RESPONSE TO ATTORNEY-GENERAL’S DEPARTMENT CONSULTATION
WIPO SCCR PROPOSED INSTRUMENT ON ACCESS TO COPYRIGHT WORKS FOR PERSONS WITH A PRINT DISABILITY

18 March 2013

Introduction

Thank you for the opportunity to respond to the proposal for an international instrument aimed at enhancing access to material by people with a print disability.

We provided comments on an earlier version of a draft instrument in November 2011. We have not repeated here all the comments made in that submission.

Our major concerns remain:

- enabling the provision of accessible-format copies by providers other than ‘authorised entities’, including commercial providers (thus maintaining an incentive for rightsholders to develop and supply accessible format content that is commonly superior in quality to that offered by subsidised institutions); and
- adequate safeguards for the storage and use of digital files.

In addition to these specific concerns, the provisions in the instrument must be expressly subject to the three-step test, to ensure that, irrespective of a contracting party’s other treaty obligations, the test clearly applies to all copyright uses.

We maintain our reservations about the necessity for a new instrument. Our comments here are premised on an assumption that an instrument in some form is likely to proceed.

We also generally support the comments made in the submissions from the Australian Copyright Council and the Australian Publishers Association.

Preamble

**Eighth**

As drafted, this preamble does not reflect the benefits to people with a print disability of maintaining an incentive to develop and offer quality accessible-format content. At the very least, the following text in square brackets should be omitted:

- ‘preference for the rightholders to make’
- ‘the need for’ (before ‘appropriate exceptions’)
- ‘including’ and ‘particularly’ before ‘when the market is unable to provide such access’

**Tenth**

We support the text in square brackets
Article A: Definitions

Reasonable price
There appears to be one reference to ‘reasonable price’ in the draft text: in Article D(3) Alternative A.

Our preference is for no definition at all.

Article C: national law limitations and exceptions on accessible format copies

Article 1. (B)
We query the justification for allowing a translation of work specifically for people with a disability. The focus of this treaty, we thought, was to facilitate the development of content in accessible formats.

We note that there are provisions in the Berne Convention that enable, in certain circumstances, the making of translations in developing countries (Appendix Article II). We are not clear about the relationship between these provisions, and the proposal regarding translations in the draft text for the proposed new instrument.

Article 4
We support the inclusion of the text in square brackets in article 4, but, at the very least, ‘may’ should be amended to ‘must’.

Our preference is for the provision to read as follows:

The Member State/Contracting Party must limit said exceptions or limitations to published works which cannot be obtained in an appropriate accessible format within a reasonable time and at a reasonable price.

Article D: Cross-border exchange of accessible format copies

Article 1
We query whether it is necessary, let alone desirable, to provide for the supply of an accessible format copy from one country directly to a beneficiary in another country (rather than via an authorised entity in that country).

Article 2(B)
In line with our concerns regarding direct supply to beneficiary persons, Article 2(B) should be omitted.

Article 3
We would support Alternative A, but with ‘may’ replaced with ‘must’.

Article 4
Alternative A is preferable from the available options.

Our preference is that the provision read as follows:

The Member State/Contracting Party must limit said exceptions or limitations to published works which cannot be obtained in an appropriate accessible format within a reasonable time and at a reasonable price.
**Article E: Importation of accessible format copies**

Consistently with our concerns regarding direct supply to beneficiary persons, we submit that this article should be confined to importation by authorised entities for supply to beneficiary persons.

Our preferred text for this provision is:

*All exceptions and limitations provided for in this instrument shall be limited to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.*

**Article F: Obligations concerning technological measures**

Alternative B is preferable.

**Article J: Cooperation to facilitate cross-border exchange**

We support the inclusion of the two paragraphs in square brackets.

**Implementation provisions**

Our preference is for the deletion of the second sentence of the third paragraph (beginning ‘These may include …’), or the amendment of the sentence to read as follows:

*These may include judicial, administrative or regulatory determinations for the benefit of beneficiary persons to meet their needs.*

**About Copyright Agency**

Copyright Agency was appointed in 1989 to manage the statutory licences in the Copyright Act that allow institutions to make accessible format copies for people with a disability. The statutory licences provide for payment to rightsholders, but our Board has decided not to seek payment.

In addition to the statutory licence, we have been involved in a range of other measures to further facilitate access for people with a print disability. These include:

- the establishment and management of an online Masters Catalogue (masters.com.au) that enables institutions to check if another institution has made an accessible format copy of a work, and, if so, to acquire that copy rather than making a new one;
- commissioning the Australian Copyright Council to write and publish guidelines on access to copyright material, and sample licences for publishers to license uses not covered by the statutory licence);¹ and
- liaising with publishers and institutions assisting the print disabled to enable the export of accessible format copies to developing countries.