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SCOPING STUDY ON ACCESS TO COPYRIGHT PROTECTED WORKS BY PERSONS WITH DISABILITIES

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EXECUTIVE SUMMARY

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

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

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

MEMBER STATE QUESTIONNAIRE

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

As of 18 December 2017, responses to the questionnaire were submitted by twenty-five states: Four member states did not authorize the authors of the study to make their responses publicly available therefore specific references to their responses have been omitted from the study. [1] The findings of their responses to the questionnaire are summarized below.

ADDRESSING ACCESSIBILITY IN NATIONAL COPYRIGHT STATUTES

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

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

are in the midst of the process (or have yet to begin the process) of adopting legislation to implement the Marrakesh treaty.

SPECIFIC ACTS

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

- All responding states with responsive statutes, covered **reproduction** in their exceptions and limitations.
- Many states covered **distribution.**
- Some states covered **communication to the public** or **making available to the public**.
- Roughly half of the states covered **adaptation.**
- Several states covered **importation, exportation, or circumvention of technological protection measures**.

SPECIFIC DISABILITIES

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

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

CATEGORIES OF COPYRIGHTED WORKS

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

- Some states applied their exceptions and limitations to **all types of works;**
- Other states covered **written works**.[2]
- Several states covered **other categories of works**, such as audiovisual works, artistic works, and scientific works.

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

CONDITIONS FOR USE

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

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

IMPEDIMENTS TO THE USE OF EXCEPTIONS AND LIMITATIONS

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

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

INTERSECTION BETWEEN COPYRIGHT LIMITATIONS AND EXCEPTIONS AND RELATED DISABILITY LAWS

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

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DISCUSSION

I. INTRODUCTION

A human-rights based conception of disability emphasizes contextual barriers that can be addressed to improve access for people with disabilities. A human-rights based conception of disability understands disability as the result of an interaction between an impairment and societal barriers or factors that results in a disabled person being unable to participate equally in society.[3]

Intellectual property laws, specifically copyright and related rights, are one factor that may intersect with the ability of people with disabilities to access informational, cultural, scientific and related materials on equal terms. Access to content is usually provided by some type of assistive technology that converts or enhances the material. Transformations of material into other mediums is required to make content accessible for people with disabilities and these transformations implicate the exclusive rights granted to copyright and related rights holders.

As these new technologies and others on the horizon begin to materialize, technology has the potential to increase access to copyrighted materials and those protected by related rights ("protected works"). However, it is necessary to think prospectively about how copyright and related rights law can flexibly facilitate access for people with disabilities.

During the thirtieth session of the Standing Committee on Copyright and Related Rights (SCCR), the Members States of the SCCR requested that the WIPO Secretariat commission a scoping study on limitations and exceptions for persons with other disabilities not currently covered by the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled (VIP Treaty).[4] Questionnaires were distributed to the member states in April 2017. This report presents the results of the member state questionnaire to inform a discussion of the current state of national legal frameworks covering the topic of access by people with disabilities to works that are protected by copyright and related rights.

First, this study identifies *relevant categories of people with disabilities* who are likely to face challenges accessing works protected by copyright and related rights ("protected works or materials"). These categories include: people who are blind or visually impaired, people who are deaf or hard of hearing, people who are print disabled, people who are DeafBlind or otherwise blind and hard of hearing or deaf and visually impaired, people with physical and motor disabilities, and people with cognitive and intellectual disabilities.[5]

Second, this study identifies *relevant categories of protected works* where accessibility challenges may arise. These categories include dramatic and non-dramatic literary works, including web content and software, pictorial/graphical/sculptural works, sound recordings, and audiovisual content.

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[3] *See* section Categories of Disabilities, *infra*.

[4] WIPO Standing Committee on Copyright and Related Rights, Secretariat's Draft Report 30th Session, 99 (Sep. 14th, 2015).

[5] We note that the preferred nomenclature to refer to categories of disabilities may vary by country.

Third, this study identifies *existing and likely future accessibility techniques and technologies* that can be used to transform the categories of protected works to be accessible to people with disabilities.

Fourth, this study analyzes *whether self-help or third-party efforts* to engage in those techniques and use those technologies may implicate exclusive rights in the categories of protected works. This study does not address implications already covered by the VIP Treaty and techniques/technologies that do not conceivably implicate copyright and related rights.

Finally, the study analyzes the extent to which member states have harmonized those laws relating to copyright and related rights protection implications, including through the use of exceptions and limitations. It is also noted that licensing initiatives have to some extent, also facilitated access. To assist in the study, member states received a short questionnaire regarding these laws, which asked member states to provide brief qualitative information about the provisions of their copyright and related rights laws together with their accessibility laws. Information from this survey has been analyzed and incorporated into this study to facilitate the further discussion of disability and protected works.

CATEGORIES OF DISABILITIES

The United Nations Convention on the Rights of Persons with Disabilities (CRPD), adopted in December of 2006, defines people with disabilities as "those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."[6] The World Health Organization (WHO) estimates that approximately 15% of the world's population or about 1 billion people are currently living with a disability.[7] Disabilities disproportionately affect those in developing countries.[8] Furthermore, the WHO claims that the rate of disability is on the rise.[9]

The preamble to the CRPD conceptualizes disability broadly:

> [D]isability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.[10]

This human rights based conception of disability is a shift from medical models that are viewed as a limitation of the rights of people with disabilities and which bars their full participation in society.[11] The WHO created the International Classification of Functioning,

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[6] Convention on the Rights of Persons with Disabilities, prov. 1, Mar. 30, 2007, 2515 U.N.T.S. 3 [hereinafter CRPD].

[7] World Health Organization, Disability and Health Fact Sheet (Nov. 2016), http://www.who.int/mediacentre/factsheets/fs352/en/.

[8] *Id*.

[9] *Id.*

[10] CRPD, supra note 1, preamble.

[11] See Marit Rasmussen and Oliver Lewis, Introductory Note to the United Nations Convention on the Rights of Persons with Disabilities, 46 I.L.M. 441, (2007).

Disability and Health (ICF) endorsed in 2001 as "the international standard to describe and measure health and disability."[12] This tool synthesizes both the medical and social model of disability into what the WHO refers to as the biopsychosocial model, which defines disabilities based on biological, individual, and social contexts.[13] This model recognizes six domains of functioning: cognition, mobility, self-care, getting along, life activities, and participation, and analyzes a person's or population's disability level.[14] This human rights based conception of disability emphasizes contextual barriers that can be addressed to improve access for people with disabilities.

Provision 30(3) of the CRPD directs that "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."[15] The VIP Treaty implemented this directive by explicitly addressing the accessibility of copyrighted material by people with print disabilities. In addition to the CRPD's provision for access to cultural materials, people with disabilities' access rights to educational, scientific and informational materials are protected by several other instruments. For example, Article 26(1) of the 1948 UN Universal Declaration of Human Rights asserts that "everyone has the right to education".

While each person with a disability faces unique challenges, it is useful to define several distinct, broad categories of disability in order to recognize common needs of these populations. This study has identified multiple categories of disabilities that are affected by access to copyrighted materials.

- *Aural:* People who are deaf or hard of hearing face barriers to accessing audio or audiovisual materials.
- *Visual:* People who are deafblind or otherwise blind and hard of hearing or deaf and visually impaired face challenges to accessing visual, audio, and audiovisual works.
- *Cognitive:* People with cognitive and intellectual disabilities face a spectrum of challenges to accessing a range of protected media including visual, audio, and audiovisual works
- *Physical:* People with physical or motor disabilities are unable to interact physically with the copyrighted material, preventing them from accessing its content including visual, audio, and audiovisual works.
- *Multiple:* People with multiple disabilities face unique challenges as different or multiple transformations are required to access content.

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[12] World Health Organization*, International Classification of Functioning, Disability and Health (ICF)*, http://www.who.int/classifications/icf/en/ (last visited Feb. 1, 2017).

[13] World Health Organization*, Towards a Common Language for Functioning, Disability and Health: ICF The International Classification of Functioning, Disability and Health*, 8-9, 2002, http://www.who.int/classifications/icf/icfbeginnersguide.pdf?ua=1.

[14] *Id*.

[15] CRPD, Supra note 1, prov. 30(3).

Beneficiaries of the Marrakesh VIP Treaty are considered in the scope of this study for works not covered under the treaty. Those protected by the definition of the Marrakesh VIP Treaty can benefit from access to protected materials other than print. Print is only one segment of the cultural materials that a person with disabilities accesses to participate equally in their communities. People who qualify as beneficiaries under the Marrakesh VIP Treaty may still be prevented by their disabilities and those disabilities' interaction with the law from accessing other protected materials. Concurrently, works in the form of text are also considered for people with disabilities not covered by the definition of the Marrakesh treaty.

CATEGORIES OF PROTECTED WORKS AND DISABILITIES

Copyright and related rights protection in each member state's jurisdiction is generally set out in national legislation. However, national legislation is informed by a country's commitments to minimum levels of protection as agreed to in international treaties that bind it.[16] WIPO-administered international agreements that provide for copyright are the Berne Convention for the Protection of Literary and Artistic Works (Berne),[17] the Agreement on Trade-related aspects of Intellectual Property Rights (TRIPS)[18] and the WIPO Copyright Treaty (WCT).[19] The WCT includes anti-circumvention provisions which support right-holders' attempts to provide additional protection of protected materials by technological protection mechanisms. Treaties providing for the protection of related rights include International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) 1961,[20], the TRIPS Agreement 1995,[21] the WIPO Performances and Phonograms Treaty (WPPT) 2002[22] and the Beijing Treaty on Audiovisual Performances (Beijing Treaty) 2012 (not yet in force)[23].

National copyright law protects specific categories of original works that are reduced to material format:

- Literary works,
- Musical works;
- Artistic works;
- Dramatic works;

[16] Some countries may treat treaties as self-executing. *See* member state Reponses in Table 6 Appendix.

[17] Berne Convention for the Protection of Literary and Artistic Works, 9 September 1886, as amended 28 September 1979.1161 UNTS 3 (Berne Convention).

[18] Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods, adopted 15 December 1993, entered into force 1 January 1995, (1994) 33 ILM 81 (TRIPS).

[19] WIPO Copyright Treaty, adopted 20 December 1996, entered into force on March 6 2002. 36 ILM 65 (WCT).

[20] International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) Oct. 26, 1961.

[21] TRIPS, *supra* note 15.

[22] WIPO Performances and Phonograms Treaty (WPPT) Dec. 20, 2002.

[23] Beijing Treaty on Audiovisual Performances (Beijing Treaty) Jun. 24, 2012.

- Cinematographic works;
- Sound recordings; and
- broadcasts (usually protected by related rights).

The exclusive rights that right-holders have in relation to these works include:

- Reproduction;
- Adaptation
- Distribution (including rental and lending)
- Broadcasting by wireless means; and
- Other communication to the public by electronic transmission and public performance."[24]

The implications of such exclusivity for the making of accessible formats for people with disabilities are discussed further below after the discussion of the categories of works and the accessibility technologies in use.

Dividing disabilities and protected materials into broad categories is a useful framework for understanding how different communities of people with disabilities access different types of content. Transformations of material into other mediums is required to make content accessible for people with disabilities. Some of the major categories we have identified are:

Aural works and disabilities

People with aural disabilities may be unable to adequately perceive sound. As a result, works consisting of or containing aural elements may be inaccessible without the substitution or addition of transformations of the aural components into a visual, tactile, or other format.

A common transformation for aural accessibility is the closed captioning of audiovisual materials such as films and TV programs. The spoken dialogue and other information about the audio contained in the material are transcribed into text that can then be embedded in or distributed alongside the audiovisual components. This allows the person with a disability to access the aural components of the program in an appropriate medium.

However, audiovisual materials are often protected by both copyright and related rights, such as those for broadcasters. As a result, accessibility transformations may implicate copyright and related rights, thereby requiring the permission of the copyright holder to create and distribute absent an applicable exception or limitation.

Visual works and disabilities

People with visual disabilities may be unable to perceive works fixed in visual mediums and therefore are unable to access some protected works that contain visual components. This includes print works such as books, audiovisual works such as movies and television, content on computers including websites and computer software, and pictorial, graphical or sculptural works.

These works must be at least partially transformed into a medium that is not dependent on visual information. For the blind or visually impaired, the transformation converts the

[24] Judith Sullivan, *Study on Copyright Limitations and Exceptions for the Visually Impaired*, 16 (2006).

information into auditory or tactile mediums. Information conveyed visually, such as the picture in a movie, must be transformed into an audio description of the image or a tactile description such as braille in order for the person with the visual disability to successfully perceive the content.

Examples of transformations:

- Movies and TV use special audio to convey the visual portion of audiovisual content to those who cannot see it. This is called audio (or visual) description.
- Screen readers are software programs that allow the visually impaired to access computer content by rendering the on-screen information into either synthesized speech or braille.[25]

Visual materials may be protected by both copyright and related rights, such as those for broadcasters, publishers, or production companies. Accessibility transformations may implicate copyright and related rights, thereby requiring the permission of the copyright holder to create and distribute absent an applicable exception or limitation.

Cognitive and intellectual disabilities and protected works

Cognitive disabilities cover a wide range of disabilities that affect mental processes of a person.[26] This includes genetic disabilities such as Down syndrome and autism, learning disabilities like dyslexia, brain injuries from illness or trauma, and dementia.[27] These disabilities, while related in their cognitive bases, express differently and therefore require a range of transformations to adapt protected content for people with this type of disability.

Most commonly cognitive disabilities express as difficulty in processing complex information, requiring a transformation of material into more easily understood forms. This is referred to as a plain and simple language transformation. Additionally, other transformations specific to the needs of a given disability may be necessary. For example, people with disabilities like dyslexia, wherein the brain has difficulty in perceiving words on page adequately, may be better able to access print material when the formatting of the text is altered to allow the brain to perceive the letters on the page more easily.

Cognitive Disabilities:

- Genetic disabilities like Down syndrome or autism express across a spectrum and correspondingly require a range of assistance.[28]
- Dyslexia is a language-based learning disability that primarily affects reading ability.[29]
- Brain injuries from trauma are unique and each person's level of cognitive function must be assessed to determine the contours of their disability.[30]

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[25] American Foundation for the Blind, *Screen Readers*, http://www.afb.org/prodBrowseCatResults.aspx?CatID=49, (Last visited Feb, 21, 2017).

[26] Disability World, *Cognitive Disability: Information on Intellectual Disabilities*, (Jun. 6, 2016), https://www.disabled-world.com/disability/types/cognitive/.

[27] *Id.*

[28] *Id.*

[29] *Id*.

- Dementia is different because it is primarily an age-related disorder that may also have a genetic component.[31] It is characterized by deterioration of cognitive ability with age beyond what would normally be expected, and like other cognitive disorders results in varying levels of functionality among people.[32] Dementia may also refer to deterioration of cognitive ability brought on by injury or trauma such as stroke.

Due to the wide variety of causes and needs, people with cognitive disabilities require a range of transformations to fit their individual needs, such as:

- Plain and simple language versions of written and audio works
- Changes in formatting
- Text to speech technology helps those with dyslexia to access print content.[33]

Because these disorders affect the processing and perception of a variety of information mediums, the necessary transformations may convert every type of work mentioned in this paper. This includes, audio, visual, audiovisual, print, and software. These materials are often protected by both copyright and related rights, such as those for broadcasters, publishers, or production companies. As a result, accessibility transformations may implicate copyright and related rights, thereby requiring the permission of the copyright holder to create and distribute absent an applicable exception or limitation.

Physical disabilities and protected works

People with physical disabilities may face difficulties in interacting with different formats. For example, someone with low motor ability may not be able to turn the pages of a book, and is therefore unable to read print media without assistance. While there are assistive technologies like automatic page turners, they may or may not work well for a person depending on the specifics of his or her disability.[34] Transforming a print work into an audio work instead may provide greater ease of access.

While many physical disabilities may be covered by the provisions of the VIP Treaty, people with physical disabilities may face other barriers in accessing copyrighted works on their computers and require transformations of software to function on alternate inputs such as voice commands or devices like trackballs or switches to access computer based content such as webpages or video games.[35] Computer software ideally is designed to function with

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[30] *Id*.

[31] *Id*.

[32] *Id*.

[33] The Yale Center for Creativity and Disability, *Accommodations*, http://dyslexia.yale.edu/DYS_Accommodations.html. (Last visited Feb. 21, 2017).

[34] Broadened Horizons, *Automatic Page Turner*, http://www.broadenedhorizons.com/automatic-page-turner-for-books . (Last visited Feb. 21, 2017).

[35] DO-IT, *Working Together: People with Disabilities and Computer Technology*, http://www.washington.edu/doit/working-together-people-disabilities-and-computer-technology. (Last visited Apr. 19, 2017).

a diverse range of alternate inputs but if software is not accessible by default, modifications may be required to allow alternate inputs to interoperate with the software in question.[36]

People with multiple disabilities and protected works:

People with multiple disabilities will face challenges to accessing a variety of protected works. People with multiple disabilities require transformations of all facets of works that they are not able to perceive into a medium that they are able to perceive. For example, people who are both blind and deaf (DeafBlind) are unable to access audio and visual materials and require transformations of audiovisual works into tactile formats such as Braille. A person who has both cognitive and aural disabilities may require both captions and plain and simple language transformation of those captions to access aural content. These accessibility transformations may implicate copyright and related rights, thereby requiring the permission of the copyright holder to create and distribute absent an applicable exception or limitation.

ACCESSIBILITY TECHNOLOGIES AND TECHNIQUES

A person who seeks to access content made inaccessible to them by a disability may require a transformation of the underlying content in order to successfully access the material. Access to content is usually provided by some type of assistive technology that converts the material. Some commonly used assistive technologies are:

- Screen readers
- Refreshable braille displays
- Closed captioning
- Audio (visual) description
- Crowd-sourcing and automated adaptation technologies
- Manual adaption systems and techniques
- Personal digital assistants (PDA for both text and speech)
- E-books
- E-reading software
- Plain and simple language versions

There are a wide range of technologies and techniques that transform copyrighted materials in order to make them accessible to those with disabilities. The diversity of technologies also represents transformations across the range of mediums for different disabilities.

New technologies have created the possibility of greater access to protected works for people with disabilities. Recent innovations like tablets, online audiobook retailers, and new "virtual assistants" like Amazon's Echo[37] and Google Home[38] may have been produced with a larger market in mind but have the potential to improve access for people with disabilities.

[36] Disabled World, *Assistive Electronic Devices and Software*, https://www.disabled-world.com/assistivedevices/computer/. (Last visited Oct. 1, 2017).

[37] Amazon, *Amazon Echo*, https://www.amazon.com/Amazon-Echo-Bluetooth-Speaker-with-WiFi-Alexa/dp/B00X4WHP5E. (Last visited Oct. 1, 2017).

For example, virtual assistants rely on voice commands from the user to perform a variety of tasks from turning on the lights (with proper setup) to ordering a product online.[39] These devices provide convenience for many users but also may serve as an accessibility technology for those with visual or physical disabilities, because it interfaces with voice and sound as opposed to sight and physical input.[40]

However, for people with speech disabilities a virtual assistant is substantially inaccessible without an input transformation, because it only responds to voice commands. Users may be able to connect another device, such as a tablet, to the device to input and receive information in a visual medium.[41] The lesson of these devices is that while the commercial market may offer products that are solutions for some people with disabilities, they may not prove to be universal solutions and may even require transformations for people with disabilities to access content on the new platform.

Machine learning is another example of a burgeoning technology that has the potential to have a significant positive impact on access to copyright protected materials for people with disabilities.[42] Machine learning is a type of artificial intelligence that allows computers to learn without specific programming input allowing for greater adaptability and individualization.[43]

Machine learning has the potential to increase access for people with disabilities across many mediums of works by automating accessibility transformations.[44] Machine learning may improve the ability to automatically generate closed captions from audio sources or audio descriptions from visual sources—and do so at a scale that has the potential to

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[38] Google, *Google Home*, https://madeby.google.com/home/. (Last visited Oct. 1, 2017).

[39] Venkat Rao, *Amazon Echo: A Great Internet of Things (IOT) Device for People with Disabilities*, ASSISTIVE TECHNOLOGY BLOG (Feb. 29, 2016), http://assistivetechnologyblog.com/2016/02/amazon-echo-great-internet-of-things.html.

[40] *Id.*

[41] April L. Hamilton, *Voicecast: The Little-Known Tip That Gives Amazon Echo's Alexa A Screen, LoveMyEcho*,http://lovemyecho.com/2016/04/29/voicecast-the-little-known-tip-that-gives-amazon-echos-alexa-a-screen. (Last visited Apr. 19, 2017).

[42]Tom Simonite, *Machine Learning Opens up New Ways to Help People with Disabilities*, MIT Technology Review (Mar. 23, 2017), https://www.technologyreview.com/s/603899/machine-learning-opens-up-new-ways-to-help-disabled-people/ ; *see also* Elliot Salisbury, Ece Kamar, Meredith Ringel Morris, *Toward Scalable Social Alt Text: Conversational Crowdsourcing as a Tool for Refining Vision-to-Language Technology for the Blind*, (2017), https://www.microsoft.com/en-us/research/wp-content/uploads/2017/08/scalable_social_alttext.pdf.

[43]*See* Tom M. Mitchell, *The Discipline of Machine Learning*, (July 2006), https://www.cs.cmu.edu/~tom/pubs/MachineLearning.pdf.

[44]Tom Simonite, *Machine Learning Opens up New Ways to Help People with Disabilities*, MIT Technology Review (Mar. 23, 2017), https://www.technologyreview.com/s/603899/machine-learning-opens-up-new-ways-to-help-disabled-people/

dramatically increase the amount of works that are accessible for people with many different disabilities.[45]

For example, the streaming service Twitch now offers live closed captioning for some channels that is generated by a professional stenographer.[46] However in the future Twitch and other live streaming services may be able to implement machine learning technology that uses software to generate closed captions or augment human captioning.

Similarly, these types of technology could be used to generate audio or visual descriptions of both live and already recorded audiovisual works.[47] The video sharing site YouTube has already implemented automatic captioning options for videos using machine learning technology with varying quality results.[48] However it is reasonable to expect that as these technologies improve and the resulting quality improves, that automated accessibility could concurrently increase.

A specific area where machine learning has the potential to increase access significantly is for people with cognitive disabilities because a computing system endowed with machine learning can convert complex text into plain and simple language tailored to the comprehension ability of a person.[49] This kind of conversion presently is difficult to accomplish because of the level of individual tailoring needed to make the content accessible for a given person. Machine learning can simplify this process and provide a person with a cognitive disability a format accessible to their unique needs. This conversion to plain and simple text is arguably a transformation that implicates the rights of the copyright holder because it is an adaptation of the original work or a derivative work.

Technology plays an important role in facilitating access for people with disabilities. Some new technologies have the potential to improve accessibility for people with disabilities while others may also require transformations to be accessible to all people with disabilities. Technologies that undertake these transformations may implicate copyright and related rights and therefore require the permission of the copyright holder absent an applicable exception or limitation.

COPYRIGHT AND RELATED RIGHTS' PROTECTION IMPLICATIONS

Self-help or third-party efforts to engage in the techniques described above and use those technologies may implicate exclusive rights in the categories of protected works, setting aside implications already addressed by the VIP Treaty and techniques/technologies that do not conceivably implicate copyright or related rights protection.

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[45] *Id.*

[46] Twitch, *Guide to Closed Captions*, (Mar. 25, 2017), https://help.twitch.tv/customer/portal/articles/2564215.

[47] *See* Elliot Salisbury, Ece Kamar, Meredith Ringel Morris, *Toward Scalable Social Alt Text: Conversational Crowdsourcing as a Tool for Refining Vision-to-Language Technology for the Blind*, (2017), https://www.microsoft.com/en-us/research/wp-content/uploads/2017/08/scalable_social_alttext.pdf.

[48] YouTube, *Use Automatic Captioning*, https://support.google.com/youtube/answer/6373554?hl=en. (Last visited Apr. 19, 2017).

[49] Simonite, *supra* note 41.

Copyright vests exclusive economic rights in the copyright holder, which include reproduction,[50] translation,[51] adaptation, distribution, performance, communicating or making available to the public,[52] display and transmission. Related rights protection extends to fixation (recording), broadcasting and communication to the public of live performances, and the reproduction of fixations of performances under certain circumstances. It also includes producers' rights over the reproduction, importation and distribution of original or copies of sound recordings and an entitlement to equitable remuneration for broadcasting and communication to the public of sound recordings. Broadcasting organizations have rights over the rebroadcasting, fixation and reproduction of their broadcasts.
The table below shows several (non-exhaustive) examples of how making an accessible format would implicate either copyright and/or related rights protection.

Example	Type of Work	Copyright	Related Rights	Accessible Format
Broadcast of live dance performance on TV	Audio-visual work	• Sound recording used to accompany performance • Choreographic work	• Performer's rights • producer's rights • broadcaster's rights	• Closed caption for aural disabilities • Audio description for visual disabilities
Photograph	Pictorial, Graphical or Sculptural works	• Artistic work	N/A	• Audio description for visual disabilities
Novel	Literary work	• Literary work	N/A	• Text to speech for cognitive or physical disabilities

Whether a given accessible copy infringes a rightsholder's exclusive rights is dependent upon the specific provisions of a member state's national legislation and the ways in which that legislation is interpreted. The examples discussed below illustrate the interactions between an accessible copy of a work, the exclusive rights of the rightsholder, and national legislation. As each member state has a unique statutory scheme providing for rights as well

[50] Article 9(1) Berne Convention.

[51] Article 8 Berne Convention.

[52] As noted by Prof. Daniel Seng, the playing of sound recordings to an audience on-site constitutes a performance, whilst the playing of sound recordings to an audience off-site constitutes a communication to the public. This distinction is based on the wording of Art. 11 of the Berne Convention which provides that authors of dramatic, dramatic-musical and musical works shall enjoy the exclusive right to authorize "the performance of their works, including such public performance by any means or process" and "any communication to the public of the performance of their works". Such wording indicates a bifurcation between performance and communication to the public. Seng also noted that in the digital environment such bifurcation may be blurred. Daniel Seng, *Study on Copyright Limitations and Exceptions for Educational Activities*, 16 (Nov. 2016).

as limitations or exceptions to those rights, these examples are intended merely as illustrations of principles. Member states may have other national laws, such as such as disability or telecommunications statutes, that interact with copyright and related rights laws to provide accessible copies to persons with disabilities.[53]

For example, when a rightsholder uploads a video to the online video sharing platform YouTube, the user can choose to enable automatic captioning, which will create captions for the work which users can view when using the website.[54] If the rightsholder chooses to enable this feature, they are making an accessible copy for people who are deaf or hard of hearing by transforming the spoken audiovisual media and turning it into print words that are displayed on screen simultaneously with the video. As the rightsholder is the one undertaking this transformation, copyright and related rights do not create a problem because the rightsholder does not infringe his or her own rights by undertaking this transformation. However, if YouTube itself chooses to provide automatic captioning for a video without the permission of the rightsholder, the exclusive rights of reproduction and/or to create derivative works under copyright law may be implicated, raising questions about whether exceptions and limitations apply.[55] When a third party undertakes a transformation for accessibility without the permission of the rightsholder, in the absence of a relevant limitation or exception, the transformation may be an infringement.

Some member states have obligations under their national telecommunications legislation and regulations to provide for accessible copies of media such as captions for broadcast programs.[56] If there were such an obligation to provide accessible copies for online platforms such as YouTube, then either the original rightsholder or the platform itself could be obligated to create captions for online videos. National legislation that mandates captioning not only creates an exception to the rights of the copyright holder but also compels some party (the rightsholder or a third party) to make an accessible version of the work available to people with disabilities. In these cases, there may be a conflict between accessibility and copyright law—or the tension between the two might be dissolved by the presence of limitations or exceptions such as fair use.

Another example is the implication of 3D printing technology for accessible copies. Museums have begun exploring the potential of this technology to provide greater access to their artworks by providing 3D printed versions of the artwork that allows persons who cannot see the artwork to interact with it tactilely.[57] For example, a 3D print of a Van Gogh painting can

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[53] *See Authors Guild, Inc. v. HathiTrust*, 755 F.3d 87, 101-03 (2d Cir. 2014) (The court "conclude[s] that the doctrine of fair use allows the Libraries to provide full digital access to copyrighted works to their print-disabled patrons.")

[54] YOUTUBE, Add Your Own Subtitles and Closed Captions, https://support.google.com/youtube/answer/2734796?hl=en (last visited Oct. 10, 2017).

[55] In the U.S., such a use would likely be permissible under the doctrine of fair use. *See also, HathiTrust*, 755 F.3d at 103. Blake E. Reid, Third Party Captioning and Copyright, G3ICT, Mar. 2014, at 10-11.

[56] See Table 6 in the Appendix for examples.

[57] Ashley Strickland, Opening up a World of Art for the Blind with 3-d Technology, CNN (Jun. 30, 2016 9:29 AM) http://www.cnn.com/2016/06/30/health/3d-art-blind-museums/index.html.

convey the brushstrokes of the piece to someone tactilely rather than visually.[58] Like the creation of captions, this kind of transformation of a protected work could implicate copyright as a derivative work. While many works in museums are in the public domain, and are therefore not protected works, much art remains protected by copyright,[59] and creating accessible transformations of such works could, without an appropriate exemption or limitation of national law, constitute infringement of the rightsholder's exclusive rights.

These examples describe the intersection of national laws, accessible copies, and protected works in order to demonstrate the importance of national law in determining whether a given accessibility transformation is permitted under a member state's laws. Depending on the specifics of these national laws, accessible copies of a protected work into another medium may or may not be permitted without the permission of the rightsholder.

MEMBER STATE QUESTIONNAIRE

Methodology of analysis

The SCCR is composed of all members of WIPO and the Berne Union.[60] WIPO currently has 189 member states.[61] Member states were surveyed in April 2017, and twenty-three survey response were received. Given the proportion of responses compared to overall number of member states in WIPO, this study does not draw quantitative conclusions, but rather presents the responses qualitatively to highlight illustrative detail from responses. Member state responses are used to depict the range of information received and to highlight archetypical responses to the questions.

Countries were asked to authorize their survey responses. We received authorizations from all countries except four. The responses from those countries have not been reflected in this study.

Member states received a short questionnaire regarding copyright and related rights, which asked member states to provide brief qualitative information about the provisions of their copyright and related rights and accessibility laws.[62] The new survey provides important information on the current state of copyright law and disability access in the national law

[58] 3DPHOTOWORKS, Museum, http://www.3dphotoworks.com/3dprinting-musuems/ (last visited Oct. 12, 2017).

[59] Alex Greenberger, Metropolitan Museum of Art Puts 375,000, Public-Domain Images in Creative Commons, ART NEWS (Feb. 7, 2017 11:40 AM) http://www.artnews.com/2017/02/07/metropolitan-museum-of-art-puts-375000-public-domain-images-in-creative-commons/.

[60] WIPO, *Standing Committee on Copyright and Related Rights*, http://www.wipo.int/policy/en/sccr/, (Last visited Oct. 1, 2017).

[61] WIPO, *Member States*, http://www.wipo.int/members/en/, (Last visited Oct. 1, 2017).

[62] Member states were previously surveyed in 2010 and the findings presented at the Twenty-First Session November 8 to 12, 2010, *see* WIPO Standing Committee on Copyright and Related Rights, *Updated Report on the Questionnaire on Limitations and Exceptions* (2010).

regimes of member states after the Marrakesh Treaty's entry into force on September 30th, 2016.[63]

Survey Results

As of 29 September 2017, responses to the questionnaire were submitted by twenty-three states, but four member states have not authorized the publishing of their answers. The information contained in their answers was considered for the purposes of statistics but their names and specific references have been omitted throughout the study. The following nineteen countries have authorized the use of their responses:

1. Botswana
2. Brazil
3. Chile
4. The Czech Republic
5. Ecuador
6. El Salvador
7. Estonia
8. Guatemala
9. Honduras
10. Indonesia
11. Serbia
12. Seychelles
13. Singapore
14. Slovakia
15. Sweden
16. Thailand
17. Turkey
18. The United Kingdom of Great Britain and Northern Ireland
19. The United States of America

The study finds a diverse set of approaches to the intersection of accessibility and copyright. Member states have implemented the VIP Treaty in a variety of ways. While member states that have implemented the treaty have generally facilitated exemptions for people with print disabilities to access literary works, implementations reflect a wide range of approaches to works, disabilities, and accessibility measures not covered by the VIP Treaty.

Addressing Accessibility in National Copyright Statutes (Q1)

Question 1: Does your national statute contain any provision that allows persons with a disability (or persons or entities acting on their behalf) to undertake exclusive acts without the authorization of the copyright holder? (Y/N) (If yes please provide statute).

Question 1 asked countries if their national statutes contain a provision that allows people with disabilities (or those persons or entities acting on their behalf) to undertake acts

[63] WIPO, *Marrakesh Notification No. 21*, http://www.wipo.int/treaties/en/notifications/marrakesh/treaty_marrakesh_21.html, (Last visited Oct. 1, 2017).

reserved for the copyright holder without the authorization of copyright holder. The transformations required to allow people with disabilities to access works protected by copyright and related rights may implicate the legal rights granted by member states.[64]

Without exceptions and limitations, people with disabilities may face barriers to accessing these works. The Marrakesh VIP Treaty recognized that in the case of print disabilities, exceptions and limitations could play a vital role in ensuring access to books, and thereby ameliorating the book desert for those with print disabilities. This question was asked to determine if member states' national statutes contained any such exception or limitation.

Of the twenty-three[65] countries surveyed, nineteen indicated that they did have such a provision in their national laws: Brazil, Chile, The Czech Republic, Ecuador, El Salvador, Estonia, Indonesia, Serbia, Seychelles, Singapore, Slovakia, Sweden, Thailand, Turkey, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.[66]

Botswana, Guatemala, and Honduras all indicated that they did not have such a provision in their laws.[67] Accordingly, these countries are not considered for the purposes of questions 2-4.[68]

Subsection A of question 1 asked the countries to append the relevant statutory provision of the legislation.[69]

Specific Acts (Q2.A)

Question 2: A) Which acts are allowed with respect to works protected by copyright and related rights and persons with a disability?

> *Reproduction, adaptation, distribution, communication to the public, making available to the public in such a way that members of the public may access these works form a place and at a time individually chosen by them, importation, exportation, circumvention of technical protection measures, other (please specify).*

Copyright protection extends a range of legal rights to the copyright holder. Limitations and exceptions may be narrowly tailored to interact with only a limited subset of the overall protections granted by copyright. Or limitations and exceptions may apply broadly across all the rights guaranteed by the grant of copyright and related rights protection. Some countries include further exceptions such as lending. Question 2 of the survey asked countries to indicate which acts protected by copyright and related rights are allowed for people with a disability.

All responding states with statutes responsive to the question of copyright treatment of accessibility measures defined the scope of their statutes in terms of specific acts that could

[64] As discussed in Section II Categories of Works *supra*.

[65] Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

[66] Table 1 Appendix.

[67] Honduras indicated in its response that their national statute is undergoing a change during the drafting of this report. *See* Table 6 Appendix.

[68] Table 1 Appendix.

[69] Member state response are presented in Table 1 in the Appendix.

be performed on copyrighted works.[70] Some countries extended exceptions and limitations to all protections granted by copyright. Other countries extended exceptions and limitations to only some of the protections granted by copyright.

Reproduction:

- *Reproduction Permitted.* Brazil, the Czech Republic, El Salvador, Estonia, Indonesia, Serbia, Seychelles, Singapore, Slovakia, Sweden, Thailand, Turkey, and the United States of America all indicated that reproduction is permitted by their national statutes.[71]
- *Reproduction not Permitted.* The United Kingdom of Great Britain and Northern Ireland indicated that reproduction is not permitted.[72]

Adaptation:

- *Adaptation Permitted.* The Czech Republic, Ecuador, Indonesia, Thailand, and the United States of America indicated that adaptation is permitted by their national statutes.[73]
- *Adaptation not Permitted.* El Salvador, Estonia, Serbia, the Seychelles, Singapore, Slovakia, Sweden, Turkey, and the United Kingdom of Great Britain and Northern Ireland indicated that adaptation is not permitted.[74]

Distribution:

- *Distribution Permitted.* Brazil,[75] Ecuador, Indonesia, Singapore, the Czech Republic, Estonia, Serbia, Seychelles, Slovakia, Sweden, and the United States of America indicated that adaptation is permitted by their national statutes. [76]
- *Distribution not Permitted.* El Salvador, Thailand, Turkey, and the United Kingdom of Great Britain and Northern Ireland indicated that distribution is not permitted.[77]

Communication to the public:

- *Communication to the Public Permitted*. The Czech Republic, Ecuador, El Salvador, Estonia, Indonesia, Slovakia, Sweden, and the United States of America indicated that communication to the public is permitted by their national statute.[78]

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[70] Member state responses are presented in Table 2.A in the Appendix.

[71] Table 2.A Appendix.

[72] Table 2.A Appendix. Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

[73] Table 2.A Appendix. Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

[74] Table 2.A Appendix.

[75] Brazil's statute only mentions reproduction, but it is interpreted to include distribution because "the limitation [on reproduction] would be useless if the material could not be distributed to persons with visual impairments." Table 2.A Appendix.

[76] Table 2.A Appendix. Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

[77] Table 2.A Appendix.

- *Communication to the Public not Permitted*. Serbia, the Seychelles, Singapore, Thailand, Turkey, and the United Kingdom of Great Britain and Northern Ireland indicated the communication to the public is not permitted.[79]

Making available to the public:

- *Making Available to the Public Permitted*. The Czech Republic, Ecuador, Indonesia, Slovakia, Sweden, and the United States of America have indicated that 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 permitted by their national statute.[80]
- *Making Available to the Public not Permitted*. El Salvador, Estonia, Serbia, Seychelles, Singapore, Thailand, Turkey, and the United Kingdom of Great Britain and Northern Ireland indicated that making available to the public is not permitted.

Importation:

- *Importation Permitted.* Ecuador, Indonesia, Singapore, and Slovakia indicated that importation is permitted by their national statutes.[81]
- *Importation not Permitted.* The Czech Republic, El Salvador, Estonia, Serbia, Seychelles, Thailand, Turkey, Sweden, the United Kingdom of Great Britain and Northern Ireland, and the United States of America indicated that importation is not permitted.

Exportation:

- *Exportation Permitted.* Ecuador, Indonesia, Singapore, and Slovakia indicated that exportation is permitted by their national statutes.[82]
- *Exportation not Permitted.* The Czech Republic, El Salvador, Estonia, Serbia, Seychelles, Sweden, Thailand, Turkey, the United Kingdom of Great Britain and Northern Ireland, and the United States of America indicated that exportation is not permitted.[83]

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[78] Table 2.A Appendix. Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

[79] Table 2.A Appendix. Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

[80] Table 2.A Appendix. Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

[81] Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

[82] Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

[83] Table 2.A Appendix. Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

Circumvention of technological protection measures:

- *Circumvention Permitted.* Ecuador, Indonesia, Singapore, Slovakia, Sweden, and the United States of America indicated that circumvention of technological protection measures is permitted by their national statutes.[84]
- *Circumvention not Permitted*. El Salvador, Estonia, the Czech Republic, the Seychelles, Thailand, Turkey, Serbia, and the United Kingdom of Great Britain and Northern Ireland indicated that circumvention is not permitted.[85]
- The Czech Republic indicated that circumvention of technological protection measures is not permitted by their statute: "but an author who used technical measures in respect of his work shall make his work available to lawful users to the extent necessary to fulfil the purpose of the stated exploitation of the work."[86]

Other:[87]

- Indonesia indicated that all exceptions are subject to a requirement that the act may not be for commercial purposes.[88]
- Turkey indicated that lending is permitted.[89]
- Slovakia also permits lending as well as public performances.
- The United Kingdom of Great Britain and Northern Ireland appended a reference to their national statute: Section 31F(4) – (8) of the Copyright, Designs and Patents Act 1988, which includes a provision that prevents any of the above exceptions from being limited by private contract. Any search term in a contract is rendered unenforceable.[90]
- The United States of America indicated that public performance rights are explicitly authorized as well as a general exception for all exclusive rights authorized under the copyright subject to certain statutory requirements.[91]

Specific Disabilities (Q2.B)

Question 2B) Such acts are permitted with respect to the following disabilities:

> *Deafness, visual impairment, cognitive disability, intellectual disability, motor disability. Any disability (specify conditions), other disability (please specify), not applicable (please specify).*

Access to copyrighted works via exceptions and limitations may be tied to specific disabilities. While there are a diverse range of people with disabilities recognized under the

[84] Table 2.A Appendix.

[85] Table 2.A Appendix. Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

[86] Table 2.A Appendix.

[87] Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

[88] Table 2.A Appendix.

[89] Table 2.A Appendix.

[90] Table 2.A Appendix.

[91] Table 2.A Appendix.

CRPD and UN definitions of disabilities[92] this may not be reflected in the national laws of all member states. Part B of question 2 asked member states which disabilities are permitted to undertake the acts described in part A of question 2. We asked countries if they permitted acts for any of the following disabilities: deafness, visual impairment, cognitive, intellectual, motor disabilities, or any other disabilities. Most responding states elaborated on the extent to which the above-referenced exceptions and limitations applied only to particular disabilities.[93] Some countries took a broad approach and allowed any disability to undertake the permitted acts. Other countries enumerated specific disabilities that were allowed to undertake the permitted acts. The subset of specific disabilities enumerated in a given country's laws varied among responding member states. Some countries allowed only one subset of specific disabilities to undertake the permitted acts while other countries allowed two or more subsets of specific disabilities to undertake the permitted acts.

Any disability:

- *Acts Permitted.* Ecuador, El Salvador, Estonia, Serbia, Slovakia, Sweden, Turkey, and the United States of America permit acts for people with any disability.[94]
- *Acts not Permitted.* Brazil, the Czech Republic, Indonesia, Seychelles, Singapore, Thailand, and the United Kingdom of Great Britain and Northern Ireland did not indicate that they permit acts for people with any disability.[95]
- Turkey indicates that the definition and scope of the term "disability" is not limited in their statute.[96]
- Slovakia indicated that it limits uses to those intended solely for the benefit of people with disabilities and that such use must be done only to the extent required by the level of the disability. The purpose of such use may not be directly or indirectly commercial.[97]
- Sweden indicated that the beneficiary must have need of the copies.[98]

Deafness/Hard of Hearing, Visual Impairment, Cognitive, Disability, intellectual Disability, and Motor Disability:

- The Czech Republic permits acts for these categories.[99]

Deafness/Hard of Hearing, Visual Impairment, Cognitive Disability, and Intellectual Disability:

- Thailand permits acts for these categories.[100]

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[92] *See* section I, *supra*.

[93] Member state responses are presented in table 2.B in the Appendix.

[94] Table 2.B Appendix. Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

[95] Table 2.B Appendix.

[96] Table 2.B Appendix.

[97] Table 2.B Appendix.

[98] Table 2.B Appendix.

[99] Table 2.B Appendix.

[100] Table 2.B Appendix.

Deafness/Hard of Hearing and Visual Impairment:

- Chile permits acts for these categories.[101]

Visual Impairment:

- The Czech Republic, El Salvador, Indonesia, Seychelles, Singapore, and Thailand permit acts for people with visual impairments.[102]

Other:

- Singapore defines a reading disability as a blind person, a person with severely impaired sight, a person unable to hold or manipulate books or to focus or move his eyes, or a person with a perceptual handicap.[103]
- Thailand indicates that it has a provision for "other impairments as prescribed in the ministerial regulation" though no other impairments have been described in the ministerial regulation so far.[104]
- The United Kingdom of Great Britain and Northern Ireland appended a reference to section 31F(4)-(8) of the Copyright, designs and Patents Act (1988). Section (4) discusses the "fuller enjoyment of the work by disabled persons". Section (2) of the same statute defines "disabled person" to mean "a person who has a physical or mental impairment which prevents the person from enjoying a copyright work to the same degree as a person who does not have that impairment and "disability" is to be construed accordingly." But section (3) excepts visual disabilities that may "be improved, by use of corrective lenses, to a level that is normally acceptable for reading without a special level or kind of light."[105]
- The United States of America included an explanation of requirements under the Americans with Disabilities Act (ADA) for effective communication.[106]

Categories of Copyrighted Works (Q3)

Question 3: A) Does your national statute specify the categories of copyrighted works that fall under the limitations and exceptions outlined in question 1? (Y/N)

This question asked member states about the categories of protected works included in the exceptions and limitation outlined in their national statutes. Part A asked if specific categories of copyrighted works were included in the statute.[107] Some national laws describe works in terms of specific categories in their national copyright statutes. Other member states do not specify the type of work subject to the limitations and exceptions. Where

[101] Table 2.B Appendix. Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

[102] Table 2.B Appendix. Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

[103] Table 2.B Appendix.

[104] Table 2.B Appendix.

[105] Table 2.B Appendix.

[106] Table 2.B Appendix.

[107] Member state responses are presented in Table 3.A in the Appendix.

certain works are included instead of others this can widen or narrow the scope of the limitation or exception. Where all works are included, any work described may be included in the definition.

- *Specific Categories Included.* Chile, the Czech Republic, Ecuador, Indonesia, the Seychelles, Sweden, Singapore, Thailand, Turkey, and the United Kingdom of Great Britain and Northern Ireland indicated that their statutes include specific categories of copyrighted works.[108]
- *Specific Categories not Included.* El Salvador, Estonia, Serbia, and Slovakia indicated that specific categories are not included in their statutes.[109]
- The United States of America indicated that the question is not applicable.[110]

Question 3 B) Please specify which categories are specified:

all types of works, written works, sound works, audiovisual works, visual works (paintings and sculptures, other (please specify).

Part B of Question 3 asked member states to indicate what categories of works are covered in their national statutes.[111] This question attempted to distinguish how different types of works are treated by national legislation. Some member states covered all types of works. Other countries only covered specific types of works in their laws. Finally, some countries while still specifying specific categories of works, covered multiples categories in their national laws.

All types of works:

- Chile, the Czech Republic, and Thailand indicated that all works are covered by their national statutes.[112]

Written Works:

- Brazil, Ecuador, Indonesia, Singapore, Sweden, and Turkey indicated that written works are covered under their national statutes.[113]

Sound Works:

- Ecuador and Sweden indicated that sound works are covered under their national statutes.[114]

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[108] Table 3.A Appendix. Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

[109] Table 3.A Appendix.

[110] Table 3.A Appendix.

[111] Member state responses are presented in Table 3.B in the Appendix

[112] Table 3.B Appendix. Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

[113] Table 3.B Appendix.

[114] Table 3.B Appendix.

Audiovisual Works:

- Ecuador indicated that audiovisual works are covered under their national statutes.[115]

Visual Works:

- Ecuador, Singapore, and Sweden indicated that visual works are covered under their national statutes.[116]

Other:

- Brazil describes works as literary, artistic, or scientific works.[117]
- The Czech Republic cited Article 38, paragraph 1 (a) and paragraph (4) of the Copyright Act for all works. Article 38 paragraph 1(b) of the Copyright act concerns audiovisual works. Article 38, paragraph 3 of the copyright act concerns television broadcasting.[118]
- The Seychelles indicated that their statute includes a provision for reproducing a published work.[119]
- Singapore indicated that limitations and exceptions for print disabled people were limited to literary, dramatic, or artistic works while exceptions for people with intellectual disabilities are not limited.[120]
- Turkey cited Additional Article 11 that "scientific and literary works in writing including school books that have been made public or published."[121]
- The United States of America indicated that there are both specific provisions for literary works and general provisions for all types of works, as well as provisions that except computer programs and secure tests from the list of works that may be reproduced.[122]

Conditions for Use (Q4)

Question 4: What other conditions, if any, must be met in order for such uses to be authorized? Part 4.1 Please describe.

[115] Table 3.B Appendix.
[116] Table 3.B Appendix.
[117] Table 3.B Appendix.
[118] Table 3.B Appendix.
[119] Table 3.B Appendix.
[120] Table 3.B Appendix.
[121] Table 3.B Appendix.
[122] Table 3.B Appendix.

Question 4 asked member states to describe what other conditions, if any, must be met for such use to be authorized.[123] Question 4.1 asked member states to describe such conditions.

Member state responses revealed several common themes of additional requirements imposed by national statutes. Multiple countries require:

- non-commercial or non-profit
- tailoring to the specific disability
- a suitable accessible copy must not already exist or already be commercially available
- the exception applies only to already published works
- record keeping of the relevant copies

While these provisions were recurring through member state surveys, they were implemented in different combinations. Some countries included only one of the above requirements. Some countries require some or all of the above. Some countries have additional requirements. These additional requirements appear to attempt to balance the needs of access by people with disabilities with respect for the rights of the copyright holder. Some provisions like labelling may attempt to keep the copies produced for the person with a disability from otherwise entering the stream of commerce or serving as a replacement for a commercial copy.

Member State Additional Requirements:[124]

- **Brazil** requires that the act must be done for non-profit purposes and the format must be in some medium designed for the specific beneficiaries.[125]
- **Chile** notes that the work must be lawfully published. The use must be related to the disability in question, must be carried out through an appropriate means to overcome the disability, and may not be commercial. The copy must state that it is being carried out under the exception, and must state a prohibition against the distribution and making available of such copy to any person without the respective disability.[126]
- **Ecuador** and **Indonesia** indicated that there are currently no additional requirements in their national laws.[127]
- **El Salvador** indicated that for people who are blind or otherwise disabled, the act can be without charge and that not participant in the act receives remuneration for his intervention in the same.[128]

[123] Member state responses are presented in Table 4 in the Appendix.
[124] Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).
[125] Table 4 Appendix.
[126] Table 4 Appendix.
[127] Table 4 Appendix.
[128] Table 4 Appendix.

- **Serbia**'s national laws include a requirement that the work may not be for direct or indirect commercial gain, that the format of the copy must be for the specific kind of disability, and that it must not already exist in the necessary form.[129]
- **Singapore** notes that different exceptions have different conditions but there are some typical requirements for most exceptions: records of the exclusive acts undertaken and keeping the relevant works in accordance with prescribed regulations.
    - The entity or person relying on the limitations and exceptions for people with reading disabilities must be satisfied that after reasonable investigation that no new accessible format copy of the relevant work has been separately published, is in the same format as the copy which is to be made or distributed, and can be obtained within a reasonable time at an ordinary commercial price.
    - The exception and imitations for people with intellectual handicaps requires that no new copy of the work in a form suitable for use in the provision of assistance to the intellectually handicapped reader can be obtained within a reasonable time and at an ordinary commercial price.
    - For educational institutions, the recipient of the accessible format copy must be a student of the institution.
    - All exceptions and limitations are subject to equitable remuneration payable upon request to the copyright owner.[130]
- **Slovakia** indicated that the work must already be released.[131]
- **Sweden** requires that the works must have been made public. Any copies may not be made for commercial purposes and must be restricted to the enumerated purposes in article 18 of the copyright act. In some cases remuneration to the author is required. When libraries or other organizations undertake the copying or distribution of copies, they shall inform the author if it can be done without inconvenience. This requirement also applies to works that are distributed or communicated. Moral rights shall be respected and a producer of such works must keep records of copies made.[132]
- **Thailand** notes that the Berne 3-step test must be met under their national laws.[133]
- **Turkey** notes that its national laws include a requirement that the use is not commercial and must be by or for a person with a disability. It is limited to a single copy for individuals, or to educational institutions, foundations, or associations which provide services for the benefit of people with disabilities. No accessible copies may already have been produced. These copies may not be in any way sold or commercialized, or used for anything other than their intended purpose. It is required

[129] Table 4 Appendix.

[130] Table 4 Appendix.

[131] Table 4 Appendix.

[132] Table 4 Appendix.

[133] Table 4 Appendix.

to give attribution to rightsholders and indicate the purpose of the reproduction on the copies.[134]

- **The United Kingdom of Great Britain and Northern Ireland** notes that copying is only permitted if accessible formats are not commercially available. Makers and distributors of such copies have a duty to keep records and provide such records to the copyright owner.[135]
- **The United States of America:** Performances of nondramatic literary works must be specifically for people who cannot read normal printed material and must be made without direct or indirect commercial advantage and must be done by a governmental body, noncommercial educational broadcaster, an authorized radio subcarrier or a cable system. Performances of dramatic literary works must on be a single occasion, of works published at least 10 years prior to the performance, must be specifically for people who cannot read normal printed material, and must be made without any direct or indirect commercial advantage through an authorized radio subcarrier. Reproductions and distribution must be done by an authorized entity, must be of a previously published work, must be in a specialized format exclusively for the disabled, must bear a notice prohibiting any further reproduction or distribution in other formats, and must include a copyright notice.[136]

Plans to Modify (Q5)

Question 5: Does your country have plans to include or modify the specific exceptions related to people with a disability, including people who are deaf, hard of hearing, blind, visually impaired, deafblind or who have physical, motor, cognitive, or intellectual disabilities?

yes-plans to include, yes-plans to modify, no, other (please describe).

This question asked member states to indicate if there are plans to modify exceptions for people with specific disabilities.[137] One of the main aims of this study is to determine the effect of the implementation of the Marrakesh treaty on the national laws of member states. This question asked countries to note any plans to change their laws with respect to exceptions and limitations in hopes of capturing any changes in response to the Marrakesh treaty.

- *Plans to Include*. Botswana, Brazil, the Czech Republic, Estonia, Guatemala, Honduras, Singapore, Slovakia, Sweden, Thailand, Turkey, and indicated that they had plans to modify exceptions for people with disabilities.[138]

[134] Table 4 Appendix.

[135] Table 4 Appendix.

[136] Table 4 Appendix.

[137] Member state responses are presented in Table 5 in the Appendix.

[138] Table 5 Appendix. Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

- *Plans to implement Marrakesh*. Botswana, Brazil, the Czech Republic, Slovakia, and Thailand indicated that they planned to modify exceptions for people with disabilities by implementing Marrakesh.[139]
- *Exceptions Already Implemented*. Chile indicated that it has already implemented such an exception.[140]
- *No Response Indicated*. Seychelles did not indicate a response.[141]
- *No plans to Implement*. Ecuador, El Salvador, Indonesia, and Serbia indicated that they have no plans to implement such exceptions at this time.[142]
- *Other*. The United Kingdom of Great Britain and Northern Ireland indicated that they are awaiting the outcome of the EU Commission's proposals to implement the Marrakesh Treaty. The United States of America indicated that there is proposed legislation to implement the Marrakesh Treaty.[143]

Impediments to the Use of Exceptions and Limitations (Q6)

Question 6: Have any impediments to the use of the limitations and exceptions for persons with disabilities been identified in your country (international constraints, capacity building, lack of information about the limitations and exceptions, etc.)?

yes, no, other (please describe).

Question 6 asked member states if they have experienced impediments to the implementation of current limitations and exceptions in place in their country.[144] The aim of this question is to identify barriers to the implementation of limitations and exceptions. Law is not the only constraint that can prevent people with disabilities from accessing materials protected by copyright and related rights. Even when laws are written if resources are not present to effectively carry out these laws impediments to access may remain. Common impediments identified by member states include lack of institutional resources for implementation. Additionally, cross-border applications may remain challenging.

- *Impediments Identified*. Brazil, Ecuador, Guatemala, Honduras, Singapore, and Slovakia indicated that they had experienced impediments to the implement of current limitations and exceptions in their country.[145]
    - Brazil: There is a lack of information about copyright and related rights. There are few institutions working with accessible formats. Lack of resources contributed to challenges in capacity building. [146]

[139] Table 5 Appendix. Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

[140] Table 5 Appendix. Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

[141] Table 5 Appendix. Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

[142] Table 5 Appendix.

[143] Table 5 Appendix.

[144] Member state responses are presented in Table 6 in the Appendix.

[145] Table 6 Appendix.

[146] Table 6 Appendix.

- Honduras: Indicated these impediments would be remedied by the entry into force of the Marrakesh Treaty on 29, Jun., 2017.[147]
- Singapore: Institutions assisting people with disabilities were often unable to obtain electronic copies or accessible format copies from publishers or entities in other countries.[148]
- Slovakia: Cross-border application of exceptions and limitations. More awareness raising about exceptions is needed. [149]

- *No Impediments Identified*. Botswana, Chile, the Czech Republic, Estonia, Serbia, Seychelles, Sweden, Thailand, Turkey, and the United States of America.[150]
- *Other*. El Salvador, Indonesia, and the United Kingdom of Great Britain and Northern Ireland responded other on the survey.[151]
    - El Salvador: Technological protection measures pose a legal obstacle. Lack of economic resources for the visually impaired is the major obstacle for the implementation of exceptions.[152]
    - Indonesia: The government has not provided maximum services and facilities for people with disabilities.[153]
    - The United Kingdom of Great Britain and Northern Ireland: Assertions have been made by stakeholders in a recent "call for views" but very little evidence to support assertions has been received.[154]

Intersection Between Copyright Limitations and Exceptions and Related Disability Laws (Q7)

Question 7: A) Does your national statute require copyright holders or third-party distributors to provide accessible formats of any copyright works? (Examples include the addition of closed captions or video description to televised video programming.)

Yes (respond to B and C), No, other (please specify).

Question 7 asked member states if their national statutes required either copyright holders or third-parties to provide accessible formats of copyrighted works.[155] One approach for access to copyrighted works can be characterized as permissive, wherein the national statute permits people with disabilities to access the otherwise protected work. Another approach is to require in copyright statutes the provision of accessible formats for people with disabilities, often in response to the failure of the market to otherwise produce such copies. Member states surveyed took both approaches, with more countries overall taking the former approach.

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[147] Table 6 Appendix.

[148] Table 6 Appendix.

[149] Table 6 Appendix.

[150] Table 6 Appendix. Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

[151] Table 6 Appendix. Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

[152] Table 6 Appendix.

[153] Table 6 Appendix.

[154] Table 6 Appendix.

[155] Member state responses are presented in Table 7.A in the Appendix.

- *Accessible Formats Required*. Chile, the Czech Republic, and the United States of America indicated that their national statutes require the provision of accessible formats of works protected by copyright.[156]
- *Accessible Formats not Required.* Botswana, Ecuador, El Salvador, Estonia, Guatemala, Honduras, Indonesia, Seychelles, Sweden, Singapore, Thailand, Turkey, and the United Kingdom of Great Britain and Northern Ireland indicated that their national statutes do not require the provision of accessible formats of copyright protected works.[157]
- *Other*. Brazil, Serbia, and Slovakia indicated other as their response on the survey.[158]
    - **Brazil** indicated that as a result of the United Nations Convention on the Rights of Persons with Disabilities, the Brazilian law for the inclusion of persons with disabilities established that works in accessible format cannot be denied to people with disabilities even under claims based upon intellectual property rights.[159]
    - **Serbia** indicated that media service providers are obliged, in accordance with their financial and technical capabilities, to makes available program contents for the needs of people with impaired hearing and vision.[160]

Question 7 B) Please attach to this questionnaire the relevant legislation and indicate below the category of work affected:

Legislation attached by member states is available in the appendix in Table 7.B.

- **Brazil**: The Brazilian Law on Inclusion does not specify any category of work, as it uses the broad expression intellectual work.[161]
- **Chile**: laws which establish rules on equality of opportunity and social inclusion of people with disabilities, provide that free-to-air television services and permit holders of limited television services shall apply audiovisual communications mechanism that make it possible for people with hearing disabilities to access programming. Furthermore certain categories of broadcast content such as public service campaigns, presidential debates, and public safety or emergency content must be broadcast subtitled and in sign language. Permit holders for broadcast TV must comply with subtitle requirements.[162]
- **The Czech Republic** indicated multiple provisions of national law that affect the availability of copyrighted materials for people with disabilities.

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[156] Table 7.A Appendix.

[157] Table 7.A Appendix. Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

[158] Table 7.A Appendix. Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

[159] Table 7.A Appendix.

[160] Table 7.A Appendix.

[161] Table 7.B Appendix.

[162] Table 7.B Appendix

- Distributors of a Czech audiovisual work must provide the work with captions for the deaf and hard of hearing and label the packages to indicate they are captioned.
- on-demand audiovisual media services will provide either open or closed captioning, or interpretation into Czech sign language for people with hearing impairments, and with a soundtrack for people with visual impairments if available or otherwise ensure that on-demand media services are accessible to people with hearing and visual disabilities.
- nationwide licensed television broadcasters have to provide captions for at least 15% of the programme units in broadcasts and make at least 2% of its programmes accessible to people with visual disabilities. A nationwide statutory television broadcaster must provide captions for at least 70% of program units, produce at least 2% of its units in Czech sign language (or interpret them) and make at least 10% of units available to visually impaired people.
- Czech television must provide at least 70% of broadcast programmes with captions for people with hearing disabilities or with simultaneous interpretation into sign language.[163]

- **Serbia**: Media service providers are obliged, in accordance with its financial and technical capabilities, to make available its program contents for the needs of people with impaired hearing and vision.[164]

Question 7 C) How do those requirements intersect with your national copyright statute and any exceptions or limitations for people with disabilities? For example, are entities subject to the requirements required to obtain a license for any adaptation or reproduction necessary to comply with the requirement, or is that need obviated by any exception or limitation? Please describe:

Copyright legislation is not the only way that member states address the issues that people with disabilities face. National statutes for telecommunications and disability rights are another way that member states create policies that determine access to copyrighted materials for people with disabilities. This question attempts to capture a more complete picture of member state legislation in regard to access to copyrighted materials for people with disabilities by asking countries about other relevant legislation.[165]

- **Brazil** describes the interaction of the copyright statute and the Brazilian Law for the Inclusion of Persons with Disabilities (LBI) as complementary as both are intended to address the needs of people with disabilities but have different targets and purposes. The LBI was approved in 2015 and its interaction with the copyright statute it not yet clear. Brazil's response further characterizes the LBI as having the goal of encouraging publishers and other institutions to make works accessible in formats

[163] Table 7.B Appendix.

[164] Table 7.B Appendix.

[165] Member state responses are presented in Table 7.C in the Appendix.

designed for people with disabilities, but notes that the government will still need to discuss regulations concerning the implementation of the law.[166]

- **The Czech Republic** stated that the interaction of the above enumerated provisions with Article 38 of their copyright Act, which regulates free use of the work and in 43 Paragraph 4 of the copyright Act which covers technological protection measures governs the definition of copyright infringement for works created for people with disabilities.[167]
- **The United States of America** stated that while the ADA and section 504 do not specifically address the treatment of copyrights with respect to people with disabilities, their requirement to provide auxiliary aids and services, such as captioning, braille, or audio descriptions, to ensure effective communication may have implications for works protected by copyright. Communications law, a discrete body of law, also supplements copyright law in this context.[168]

RECOMMENDATIONS FOR FURTHER STUDY:

This study provides a detailed snapshot of the diverse approaches that member states take to accessibility and copyright and related rights. Further member state responses to this survey will provide a more complete picture of the current state of national copyright laws and access to protected works by people with disabilities.

In addition, more information about member state national laws that intersect with copyright and related rights laws, such as disability and telecommunications laws, would provide greater detail about how member states' national laws facilitate access to cultural works for people with disabilities.

Another area that could be explored in more depth is the operation of cross-border limitations to copyright law under the Marrakesh Treaty given the differing approaches to access among member states national laws.

Finally, studying the relationship between the implementation of the Marrakesh Treaty and the CRPD would also provide a more complete understanding of the current state of access to protected works by people with disabilities.

[Annex follows]

[166] Table 7.C Appendix.

[167] Table 7.C Appendix.

[168] Table 7.C Appendix.

APPENDIX A: SURVEY RESULTS[169]

I. SCOPE OF THE LIMITATION OR EXCEPTION

1. Does your national statute contain any provision that allows persons with a disability (or persons or entities acting on their behalf) to undertake exclusive acts without the authorization of the copyright holder?

Countries that do not have a national statute that contains a provision to allow persons with a disability to undertake exclusive acts without authorization of the copyright holder: **Botswana, Guatemala, Honduras**

The following countries do have a national statute that contains a provision which allows persons with a disability to undertake exclusive rights without the authorization of the copyright holder:

Brazil	Article 46 of the National Copyright Statute. The following shall not constitute violation of copyright: I. the reproduction: (…) (d) of literary, artistic or scientific works for the exclusive use of the visually handicapped, provided that the reproduction is done without gainful intent, either in Braille or by means of another process using a medium designed for such users; (Law n. 9610, of February 19, 1998, on Copyright and Neighboring Rights)
Chile	La Ley Nº 17.336 sobre Propiedad que rige en el país desde el año 1970, luego de ser modificada el año 2010 por la Ley Nº 20.435, incorporó un artículo específico al efecto, dentro de las normas relativas a limitaciones y excepciones al derecho de autor y a los derechos conexos, que señala: "Artículo 71 C. Es lícito, sin remunerar ni obtener autorización del titular, todo acto de reproducción, adaptación, distribución o comunicación al público, de una obra lícitamente publicada, que se realice en beneficio de personas con discapacidad visual, auditiva, o de otra clase que le impidan el normal acceso a la obra, siempre que dicha utilización guarde relación directa con la discapacidad de que se trate, se lleve a cabo a través de un procedimiento o medio apropiado para superar la discapacidad y sin fines comerciales. En los ejemplares se señalará expresamente la circunstancia de ser realizados bajo la excepción de este artículo y la prohibición de su distribución y puesta a disposición, a cualquier título, de personas que no tengan la respectiva discapacidad". [*English translation*] Law No. 17.336 on Property that has been in force in Chile since 1970, it was modified in 2010 by Law No. 20,435, which incorporated a specific article to that effect, within the rules relating to limitations and exceptions to copyright and to the rights, which states: "Article 71 C. It is lawful, without remuneration or authorization of the holder, any act of reproduction,

[169] Some countries are not specifically listed here because they did not authorize the release of their information. *See* discussion *supra*, Part VI(B).

	adaptation, distribution or communication to the public, of a lawfully published work, carried out for the benefit of persons with visual, auditory, or other disabilities that impede normal access to the work, provided that such use is directly related to the disability in question, is carried out by means of an appropriate procedure or means to overcome the disability and non-commercial purposes. The specimens will expressly indicate the fact of being carried out under the exception of this article and the prohibition of its distribution and making available, any title, of persons that do not have the respective disability."
Ecuador	El Código Orgánico de la Economía Social de los Conocimientos, Creatividad e Innovación, publicado en el Registro Oficial Suplemento No 899 de 09 de Diciembre del 2016 establece de manera clara tres disposiciones en las que se hace referencia a limitaciones y excepciones que permiten a personas con discapacidad ejecutar actos exclusivos sin la autorización del autor. Estas disposiciones son: “Artículo 130.- De la elusión de medidas tecnológicas.- Los usuarios que requieran ejercer una limitación o excepción a los derechos de autor y derechos conexos de conformidad con este Código, podrán eludir, neutralizar, o dejar sin efecto las medidas tecnológicas de que trata este Parágrafo, ello sin perjuicio de las acciones administrativas o judiciales a las que hubiere lugar.” “Artículo 212.- Actos que no requieren autorización para su uso.- Sin perjuicio de lo dispuesto en el artículo anterior, de conformidad con la naturaleza de la obra, los instrumentos internacionales de los que Ecuador es parte y los principios de este Código, no constituirá violación de los derechos patrimoniales del titular de derechos, aquellos casos determinados en el presente artículo, siempre que no atenten contra la normal explotación de las obras y no causen perjuicio injustificado a los legítimos intereses del titular o titulares de los derechos. En este sentido, los siguientes actos no requieren la autorización del titular de los derechos ni están sujetos a remuneración alguna: (...) 7.- La reproducción, adaptación, distribución o comunicación pública con fines científicos o educativos y para garantizar acceso a las personas con discapacidad de las obras arquitectónicas, fotográficas, de bellas artes, de arte aplicado u otras similares, que se encuentren situadas permanentemente en lugares abiertos al público, mediante la [*English translation*] The Organic Code of the Social Economy of Knowledge, Creativity and Innovation, published in the Official Gazette Supplement No. 899 of December 9, 2016 clearly sets out three provisions in which reference is made to limitations and exceptions enabling persons with disabilities to perform without the authorization of the author. These provisions are: "Article 130.- Of the circumvention of technological measures.- Users who require exercise of a limitation or exception to copyright and related rights of accordance with this Code, may evade, neutralize or render ineffective the measures technological aspects referred to in this Paragraph, without prejudice to administrative or judicial proceedings to which they may refer. " "Article 212.- Acts that do not require authorization for its use.- Without

	prejudice to provide in the previous article, in accordance with the nature of the work, the international instruments to which Ecuador is a party and the principles of this Code, shall not constitute a violation of the economic rights of the right holder, those cases determined in this article, provided that they do not violate the normal exploitation of the works and do not unreasonably prejudice the legitimate interests of the holder or holders of rights. In this sense, the following acts do not require the authorization of the owner of the rights nor are they subject to any remuneration: (...) 7.- Reproduction, adaptation, distribution or public communication for scientific purposes or to guarantee access to the disabled by architectural, photographic, fine arts, applied arts or other are located permanently in places open to the public, by means of photography, painting, drawing, filming or any other similar technique or procedure, provided the name of the author of the original work is indicated, if known, and the place where you are; 29. Non-profit entities recognized by the State or those that receive financial support from the latter and providing education, training, reading or access to information for people with disabilities, those works that have been legally acquired, reproduce, distribute and make them available to the public, in formats accessible to people with disability. Access to such works will include the possibility of representing them and publicly, in order to be accessible to disability. Persons with disabilities or those acting on their behalf may the same activities detailed in the previous section of those works that have been legally acquired for their personal use (...) "
El Salvador	Artículo 44 literal d) y 45 literal a) de la Ley de Propiedad Intelectual [*English translation*] Article 44 (d) and 45 (a) of the Intellectual Property Law
Estonia	Copyright Act § 19. Free use of works for scientific, educational, informational and judicial purposes The following is permitted without the authorisation of the author and without payment of remuneration if mention is made of the name of the author of the work, if it appears thereon, the name of the work and the source publication: /-/ 6) the reproduction, distribution and communication to the public of a lawfully published work in the interests of disabled persons in a manner which is directly related to their disability on the condition that such use is not carried out for commercial purposes. Works created especially for disabled persons may not be reproduced, distributed and made available without the authorisation of the author;
Indonesia	Copyright Law Number 28 Year 2014, Article 44 Paragraph (2): Facilitating access to a Creation for persons who are blind, visually impaired or print disabled and/or users of Braille, audio books, or

	other means, shall not be considered Copyright infringement if the source is mentioned or fully cited, except for commercial purposes. Paragraph (4): Further provisions regarding the facilitation of access to Creations for persons who are blind, visually impaired and print disabled and using Braille, audio books, or other means as stipulated in paragraph (2) shall be governed by Government Regulation
Serbia	Article 54 of the copyright and related rights, Official Gazette RS no.104/99,99/11,119/12,29/16 Article 54 For the needs of the persons with disability, it is allowed, without the permission of the author and without payment of the remuneration, to copy and distribute the work protected by copyright, if such a work does not exist in the required form, if its use is in direct connection with the invalidity of persons concerned and in the scope that is required by a specific kind of invalidity providing the copying and distribution has not been made for the sake of realizing direct or indirect commercial gain.
Seychelles	16(1) It shall be permitted without the authorization 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 protection of the work, and to distribute the copies exclusively to such 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. (2) The distribution of work referred to in subsection (1) is also permitted in case the copies of such work have been made abroad and the conditions mentioned in that subjection have been fulfilled. (3) The provisions in subsections (12) and (2) are subject to the obligation to indicate the source and the name of the author.
Singapore	Sections 54 and 54A of the Copyright Act (Chapter 63); and Rules 7, 8, 10, 11 and 14 of the Copyright Rules.
Slovakia	It is included directly in Section 46 of Slovak Act No. 185/2015 Coll. On Copyright (hereinafter referred to as “CA”), as amended. This section (Section 46) contains the general exception for the benefit of persons with a disability and consists of three paragraphs. The full wording of these provisions is as follows: (1) Copyright is not infringed by a person who without authorization of its author uses released work by making a copy, by public performance, communication to the public and public distribution by means of transfer of title or by lending, provided that such use is intended solely for the benefit of persons with a disability, to the extent required by the level of disability and purpose of this use is not directly or indirectly commercial. (2) Copyright is not infringed by a person who without authorization of its author supplements audiovisual work with verbal description of visual

	element of the work, intended solely for persons with a disability and to the extent required by level of disability. Use of audiovisual work supplemented in such manner is governed by paragraph 1. (3) Copyright is not infringed by a person who without authorization of its author creates sound recording (phonogram) of literary (verbal) work intended solely for persons with a disability and to the extent required by the level of disability. Use of such sound recording is governed by paragraph 1.
Sweden	1. Act on Copyright in Literary and Artistic Works (Swedish Statute Book, SFS. 1960:729, as later amended), in particular Article 17 2. Copyright Regulation (Swedish Statute Book, SFS, 1993:1212, as later amended), in particular Section 3
Thailand	**Section 32 paragraph two (9)** of the Copyright Act B.E. 2527, as amended by the Copyright Act (No. 3) B.E. 2558 Section 32 An act against a copyright work under this Act of another person which does not conflict with normal exploitation of the copyright work by the owner of copyright and does not unreasonably prejudice the legitimate rights of the owner of copyright shall not be deemed an infringement of copyright. Subject to the provision in the first paragraph, the following acts in relation to a copyright work shall not be deemed an infringement copyright. Subject to the provision in the first paragraph, the following acts in relation to a copyright work shall not be deemed an infringement of copyright: (1) Research or study of the work which is not for profit (2) Use for personal benefit or for the benefit of the user and his family members or close relatives; (3) Comment, criticisms or introduction of the work with acknowledgment of the ownership of copyright in such work; (4) Reporting of news through mass media with an acknowledgement of the ownership of copyright in such work; (5) Reproduction, adaptation, exhibition or display for the benefit of judicial proceedings or administrative proceedings by authorized officials or for reporting the result of such proceedings; (6) Reproduction, adaption, exhibition or display by a teacher for the benefit of his teaching provided that the act is not for profit; (7) Reproduction, adaptation in part of a work or abridgment or making a summary by a teacher or an education institution so as to distribute or sell to students in a class or in an educational institution provided that the act is not for profit; (8) Use of the work as part of questions and answers in an examination. **(9)** reproduction or adaptation for the benefit of a disabled person who is unable to have access to a copyright work due to his or her impairment in vision, hearing, intellect or learning or other impairments a prescribed in the Ministerial Regulation, provided that

	such act is not done for profit. The format of such reproduction or adaptation with respect to the necessity of the disabled person and the organization as well as the rules and procedures for the reproduction or adaption shall be in accordance with the provision specified by the Minster of Commerce in the Government Gazette**.**
Turkey	**Additional Art. 11-**(Addition:03.03.2004-5101/26) It is permitted to reproduce or lend scientific and literary works in writing including school books that have been made public or published, without obtaining the permissions prescribed by this Law and without any commercial purpose in the form of cassettes, CDs, Braille alphabet, and similar formats by a person with disability for his/her own use or by another person acting on behalf of him in a single copy, or by educational institutions, foundations, associations, and the like providing services for the benefit of the people with disability in the quantity required, provided that no such copies have already been produced for the use of people with disability. Such copies may in no way be sold, put into commercial use and used and allowed to be used for other than their intended purpose. Furthermore, it is compulsory to show information relating to rightholders and indicate the purpose of reproduction on the copies.
United Kingdom	**31A Disabled persons: copies of works for personal use** (1) This section applies if— (a) a disabled person has lawful possession or lawful use of a copy of the whole or part of a work, and (b) the person's disability prevents the person from enjoying the work to the same degree as a person who does not have that disability. (2) The making of an accessible copy of the copy of the work referred to in subsection (1)(a) does not infringe copyright if— (a) the copy is made by the disabled person or by a person acting on behalf of the disabled person, (b) the copy is made for the disabled person's personal use, and (c) the same kind of accessible copies of the work are not commercially available on reasonable terms by or with the authority of the copyright owner. (3) If a person makes an accessible copy under this section on behalf of a disabled person and charges the disabled person for it, the sum charged must not exceed the cost of making and supplying the copy. (4) Copyright is infringed by the transfer of an accessible copy of a work made under this section to any person other than— (a) a person by or for whom an accessible copy of the work may be made under this section, or (b) a person who intends to transfer the copy to a person falling within paragraph (a), except where the transfer is authorised by the copyright owner. (5) An accessible copy of a work made under this section is to be treated for all purposes as an infringing copy if it is held by a person at a time when

	the person does not fall within subsection (4)(a) or (b). (6) If an accessible copy made under this section is subsequently dealt with— (a) it is to be treated as an infringing copy for the purposes of that dealing, and (b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes. (7) In this section "dealt with" means sold or let for hire or offered or exposed for sale or hire.**]**
United States of America	United States law contains several provisions that allow persons with a disability or persons or entities acting on their behalf to undertake exclusive acts without the authorization of the copyright holder. The Copyright Act contains both specific provisions allowing certain uses for the benefit of persons with disabilities, as well as a more general fair use provision that allows uses that meet the statutory criteria. The specific provisions under U.S. copyright law include: • 17 U.S.C. § 110(8), which allows the public performance of nondramatic literary works by government entities, noncommercial educational broadcast stations, and radio subcarriers when the performance occurs "in the course of 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, or deaf or other handicapped persons who are unable to hear the aural signals accompanying a transmission of visual signals." • 17 U.S.C. § 110(9), which allows the public performance of a single occasion of a dramatic literary work published at least ten years before the date of the performance by a radio subcarrier, when the performance occurs "in the course of a transmission specifically and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap." • 17 U.S.C. § 121, which allows for the reproduction or distribution of previously published nondramatic literary works by "authorized entities" in "specialized formats exclusively for use by blind or other persons with disabilities." In addition, U.S. law allows for anyone, including persons with a disability or persons or entities acting on their behalf, to undertake any exclusive acts with respect to any types of works without the authorization of the copyright holder, so long as the undertaking of those acts qualifies as a fair use under the four-factor balancing test found in Section 107 of Title 17. These four factors are weighed together to determine if a use is fair: 1. The purpose and character of the use; 2. The nature of the copyrighted work; 3. The amount and substantiality of the portion used; 4. The effect of the use on the potential market.

2. A) Which acts are allowed with respect to works protected by copyright and related rights and persons with a disability?

	Reproduction	Adaptation	Distribution	Communication to the Public	Access available at a place and Time Chosen by the public	Importation	Exportation	Circumvention of Technological Protection	Other
Botswana									
Brazil	✔		✔						
Chile	✔	✔	✔	✔	✔				
Czech Republic	✔	✔	✔	✔	✔				
Ecuador	✔	✔	✔	✔	✔	✔	✔	✔	
El Salvador	✔			✔					
Estonia	✔		✔	✔					
Guatemala									
Honduras									
Indonesia	✔	✔	✔	✔	✔	✔	✔	✔	✔
Serbia	✔		✔						
Seychelles	✔		✔						
Singapore	✔		✔			✔	✔	✔	
Slovakia	✔		✔	✔	✔	✔	✔	✔	✔
Sweden	✔		✔	✔	✔			✔	

	Reproduction	Adaptation	Distribution	Communication to the Public	Access available at a place and Time Chosen by the public	Importation	Exportation	Circumvention of Technological Protection	Other
Thailand	✔	✔							
Turkey	✔								✔
United Kingdom									✔
United States of America	✔	✔	✔	✔	✔			✔	✔

Other explanation:

Czech Republic The circumvention of technological protection measures is not allowed, but an author who used technical measures in respect of his work shall make his work available to lawful users to the extent necessary to fulfill the purpose of the stated exploitation of the work.

Slovakia Lending, public performance

Turkey Lending

United States of America There are specific exceptions for public performance, reproduction, and distribution under Sections 110 and 121, respectively, but Section 107 allows uses protected by any of the exclusive rights set forth in 17 U.S.C. § 106, subject to certain statutory requirements. Additionally, through the triennial Section 1201 Rulemaking process (described directly below), persons with disabilities or those acting on their behalf may request an exemption to the prohibition on circumventing technological protection measures.

17 U.S.C. § 1201, under which the United States triennial rulemaking provides for a process to grant exemptions to the prohibition on the circumvention of technological protection measures. Every three years, the Librarian of Congress, upon the recommendation of the Register of Copyrights, determines whether users of a particular class of copyrighted works are, or are likely to be, adversely affected by the prohibition on the circumvention of technological protection measures. Whenever such an adverse impact is determined, the Librarian is required to publish the classes of works to which the prohibition against circumvention of technological measures shall not apply.

Furthermore, under the Americans with Disabilities Act (ADA), a state or local entity or public accommodation must furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.[170] Similarly, section 504 of the Rehabilitation Act (section 504) requires recipients of Federal funding and Federal agencies to take appropriate steps to ensure effective communication with applicants, employees, and members of the public.[171] Examples of auxiliary aids and services include: open and closed captioning; assistive listening devices or systems; qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs; large print materials; and accessible electronic and information technology.[172] The effective communication requirements apply to individuals with all types of disabilities.

[170] See 28 CFR 35.160(b), 36.303(c).
[171] See 28 CFR 41.51(e), 39.160(a), and 42.503(e), (f).
[172] See 28 CFR 35.104, 36.303(b).

2. B) Such acts are permitted with respect to the following disabilities:

	Deafness of hard of hearing	Visual Impairment	Cognitive Disability	Intellectual Disability	Motor Disability	Any Disability
Botswana						
Brazil		✔				
Chile	✔	✔				✔
Czech Republic	✔	✔	✔	✔	✔	
Ecuador						✔
El Salvador		✔				✔
Estonia						✔
Guatemala						
Honduras						
Indonesia		✔				
Serbia						✔
Seychelles		✔				
Singapore		✔		✔		
Slovakia						✔
Sweden						✔
Thailand	✔	✔	✔	✔		

	Deafness of hard of hearing	Visual Impairment	Cognitive Disability	Intellectual Disability	Motor Disability	Any Disability
Turkey						✔
United Kingdom						
United States of America						✔

Other Disabilities:

Singapore Reading disability (a blind person, a person with severely impaired sight, a person unable to hold or manipulate books or to focus or move his eyes, or a person with a perceptual handicap.)

Thailand "Other impairments as prescribed in the Ministerial Regulation (To date, there has been no other impairment prescribed in the Ministerial Regulation.)"

United Kingdom Section 31F(4) – (8) of the Copyright, Designs and Patents Act 1988

Explanations:

Turkey In addition to Article 11; the statement of "by a person with a disability" is regulated. As a result, the definition and the scope of disability is not limited.

Slovakia Use is intended solely for the benefit of persons with a disability. Such use is done only to the extent required by the level of disability and provided that the purpose of such use is not directly or indirectly commercial.

Sweden The beneficiary person must have a need of the copies "in order to be able to enjoy the work." Further details are included in Article 17, Second Paragraph.

3. A). Does your national statute specify the categories of copyrighted works that fall under the limitations and exceptions outlined in Question 1?

	Yes	All Types of Works	Written Works	Sound Works	Audiovisual Works	Visual Works	No
Botswana							
Brazil			✔				✔
Chile	✔	✔					
Czech Republic	✔	✔					
Ecuador	✔		✔	✔	✔	✔	
El Salvador							✔
Estonia							✔
Guatemala							
Honduras							
Indonesia	✔		✔				
Serbia	✔	✔					
Seychelles	✔						
Singapore			✔			✔	
Slovakia	✔	✔					
Sweden	✔		✔	✔		✔	
Thailand	✔	✔					

	Yes	All Types of Works	Written Works	Sound Works	Audiovisual Works	Visual Works	No
Turkey	✔		✔				
United Kingdom	✔						
United States of America							

Other categories of Copyrighted works:

Brazil The national statute mentions "literary, artistic or scientific works" (art. 46, I, "d").

Seychelles to reproduce a published work

Singapore The works that fall under the limitations and exceptions for print-disabled users are specifically literary, dramatic, or artistic works. The exception for persons with intellectual disabilities does not limit the categories of copyrighted works that fall within its scope.

Turkey According to additional Article 11 "scientific and literary works in writing including school books that have been made public or published"

Czech Republic Article 38 Paragraph 1 (a) and Paragraph (4) of the Copyright Act concerns all works in general. Article 38 Paragraph 1 (b) of the Copyright Act concerns the audiovisual works. Article 38 Paragraph 3 of the Copyright Act concerns the television broadcasting.

United States of America See answer to 1. There are specific provisions for literary works under Sections 110(8), 110(9), and 121, but Section 107 applies to all types of works. Section 121 excludes computer programs and secure tests from the list of works that may be reproduced.

4. What other conditions, if any, must be met in order for such uses to be authorized?

Brazil	In order to be entitled to the limitation provided by the law, the act must be done with non-profit purposes. The provision also mentions that the reproduction of the protected content must be done through some medium designed for the specific beneficiaries (i.e. persons with visual impairments), such as Braille.
Chile	1.- Debe tratarse de una obra lícitamente publicada. 2.- La utilización debe guardar relación directa con la discapacidad de que se trate, se debe llevar a cabo a través de un procedimiento o medio apropiado para superar la discapacidad y efectuarse sin fines comerciales. 3.- En los ejemplares se debe señalar expresamente la circunstancia de ser realizados bajo la excepción y la prohibición de su distribución y puesta a disposición, a cualquier título, de personas que no tengan la respectiva discapacidad. [*English translation*] 1.- It must be a work published lawfully. 2.- The use must be directly related to the disability in question, must be carried out through an appropriate procedure or means to overcome the disability and be carried out without commercial purposes. 3.- The specimens must expressly state the fact of being carried out under the exception and the prohibition of its distribution and making available, in any capacity, people who do not have the respective disability.
Ecuador	No se requiere ninguna condición adicional. [*English translation*] No additional condition is required.
El Salvador	En comunicación efectuadas para no videntes y otras personas incapacitadas: 1) Que los no videntes o personas incapacitadas puedan asistir gratuitamente al acto 2) Que ningún participante en el acto reciba retribución específica por su intervención en el mismo. [*English* translation] In communication made for blind people and other incapacitated persons: 1) That the blind or incapacitated persons can attend the act gratuitously 2) That no participant in the act receives specific remuneration for his intervention in the same.

Honduras	No existen excepciones en la legislación nacional para personas discapacitadas, pero, a partir del 29 de junio de 2017 entrara en vigencia el tratado de Marrakech en nuestro país. [*English* translation] There are no exceptions in national legislation for people with disabilities, but, as of June 29, 2017, the Marrakesh Treaty will enter into force in our country.
Indonesia	"Not Yet"
Serbia	If s[u]ch work does not exist in the required form, if its use is in direct connection with invalidity of persons concerned, and in the scope that is required by a specific kind of invalidity providing the reproduction and dist[r]ibution has not been made for the sake of realizing direct or indirect commercial gain.
Singapore	Different exceptions may come with slightly different conditions. However, the following are typical requirements for most exceptions: records of the exclusive acts undertaken upon reliance of the limitations and exceptions as well as the relevant works must be kept in accordance with prescribed regulations. The entity or person relying on the limitations and exceptions relating to persons with reading disability must be satisfied after reasonable investigation that no new accessible format copy of the relevant work has been separately published, is in the same format as the copy which is to be made or distributed, and can be obtained within a reasonable time at an ordinary commercial price. The entity or person relying on the limitations and exceptions relating to persons with intellectual handicap must be satisfied, after reasonable investigation, that no new copy of the work in a form suitable for use in the provision of assistance to the intellectually handicapped reader, can be obtained within a reasonable time at an ordinary commercial price. In the case of an educational institution, the recipient of the accessible format copy must be a student of the institution. Equitable remuneration is payable upon request by the copyright owner.
Slovakia	See the conditions described in Question 2 point B) + the work has to be already released
Sweden	1. The works to be copied etc. must have been made public in the copyright sense (in Swedish “offentliggjorda”). 2. The making of copies, distribution etc. must not be carried out for commercial purposes 3. The copies must not be used for purposes other than the ones mentioned in Article 17 of the Copyright Act 4. In certain cases where the recipient may keep a copy of the work, etc. the author has a right to remuneration (Article 17 last

	Paragraph). 5. When libraries or organizations prepare or communicate copies of works under Article 17 of the Act, the author shall be informed (if so can be done without inconvenience). The same applies if the recipient may keep a copy of works that are distributed or communicated. Furthermore, the moral rights under Article 11 of the Act shall be respected, and the producer shall establish a register of the copies made. 6. The provisions mentioned under 5.are to be found in Section 3 of the Copyright Regulation.
Thailand	The 3-step test must be met as prescribed in section 32
Turkey	Without any commercial purpose. In the form of cassettes, CDs, Braille alphabet, and similar formats. By a person with disability for his/her own use or by another person acting on behalf of him in a single copy, or by educational institutions, foundations, associations, and the like providing services for the benefit of the people with disability. In the quantity required, Provided that no such copies have already been produced for the use of people with disability. Such copies may in no way be sold, put into commercial use and used and allowed to be used for other than their intended purpose. It is compulsory to show information relating to rightholders and indicate the purpose of reproduction on the copies.
United Kingdom	The Copyright and Rights in Performances (Disability) Regulations 2014 Disabled persons: copies of recordings for personal use ● lawful possession or lawful use of a copy of the whole or part of a recording of a performance ● the copy is made by the disabled person or by a person acting on behalf of the disabled person, ● the copy is made for the disabled person's personal use, ● suitable accessible copies are not commercially available on reasonable terms by or with the authority of the rights owner.[173]
United States of America	See answer to 1 and statutes attached hereto. Performances of nondramatic literary works under Section 110(8) must be specifically for persons who cannot read normal printed material and must be made without direct or indirect commercial advantage and must be done by a governmental body, noncommercial educational broadcaster, an authorized radio subcarrier or a cable system. Performances of dramatic literary works under Section 110(9) must on be a single occasion, of works published at least 10 years prior to the performance, must be specifically for persons who cannot read normal printed material, and must be made without any

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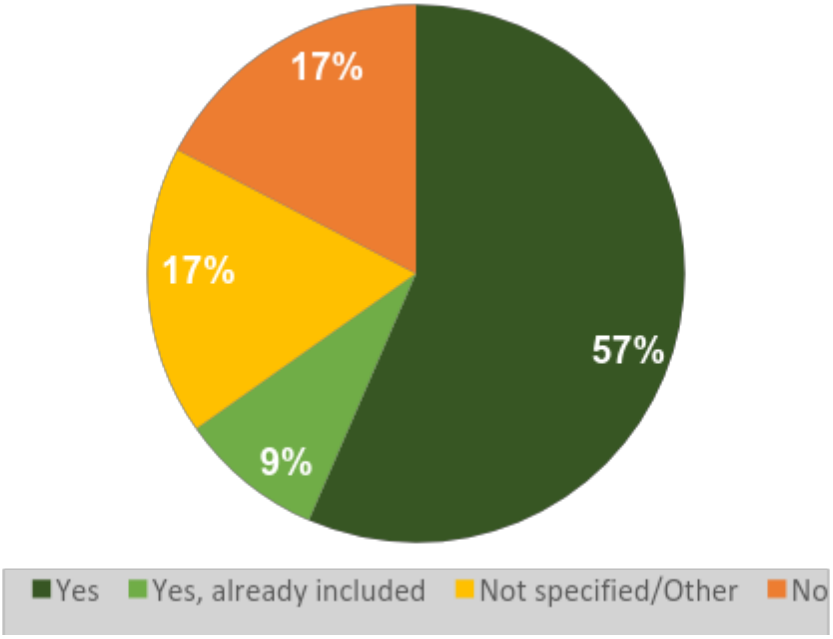
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/375952/Accessible_formats_for_disabled_people.pdf

direct or indirect commercial advantage through an authorized radio subcarrier. Reproductions and distribution under Section 121 must be done by an authorized entity, must be of a previously published work, must be in a specialized format exclusively for the disabled, must bear a notice prohibiting any further reproduction or distribution in other formats, and must include a copyright notice.

5. Does your country have plans to include or modify the specific exceptions related to people with a disability, including people who are deaf, hard of hearing, blind, visually impaired, deafblind or who have physical, motor, cognitive, or intellectual disabilities?



Yes	YES, already included	Not Specified/Other	No
Botswana* Singapore Thailand* Turkey Czech Republic* Estonia Slovakia* Guatemala Honduras Sweden Brazil*	Chile	Seychelles U.K. United States	Indonesia Serbia Ecuador El Salvador

* Countries indicate they plan to implement Marrakesh

Further explanation:

Botswana Botswana acceded to the Marrakesh Treaty, and is only looking at revising the national copyright law to include limitations and exceptions to cater for people living with disabilities. The primary focus is on those covered by the Marrakesh Treaty, however, benchmarks will be carried out for other persons living with disability in view of issues being discussed at the SCCR.

Brazil Since Brazil ratified the Marrakesh Treaty, the government needs to adapt the national copyright statute to the provisions of this international agreement. This involves the inclusion of people with other disabilities (e.g. "perceptual and reading disabilities") and provisions regarding the importation and exportation of works in accessible formats.

Czech Republic The Czech Republic will amend the national legislation to bring the national law into line with the Marrakesh Treaty.

Ecuador En el Ecuador el Código Orgánico de la Economía Social de los Conocimientos, Creatividad y la Innovación, se publicó el pasado 9 de Diciembre de 2016, en su texto se incorporan limitaciones y excepciones en favor de las personas con discapacidad. [English *Translation:* In Ecuador, the Organic Code of the Social Economy of Knowledge, Creativity and Innovation was published on December 9, 2016, incorporating limitations and exceptions in favor of people with disabilities.]

Indonesia Copyright Law Number 28 Year 2014 only sets exception for Facilitation of access to the works for the blind, persons with vision impairment or limitations in reading. While for persons with other disabilities are regulated in Law Number 8 Year 2016 Regarding Persons with Disabilities.

Slovakia The CA will be modified in order to ensure compliance with the recently approved EU legislation, which implements the provisions of Marrakesh Treaty (Directive of the European Parliament and of the Council on certain permitted uses of works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled and amending Directive 2001/29/EC on the harmonization of certain aspects of copyright and related rights in the information society and Regulation of the European Parliament and of the Council on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled). It means that there will be modifications related to persons who are blind, visually impaired or otherwise print disabled.

Thailand [P]lans to include people who are considered as beneficiary persons under the Marrakesh Treaty and communication to the public right.

United Kingdom We are currently awaiting the outcome of the EU Commission's proposals to implement the Marrakesh Treaty.

United States On February 12, 2016, draft legislation, entitled the "Marrakesh Treaty Implementation Act of 2016," was forwarded to the Senate. This draft bill proposed limited changes to the Copyright Act to implement the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, done at Marrakesh, Morocco, on June 27, 2013 (Marrakesh Treaty).

6. Impediments to the use of the limitations and exceptions for persons with disabilities:

Brazil	Overall, there is lack of information about copyright and related rights. It is important to develop awareness initiatives. There are few institutions working with accessible formats. As most persons and institutions have few resources, capacity building is an additional challenge.
El Salvador	Desde el punto de vista legal, el obstáculo que podría presentarse para el uso de las excepciones establecidas en la ley (ver respuesta a pregunta 1 y anexo) es la protección a las medidas tecnológicas efectivas (Art. 85-D de la Ley de Propiedad Intelectual), que no contempla exención de responsabilidad ni excepción para la evasión o infracción de este tipo de medidas para el uso de una obra en el marco de la excepción de las comunicaciones en favor de personas con discapacidad o de la reproducción para copia privada. Sin embargo, esta situación no se daría siempre, sino únicamente cuando la obra a utilizar en el marco de esta limitación esté protegida con este tipo de medidas. Desde el punto de vista práctico, la falta de recursos económicos del sector de personas con discapacidad visual es la principal limitante para el aprovechamiento de las excepciones. [*English translationI]* From the legal point of view, the obstacle that could arise for the use of the exceptions established in the law (see answer to question 1 and annex) is the protection of effective technological measures (Article 85-D of the Property Law Intellectual), which does not contemplate exemption from liability or exception for evasion or violation of this type of measures for the use of a work in the context of the exception of communications in favor of persons with disabilities or reproduction for private copying. However, this situation would not always be the case, but only where the work to be used in the context of this limitation is protected by such measures. From the practical point of view, the lack of economic resources of the visually impaired sector is the main limitation for the use of the exceptions.
Guatemala	A través de la Política Nacional de discapacidad y la Ley nacional de atención a las personas con discapacidad. [*English translation*] Through the National Disability Policy and the National Law for the Care of Persons with Disabilities.
Indonesia	The Government has not provided maximum services and facilities for persons with disabilities.

Singapore	Institutions assisting persons with disability were often unable to obtain electronic copies or accessible format copies from publishers or entities in other countries.
Slovakia	- Cross-border application of exceptions and limitations as such, including this exception. - More awareness raising about exceptions is needed.
United Kingdom	Assertions have been made by stakeholders in a recent ‘call for views’ but very little evidence to support assertions have been received.

7. A) Does your national statute require copyright holders or third-party distributors to provide accessible formats of any copyright works? (Examples include the addition of closed captions or video description to televised video programming.)

YES (2)	**NO** (15)	**OTHER** (4)
Chile Czech Republic United States of America	Sweden United Kingdom Botswana Seychelles Indonesia Singapore Thailand Turkey Ecuador El Salvador Guatemala Honduras Estonia	Serbia Slovakia Brazil

7. B) Please attach to this questionnaire the relevant legislation and indicate below the category of work affected:

Brazil

As a result of the UN Convention on the Rights of Persons with Disabilities, the Brazilian Law for the Inclusion of Persons with Disabilities (Lei Brasileira de Inclusão) establishes that works in accessible format cannot be denied to persons with disabilities even under claims based upon intellectual property rights (Art. 42, §1º; Law n. 13.146, of July 6, 2015).

Law n. 13.146, of July 6, 2015 (Brazilian Law on Inclusion): it does not specify any category of work, as it uses the broad expression “intellectual work”.

The limitations and exceptions provided by the copyright statute and the Brazilian Law for the Inclusion of Persons with Disabilities (hereinafter referred to as “LBI”) are complementary. Both intend to develop a better environment for persons with disabilities, but they have different targets and purposes. As LBI was approved in 2015, its intersection with the copyright statute is not totally clear yet.

Limitations and exceptions focus on non-profit institutions, such as “authorized entities” according to the concept of the Marrakesh Treaty. On the other hand, the Brazilian Law for the Inclusion of Persons with Disabilities seems to have broader provisions aimed at for-profit institutions. This law just establishes that works in accessible formats cannot be denied to persons with disabilities, but it does not provide any

	specific criteria. The goal is to encourage publishers and other institutions to make works accessible in formats designed for persons with disabilities. Nonetheless, the government will still discuss regulations concerning this law.
Chile	El artículo 25 de la Ley 20.422 que establece normas sobre igualdad de oportunidades e inclusión social de personas con discapacidad, dispone: "Los concesionarios de servicios de radiodifusión televisiva de libre recepción y los permisionarios de servicios limitados de televisión deberán aplicar mecanismos de comunicación audiovisual que posibiliten a las personas en situación de discapacidad auditiva el acceso a su programación en los casos que corresponda, según lo determine el reglamento que al efecto se dictará a través de los Ministerios de Desarrollo Social, de Transportes y Telecomunicaciones y Secretaría General de Gobierno. Las campañas de servicio público financiadas con fondos públicos, la propaganda electoral, los debates presidenciales, las cadenas nacionales, los informativos de la Oficina Nacional de Emergencia del Ministerio del Interior y Seguridad Pública y los bloques noticiosos transmitidos por situaciones de emergencia o calamidad pública que se difundan a través de medios televisivos o audiovisuales deberán ser transmitidos o emitidos subtitulados y en lenguaje de señas, en las formas, modalidades y condiciones que establezca el reglamento indicado en el inciso precedente". Por otro lado, la Ley 18.838 que crea el Consejo Nacional de Televisión, la letra b) de su artículo 12, dispone: "El Consejo Nacional de Televisión tendrá las siguientes funciones y atribuciones: b) Promover, financiar o subsidiar la producción, los costos de transmisión o la difusión de programas de alto nivel cultural, de interés nacional, regional, local o comunitario; de contenido educativo; que propendan a la difusión de los valores cívicos y democráticos, o que promuevan la diversidad en los contenidos televisivos y reflejen la conformación plural de la sociedad, así calificados por el mismo Consejo, sin perjuicio que para el financiamiento o subsidio de la programación cultural deberá ser escuchado, en forma previa, el Consejo Nacional de la Cultura y las Artes. Anualmente, la ley de Presupuestos del Sector Público contemplará los recursos necesarios, de acuerdo con lo establecido en la letra a) del artículo 32 de esta ley. Estos recursos deberán ser asignados por el Consejo, previo concurso público en el que podrán participar concesionarias de servicios de radiodifusión televisiva de libre recepción y productores independientes. En el caso de asignaciones a productores independientes, antes de la entrega de los recursos, el productor beneficiado deberá, dentro de los sesenta días siguientes a la resolución del concurso, acreditar que la transmisión del respectivo programa en las condiciones de horario y niveles de audiencia preceptuados en las bases está garantizada por una concesionaria de servicio de radiodifusión televisiva de libre recepción o permisionario de servicios limitados de televisión en los casos y formas

previstos en dichas bases. Vencido dicho plazo sin que se acredite esta circunstancia, la asignación beneficiará al programa que haya obtenido el segundo lugar en el concurso público respectivo. Para estos efectos, elConsejo, al resolver el concurso, deberá dejar establecido el orden de preferencia.

El Consejo Nacional de Televisión deberá establecer un sistema escalonado de beneficios, de manera de favorecer especialmente la difusión de la programación de concesionarios regionales, locales y locales de carácter comunitario.

El Consejo Nacional de Televisión deberá siempre velar por el cumplimiento de la ley Nº 20.422 y su reglamento. En el caso que se emitan programas de acuerdo con el párrafo primero de esta letra b) los concesionarios y permisionarios deberán siempre incluir el correspondiente subtitulado oculto para ser visualizado especialmente por personas con discapacidad auditiva.

Las bases del concurso deberán contemplar las garantías que aseguren el cumplimiento de las obligaciones asumidas por el adjudicatario definitivo".

[*English translation*]

Article 25 of Law 20.422, which establishes rules on equality of opportunity and social inclusion of persons with disabilities, provides: "Concessionaires of free-to-air television services and permit holders of limited television services shall apply audiovisual communication mechanisms Make it possible for people with hearing disabilities to have access to their programming in the corresponding cases, as determined by the regulations that will be issued through the Ministries of Social Development, Transport and Telecommunications and General Secretariat of Government.

Public-funded public service campaigns, electoral propaganda, presidential debates, national channels, news reports from the National Emergency Office of the Ministry of the Interior and Public Security, and news blocs transmitted through emergency or public calamity that Broadcast through television or audiovisual media must be transmitted or broadcast subtitled and in sign language, in the forms, modalities and conditions established by the regulation indicated in the preceding paragraph."

On the other hand, Law 18,838 created by the National Television Council, article 12, letter b) states: "The National Television Council shall have the following functions and powers:

> B) Promote, finance or subsidize the production, transmission costs or dissemination of programs of high cultural level, of national, regional, local or community interest; Educational content; That promote the dissemination of civic and democratic values, or that promote diversity in television content and reflect the plural form of society, as qualified by the same Council, without prejudice to the financing or subsidy of cultural programming Be heard, in advance, the National Council of Culture and Arts. Annually, the Public Sector Budget Law will contemplate the necessary resources, according to what is established in letter a) of article 32 of this law.

	These resources must be allocated by the Council, following a public tender in which concessionaires of free-to-air television broadcasting services and independent producers may participate. In the case of allocations to independent producers, prior to the delivery of the resources, the benefited producer must, within sixty days following the resolution of the competition, certify that the transmission of the respective program in the conditions of time and audience levels precepted in the bases is guaranteed by a concessionaire of television broadcasting service of free reception or permission of limited television services in the cases and forms provided in said bases. Once said term has expired without this circumstance being evidenced, the assignment will benefit the program that has obtained the second place in the respective public contest. For these purposes, the Council, in resolving the competition, should leave the order of preference established. The National Television Council must establish a tiered system of benefits, in order to promote, in particular, the dissemination of the programming of regional, local and local concessionaires of a community character. The National Television Council must always ensure compliance with Law No. 20,422 and its regulations. In the case that programs are issued in accordance with the first paragraph of this letter b) concessionaires and permit holders must always include the corresponding subtitled hidden to be displayed especially by people with hearing impairment. The bases of the contest must include the guarantees that ensure compliance with the obligations assumed by the definitive winner."
Czech Republic	There are “[l]ots of detailed statutes and regulations (basically requirements for captions, signing, etc.) Neat detail on how they interact with the copyright act.”
Serbia	Media service providers are obliged, in accordance with its financial and technical capabilities, to make available its program contents for the needs of the hearing and vision impaired persons. Law on electronic media (Official gazette RS No 83/2014, 6/2016), Article 52.
Slovakia	The Section 46 of Slovak Act No. 185/2015 Coll. (CA) does not require copyright holders or third-party distributors to obligatory provide accessible formats of works protected by copyright but any person is allowed to make accessible formats under the exception in compliance with the conditions of exception. • Only audiovisual works and literary (verbal) works are affected. • It is included in Section 46 paragraphs 2 and 3 of CA: (2) Copyright is not infringed by a person who without authorization

of its author supplements audiovisual work with verbal description of visual element of the work intended solely for persons with a disability and to the extent required by level of disability.

(3) Copyright is not infringed by a person who without authorization of its author creates sound recording of literary (verbal) work intended solely for persons with a disability and to the extent required by the level of disability.

These provisions form an integral part of the CA. These entities/persons, who adapt the audiovisual work or literary (verbal) work for the benefit of persons with a disability can do it without obtaining authorization (license) from rightholder, but they have to do it solely for persons with a disability, to the extent required by the level of disability and without direct or indirect commercial purpose.

7. C) How do those requirements intersect with your national copyright statute and any exceptions or limitations for people with disabilities? For example, are entities subject to the requirements required to obtain a license for any adaptation or reproduction necessary to comply with the requirement, or is that need obviated by any exception or limitation?

Brazil

The limitations and exceptions provided by the copyright statute and the Brazilian Law for the Inclusion of Persons with Disabilities (hereinafter referred to as "LBI") are complementary. Both intend to develop a better environment for persons with disabilities, but they have different targets and purposes. As LBI was approved in 2015, its intersection with the copyright statute is not totally clear yet.

Limitations and exceptions focus on non-profit institutions, such as "authorized entities" according to the concept of the Marrakesh Treaty. On the other hand, the Brazilian Law for the Inclusion of Persons with Disabilities seems to have broader provisions aimed at for-profit institutions. This law just establishes that works in accessible formats cannot be denied to persons with disabilities, but it does not provide any specific criteria. The goal is to encourage publishers and other institutions to make works accessible in formats designed for persons with disabilities. Nonetheless, the government will still discuss regulations concerning this law.

Chile

Por favor, remítase a la respuesta dada a la pregunta nº 1.

[*English translation*]

Please refer to the answer given to question no. 1

Czech Republic

The regulations contained in the special laws mentioned above are also taken into consideration in the provision of Article 38 of the Copyright Act, especially in the provision of Article 38 Paragraph 3 of the Copyright Act, which regulates the free use of the work, and in the provision 43 Paragraph 4 of the Copyright Act.

The provision of Article 38 of the Copyright Act defines cases where persons do not infringe the copyright if they intervene in the author's work exclusively for the benefit of people with disability the way of use of the work as follows in that provision. These persons may not obtain the right to exercise the right to use the copyright work (license) if they use the work in the manner specified in Article 38 of the Copyright Act.

The addition of amendment is proposed in Article 38, Paragraph 3, to facilitate the application of Article 32 Paragraph 2 of Act No. 231/2001 Coll., on Radio and Television Broadcasting and on Amendment to Other Acts, and Act No. 132/2010 Coll., on on-demand audiovisual services and amending certain laws (the On/demand Audiovisual Media Services Act).

Pursuant to the provisions of Article 43 Paragraph 4 of the Copyright Act, an author who used technical measures under Paragraph 3 in respect of his work shall make his work available to lawful users (Article 38 of the Copyright Act) to the extent necessary to fulfil the purpose of the stated exploitation of the work.

It is concerning the following provisions:

Article 38

License for persons with disabilities

(1) Copyright is not infringed by anybody who:

a) exclusively for the benefit of people with disability and not for the purpose of direct or indirect economic or commercial advantage, makes a reproduction or has a reproduction made of a work to the extent required by the specific disability; a reproduction so made may also be distributed and communicated by the same person, unless this is done for the purpose of direct or indirect economic or commercial advantage;

b) exclusively for the benefit of people with vision or hearing disability and not for the purpose of direct or indirect economic or commercial advantage, equip the reproduction of the audiovisual record of the audiovisual work with verbal expression of the visual component or addition of the visual or textual means necessary to make the work available to those persons; the audiovisual work completed this way may also be reproduced, distributed and communicated by the same person, unless this is done for the purpose of direct or indirect economic or commercial advantage.

(2) Paragraph 1 shall apply to the audiovisual work only if it has been issued.

(3) Copyright shall therefore not be infringed by anybody who performs television broadcasting and, in accordance with the law, broadcasts a program accompanied by a sound description to make the program accessible to visually impaired persons unless this service is charged or this is done for direct or indirect economic or commercial advantage.

(4) Copyright is not infringed by the person referred to in Article 37 (1), if the originals or reproductions of published works are lent to meet the

	needs of people with disability in connection with their disability. (5) Provisions of Article 30 (5) shall apply mutatis mutandis. Article 43 (1) Copyright is infringed by anybody who circumvents effective technical measures that are in place to protect rights under this Act. (3) For the purposes of this Act, the expression effective technical measures means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works, which are not authorised by the author, if the author can control the use of a protected work through application of an access control or protection process, such as encryption, scrambling or other transformation of the work, or a copy control mechanism. (4) Legal protection under Paragraph (1) above shall be without prejudice to the provisions of Article 30a, Article 31 (1) (b), Article 34 (a), Article 37 (1) (a) and (b), Article 38, Article 38a (2) and Article 38e, to the extent necessary to benefit from the exception. An author who used technical measures under Paragraph (3) in respect of his work shall make his work available to lawful users to the extent necessary to fulfil the purpose of the stated exploitation of the work. The author may make available his work, for which he used the technical measures referred to in Paragraph (3), even in the case that a reproduction of his work for private use has already been made under Article 30; this shall not prevent the author from adopting adequate measures regarding the number of such reproductions.
Guatemala	En la legislación nacional no contiene disposiciones relativas a las excepciones o limitaciones a favor de las personas con discapacidad. [*English translation*] National legislation does not contain provisions regarding exceptions or limitations in favor of persons with disabilities
Serbia	Entities must obtain a license.
Slovakia	These provisions form an integral part of the CA. These entities/persons, who adapt the audiovisual work or literary (verbal) work for the benefit of persons with a disability can do it without obtaining authorization (license) from rightholder, but they have to do it solely for persons with a disability, to the extent required by the level of disability and without direct or indirect commercial purpose.

[End of Annex]