

Standing Committee on Copyright and Related Rights

Twentieth Session

Geneva, June 21 to 24, 2010

Draft Consensus Instrument

Proposal by the Delegation of the United States of America

DRAFT CONSENSUS INSTRUMENT

The Assembly of the Berne Union,ⁱ the Assembly of the WIPO Copyright Treaty, and the General Assembly of the World Intellectual Property Organization (WIPO),

Taking into account the provisions of the Berne Convention for the Protection of Literary and Artistic Works and the WIPO Copyright Treaty;

Desiring to develop and maintain the protection of the rights of authors in their literary and artistic works in a manner as effective and uniform as possible;ⁱⁱ

Recognizing the public interest in maintaining a balance between the interests of authors and users, particularly the needs of those persons with print disabilities or impairment of their vision,ⁱⁱⁱ

Recognizing the role of the copyright system in facilitating access to information and full engagement by persons who are blind or print disabled in civil, educational, political, economic, social and cultural spheres;

Recognizing the large number of Members who, to that end, have established exceptions and limitations in their national copyright laws for persons with print disabilities, yet the continuing shortage of works in special formats for such persons;

Emphasizing the importance, vitality, and flexibility of the three-step test for limitations and exceptions established in Article 9(2) of the Berne Convention and in Article 10 of the WIPO Copyright Treaty;

Recommend that each Member State adopt and implement the provisions adopted by the Standing Committee on Copyrights and Related Rights (SCCR) at its [___] session as rules for copyright law in relation to the needs of persons with print disabilities;

Provisions follow.

Article 1

Definitions

“person with print disabilities”^{iv}

For the purposes of this [consensus instrument], a ‘person with print disabilities’ is:

1. a person who is blind; or
2. a person who has a visual impairment or a perceptual or reading disability which cannot be improved by the use of corrective lenses to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read^v printed works to substantially the same degree as a person without an impairment or disability;
3. a person who has an orthopedic- or neuromuscular-based physical disability that prohibits manipulation and use of standard print materials.

“reasonable price”^{vi}

For the purposes of this [consensus instrument], in determining if a special format copy of a work is available at a “reasonable price,” the special format copy of the work should be available at a similar or lower price than the price of the work available to persons without print disabilities in that market.

“special format version of a work”

For the purposes of this [consensus instrument], a “special format version of a work” means Braille, audio, or digital text which is exclusively for use by persons with print disabilities, such exclusivity being inherent to the format, through technical means, or through exclusive distribution by trusted intermediaries.

“trusted intermediary”

For the purposes of this [consensus instrument], a “trusted intermediary” means a governmental agency or a non-profit entity with legal personality that has as a primary mission to assist persons with print disabilities by providing them with services relating to education, training, adaptive reading, or information access. A trusted intermediary maintains policies and procedures to establish the eligibility of the persons with print disabilities that it serves.

A trusted intermediary is an institution that has the trust of both persons with print disabilities and copyright rights holders. If the trusted intermediary is a nation-wide network of organizations, then all organizations, institutions, and entities that participate in the network must adhere to these characteristics.^{vii}

Article 2

The exportation of special format copies for persons with print disabilities

Members should provide that the following shall be permitted under their individual national laws without the authorization of the owner of copyright:

A. the exportation to another Member of any physical Braille format copy of a published work made pursuant to an exception, limitation, or other special provision of the Member’s copyright law for the benefit of persons with print disabilities;

B. the exportation to trusted intermediaries in another Member of any other special format copy of a published work made pursuant to an exception, limitation, or other special provision of the Member’s copyright law for the benefit of persons with print disabilities.

Members may chose to limit the operation of this principle to published works which, in the applicable special format, cannot be otherwise obtained in the country of importation within a reasonable time and at a reasonable price.^{viii}

Article 3

The importation of special format copies for persons with print disabilities

Members should provide that the following shall be permitted under their individual national laws without the authorization of the owner of copyright:

A. the importation from another Member of any physical Braille format copy of a published work made pursuant to an exception, limitation, or other special provision of that other Member's copyright law for the benefit of persons with print disabilities;

B. the importation from trusted intermediaries in another Member of any other special format copy of a published work made pursuant to an exception, limitation, or other special provision of that other Member's copyright law for the benefit of persons with print disabilities.

Members may chose to limit the operation of this principle to published works which, in the applicable special format, cannot be otherwise obtained in the country of importation within a reasonable time and at a reasonable price.

[End of document]

EXPLANATORY NOTES

- i Alternatives would include "The Assembly of the Berne Union for the Protection of Literary and Artistic Works" or "The Assembly of the Berne Union for the Protection of the Rights of Authors in their Literary and Artistic Works."
- ii This is inspired by the preamble of the WCT.
- iii This also is inspired by the preamble of the WCT.
- iv The second part of this definition draws elements from Article 15 of the WBU draft treaty with the addition of the concept of reading drawn from the World Health Organization as described in the next footnote. The third element reflects provisions in several national laws addressing print disabilities.
- v "Reading" should be defined pursuant to the World Health Organization's INTERNATIONAL CLASSIFICATION OF FUNCTIONING, DISABILITY AND HEALTH (ICF), available at <http://www.who.int/classifications/icf/en/>. The ICF's definition of reading (class d166) is "Performing activities involved in the comprehension and interpretation of written language (e.g. books, instructions or newspapers in text or Braille), for the purpose of obtaining general knowledge or specific information." [This can be found by using the IFC search function at <http://apps.who.int/classifications/icfbrowser/>.]
- vi This provision draws on the description given in Article 4(d) of the WBU draft treaty.
- vii This definition is inspired by existing provisions in Argentine, Australian, and US law as well as the description of a "trusted intermediary" in the WIPO Trusted Intermediary Guidelines.
- viii The principle recognizes that some Members (as in their existing national law) may wish to limit the operation of the principle to situations where the work is not available in the requesting Member; such judgments could be made on a case-by-case basis. The language here is inspired by relevant provisions of Australian law; the reference to "reasonable price" draws on the concept offered in the WBU draft treaty.