commercial activity but no separate lending right so non-commercial lending may also be possible.
Distribution to organisations	Probably the same as for distribution direct to individuals, but exception only permits accessible copies in Braille
Export to individuals	No restriction found. Probably permitted
Export to national organizations	No restriction found. May be permitted but not clear
Export to international organisations	Same as for export to national organisations
Import by individuals	No restriction found. Probably permitted

<sup>148</sup> See sections 2 and 27

<sup>149</sup> See section 27.1 and the Book Importation Regulations



Import by organisations	No restriction found. May be permitted but subsequent distribution of copies other than in Braille unlikely to be permitted as exception does not cover these
Export/import of intermediate copies	No provision found but could be legal given lack of restrictions specifically on import/export, but unlikely to permit any subsequent activity unless it is making and distributing Braille copies only
Exhaustion of rights	No provision found

*Reference: Copyright Law of the People's Republic of China as amended up until 27 October 2001*

#### Croatia

Distribution to individuals	Distribution to visually impaired people by any means probably possible as exception permits "use" for the benefit of disabled people, but rental probably not possible as commercial activity outside scope of exception
Distribution to organisations	Distribution via other organisations probably permitted too – it is not clearly ruled out
Export to individuals	Probably permitted but the meaning of the "the right of the author to authorize or prohibit the export to or the import from a certain country of the original or copies of the work" <sup>150</sup> is not clear and so not clear whether permitted
Export to national organizations	Less certain that export to organizations permitted as direct beneficiary for export by an organization in Croatia may need to be an individual visually impaired person
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted but the provision referred to above (see export to individuals) may be relevant
Import by organisations	Could be permitted as could come within the scope of "use" as specified in the exception, but provision referred to above (see export to individuals) may be relevant
Export/import of intermediate copies	Not clearly permitted but not clearly prevented either so could be possible

---

<sup>150</sup> See Article 20(2)

Exhaustion of rights	First sale or other transfer of ownership by or with consent of author or right holder in Croatia exhausts the distribution right in tangible copies in Croatia, but not the rental and lending rights or “the right of the author to authorize or prohibit the export to or the import from a certain country of the original or copies of the work” <sup>151</sup>
----------------------	--

*Reference: Copyright and Related Rights Act of 2003*

### Czech Republic

Distribution to individuals	Distribution permitted by the exception which means making copies available in tangible form by sale or other transfer of ownership, but not rental and lending
Distribution to organisations	Distribution via other organizations seems to be possible so long as end beneficiary is a visually impaired (or other disabled) person
Export to individuals	Probably permitted
Export to national organizations	Less certain that export to organizations permitted as direct beneficiary for export by an organization in Croatia may need to be an individual visually impaired person
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted, especially if accessible copy already distributed under an exception for the benefit of visually impaired people in another country of the EU or EEA as distribution right seems to be exhausted by any lawful distribution in these territories and not just distribution with the consent of the right holder <sup>152</sup>
Import by organisations	May be permitted in same circumstances as for import by individuals
Export/import of intermediate copies	Not clearly permitted but not clearly prevented either so could be possible

---

<sup>151</sup> See Article 20(2)

<sup>152</sup> See Article 14(2)

Exhaustion of rights	Right of distribution of tangible copies after first lawful sale or other transfer of ownership anywhere in the EU or EEA exhausts the right of distribution in tangible copies, but not the rental and lending rights
----------------------	--

*Reference: Law No. 121/2000 Coll. of 7 April 2000 on Copyright, Rights Related to Copyright and on the Amendment of Certain Laws as amended to 21 January 2005*

Denmark

Distribution to individuals	Clearly permitted except distribution by rental
Distribution to organisations	Probably permitted as distribution direct to visually impaired person does not seem to be required so long as end beneficiary of the organization is a visually impaired (or other handicapped) person
Export to individuals	Probably permitted
Export to national organizations	Probably not permitted as more difficult to be sure that such organizations control use as required under the exception
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted, especially if accessible copy made under an exception for the benefit of visually impaired people in another country that permits similar activity to that permitted in Denmark <sup>153</sup>
Import by organisations	Possibly permitted as exception seems to cover the case where an organization does not make but only distributes an accessible copy, but as for individual importation, more likely where copy made under an exception provision similar to that in Denmark
Export/import of intermediate copies	Export unlikely to be permitted, import may be possible
Exhaustion of rights	Distribution right in a tangible copy exhausted when that copy has been sold or otherwise transferred to others within the EEA with the consent of the author, but rental right not exhausted. <sup>154</sup>

*Reference: Copyright Act consolidated in Act No. 164 of 12 March 2003*

<sup>153</sup>Section 77 is particularly relevant as it makes a person liable to a fine for intentional or grossly negligent importation of a copy of a work with a view to making available to the public where the copy has been produced outside Denmark under such circumstances that a similar production in Denmark would have been in conflict with the law

<sup>154</sup>See Section 19

Dominican Republic

Distribution to individuals	Distribution of copies does not seem to be permitted by any means as exception does not even permit making of accessible copies
Distribution to organisations	Same as for distribution to individuals
Export to individuals	Unlikely to be permitted given exception does not appear to permit any distribution of copies
Export to national organizations	Same as for export to individuals
Export to international organisations	Same as for export to individuals
Import by individuals	Probably permitted
Import by organisations	Probably not permitted given exception does not appear to permit any distribution of copies and distribution right seems to be comprehensive regarding mechanisms for distribution, including rental, lending and communication to the public <sup>155</sup>
Export/import of intermediate copies	No provision found. Unlikely to be permitted
Exhaustion of rights	Not clear when rights are exhausted

*Reference: Law No. 65-00 on Copyright of 21 August 2000*

El Salvador

Distribution to individuals	Distribution of copies does not seem to be permitted by any means as exception does not even permit making of accessible copies
Distribution to organisations	Same as for distribution to individuals
Export to individuals	Unlikely to be permitted given exception does not appear to permit any distribution of copies
Export to national organizations	Same as for export to individuals
Export to international organisations	Same as for export to individuals
Import by individuals	May not be permitted as importation of copies made legally overseas seems to be an act restricted by copyright <sup>156</sup>
Import by organisations	Probably not permitted given exception does not appear to permit any distribution of copies and even importation of copies made legally overseas seems to be an act restricted by copyright
Export/import of intermediate copies	No provision found. Unlikely to be permitted

<sup>155</sup> See Articles 19 and 16

<sup>156</sup> See Article 7(e)

Exhaustion of rights	Distribution right in a tangible copy is exhausted after first sale but the rental and communication to the public rights are not exhausted <sup>157</sup>
----------------------	--

*Reference: Law on the Promotion and Protection of Intellectual Property, (Decree No. 604 of 15 July 1993)*

Estonia

Distribution to individuals	Exception specifically permits distribution which covers any transfer of ownership of physical copies including rental and lending, but commercial renting unlikely to be permitted as use must be for non-commercial purposes
Distribution to organisations	Probably permitted as distribution direct to visually impaired person does not seem to be required so long as end beneficiary of the organization is a blind person
Export to individuals	Probably permitted
Export to national organizations	May be permitted
Export to international organisations	Same as for export to national organisations
Import by individuals	Accessible copy made under an exception in another country seems to be a “pirated copy” as it is not made with the authorization of the right holder <sup>158</sup> , but it does not seem to be illegal for it to be imported by an individual
Import by organisations	Some activity could be legal but seems to depend on whether or not it falls within the scope of the restrictions on trade in pirated goods <sup>159</sup> which, for example, seems to rule out any “selling” of accessible copies imported.
Export/import of intermediate copies	Not clearly permitted but not clearly prevented either so could be possible, but provision on trade in pirated copies could be relevant

<sup>157</sup> See Article 7(d)

<sup>158</sup> See section 80<sup>1</sup>(1)

<sup>159</sup> See sections 80<sup>2</sup> and 81<sup>1</sup>

Exhaustion of rights	The first sale or transfer in some other manner of the right of ownership of a copy of a work by the author or with his or her consent in a Member State of the EU or a state which is a contracting party of the EEA Agreement exhausts the right of distribution in tangible copies, but not the rental or lending rights <sup>160</sup>
----------------------	--

*Reference: Copyright Act of 11 November 11 1992, as last amended by the Act of 29 October 2004*

## Fiji

Distribution to individuals	Exception permits copies <sup>161</sup> to be provided to disabled people and does not appear to limit how this might be done. Also, no lending right so lending would be possible.
Distribution to organisations	May not be impossible for distribution to be through another organisation, but would have to be another body designated to act under the exception
Export to individuals	No particular restriction found so could be possible
Export to national organizations	Unlikely to be possible because exception only permits activity involving designated bodies and bodies overseas would not be designated
Export to international organisations	Same as for export to national organisations
Import by individuals	An accessible copy made elsewhere is likely to be an “infringing copy” as it is unlikely to have been made by a body able to make it in Belize. However, it is not an infringement of copyright to import copies for private and domestic use so import of accessible copies by individuals is probably legal, even where the accessible copies are of a type not permitted to be made in Fiji <sup>162</sup>
Import by organisations	There is no exception to the importation of infringing copies by organisations so likely to be illegal
Export/import of intermediate copies	No provision found. Unlikely to be legal

<sup>160</sup> See section 13(2)

<sup>161</sup>The provision in Fiji only relates to copies of television broadcasts or cable programmes and so would cover audio-described copies of these made for visually impaired people but not any types of accessible copies made for people with a print disability.

<sup>162</sup> See sections 12 and 35

Exhaustion of rights	Definition of the meaning of issuing copies to the public seems to deliver exhaustion of the right for a copy where it has been put into circulation by the right holder anywhere as subsequent importation of those copies into Fiji is not issue to the public <sup>163</sup> . However, definition of “infringing copies” and so how copyright is infringed by importation is complicated seeming to encompass situations where rights belong to different exclusive licensees in different countries, but there is a provision saying that a copy of a literary or artistic work that has been made, copied, published, adapted, or distributed in an overseas country by or with the licence of the owner of the copyright in the work in that country is not an infringing copy and so its importation is not an infringement.
----------------------	--

*Reference: Copyright Act 1999*

#### Finland

Distribution to individuals	Not clear what distribution methods are possible.
Distribution to organisations	May be possible by some means, but subsequent distribution to visually impaired people not clear with no clear provision in exception
Export to individuals	May be permitted but not clear
Export to national organizations	Probably not permitted for sound recordings given limitation on organizations which can act; could be permitted for other types of copies
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted
Import by organisations	May be permitted where the accessible copy is of a type that could be made in Finland, but if it is not the importation appears to be an infringement as it seems likely that an organization will then be found to be importing a copy to distribute it to the public where making the copy would have infringed copyright if made in Finland <sup>164</sup>
Export/import of intermediate copies	No provision found. Unlikely to be legal

<sup>163</sup> See section 9

<sup>164</sup> See Article 56a

Exhaustion of rights	The right of distribution in tangible copies, but not the rental and lending rights, is exhausted by the first sale or other transfer of ownership of the copy with the consent of the author, but for certain rights in certain works (films, sound recordings and broadcasts) this only applies where the first sale or transfer is within the EEA <sup>165</sup>
----------------------	---

*Reference: Copyright Act, as amended on 9 October 1998*

France

Distribution to individuals	Distribution by any means seems to be permitted
Distribution to organisations	Probably permitted so long as organisations are those able to act under the exception
Export to individuals	Could be a problem as the exception is very specific about how disability must be measured against relevant standards in France
Export to national organizations	Likely to be difficult given detailed provisions in the exceptions regarding organizations which can undertake activity and so on
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted
Import by organisations	Probably less likely to be permitted
Export/import of intermediate copies	No provision found regarding intermediate copies made by organizations making accessible copies <sup>166</sup>
Exhaustion of rights	Distribution right by sale of a tangible copy is exhausted after the first sale of the copy by or with the consent of the right holder in the EEA <sup>167</sup>

*Reference: Intellectual Property Code as amended to 1 August 2006*

<sup>165</sup> See Articles 19 and 46 to 48

<sup>166</sup> The publishers' electronic copies that may be required to be stored centrally under the exception seem unlikely to be transferable to other countries

<sup>167</sup> See Article L122-3-1



Gabon

Distribution to individuals	Making copies not clearly covered by exception so distribution of permanent copies in accessible formats unlikely to be permitted. Making material available by broadcasting or other communication to the public seems to be permitted. No rental and lending rights seem to exist.
Distribution to organisations	Distribution of permanent copies no more likely via organisations
Export to individuals	Unlikely to be lawful if cannot make accessible copies to distribute in the first place
Export to national organizations means	Same as for export to individuals
Export to international organisations	Same as for export to individuals
Import by individuals	Probably permitted
Import by organisations	Much less likely to be permitted
Export/import of intermediate copies	No provision found. Unlikely to be legal
Exhaustion of rights	Not clear when rights are exhausted

*Reference: Copyright Law*

Georgia

Distribution to individuals	Not clear what distribution methods are possible. Distribution right in tangible copies does not seem to cover lending (but does cover commercial rental) so lending seems possible
Distribution to organisations	May be possible by some means, but subsequent distribution to visually impaired people not clear as distribution does not appear to be mentioned in exception
Export to individuals	No particular restriction found. Could be permitted, although doubt exists because of lack of permission to distribute in the exception
Export to national organizations	No particular restriction found so could be possible by means not restricted by copyright given lack of provision for distribution in the exception
Export to international organisations	Same as for export to national organisations
Import by individuals	Could be permitted as no provision preventing personal imports found
Import by organisations	Given specific right to prohibit imports of copies for the purposes of distribution when made with or without permission of the right holder, importation of accessible copies by

	organisations does not appear to be legal <sup>168</sup>
Export/import of intermediate copies	No provision found. Unlikely to be legal
Exhaustion of rights	Subsequent distribution, other than rental, of tangible copies which have been published and lawfully put into circulation by sale is permitted, but this does not seem to apply to copies made overseas as there is a specific right to authorise importation for the purposes of distribution, including copies made with the authorisation of the right holder <sup>169</sup>

*Reference: Law of Georgia on Copyright and Neighbouring Rights*

#### Germany

Distribution to individuals	Distribution of tangible copies by any means seems to be permitted, but probably not by communication to the public by electronic transmission
Distribution to organisations	Probably possible by same means as for distribution to individuals so long as via authorized organisations
Export to individuals	Probably permitted
Export to national organizations	Less likely to be permitted given limitation on which organizations can act under exception
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted
Import by organisations	Less likely to be permitted
Export/import of intermediate copies	No provision found. Probably not permitted
Exhaustion of rights	Distribution right in a tangible copy is exhausted after the first sale or other transfer within the EEA by or with the consent of the copyright owner, but the rental right is not exhausted and the lending right gives continuing entitlement to remuneration <sup>170</sup>

*Reference: Copyright Act as amended on 10 September 2003*

#### Greece

Distribution to individuals	Not clear what distribution methods are possible.
Distribution to organisations	May be possible by some means, but

<sup>168</sup> See Article 18(1)(c)

<sup>169</sup> See footnote 81

<sup>170</sup> See Articles 17 and 27

	subsequent distribution to visually impaired people could be difficult as distribution does not appear to be mentioned in exception
Export to individuals	No particular restriction found. Could be permitted, although doubt exists because of lack of permission to distribute in the exception
Export to national organizations	No particular restriction found so could be possible by means not restricted by copyright given lack of provision for distribution in the exception
Export to international organisations	Same as for export to national organisations
Import by individuals	Could be a problem with importation as importation of copies made overseas without the right holder's consent, which would include copies made under exceptions in other countries, seems to be one of the acts restricted by copyright <sup>171</sup>
Import by organisations	Given specific right to authorise imports of copies and that the exception in Greece does not permit distribution, importation of accessible copies by organisations does not appear to be legal
Export/import of intermediate copies	No provision found. Unlikely to be legal
Exhaustion of rights	Distribution right in a tangible copy is exhausted after the first sale or other transfer within the EU by or with the consent of the copyright owner, but the rental and lending rights are not exhausted <sup>172</sup>

*Reference: Law 2121/1993 as amended to 10 October 2002*

---

<sup>171</sup> See Article 3.1(i)

<sup>172</sup> See Article 3.1(d) and (e)

Hungary

Distribution to individuals	Exception seems to provide for distribution of accessible copies which would include putting tangible copies into circulation as well as rental and for some types of material lending <sup>173</sup> . But free uses under exceptions appear to be limited by an overriding provision disallowing distribution without the author's authorization other than lending between libraries <sup>174</sup> so there is some doubt about what types of distribution are possible.
Distribution to organisations	Lending to another library seems to be possible, but it is not clear what, if anything else, is permitted
Export to individuals	Not clear what is permitted given the doubt over what form distribution can take.
Export to national organizations	Same as for export to individuals
Export to international organisations	Same as for export to individuals
Import by individuals	Probably permitted
Import by organisations	Importation of a copy with the purpose of putting the copy into circulation forms part of the distribution right <sup>175</sup> so import by organizations of accessible copies made overseas looks unlikely to be permitted.
Export/import of intermediate copies	No provision found. Unlikely to be legal
Exhaustion of rights	Copies put into circulation in Hungary by or with the consent of the right holder seem to exhaust the distribution right other than the rental, lending and importation rights <sup>176</sup>

*Reference: Act No. LXXVI of 1999 on Copyright as amended in 2001*

Iceland

Distribution to individuals	Distribution by any means seems possible, including rental and lending, as the exception permits "publishing" which has a broad meaning <sup>177</sup> , but the exception only permits Braille copies to be produced and distributed.
Distribution to organisations	Distribution by any means via other organizations seems possible
Export to individuals	No specific provision found but probably

<sup>173</sup> See definition of distribution in Article 23

<sup>174</sup> See Article 40

<sup>175</sup> See Article 23(2)

<sup>176</sup> See Article 23(5)

<sup>177</sup> See Article 2

	permitted
Export to national organizations	Could be permitted
Export to international organisations	Could be permitted
Import by individuals	No restriction found so probably permitted
Import by organisations	Probably permitted for Braille copies, but probably not permitted for other accessible formats although it might not be the act of importation as such which is illegal. Importation of copies in the form of audio or video recordings or databases, which could not be made under the exception in Iceland, could be illegal as they are likely to have been made in circumstances in the other country which would not be permitted in Iceland <sup>178</sup>
Export/import of intermediate copies	No provision found. Might be legal if copies are intermediate for the purposes of producing Braille copies only
Exhaustion of rights	Further distribution of tangible copies after “publication” that has been authorized by the right holder seems to be permitted, but rental and lending rights in musical works, films and sound recordings are not exhausted and for video and audio recordings no aspects of the distribution right are exhausted until after the first sale or other transfer with the authorization of the right holders in the EEA <sup>179</sup>

*Reference: Copyright Act No. 73 of 29 May 1972 as last amended by Act No. 60 of 19 May 2000*

#### Indonesia

Distribution to individuals	Not clear what distribution methods are possible. Distribution right in tangible copies does not seem to cover lending and only rental for some types of material (films, computer programs and sound recordings) so lending seems possible
Distribution to organisations	May be possible by some means, but subsequent distribution to visually impaired people not clear as distribution does not appear to be mentioned in exception
Export to individuals	No particular restriction found. Could be permitted, although doubt exists because of

<sup>178</sup> See Article 54

<sup>179</sup> See Articles 24 and 46

	lack of permission to distribute in the exception and exception only permits Braille copies to be made in any case
Export to national organizations	No particular restriction found so could be possible by means not restricted by copyright given lack of provision for distribution in the exception
Export to international organisations	Same as for export to national organisations
Import by individuals	Could be permitted as no provision preventing personal imports found
Import by organisations	Could be permitted for Braille copies as no specific restriction on imports found although could be a problem for subsequent distribution given lack of provision in the exception. Unlikely to be possible for other accessible copies although as for Braille copies it may not be the actual act of importation that is illegal
Export/import of intermediate copies	No provision found. Unlikely to be legal
Exhaustion of rights	Right to publish is broad and covers distribution of both tangible copies and dissemination over the internet. Not clear when right is exhausted, but rental right provided for films, computer programs and sound recordings seems not to be exhausted <sup>180</sup>

*Reference: Law of the Republic of Indonesia Number 19 Year 2002 Regarding Copyright*

#### Ireland

Distribution to individuals	Exception permits “supply” which may include distribution by any means
Distribution to organisations	Distribution via other organisations could be limited to only those organizations that have been designated by the Minister to act under the exception, but even this may not be possible as exception specifies supply of a modified copy to a disabled person
Export to individuals	No particular restriction found. Probably permitted
Export to national organizations means	Unlikely to be legal as organisations outside Ireland are unlikely to be ones that have been designated by the Minister under the exception
Export to international organisations	Same as for export to national organisations

<sup>180</sup> See Articles 1, 2 and 49

Import by individuals	An accessible copy made elsewhere is likely to be an “infringing copy” as it is unlikely to have been made by a body able to make it in Ireland. However, it is not an infringement of copyright to import copies for private and domestic use so import of accessible copies by individuals is probably legal <sup>181</sup>
Import by organisations	Probably illegal given definition of “infringing copy” and that importation of “infringing copies” otherwise than for private and domestic use can be illegal
Export/import of intermediate copies	No provision found. Unlikely to be legal
Exhaustion of rights	The distribution right in a tangible copy is only exhausted after that copy has been put into circulation in an EEA State by or with the agreement of the copyright owner, but this does not exhaust the rental and lending rights <sup>182</sup>

*Reference: Copyright and Related Rights Act, 2000*

#### Italy

Distribution to individuals	Copies can be communicated to the public under the exception which is according to the definition of this restricted act communication by wire or wireless means using any means of diffusion at a distance, such as telegraphy, telephony, radio or television broadcasting <sup>183</sup> . Not clear what, if any, other distribution might be possible
Distribution to organisations	Probably same as for distribution direct to individuals
Export to individuals	No restriction found. Probably permitted
Export to national organizations	May be permitted
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted as no restriction on personal imports found
Import by organisations	Provision on importation seems to apply only to activity done for gainful intent and other than for personal use, or importation of more than 50 copies <sup>184</sup> , so importation of accessible copies made overseas by organizations may

<sup>181</sup> See Sections 44 and 45

<sup>182</sup> See Section 41

<sup>183</sup> See Article 16

<sup>184</sup> See Article 171ter

	be possible, but exception would then limit the way in which the copies can be distributed
Export/import of intermediate copies	No provision found. Could be legal subject to restrictions on importation indicated above
Exhaustion of rights	The distribution right in tangible copies is only exhausted after the first sale or other transfer of ownership of the copy in the EU made by the right holder or with his consent, but the rights of rental and lending in those copies are not exhausted, and communication to the public by wire or wireless means and the making of copies from transmissions delivered on demand are also specifically not acts which lead to exhaustion of rights <sup>185</sup>

*Reference: Law for the Protection of Copyright and Neighbouring Rights, as amended on 9 April 2003*

#### Japan

Distribution to individuals	The exception makes different provision depending on the type of work and/or the type of accessible copy so what is permitted is quite complicated – public transmission other than broadcasting and wire diffusion for Braille copies of works, lending for sound recordings of works and distribution of large print copies of school textbooks
Distribution to organisations	As well as the limitations on what distribution methods are possible dependent on material copied and type of accessible copy, for sound recordings only organisations designated by Cabinet Order can act so it seems unlikely that distribution other than through organisations so designated would be permitted
Export to individuals	No provision found but restrictions probably exist due to limits on distribution methods
Export to national organizations	Unlikely to be possible for sound recordings given limitation to activity by designated bodies; could be possible for other types of copy
Export to international organisations	Same as for export to national organisations
Import by individuals	Importation of copies that could not have been made in Japan because of any of the restrictions in the exception seem to amount

<sup>185</sup> See Articles 16, 17 and 18bis



	to an infringement even if imported by an individual <sup>186</sup>
Import by organisations	Same as for importation by individuals with the added restrictions regarding how any copies imported might be distributed and the specific limitation on distribution or making available of copies other than in accordance with the exception <sup>187</sup>
Export/import of intermediate copies	No provision found. Could possibly be permitted for some types of intermediate copy but will depend at least on what types of copies can be made in Japan and under what conditions.
Exhaustion of rights	The distribution right as far as it relates to the right of transfer in ownership in the original or a tangible copy of a work appear to be subject to international exhaustion, that is it is exhausted after the first transfer of ownership in that copy by or with the authorization of the copyright owner <sup>188</sup>

*Reference: Copyright Law as amended to 9 June 2004*

#### Kazakhstan

Distribution to individuals	Not clear what distribution methods are possible. Distribution right in tangible copies covers rental and public lending <sup>189</sup> so even lending may not be possible
Distribution to organisations	May be possible by some means, but subsequent distribution to visually impaired people not clear as distribution does not appear to be mentioned in exception
Export to individuals	Export of a copy of a work by a natural person for exclusively personal purposes seems to be generally permitted <sup>190</sup>
Export to national organizations	Provision specifically permitting export of copies for personal purposes suggests export to organisations unlikely to be legal
Export to international organisations	Same as for export to national organisations
Import by individuals	May be permitted

[Footnote continued from previous page]

<sup>186</sup> See Article 113

<sup>187</sup> See Article 49 that specifically limits uses for other purposes than permitted by exceptions of copies made under various exceptions

<sup>188</sup> See Article 26bis

<sup>189</sup> See Article 16(2)2

<sup>190</sup> See Article 27

Import by organisations	Unlikely to be permitted given right to control importation of copies of a work for the purposes of distribution <sup>191</sup>
Export/import of intermediate copies	No provision found. Unlikely to be legal
Exhaustion of rights	If tangible copies have been put into circulation in Kazakhstan by sale, then further distribution is not restricted other than by rental and public lending, but provision of broad importation right does not seem to give rise to exhaustion of rights until consent for first distribution in Kazakhstan has been given <sup>192</sup> .

*Reference: Law on Copyright and Neighbouring Rights as entered into force on 10 June 1996*

#### Republic of Korea

Distribution to individuals	Not clear what distribution methods are possible for the Braille copies that can be made. Distribution right in tangible copies covers lending both with and without payment <sup>193</sup> so even lending looks doubtful. Sound recordings can only be used at facilities as prescribed by Presidential Decree in any case so no distribution seems possible.
Distribution to organisations	May be possible by some means, but subsequent distribution to visually impaired people same as for distribution to individuals
Export to individuals	No particular restriction found. Could be permitted, although doubt arises because of lack of permission to distribute in the exception
Export to national organizations	No particular restriction found so could be possible by at least some means for Braille copies but not for other copies given restrictions in exception
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted
Import by organisations	Could be possible for Braille copies which could be made under the exception in Korea, but doubt arises due to absence of possibility of distribution under the exception. Importation of other types of accessible

<sup>191</sup> See Article 16(2)3

<sup>192</sup> See Article 16

<sup>193</sup> See Article 2(15)

	copies unlikely to be legal as seems to be infringement by provision regarding importation of copies that could not have been made in Korea without infringing copyright <sup>194</sup>
Export/import of intermediate copies	No provision found. Unlikely to be legal except possibly for intermediate copies for making Braille copies
Exhaustion of rights	The right of distribution in a tangible copy is exhausted by the first sale with the authorization of the copyright owner but the commercial rental right in commercial sound recordings is not exhausted <sup>195</sup>

*Reference: Copyright Act No. 3916 of 30 December 1989 as last amended by Act No. 5015 of 6 December 1995*

#### Kyrgyzstan

Distribution to individuals	Not clear what distribution methods are possible. Distribution right in tangible copies includes sale, rental etc <sup>196</sup> so lending may be possible as not clear whether this is a restricted act
Distribution to organisations	May be possible by some means, but subsequent distribution to visually impaired people not clear as distribution does not appear to be mentioned in exception
Export to individuals	Export of a copy of a work by a natural person for only personal purposes seems to be generally permitted <sup>197</sup>
Export to national organizations	Provision specifically permitting export of copies only for personal purposes suggests export to organisations unlikely to be legal
Export to international organisations	Same as for export to national organisations
Import by individuals	May be permitted
Import by organisations	Unlikely to be permitted given right to control importation of copies of a work for the purposes of distribution <sup>198</sup>
Export/import of intermediate copies	No provision found. Unlikely to be legal

[Footnote continued from previous page]

<sup>194</sup> See Article 92

<sup>195</sup> See Article 43

<sup>196</sup> See Article 16(2)

<sup>197</sup> See Article 19(2)

<sup>198</sup> See Article 16(2)

Exhaustion of rights	If tangible copies of lawfully published works have been put into circulation in Kyrgyzstan by sale, then further distribution of those copies is not restricted other than by rental where the work is a film, sound recording, computer program or a musical work, but provision of broad importation right does not seem to give rise to exhaustion of rights until consent for first distribution in Kyrgyzstan has been given <sup>199</sup> .
----------------------	---

*Reference: Law on Copyright and Related Rights of as amended on 6 November 1999*

Latvia

Distribution to individuals	Exception specifically permits distribution which covers any transfer of ownership of physical copies. As the economic rights list rental and public lending separately from distribution in the list of economic rights <sup>200</sup> , distribution may not, though, cover these
Distribution to organisations	Probably permitted as distribution direct to visually impaired person does not seem to be required so long as end beneficiary of the organization is such a person
Export to individuals	Probably permitted
Export to national organizations	May be permitted but not clear
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted
Import by organisations	May be permitted
Export/import of intermediate copies	Not clearly permitted but not clearly prevented either so could be possible
Exhaustion of rights	The first sale or transfer in some other manner of the right of ownership of a tangible copy of a work by the author or with his consent in a Member State of the EU exhausts the right of distribution in tangible copies <sup>201</sup> . As the rental and lending rights are provided separately it is assumed that this does not exhaust those rights.

*Reference: Copyright Law as amended on 22 April 2004*

---

<sup>199</sup> See Article 16

<sup>200</sup> See Section 15

<sup>201</sup> See Section 32

Lithuania

Distribution to individuals	Not clear what distribution methods are possible. Distribution right in tangible copies covers rental and lending <sup>202</sup> so even lending may not be possible
Distribution to organisations	May be possible by some means, but subsequent distribution to visually impaired people not clear as distribution does not appear to be mentioned in exception
Export to individuals	Distribution right also covers exporting so in the absence of specific provision even export to individuals looks unlikely to be permitted
Export to national organizations	Even less likely to be permitted
Export to international organisations	Same as for export to national organisations
Import by individuals	Distribution right also covers importing so in the absence of specific provision even import to individuals looks unlikely to be permitted
Import by organisations	Even less likely to be permitted
Export/import of intermediate copies	No provision found. Unlikely to be legal
Exhaustion of rights	First sale or other transfer of ownership of tangible copies by or with the consent of the author in Lithuania exhausts the distribution right, but not the rental and lending rights <sup>203</sup>

*Reference: Law on Copyright and Related Rights of 5 March 2003*

Macau

Distribution to individuals	Exception applying to published works permits reproduction and other uses so should be no problem with distribution to individuals
Distribution to organisations	Exception applying to published works does not seem to impose any limitation about distribution through other organisations other than must be non-profit making use
Export to individuals	Probably permitted
Export to national organizations	Could also be permitted
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted
Import by organisations	Could be permitted to the extent that copies could have been made in Macau
Export/import of intermediate copies	No provision found, but could be permitted to the extent that intermediate copies permit the making of copies that can be made in Macau

<sup>202</sup> See Article 15

<sup>203</sup> See Article 16

Exhaustion of rights	Distribution of tangible copies by or with the consent of the author exhausts the right other than in respect of commercial rental <sup>204</sup> . Lending does not appear to be covered by the distribution right in any case.
----------------------	--

*Reference: Decree-Law No. 43/99/M of 16 August 1999*

### Malaysia

Distribution to individuals	For recordings of television broadcasts distribution by issuing copies to the public is possible and for Braille copies any form of distribution might be permitted subject to the other conditions in the exception being met.
Distribution to organisations	For both types of material/copies, only certain organisations can act prescribed by the Minister or defined in the legislation so there would seem very limited opportunities for distribution via other organisations
Export to individuals	Probably permitted
Export to national organizations	Unlikely to be permitted given the restrictions on organisations which can act under the exceptions
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted
Import by organisations	Seems unlikely to be legal. Copies made in other countries are ones made without the consent of the copyright owner so could come within the scope of either infringement by importation for commercial dealing or to distribute to an extent that would affect prejudicially the owner of copyright, or the offence of importing an infringing copy into Malaysia otherwise than for private and domestic use <sup>205</sup>
Export/import of intermediate copies	No provision found. Unlikely to be legal

<sup>204</sup> See Article 58

<sup>205</sup> See Sections 36, 41 and definition of infringing copy in section 3

Exhaustion of rights	Distribution right only refers to right to put copies into circulation not previously put into circulation in Malaysia and not any subsequent distribution or importation of those copies, but commercial rental right is provided separately and so presumably not exhausted in the same way <sup>206</sup> . There is no lending right.
----------------------	---

*Reference: Copyright Act 1987 as amended on 15 August 2000*

Republic of Moldova

Distribution to individuals	Not clear what distribution methods are possible. Distribution right in tangible copies does not seem to cover lending (but does cover commercial rental) so lending seems possible
Distribution to organisations	May be possible by some means, but subsequent distribution to visually impaired people not clear as distribution does not appear to be mentioned in exception
Export to individuals	Exception does not seem to permit distribution by export, but there is provision that specifically permits export of a copy of a work by a natural person for his own exclusive use <sup>207</sup>
Export to national organizations	No particular restriction found but likely to be very doubtful given that only export by a natural person for his use has been specifically provided for
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted
Import by organisations	Unlikely to be permitted as importing copies of the work for the purposes of distribution, including copies made with the authorization of the author or other holder of copyright, is one of the acts restricted by copyright <sup>208</sup>
Export/import of intermediate copies	No provision found. Unlikely to be legal

<sup>206</sup> See Section 13

<sup>207</sup> See Article 22

<sup>208</sup> See Article 10(2)(c)

Exhaustion of rights	Not clear when distribution rights are exhausted but the right of commercial rental in certain types of work is clearly independent of the right of ownership of a tangible copy and so is presumably not exhausted <sup>209</sup>
----------------------	--

*Reference: Law of the Republic of Moldova on Copyright and Neighbouring Rights as amended on 28 July 2004*

#### Mongolia

Distribution to individuals	Not clear what distribution methods are possible. Distribution right in tangible copies does not seem to cover lending (but a commercial rental does exist) so lending seems possible <sup>210</sup>
Distribution to organisations	May be possible by some means, but subsequent distribution to visually impaired people seems unlikely as distribution does not appear to be mentioned in exception
Export to individuals	No particular restriction found. Could be permitted, although doubt exists because of lack of permission to distribute in the exception
Export to national organizations	No particular restriction found so could be possible by means not restricted by copyright given lack of provision for distribution in the exception
Export to international organisations	Same as for export to national organisations
Import by individuals	Could be permitted as no provision preventing personal imports found
Import by organisations	Could be permitted but likely to be problems with subsequent distribution of imported copies given lack of provision for distribution in the exception
Export/import of intermediate copies	No provision found. Unlikely to be legal
Exhaustion of rights	Not clear when distribution right involving sale or other transfer of ownership is exhausted but the right of commercial rental is separately provided so may not be exhausted

*Reference: Law of Mongolia on Copyright as amended on 21 May 1999*

<sup>209</sup> See Article 10(3)

<sup>210</sup> See Article 9



Netherlands

Distribution to individuals	Copies can be published under the exception but not clear what distribution methods can be used
Distribution to organisations	May be possible by some means, but subsequent distribution to visually impaired people limited as for distribution to individuals
Export to individuals	May be permitted if covered by “publication”
Export to national organizations	May be permitted but will depend in part what is covered by “publication”
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted
Import by organisations	May be permitted if subsequent distribution covered by “publication”
Export/import of intermediate copies	No provision found. Probably not permitted
Exhaustion of rights	Distribution right in a tangible copy is exhausted by the first transfer of ownership of that copy in the EEA by or with the consent of the copyright owner, but the rental and lending rights are not exhausted <sup>211</sup>

*Reference: Copyright Act 1912 as amended on 20 January 2006*

New Zealand

Distribution to individuals	Does not appear to be any limitation on the distribution method used to provide the end beneficiaries with accessible copies of printed material so long as other conditions in the exception are complied with. Also, non-commercial lending for no charge does not appear to be a restricted act in any case <sup>212</sup> . For accessible copies of television broadcasts and cable programmes seems to be limited to distribution of tangible copies.
Distribution to organisations	Only bodies prescribed by regulations can undertake activity under the exceptions, but distribution as limited for distribution direct to individuals may be possible via such bodies
Export to individuals	Probably permitted
Export to national organizations	Probably not permitted as organizations in other countries are unlikely to have been prescribed by regulations

<sup>211</sup> See Article 12b

<sup>212</sup> See definition of “rental” in Section 2

Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted as importation for private and domestic use is not an infringement of copyright <sup>213</sup>
Import by organisations	Probably legal where importation is by a body prescribed by regulations in New Zealand and the copy was made under an exception overseas and is of a type that could have been made in New Zealand <sup>214</sup>
Export/import of intermediate copies	No provision found but could be legal if the copy was made legally overseas and could have been made in New Zealand
Exhaustion of rights	Legal distribution of tangible copies either in New Zealand or overseas seems to exhaust the right other than in respect of rental of sound recordings, films and computer programs <sup>215</sup> . Lending for no charge does not appear to be covered by the distribution right in any case.

*Reference: Copyright Act 1994 consolidated up to Amendment 2005 No. 33*

#### Nicaragua

Distribution to individuals	Not clear what distribution methods are possible
Distribution to organisations	May be possible by some means, but subsequent distribution to visually impaired people not clear as distribution does not appear to be mentioned in exception
Export to individuals	No particular restriction found. Could be permitted, although doubt exists because of lack of permission to distribute in the exception
Export to national organizations	No particular restriction found so could be possible by means not restricted by copyright given lack of provision for distribution in the exception
Export to international organisations	Same as for export to national organisations
Import by individuals	May not be permitted as importation is one of the activities covered by the distribution right <sup>216</sup>
Import by organisations	Probably not permitted and also likely to be

<sup>213</sup> See Section 35

<sup>214</sup> See Sections 35 and 12 for infringement by importation and meaning of infringing copy

<sup>215</sup> See Section 9

<sup>216</sup> See Articles 23 and 2.6

	problems with subsequent distribution of imported copies given lack of provision for distribution in the exception
Export/import of intermediate copies	No provision found. Unlikely to be legal
Exhaustion of rights	Not clear when distribution right is exhausted

*Reference: Law on Copyright and Related Rights as entered into force on 31 August 1999*

## Nigeria

Distribution to individuals	Although exception only permits reproduction, the restricted act of distribution seems only to apply to commercial activity and communication to the public by electronic transmission other than by broadcasting does not seem to be a restricted act <sup>217</sup> , so distribution in a variety of ways seems possible
Distribution to organisations	For Braille copies, distribution via organizations as indicated above for distribution direct to individuals seems to be possible. For sound recordings, organizations that can act must be approved by the Government
Export to individuals	Probably permitted
Export to national organizations	Probably permitted for Braille copies. Could be restricted for sound recordings given requirement for organizations to be approved
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted for copies that could have been made in Nigeria. Less clear for copies that could not have been made in Nigeria as, although copyright appears to be infringed by importation of these and there is a copyright offence by importation, importation of infringing copies by a person for private and domestic use does not seem to be capable of being prohibited <sup>218</sup>
Import by organisations	Probably permitted for Braille copies that could have been made in Nigeria and for sound recordings so long as importation is by organizations approved in Nigeria
Export/import of intermediate copies	No provision found. Most likely to be possible for intermediate copies for making Braille copies

<sup>217</sup> See Section 5

<sup>218</sup> See Sections 14, 18 and 36

Exhaustion of rights	Not clear when the distribution right is exhausted
----------------------	--

*Reference: Copyright Act (Consolidation Ch. 68) 1988 (1999) No. 47 (No. 42)*

Norway

Distribution to individuals	Not clear what distribution methods are permissible as exception does not seem to provide for distribution
Distribution to organisations	May be possible by some means, and to organizations permitted to act where relevant, but subsequent distribution to visually impaired people not clear as for distribution to individuals
Export to individuals	May not be permitted given exception does not seem to cover distribution
Export to national organizations	Could be possible by means not restricted by copyright for some types of copy, but difficulty where exception only permits certain organizations to act
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted
Import by organisations	For copies of a type that could have been made in Norway, importation could be a problem because of lack of clarity about what distribution is possible with copies imported, and, for copies that can only be made by organisations and libraries specified by the King, could be a problem because the body making them was not so specified. For copies made in circumstances, or of a type, not possible in Norway, there could in addition be a problem because they are being imported with the intention of making them available to the public contrary to provisions applying when any copies of a work have been produced abroad under such circumstances that a similar production in Norway would have been unlawful <sup>219</sup>
Export/import of intermediate copies	No provision found. Unlikely to be permitted

---

<sup>219</sup> See Section 54

Exhaustion of rights	The distribution right in a tangible copy, other than rental and lending, is exhausted after the first sale by or with the consent of the author in the EEA <sup>220</sup>
----------------------	--

*Reference: Act No. 2 of 12 May 1961 relating to Copyright in Literary, Scientific and Artistic Works, Etc, as amended up until 17 June 2005*

#### Panama

Distribution to individuals	Distribution of copies does not seem to be permitted by any means as exception does not even permit making of accessible copies
Distribution to organisations	Same as for distribution to individuals
Export to individuals	Unlikely to be permitted given exception does not appear to permit any distribution of copies
Export to national organizations	Same as for export to individuals
Export to international organisations	Same as for export to individuals
Import by individuals	Probably permitted
Import by organisations	Importation itself may not infringe rights but exception does not appear to permit any distribution of copies so it does not seem possible to distribute copies made legally overseas
Export/import of intermediate copies	No provision found. Unlikely to be permitted
Exhaustion of rights	Distribution right in a tangible copy is exhausted after first sale but the rental and communication to the public rights are not exhausted <sup>221</sup>

*Reference: Law No. 15 of 8 August 1994*

#### Paraguay

Distribution to individuals	Not clear what distribution methods are possible
Distribution to organisations	May be possible by some means, but subsequent distribution to visually impaired people not clear as distribution does not appear to be mentioned in exception
Export to individuals	No particular restriction found. Could be permitted, although doubt exists because of lack of permission to distribute in the exception

<sup>220</sup> See Section 19

<sup>221</sup> See Article 40

Export to national organizations	No particular restriction found so could be possible by means not restricted by copyright given lack of provision for distribution in the exception
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted as, although importation is one of the acts restricted by copyright and is specifically applied to imports into Paraguay regardless of what has been authorized in the country of origin and is also applied to electronic transmission of the work, it does not apply to a copy for personal use, although it may be that this exception to the right only applies to a copy in personal baggage <sup>222</sup>
Import by organisations	Probably not permitted and also likely to be problems with subsequent distribution of imported copies given lack of provision for distribution in the exception
Export/import of intermediate copies	No provision found. Unlikely to be legal
Exhaustion of rights	Distribution right in a tangible copy is exhausted by the first sale of that copy authorized by the copyright owner, but the rights to control communication to the public, renting and public lending are not exhausted <sup>223</sup> . However, it is not clear when the importation right, which is provided separately, is exhausted

*Reference: Law No. 1328/98 on Copyright and Related Rights*

#### Peru

Distribution to individuals	Not clear what distribution methods are possible
Distribution to organisations	May be possible by some means, but subsequent distribution to visually impaired people not clear as distribution does not appear to be mentioned in exception
Export to individuals	No particular restriction found. Could be permitted, although doubt exists because of lack of permission to distribute in the exception
Export to national organizations	No particular restriction found so could be possible by means not restricted by copyright

<sup>222</sup> See Articles 25 and 29

<sup>223</sup> See Article 28

	given lack of provision for distribution in the exception
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted as, although importation is one of the acts restricted by copyright and is specifically applied to imports of copies into Peru which have been reproduced without the right holder's authorization, which would be the case for copies made overseas under an exception, and is also applied to electronic transmission of the work, it does not apply to a copy for personal use, although it may be that this exception to the right only applies to a copy in personal baggage <sup>224</sup>
Import by organisations	Probably not permitted and also likely to be problems with subsequent distribution of imported copies given lack of provision for distribution in the exception
Export/import of intermediate copies	No provision found. Unlikely to be legal
Exhaustion of rights	Distribution right in a tangible copy is exhausted by the first sale or other transfer of ownership of that copy authorized by the copyright owner, but the rights to control communication to the public, renting and public lending are not exhausted <sup>225</sup> . However, it is not clear when the importation right, which is provided separately, is exhausted

*Reference: Copyright Act - Legislative Decree No. 822 of 23 April 1996*

#### Poland

Distribution to individuals	Distribution by any means seems to be permitted so long as other conditions in the exception are met
Distribution to organisations	Distribution via other organisations seems possible
Export to individuals	Probably permitted
Export to national organizations	May be more difficult where export is not direct to a disabled person
Export to international organisations	Same as for export to national organisation
Import by individuals	Probably permitted
Import by organisations	May also be permitted
Export/import of intermediate copies	No provision found but may be possible

<sup>224</sup> See Articles 31 and 35

<sup>225</sup> See Article 34

Exhaustion of rights	Distribution of a tangible copy in the EEA exhausts the right other than with respect to renting or lending <sup>226</sup>
----------------------	--

*Reference: Act of 4 February 1994 on Copyright and Related Rights, as amended up to 5 February 2005*

#### Portugal

Distribution to individuals	Distribution by any means seems to be permitted so long as other conditions in the exception are met
Distribution to organisations	Distribution via other organisations seems possible
Export to individuals	Probably permitted
Export to national organizations	May be more difficult where export is not direct to a disabled person
Export to international organisations	Same as for export to national organisation
Import by individuals	Probably permitted
Import by organisations	May also be permitted
Export/import of intermediate copies	No provision found but may be possible
Exhaustion of rights	Distribution of a tangible copy in the EU by sale or other transfer of ownership exhausts the right for that copy <sup>227</sup>

*Reference: Copyright and Related Rights Code, as amended on 24 August 2004*

#### Russian Federation

Distribution to individuals	Not clear what distribution methods are possible. Distribution right in tangible copies does not seem to cover lending (but does cover commercial rental) so lending seems possible
Distribution to organisations	May be possible by some means, but subsequent distribution to visually impaired people not clear as distribution does not appear to be mentioned in exception
Export to individuals	No particular restriction found. Could be permitted, although doubt exists because of lack of permission to distribute in the exception
Export to national organizations	No particular restriction found so could be possible by means not restricted by copyright

<sup>226</sup> See Article 51

<sup>227</sup> See Article 68(5)



	given lack of provision for distribution in the exception
Export to international organisations	Same as for export to national organisations
Import by individuals	Could be permitted as no provision preventing personal imports found
Import by organisations	Given specific right to prohibit imports of copies for the purposes of distribution when made with or without permission of the right holder, importation of accessible copies by organisations unlikely to be legal <sup>228</sup>
Export/import of intermediate copies	No provision found. Unlikely to be legal
Exhaustion of rights	Subsequent distribution, other than rental, of tangible copies which have been published and lawfully put into circulation by sale is permitted, but this does not seem to apply to copies made overseas as there is a specific right to authorise importation for the purposes of distribution, including copies made with the authorisation of the right holder <sup>229</sup>

*Reference: Law of the Russian Federation No. 5351 of 9 July 1993 on Copyright and Neighbouring Rights, as amended on 20 July 2004*

#### Singapore

Distribution to individuals	Exception does not seem to provide for distribution, but once published, distribution of tangible copies does not appear to be an act restricted by copyright in any case, other than rental of sound recordings and computer programs, so lending and permanent transfer of copies seems to be possible. Communication to the public by electronic transmission is a restricted act so it is doubtful that distribution this way is permitted <sup>230</sup>
Distribution to organisations	So long as organization is of the type able to act under the exception, distribution via other organizations seems to be possible
Export to individuals	Probably permitted
Export to national organizations	Could be permitted by the distribution methods indicated above for distribution to individuals as those acts are not restricted by copyright
Export to international organisations	Same as for export to national organisations

<sup>228</sup> See Article 16

<sup>229</sup> See Article 16

<sup>230</sup> See Section 24, for definition of publication, and Section 26, regarding acts restricted by copyright

Import by individuals	Probably permitted
Import by organisations	May be permitted so long as not done to an extent that would affect prejudicially the owner of the copyright. Copies made under exceptions overseas have not been made with the copyright owner's consent and copyright is infringed by importation of copies for the purposes of distribution where, amongst other things, the copyright owner would be affected prejudicially and where the importer knows, or ought reasonably to know, that the making of the article was carried out without the consent of the owner of the copyright <sup>231</sup>
Export/import of intermediate copies	No provision found. May be permitted in some circumstances
Exhaustion of rights	So long as the work has been published as determined by the meaning of this in Singapore, then distribution of tangible copies seems to be unrestricted, other than rental of sound recordings and computer programs

*Reference: Copyright Act (Chapter 63)*

#### Slovakia

Distribution to individuals	Any distribution method other than one that involves sale seems to be possible, including communication to the public by electronic transmission
Distribution to organisations	There does not appear to be any restriction on using the methods possible for distribution to individuals to distribute via another organisation
Export to individuals	Probably permitted
Export to national organizations	May be possible
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted
Import by organisations	May be a problem as the exception may not permit copies that have been made overseas to be distributed in that it may be limited only to distribution of copies made under the exception in Slovakia
Export/import of intermediate copies	No provision found. Probably not permitted

---

<sup>231</sup> See Section 32

Exhaustion of rights	Lawful first sale or other transfer of ownership of a copy in Slovakia exhausts the right of distribution in tangible copies but not the right in subsequent rental or lending <sup>232</sup>
----------------------	---

*Reference: Copyright Act, as entered into force on 1 January 2004*

#### Slovenia

Distribution to individuals	Distribution is specifically covered by the exception, but is probably limited to sale or other transfer of ownership of tangible copies given that other activities are provided separately in the list of economic rights <sup>233</sup>
Distribution to organisations	Probably permitted
Export to individuals	Probably permitted as sale or other transfer of ownership
Export to national organizations	May be permitted so long as within the constraints of the definition of “distribution” or by means not restricted by copyright
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted
Import by organisations	May be permitted so long as subsequent use within the constraints of the definition of “distribution”
Export/import of intermediate copies	No provision found. May be permitted within the constraints of the definition of “distribution”
Exhaustion of rights	Right of distribution in a tangible copy is exhausted after the first sale or other transfer of ownership of the copy in the EU by or with the consent of the author, but this does not apply to the rental and public lending rights which are provided separately <sup>234</sup>

*Reference: Copyright and Related Rights Act, as amended on 11 May 2004*

#### Spain

Distribution to individuals	Not clear what distribution methods are possible
Distribution to organisations	May be possible by some means, but subsequent distribution to visually impaired

<sup>232</sup> See Sections 23 and 18

<sup>233</sup> See economic rights in Article 22 and definition of right of distribution in Article 24

<sup>234</sup> See Articles 43, 24, 25 and 36

	people not clear as distribution does not appear to be mentioned in exception
Export to individuals	No particular restriction found. Could be permitted, although doubt exists because of lack of permission to distribute in the exception
Export to national organizations	No particular restriction found so could be possible by means not restricted by copyright given lack of provision for distribution in the exception
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted
Import by organisations	Likely to be problems with subsequent distribution of imported copies given lack of provision for distribution in the exception
Export/import of intermediate copies	No provision found. Unlikely to be legal
Exhaustion of rights	Right of distribution of a tangible copy by sale is exhausted by the first sale of that copy by or with the consent of the right holder, but rental and public lending rights seem not to be exhausted <sup>235</sup>

*Reference: Royal Legislative Decree 1/1996, as amended on 7 January 2000*

#### Sweden

Distribution to individuals	All forms of distribution, including communication to the public by electronic transmission, seem possible
Distribution to organisations	For sound recordings, seems to be limited to organisations as decided by the Government and for other types of copy seems to be similarly limited where distribution is via communication to the public via electronic transmission
Export to individuals	Probably permitted
Export to national organizations	More doubtful, especially for formats and/or distribution methods limited to organizations as decided by the Government
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted
Import by organisations	More doubtful as not clear that an organization can distribute copies it has not made
Export/import of intermediate copies	No provision found. Probably not permitted

<sup>235</sup> See Article 19

Exhaustion of rights	Right of distribution in a tangible copy is exhausted after the first sale or other transfer of ownership of the copy in the EEA by or with the consent of the author, but this does not apply to the rental and lending rights <sup>236</sup>
----------------------	--

*Reference: Act on Copyright in Literary and Artistic Works, as amended up to 1 July 2005*

#### Ukraine

Distribution to individuals	Some form of distribution seems to be permitted, but it is not entirely clear what would and what would not be permitted. The acts restricted by copyright include repeated disclosure of a work if carried out by an organization other than that which carried out the first disclosure/publication as well as distribution, rental (but probably not non-commercial lending) and communication to the public <sup>237</sup> and it is not clear which of these activities is covered by the exception
Distribution to organisations	Probably permitted by at least some means
Export to individuals	Possibly permitted by at least some methods but same doubt as for distribution to individuals
Export to national organizations	Probably permitted by at least some means
Export to international organisations	Same as for export to national organisations
Import by individuals	Seems to be illegal as importation is an act restricted by copyright and so an infringement if carried out without authorization from the copyright owner <sup>238</sup>
Import by organisations	Same as for import by individuals
Export/import of intermediate copies	No provision found. Import likely to be illegal; export in certain circumstances might be possible
Exhaustion of rights	Distribution right in a tangible copy of a lawfully published work is exhausted after being put into circulation in Ukraine by its first sale, but the rental right is not exhausted <sup>239</sup>

*Reference: Law on Copyright and Related Rights of 2001*

<sup>236</sup> See Article 19

<sup>237</sup> See Article 15 and definitions in Article 1

<sup>238</sup> See Article 15.3(11) and Article 50

<sup>239</sup> See Article 15.7

Uzbekistan

Distribution to individuals	Not clear what distribution methods are possible.
Distribution to organisations	May be possible by some means, but subsequent distribution to visually impaired people not clear as distribution does not appear to be mentioned in exception
Export to individuals	No particular restriction found. Could be permitted, although doubt exists because of lack of permission to distribute in the exception
Export to national organizations	No particular restriction found so could be possible by means not restricted by copyright given lack of provision for distribution in the exception
Export to international organisations	Same as for export to national organisations
Import by individuals	Could be a problem as importing a copy appears to be part of the restricted act of distribution <sup>240</sup> , but exhaustion of the distribution right, which covers importation, does not appear to apply only to distribution of copies made with the consent of the author so the right might have been exhausted in respect of copies made and distributed lawfully under exceptions in other countries so that importation is legal
Import by organisations	Same as for importation by individuals
Export/import of intermediate copies	No provision found. Imports may be legal if copies can be lawfully exported from the other country. More doubtful for exports
Exhaustion of rights	Where the ownership of a copy has been transferred lawfully, its further distribution is not restricted, which seems to provide for international exhaustion as there is no restriction regarding the country in which the lawful transfer took place <sup>241</sup>

*Reference: Law of the Republic Of Uzbekistan of 30 August 30 1996 N 272-I on Copyright and Neighbouring Rights as amended to 15 December 2000*

<sup>240</sup> See Article 22

<sup>241</sup> See Article 22

United Kingdom

Distribution to individuals	Supply to individuals possible which clearly includes lending and could encompass permanent transfer of ownership of tangible copies and communication to the public by electronic transmission
Distribution to organisations	Distribution via other organisations seems possible so long as they are of the type specified in the exception
Export to individuals	Probably permitted
Export to national organizations	Less clear whether permitted but may be possible if organization is of the type specified in the exception
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted as copies made abroad may be “infringing copies” in the UK where they have been made by bodies not able to legally make them in the UK, but importation by a person of even such a copy is not an infringement if it is imported by him for his private and domestic use <sup>242</sup>
Import by organisations	Would be a problem where the copy is an “infringing copy” and the importer knows or has reason to believe that this is the case
Export/import of intermediate copies	Provision permitting loan or transfer of intermediate copies would probably not permit their export as a body in another country is not acting in the UK and so does not have the required entitlement to make accessible copies under the UK exception <sup>243</sup> . Importation only seems possible where the copy is not an “infringing copy”
Exhaustion of rights	Distribution right in a tangible copy is exhausted after the copy has been put into circulation for the first time in the EEA by or with the consent of the copyright owner, but the rental and lending rights are not exhausted <sup>244</sup>

*Reference: Copyright, Designs and Patents Act 1988 as amended up to 31 December 2003*

<sup>242</sup> See Sections 27 and 22

<sup>243</sup> See Section 31C

<sup>244</sup> See Sections 18 and 18A

United States of America

Distribution to individuals	Distribution is specifically covered by the exception but appears to be limited to distribution, including by lending, of tangible copies as this is how the distribution right is defined <sup>245</sup>
Distribution to organisations	Probably the same as for distribution to individuals so long as via an organization of the type authorized to act under the exception
Export to individuals	Probably permitted but only for copies in the special formats permitted under the exception
Export to national organizations	Less likely to be permitted given restrictions on organizations which can act under the exception
Export to international organisations	Same as for export to national organisations
Import by individuals	Probably permitted as there is an exception to the infringement of the distribution right by importation of copies acquired outside the United States for copies imported for the private use of the importer or in a person's personal baggage <sup>246</sup>
Import by organisations	May be possible for Braille copies and importation of a very small number of copies for loan, but provision concerning when copyright is infringed by importation and when importation of copies made other than in the United States and Canada is prohibited is complicated <sup>247</sup>
Export/import of intermediate copies	No provision found. Unlikely to be permitted
Exhaustion of rights	The owner, or a person authorized by the owner, of a lawfully made tangible copy can sell or otherwise dispose of that copy without the authorization of the copyright owner, but the commercial rental right in a sound recording (including any recorded musical work) or a computer program is not exhausted and a person does not become an owner entitled to sell or otherwise dispose of a copy without the authorization of the copyright owner when they only rent, lease or loan the copy. Also, the infringement of copyright by importation appears to mean that in general the distribution right is only exhausted for a

<sup>245</sup> See the list of exclusive rights in Section 106

<sup>246</sup> See Section 602

<sup>247</sup> See Sections 602 and 601



	copy where the right has been exercised in respect of that copy in the United States <sup>248</sup>
--	---

*Reference: United States Code – Title 17, as amended to 3 December 2004*

---

[Footnote continued from previous page]

<sup>248</sup> See Sections 109 and 602