Scoping Study on Access to Copyright Protected Works by People with Disabilities

WIPO Standing Committee on Copyright and Related Rights

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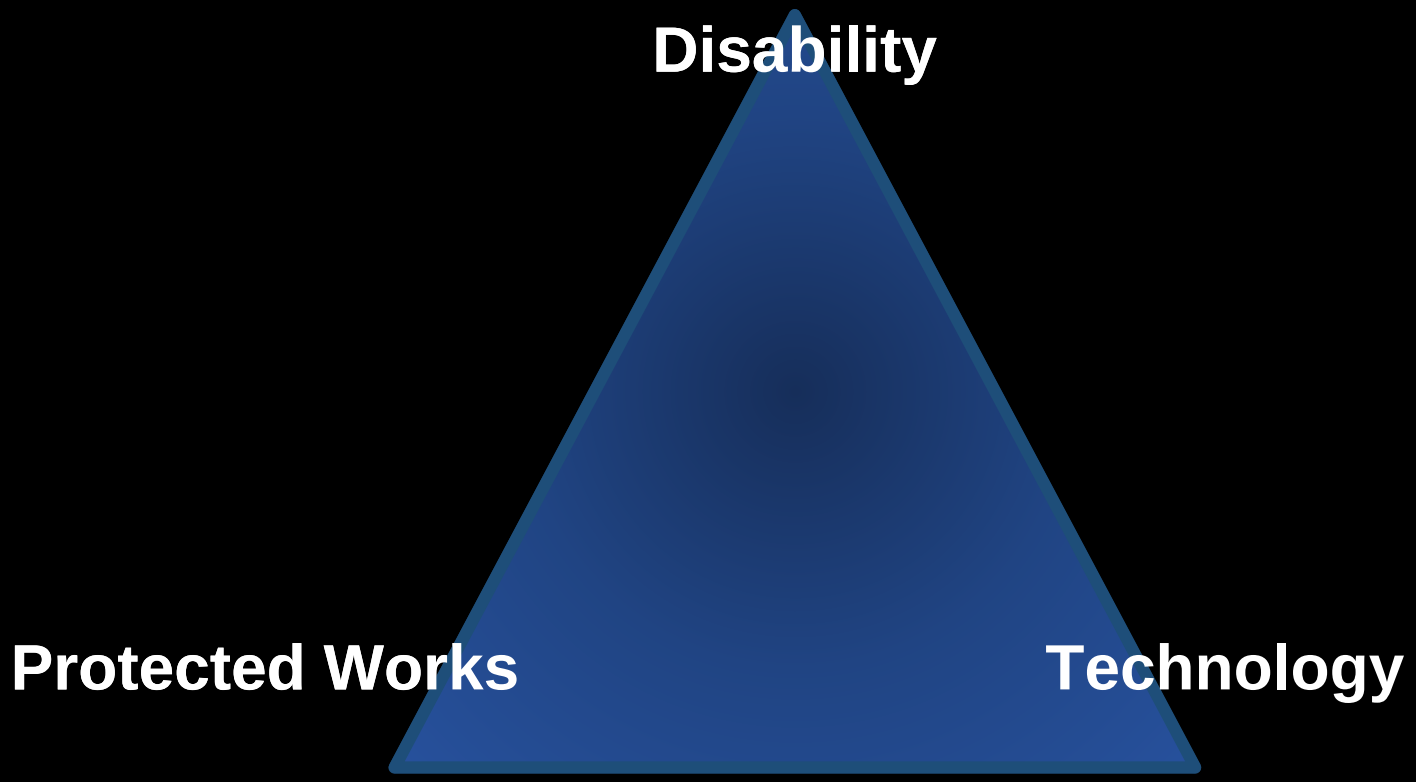
Agenda

- Background and New Technological Developments
- Updated Methodology
- Analysis and Findings
- Next Steps, Acknowledgments and Q&A

Background

Intersection of Copyright and Accessibility

Copyright/accessibility intersection



Marrakesh VIP Treaty

- Protected works: Books (text, notation, and/or related illustration)
- Print disabilities: blind/visually impairment, perception/reading, physical
- Technology: accessible format copies

Disabilities, works, and technologies

- Other categories of protected works:
  - Literary, musical, dramatic, and artistic
  - Pictorial, graphical, and sculptural works (except associated illustrations)
  - Audio works (except for audiobooks)
  - Audiovisual works and motion pictures
  - Software

Disabilities, works, and technologies

- Other disabilities:
  - Aural (deaf / hard of hearing)
  - Visual (blind / visually impaired)
  - Cognitive / intellectual
  - Physical
  - Multiple disabilities (e.g., DeafBlind, deaf + cerebral palsy)

Disabilities, works, and technologies

- Other technological accessibility measures and remediation (examples)
  - Tactile books and paintings
  - Closed captioning and audio description
  - Image and photo description
  - Plain language and other content adaptations
  - Augmented reality

Background

New Technological Developments: AI and Machine Learning

AI Image and Speech Recognition for Video

Automated Image Recognition

elk-mountain-ranch-colorado-dudes.jpg

Horse	98%
Trail Riding	97%
Endurance Riding	94%
Grassland	94%
Outdoor Recreation	93%
Ranch	92%
Animal Sports	91%
Equestrian Sport	90%
Recreation	89%

Automated Content Clarification

Original content

Hey John, am I glad to see you! I wanted to tell you that my family is in unanimous agreement regarding the Grand Canyon being an astonishing landmark. As a matter of fact, we also hired a very competent tour guide to take us on our little jaunt. Well, that's all for now. See you later, alligator!

Analyzed content

Hey John, I am very glad to see you! I wanted to tell you that my family is in solid agreement about the Grand Canyon being an amazing place. Actually, we also hired a very skilled tour guide to take us on our little outing. Well, that's all for now. Good bye!

Automated Content Summarization

Hide Original

Original Text

Training is the key to making sure that people who are hard of hearing or deaf—the consumers of hearing assistive technology—have the knowledge and skills necessary to take full advantage of the hearing devices and other emerging assistive technologies they might want or need to use. Consumers, who include both people who are hard of hearing or deaf and parents of children who are hard of hearing or deaf, can benefit from high quality and in-depth training, particularly when it is provided by other consumers of hearing assistive technology. These “consumer trainers” can serve as examples to other consumers of how to use technology with confidence. The consumer trainers bring real life understanding from their personal, social, and workplace experiences. They can share with other consumers their positive experiences and lessons learned in searching for the right technology, learning

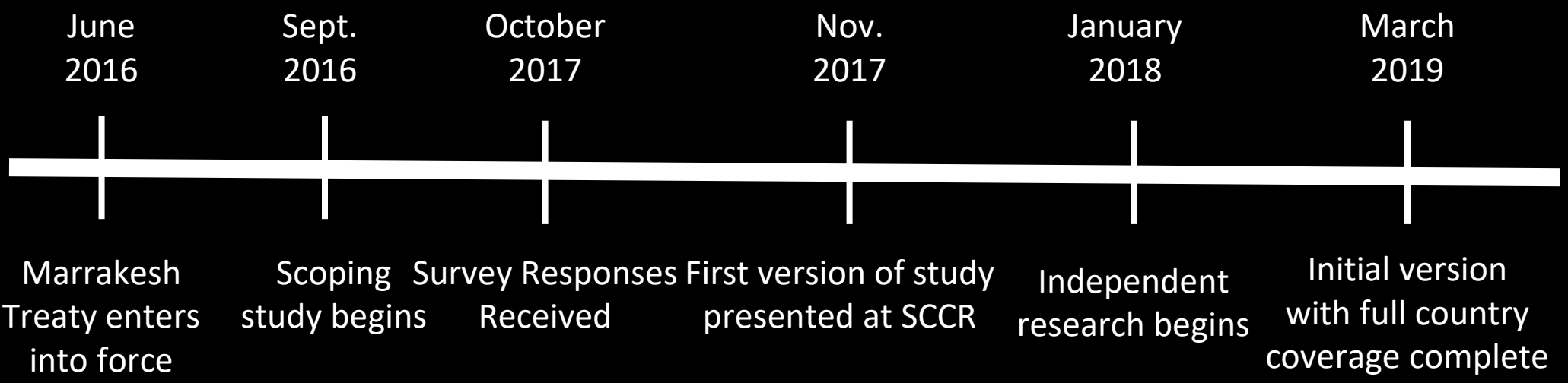
Analyzed Text

Training is the key to making sure that people who are hard of hearing or deaf—the consumers of hearing assistive technology—have the knowledge and skills necessary to take full advantage of the hearing devices and other emerging assistive technologies they might want or need to use. Consumers include both people who are hard of hearing or deaf and parents of children who are hard of hearing or deaf. These "consumer trainers can serve as examples to other consumers of how to use technology with confidence. The consumer trainers bring real life understanding. A technology focused train-the-trainer program.

Content Length: 1185
Summary Length: 612
Summary Ratio: 48.35

Methodology

Methodology: Timeline



Slovakia

Specific Provisions	**Section 46** Using of Work for the Benefit of Persons with a Disability (1) Copyright is not infringed by a person who without authorisation 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 and to the extent required by the level of disability and having purpose other than direct or indirect commercial benefit. 2) Copyright is not infringed by a person who without authorisation 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. Using of audiovisual work supplemented in such manner is governed by paragraph 1. (3) Copyright is not infringed by a person who without authorisation of its author creates sound recording of literary work intended solely for persons with a disability and in the extent required by the level of disability. Using of such sound recording is governed by paragraph 1.	Sec 46
Which disabilities are provided for?	Unspecified	
Who may make accessible formats?	Unspecified	

Conditions:	• Cannot be for profit • Modification must be intended solely for the benefit of a disabled person • Modification must not exceed the extent necessary • Work must be released	
Works	Unspecified	
Exclusive rights	• Reproduction • Distribution • Communication to the public • Lending • Public performance	
General Provisions	None	
Import/export provisions	Import Export	
Other provisions?	Anti- circumvention exemption	
Marrakesh VIP Treaty	None	
Source	Slovak Act No. 185/2015 Coll On Copyright, available at https://wipolex.wipo.int/en/text/451097	

Analysis and Findings

Previous Study Recap

A diversity of approaches

- Minority of the sampled member states did not have accessibility-related © exceptions and limitations
- Of those who had these, there were variances with respect to:
    1. exclusive rights the e&I are applicable to
    2. disabilities are addressed (some or all)
    3. categories of copyright protected works
    4. conditions for use

Specific Acts (Q2.A)

Member State	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	
Reproduction					✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	16
Adaptation						✓						✓	✓			✓		✓	✓	✓	7
Distribution							✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	13
Communication to the Public										✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	10
Access Available at a Place and Time Chosen by the Public												✓	✓		✓	✓	✓	✓	✓	✓	8
Importation														✓			✓	✓	✓	✓	5
Exportation														✓			✓	✓	✓	✓	5
Circumvention of Technological Protection Measures														✓	✓	✓	✓	✓	✓	✓	7

Specific Disabilities (Q2.B)

Member State	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Deafness or hard of hearing									✓	✓	✓									✓
Blindness or Visual Impairment					✓	✓	✓	✓	✓	✓	✓								✓	✓
Cognitive Disability									✓	✓	✓									
Intellectual Disability								✓	✓	✓	✓									
Motor Disability											✓									
Any Disability												✓	✓	✓	✓	✓	✓	✓	✓	✓

Categories of Copyrighted Works (Q3.B)

Member State	1	2	3	4	5	6	7	8	9	10	11	12
All Types of Works							✓	✓	✓	✓	✓	✓
Written Works	✓	✓	✓	✓	✓	✓						
Sound Works					✓	✓						
Audiovisual Works						✓						
Visual Works				✓	✓	✓						

Conditions for Use (Q4)

- Common requirements:
  - Non-commercial or non-profit
  - Tailoring to specific disability
  - An accessible copy must not already exist
    - Or be commercially available
  - Exception applies only to published works
  - Recordkeeping of copies made
  - Inform rightsholder in advance
  - Remuneration

Other questions probed

- Plans to modify copyright law
- Impediments, if any, to the use of exceptions & limitations
- Intersection between copyright and disability laws
  - not covered in current expanded iteration of study

Analysis and Findings

Single vs. Mixed/Hybrid Approach

Single vs. Mixed/Hybrid Approach

- Two main approaches based on the use of two types of exceptions and limitations (“provisions”)
- Types of provisions
  - specific
  - general

Single

GENERAL PROVISIONS ONLY

Dominica, Kyrgyzstan, Micronesia, Sri Lanka

- provisions (fair use) that enable the making of accessible format copies

Single

SPECIFIC PROVISIONS ONLY

Australia
Armenia

- provisions that specify disability, works, exclusive rights & conditions

Mixed

GENERAL AND SPECIFIC PROVISIONS

Israel
United States of America

- these jurisdictions have both general and specific provisions in their copyright law

Specific Provisions (1)

- Indicates disability, relevant works, exclusive rights to which the exception and limitation applies and any conditions of use
- A few non-geographically representative examples:
  - Armenia
  - Argentina
  - India
  - Israel
  - United States of America

Country	Provision	Disability	Exclusive Rights	works	Conditions
Armenia	Art 22(h)	Visual "blindness"	Reproduction	Unspecified	Attribution Use not contrary to normal exploitation of work Non-commercial
Argentina	Art 36	Visual "unsighted" Sensory "severe visual impairment, amblyopia, dyslexia or any other physical or neurological impairment which affects the reading, handling or understanding of conventionally printed texts"	Reproduction Distribution Performance	Scientific Literary	To be made by authorized bodies Not applicable to AFC that are available commercially Indication of authorized body creating the AFC, date of original publication and the copyright holder of original work Warning of applicable criminal sanctions for unauthorized use
India	52(1) (zb) specific exception s 31B (compulsory licenses for AFC production on a commercial basis)	Unspecified/All	s52 adaptation reproduction issue of copies or communication to the public	Literary Musical Artistic Dramatic (other than cinematographic	s 52 to be made by any person or organization working for the benefit of persons with disabilities non-profit AFC to be used only by persons with disabilities reasonable steps to prevent its entry into ordinary channels of business.

Country	Provision	Disability	Exclusive Rights	works	Conditions
Israel	Sec 28A – B	physical, mental or intellectual, including cognitive, impairment	Unspecified/All	Unspecified/All	• Cannot be for profit if made by an organization • Must only be modified to the extent necessary for use • Must be a notice stating that the copying or transferring of a formatted copy will constitute copyright infringement • Must be for personal use if modification was made by an individual • Work must be lawfully disclosed
US	**§110** **§121**	Deaf Blind Other	Reproduction Adaptation Distribution Public Performance	Non-dramatic literary Educational	• Must be done by an authorized entity • specialized format exclusively for use by blind or other persons with disabilities; • Must bear a notice that any further reproduction or distribution in a format other than a specialized format is an infringement • Must include a copyright notice identifying the copyright owner and the date of the original publication. • Shall not apply to standardized, secure, or norm-referenced tests and related testing material, or to computer programs, except the portions thereof that are in conventional human language (including descriptions of pictorial works) and displayed to users in the ordinary course of using the computer programs • §110 exemption must be transmitted through (i) a governmental body; or (ii) a noncommercial educational broadcast station; or (iii) a radio subcarrier authorization or (iv) a cable system

Specific Provisions (2)

- some are structured as a fair dealing clause that lists the making of AFC as one of the permitted uses:
  - E.g., Australia's Copyright Act's s113E provides for fair dealing for purpose of access by persons with a disability
- others, e.g. Uganda, have a fair use provision that specifies disability, purpose, exclusive rights and conditions. It is thus classified as a specific provision.

Country	Provision	Disability	Exclusive Rights	works	Conditions
Australia	s 113E	Visual Aural Cognitive Physical	Unspecified	Literary Dramatic Sound recordings	• Must consider: o the purpose and character of the dealing; o the nature of the copyright material; o the effect of the dealing upon the potential market for, or value of, the material; o if only part of the material is dealt with—the amount and substantiality of the part dealt with, taken in relation to the whole material. • Exclusively for the benefit of persons with a disability • the organization, or the person acting on behalf of the organization, must be satisfied that the material (or a relevant part of the material) cannot be obtained in that format within a reasonable time at an ordinary commercial price • **Work must be published**
Uganda	s 15(1)(k)	Visual Aural	Transcription (into braille or sign language)	Unspecified "any work"	• For educational purposes of persons with a disability • Must consider: o the purpose and character of the use, including whether the use is of a commercial nature or is for non-profit educational purposes; o the nature of the protected work; o the amount and substantiality of the portion used in relation to the protected work as a whole; and o the effect of the use upon the potential market for value of the protected work. • **The fact that a piece of work is not published shall not of itself prejudice the requirement of fair use**

General Provisions

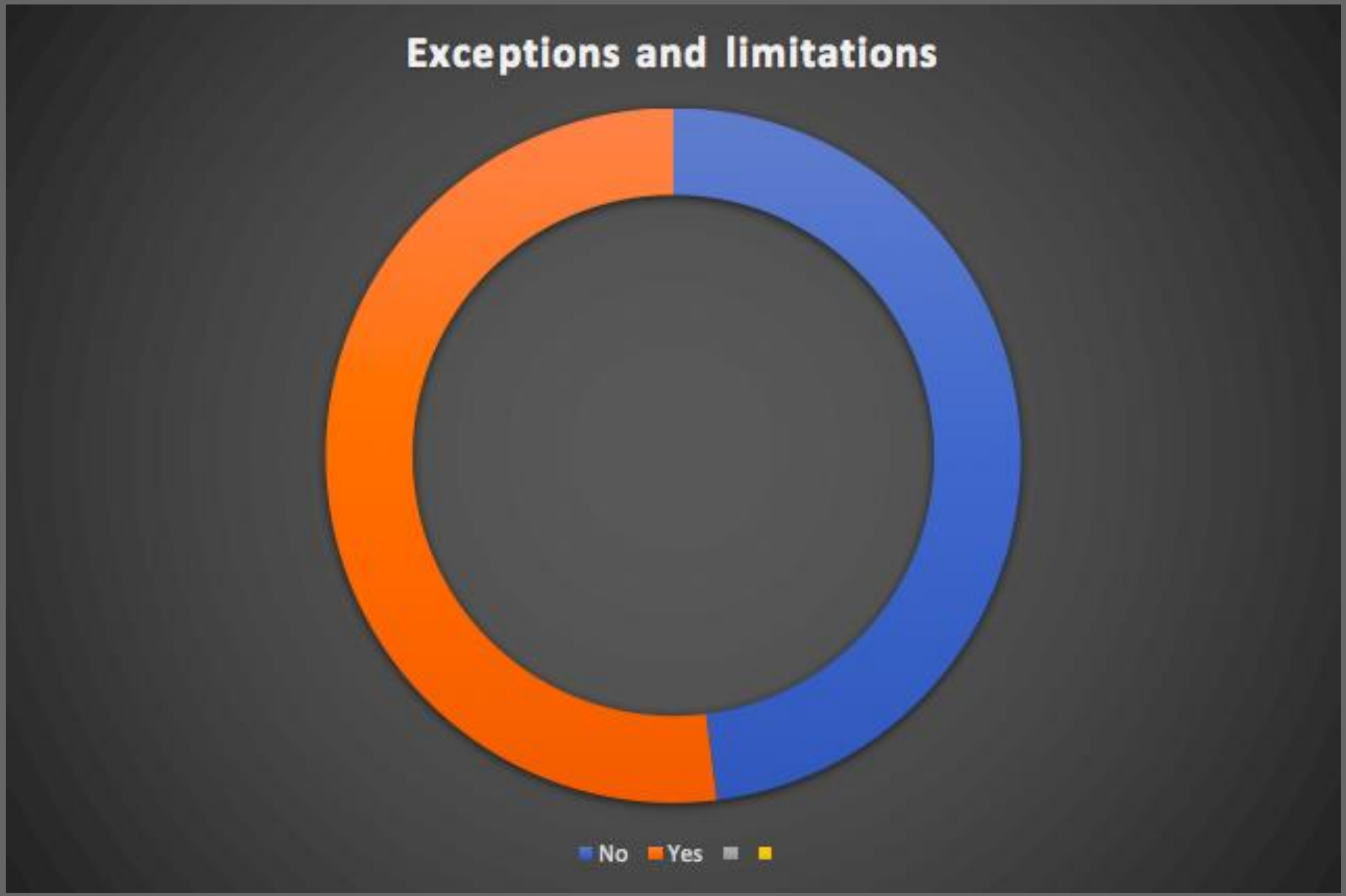
- Broadly worded exception and limitation that includes the making of accessible format copies
- Examples include:
  - Fair use: Dominica, Israel, Kyrgyzstan, Micronesia, Sri Lanka, United States of America
  - All works, disabilities, exclusive rights and subject to fairness analysis

Analysis and Findings

Summary

Analysis metrics

A. Prevalence of exceptions and limitations
B. Disabilities addressed
C. Exclusive rights/specific acts and works
    - Import and export
    - Anti-circumvention with a disability exemption
D. Conditions


Exceptions and limitations
No
Yes

Disabilities

All	27
Aural	25
Cognitive	23
Physical	20
Visual (print works only)	24
Visual (beyond print works)	72

Exception for all disabilities (*does not specify disability)	27	Austria, Belgium, Bosnia and Herzegovina, Croatia, Czech Republic, Ecuador, Estonia, Gabon, Germany, Hungary, India, Italy, Liechtenstein, Malta, Mexico, Montenegro, Netherlands, Poland, Republic of Moldova, Romania, Sao Tome and Principe, Serbia, Slovakia, Slovenia, Switzerland, Republic of Macedonia, Turkey
Exception for persons with aural disabilities	25	Australia, Bahamas, Belize, Cabo Verde, Chile, Cote d'Ivoire, Denmark, Fiji, Greece, Ireland, Jamaica, japan, Liberia, Lithuania, Luxembourg, Malaysia, Mongolia, New Zealand, Niue, Norway, Saint Vincent and the Grenadines, Thailand, Uganda, United Kingdom, United States of America
Exception for persons with cognitive/mental disabilities	23	Albania, Argentina, Australia, Belize, Cabo Verde, Canada, Fiji, France, Ireland, Israel, Japan, Latvia, Lithuania, Malaysia, New Zealand, Niue, Philippines, Saint Vincent and the Grenadines, Singapore, Spain, Thailand, United Kingdom, Uruguay

Exception for persons with physical disabilities	20	Argentina, Australia, Belize, Cote d'Ivoire, Denmark, Dominican Republic, Fiji, France, Ireland, Latvia, Lithuania, Malaysia, New Zealand, Niue, Saint Vincent and the Grenadines, Spain, Thailand, United Kingdom, Uruguay
Exception for persons with visual disabilities only limited to print/text works	24	Argentina, Armenia, Azerbaijan, Belarus, Brazil, Bulgaria, Cameroon, China, Democratic People's Republic of Korea, Georgia, Grenada, Indonesia, Kazakhstan, Lao People's Democratic Republic, Mauritius, Nicaragua, Panama, Paraguay, Peru, Philippines, Rwanda, Ukraine, Uruguay, Vietnam
Exception for persons with visual disabilities beyond print/text works/works not specified	72	Albania, Australia, Austria, Bahamas, Belize, Bosnia and Herzegovina, Cabo Verde, Canada, Chile, Colombia, Cook Islands, Cote d'Ivoire, Croatia, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Fiji, Finland, France, Gabon, German, Greece, Hungary, Iceland, India, Ireland, Israel, Italy, Jamaica, Japan, Kuwait, Kyrgyzstan, Latvia, Liberia, Liechtenstein, Lithuania, Luxembourg, Malawi, Malaysia, Malta, Mexico, Mongolia, Montenegro, Netherlands, New Zealand, Nigeria, Niue, Norway, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Saint Vincent and the Grenadines, Sao Tome and Principe, Serbia, Seychelles, Singapore, Slovakia, Spain, Sweden, Switzerland, Thailand, The former Yugoslav Republic of Macedonia, Turkey, Uganda, United Kingdom, United States of America

Exclusive rights/specific acts

1. Reproduction
2. Distribution
    a. import and export
3. Communication to the public
4. Adaptation
5. Translation
6. Transmission
7. Arrangement

*works depend on the disability being provided for

Anti-Circumvention of Technological Protection Measures – Exemption for Disability

- Technological protection measures and digital rights management
  - May be applied to standard/original format of work
  - work has to rendered accessible before conversion to accessible formats
  - Anti-circumvention provisions may apply
  - Exemption/exception for disability required
- 23 member states provide for a disability exception in their anti-circumvention provisions

Conditions

- Non-commercial or non-profit
- Exclusively for specified beneficiary
  - Some have a requirement to take reasonable steps to restrict access

Conditions

- Sometimes a limitation on who may make the accessible formats and distribute them
- Information to be displayed e.g.
  - opyright holder, person/entity making the accessible format, sanctions for infringement
  - Attribution

Summary

- A diversity of approaches amongst states that have accessibility-related exceptions and limitations with regard to -
  - exclusive rights the exceptions and limitation are applicable to
  - disabilities are addressed (some or all)
  - categories of copyright protected works
    - determined by the disability being addressed
  - conditions for use

Next Steps, Acknowledgements, and Q&A

Next Steps

- Update and correct missing and inaccurate information
  - Please let us know if we got any of the details wrong!
  - Some translation barriers

Acknowledgements and Q&A

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