



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HIKINA WHAKATUTUKI

Discussion Document

Marrakesh Treaty: Possible Accession and Options for Implementation

Request for Submissions October 2015

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Commerce, Consumers & Communications Branch

Ministry of Business, Innovation & Employment

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New Zealand

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Request for submissions

The Ministry of Business, Innovation and Employment (**MBIE**) seeks submissions to assist the Government in deciding whether New Zealand should join the Marrakesh Treaty and seeks views on changes to the Copyright Act that would be required or desirable should New Zealand should become a Party to the Treaty.

Annex 1 contains a short list of questions targeted at obtaining the perspective of people with print disabilities. Annex 2 contains all of the questions asked throughout the document, many of which are technical and target the views of organisations involved in the production and dissemination of accessible format copies.

Your submission may respond to any or all of these questions. Where possible, please include evidence to support your views. For example, references to your own experience, independent research, facts and figures, or relevant examples.

When making your submission, please indicate the question number or numbers that you are responding to. Please also include your name, or the name of your organisation, and contact details. You can make your submission by:

- Attaching your submission as a Microsoft word or PDF attachment and sending to MarrakeshTreaty@mbie.govt.nz
- Answering the questions in this document online at the following link: www.mbie.govt.nz/mbie/info-services/business/intellectual-property/copyright/the-marrakesh-treaty
- Calling 04 901 8345 and leaving a message
- Mailing your submission to:

Business Law
Commerce, Consumers & Communications Branch
Ministry of Business, Innovation & Employment
PO Box 1473, Wellington

The closing date for submissions is **Friday 26 February 2016**.

Publication of submissions, the Official Information Act and the Privacy Act

MBIE intends to publish all submissions on its website, other than submissions that may be defamatory.

MBIE will not publish the content of your submission if you state that you object to its publication when you provide it. However, your submission will remain subject to the Official Information Act 1982 and may, therefore, be released in part or full. The Privacy Act 1993 also applies.

When making your submission, please state if you have any objections to the release of any information contained in your submission. If so, please identify which parts of your submission you request to be withheld and the grounds under the Official Information Act for doing so.

Disclaimer

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List of acronyms

CLNZ Copyright Licensing New Zealand

DAISY Digital Accessible Information System Consortium

NIA National Interest Analysis

TIGAR Trusted Intermediary Global Accessible Resources

TRIPS Agreement on Trade-Related Aspects of Intellectual Property Rights

UNCRPD United Nations Convention on the Rights of Persons with Disabilities

WIPO World Intellectual Property Organisation

Glossary of terms

Accessible format copy

Published works in formats that are accessible for the particular needs of people with a print disability. This includes works in formats such as Braille, audio or large print.

Authorised entity

The Marrakesh Treaty defines an authorised entity as a non-profit or government agency that is recognised or authorised by government to provide education, training, adaptive reading or information access to people with a print disability on a non-profit basis either as its sole function or as one of its primary activities or institutional obligations. This definition also covers for-profit entities that provide services to beneficiary persons using public funds and on a not-for-profit basis.

Beneficiary persons

This is a very broad and inclusive definition in the Marrakesh Treaty covering any disability that interferes with effective reading of print material. Beneficiary persons are referred to as “people with a print disability” under the New Zealand exception. This definition covers the same broad range of disabilities.

Copyright exceptions and limitations

Provisions in copyright law that allow for limitations of exceptions to copyright so that works subject to copyright may, in certain circumstances, be used without authorisation from the rights holder.

Prescribed body

A prescribed body is a non-profit body recognised by regulation under the Copyright Act 1994 to produce and communicate accessible format copies.

Print disability

As defined in New Zealand law, a person has a print disability if that person is blind, severely visually impaired, unable to hold or manipulate a book, unable to move or focus their eyes, or experiences a disability with respect to visual perception.

Technological Protection Measures

Any process, treatment, mechanism, device, or system that in the normal course of its operation prevents or inhibits the infringement of copyright of a protected work.

Executive Summary

1. The purpose of this document is to gather feedback that will assist the Government in deciding whether New Zealand should join the *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled* (the **Marrakesh Treaty**).
2. The World Blind Union estimates that 90% of all materials published worldwide are unable to be accessed by the blind and people who are otherwise visually impaired. This global “book famine” prevents hundreds of millions of individuals from having equal access to published works.¹
3. New Zealand already has a copyright exception that allows for the creation and dissemination of accessible format copies for people with print disabilities. However it does not facilitate cross-border exchange. This results in costly duplication of efforts to convert works that would otherwise be easy and inexpensive to import and is a significant barrier to accessing published works in accessible formats. This lack of access is a known barrier to full participation in public life, including employment and educational opportunities.
4. The Marrakesh Treaty aims to remove this barrier by providing an international legal framework for copyright exceptions to facilitate the cross border exchange of accessible versions of books and other print materials.
5. In light of these issues, this document puts forward three possible options in relation to the Marrakesh Treaty.
 - Option 1: Retain the status quo by deciding not to accede to the Marrakesh Treaty.
 - Option 2: Join the Marrakesh Treaty and make the minimum legislative amendments required to align with Marrakesh Treaty obligations and ensure that the exception facilitates cross-border exchange.
 - Option 3: Join the Marrakesh Treaty and make the necessary amendments to align with obligations and facilitate cross-border exchange as well as consider other changes to improve the operation of the exception within the framework allowed for by the Treaty.
6. The main benefit of joining the Marrakesh Treaty is that New Zealand will be part of an international regime which facilitates the import of accessible works into New Zealand. It is expected that the Treaty will lead to more timely access to a greater variety of accessible format copies for people with a print disability. It is also expected to lead to more efficient use of resources by schools, libraries and charitable organisations that serve people with print disabilities.
7. MBIE prefers Option 3 on the basis that it may provide greater access benefits, as well as providing greater certainty around the operation of the existing exception.

¹ Read more on the priorities of the World Blind Union here: <http://www.worldblindunion.org/English/our-work/our-priorities/Pages/default.aspx>

8. A number of questions are presented throughout this document to provide opportunities for submitters to comment on, correct and challenge our analysis. **Annex 1: Targeted list of key Questions** contains a short list of questions targeted at obtaining the views and experience of people with print disabilities. **Annex 2: Full list of Questions** contains all of the questions asked throughout the document, many of which are technical and target the views of organisations involved in the production and dissemination of accessible format copies.
9. The normal domestic Treaty adoption process will apply if the Government decides to proceed with accession to the Marrakesh Treaty. This involves preparing a National Interest Analysis to be presented to Cabinet for approval to join the Treaty. The National Interest Analysis will be informed by public submissions to this discussion document and will outline the reasons why New Zealand should join the Treaty. It will include analysis of the advantages and disadvantages, along with the economic, social, cultural and environmental impacts of joining.

Introduction

10. Individuals who are blind, severely visually impaired, unable to hold or manipulate a book, unable to move or focus their eyes, or experience a disability with respect to visual perception (people with a **print disability**²) require published works in formats that are accessible for their particular needs, such as works in Braille, audio or large print (**accessible format copies**³).
11. New Zealand, like many other countries, has a copyright exception that allows for the creation and dissemination of accessible format copies for people with print disabilities. However access to published works in accessible formats remains limited. This may be partly due to access barriers in copyright law, relating to the legality of importing and exporting accessible format copies. These barriers result in costly duplication of efforts to produce accessible format copies that would otherwise be relatively easy and inexpensive to share and distribute.
12. The World Intellectual Property Organization⁴ (**WIPO**) has been working for many years towards facilitating and enhancing access to copyright works in accessible formats for people with a print disability. These efforts have led to *The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled* (the **Marrakesh Treaty**)⁵.
13. The Marrakesh Treaty requires countries which become a Party to the Treaty to have an exception to domestic copyright law for the creation of accessible format copies. It also provides for the import and export of copies produced under domestic exceptions in other Treaty countries, without having to obtain the permission of rights holders. This will help avoid duplication of conversion efforts in different countries, and allow those with larger collections of accessible books to share these collections with people with a print disability in countries with fewer resources.
14. The Marrakesh Treaty was adopted by WIPO in June 2013 and it is the first legally binding instrument that requires, rather than allows, members to have exceptions to copyright.
15. The Treaty currently has 81 signatories⁶ and will come into effect three months following ratification or accession by 20 countries, after which it will become binding on those countries. To date Argentina, El Salvador, India, Mali, Mongolia, Paraguay, Singapore, South Korea, the United Arab Emirates, Uruguay and Mexico have ratified. We understand that Australia, Canada and South Africa are likely to ratify by the end of 2015.

² This definition of print disability mirrors the definition in section 69 of the Copyright Act 1994 and captures broadly the same range of disabilities as covered by the Marrakesh Treaty.

³ This definition is based on the defined term in the Marrakesh Treaty which covers the same range of accessible formats as the New Zealand exception (which does not include a defined term).

⁴ The organ of the United Nations that has responsibility for the development of intellectual property rights.

⁵ A full-text version of the Marrakesh Treaty can be found at: <http://www.wipo.int/portal/en/index.html>

⁶ Signatories include Australia, the United Kingdom, Canada, the United States and the European Union.

Brief overview of the key provisions of the Marrakesh Treaty

16. The Marrakesh Treaty provides countries with great flexibility concerning the implementation of their obligations. It provides a template which countries may adopt. Alternatively, it allows countries to develop or adapt their own existing exceptions for people with print disabilities, so long as any such exception meets each country's existing international obligations.
17. An overview of what the Marrakesh Treaty requires countries to provide in their domestic exceptions is as follows:
 - a. reproduction of works, by an authorised entity, for the purposes of converting them into accessible format copies exclusively for people with a print disability (described in the Marrakesh Treaty as "beneficiary persons");
 - b. distribution of accessible format copies exclusively to people with a print disability;
 - c. export of accessible format copies, for the purposes of making them available to people with a print disability in other countries; and
 - d. import of accessible format copies, for the purposes of making them available domestically.
18. An authorised entity must have lawful access to the work, must not make any changes to the accessible format copy other than those necessary to make it accessible, and provide copies only to people with a print disability.
19. Within these broad parameters the New Zealand exception appears to largely comply with the Marrakesh Treaty, with only a very minor change required to align with Treaty text. It is also desirable to clarify the application of the existing exception in respect of cross-border transfers of works, as the current exception is open to interpretation in a number of ways at present and is untested in litigation. While not required to join the Treaty, a number of other changes may be desirable to better meet policy objectives.

Purpose of this document

20. The purpose of this discussion document is to assist the Government in deciding whether New Zealand should join the Marrakesh Treaty and what changes to the Copyright Act would be required or desirable should New Zealand should become a Party to the Treaty.
21. The intention of this paper is to make the issues accessible to people with a print disability and the general public. The language and terminology used throughout the paper reflect this aim and, consequently, may not be precise in a legal sense. For absolute precision, refer to the text of the Copyright Act and the Marrakesh Treaty.

Next steps

22. If the Government takes the decision to join the Marrakesh Treaty, public submissions to this discussion document will inform a National Interest Analysis (**NIA**). The NIA will then be presented to Cabinet for approval to join the Treaty. The NIA needs to outline the reasons why New Zealand should join the Treaty and include analysis of the advantages and disadvantages along with the economic, social, cultural and environmental impacts of joining. It also needs to outline New Zealand's obligations under the Treaty.
23. Any binding treaty action remains subject to the usual domestic treaty adoption process. Steps include approval by Cabinet to join, tabling of the Marrakesh Treaty and NIA in Parliament, consideration of the decision to join by a Parliamentary Select Committee and the amendment of any national legislation by Parliament, if necessary, to comply with Treaty obligations.⁷

⁷ Further details New Zealand's Treaty implementation process can be viewed at the Ministry of Foreign Affairs and Trade website: <http://www.mfat.govt.nz/Treaties-and-International-Law/03-Treaty-making-process/index.php>

Status quo

The rationale and existing rules for exceptions to copyright

24. Copyright aims to give people an incentive to create and disseminate creative works. Copyright provides the copyright owner with the right to authorise or prevent certain uses of their work. This usually includes the right to authorise or prohibit the reproduction of the work in various forms, such as a printed publication or a sound recording.
25. However, copyright also creates a barrier to dissemination of works, and the creation of new ones based on existing works. The interests of creators and rights holders must be balanced against the underlying purpose of copyright laws: to promote the widest possible access to an array of creative works.
26. To appropriately balance these competing interests, copyright law allows for certain exceptions and/or limitations to these rights. In other words, some works subject to copyright may, in certain circumstances, be used without authorisation from the rights holder. The rights holder may or may not receive compensation for this use.
27. New Zealand is Party to international agreements that shape our domestic copyright legislation. These agreements ensure that New Zealand rights holders have their rights protected in other countries. They also encourage overseas publishers to bring their works into New Zealand, knowing their creative works will be protected.
28. New Zealand's core copyright obligations are outlined in the Berne Convention for the Protection of Literary and Artistic Works (the **Berne Convention**) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (**TRIPS**). Both the Berne Convention and TRIPS set out the so-called 'three-step test' for limitations and exceptions to copyright.
29. The test requires each country to ensure that any domestic exception or limitation to copyright must be (a) a special case, (b) not conflict with a normal exploitation of the work, and (c) not unreasonably prejudice the legitimate interests of the right holder. It is then up to each country to decide if a particular exception or limitation is to be applied and, if so, to determine how it is implemented within domestic law.
30. New Zealand has implemented a domestic exception to copyright for the benefit of people with a print disability (section 69 of the Copyright Act) and this exception meets the requirements of the three-step test.

What does New Zealand's exception allow?

31. Section 69 of the Copyright Act permits prescribed bodies to produce copies or adaptations of published literary or dramatic works in accessible formats without infringing copyright. A prescribed body is a non-profit body recognised by regulation under the Act to produce and communicate accessible format copies.

32. Any production of a copy or adaptation can only be carried out if:
- a. the prescribed body has made reasonable efforts to obtain a copy of the work in the required format, within a reasonable time at an ordinary commercial price, but has been unable to do so (the commercial availability test);
 - b. the copy is provided only to people with a print disability;
 - c. reasonable steps are taken to notify the copyright owner, as soon as practical; and
 - d. the reproduction is not-for-profit.

People living with a print disability in New Zealand

33. The 2013 Disability Survey conducted by Statistics New Zealand found that 168,000 people, approximately 4 per cent of the population, live with some form of sight loss that limits their everyday activities and is not eliminated by assistive devices such as glasses.
34. Visual impairment is strongly related to age with 11 per cent of adults over 65 affected, compared with 2 per cent of people aged 15 to 44 and around 1 per cent of children under 15.⁸ The need for services for the visually impaired is likely to increase as the population ages, increasing the instance of vision loss and disease-related blindness.
35. The definition of print disability extends beyond those with sight loss or other visual impairment, to include those with visual perception disabilities and those who are unable to hold or manipulate books. It is difficult to quantify the entire number of people who may have a print disability in New Zealand. With the advancement of tools that help to identify visual perception disabilities like dyslexia, the size of the community may grow significantly in future.

Prescribed bodies and the creation of copies under the exception

36. There are currently six prescribed bodies⁹, although not all are operational. The Blind Foundation is the primary producer and supplier of accessible format copies in New Zealand. The University of Auckland is the other significant producer, serving its students with print disabilities.
37. The Blind Foundation has approximately 12,000 members. Membership is restricted to severely visually impaired adults and children and young adult with a referral from an ophthalmologist or optometrist.¹⁰ Material produced or sourced by the Foundation is available only to its members. This means that the majority of New Zealanders with a print disability are not able to access the Blind Foundation's services.

⁸ For a full breakdown of statistics on rates of visual impairment in New Zealand see the Statistics NZ Disability Survey: 2013 at: http://www.stats.govt.nz/browse_for_stats/health/disabilities/DisabilitySurvey_HOTP2013/Commentary.aspx

⁹ The prescribed bodies are the Blind Foundation, the University of Auckland, Christian Ministries with Disabled Trust (now known as Elevate Christian Disability Trust), the Correspondence School Te Kura ā-Tuhi, New Zealand Radio for the Print Disabled Incorporated, and the Wellington Braille Club Incorporated.

¹⁰ All children and young adults (21 years of age and under) who are currently registered with Visual Resource Centres regardless of their degree of vision loss may apply to become a Blind Foundation member.

38. While the Ministry of Education provides funding for the conversion of educational material in highest demand for school-aged children, the Blind Foundation largely relies on charitable donations to translate most other works.
39. The Blind Foundation produces accessible format copies in Braille, talking book, electronic and large print formats. About half of the 10,000 titles in the Blind Foundation's talking book library are international works that the Foundation records itself or purchases commercially. Recording a single book is estimated to cost around \$3000 and producing a Braille book can cost up to \$5000 per book. However, total costs depend on factors such as the length, complexity and the inclusion of diagrammatic content.
40. Accessible format copies are made at the request of an individual with a print disability, or if the Blind Foundation anticipates demand for a certain text. It can take from two weeks to four months to create an accessible format copy depending on the complexity of the text and availability of electronic files from the publisher. Electronic files may be a combination of manual and electronic forms, which can further delay the process. The existence of technical protection measures on digital files can also slow down the conversion process considerably, even with permission to circumvent such measures.
41. These delays can be particularly detrimental for students who may not have access to exam or textbook material on time, even though these works may be available in accessible formats overseas. Another negative outcome of these delays is that the Blind Foundation is unable to fully meet the need for foreign language works in New Zealand.

Questions

1. Do other prescribed bodies use the section 69 exception? If so, how do they create accessible format copies?
2. Are there any other barriers or impediments to produce accessible format copies under the existing exception that have not been canvassed above?

The operation of the commercial availability test

42. The commercial availability test requires that once a request is received or demand is anticipated, the prescribed body must determine whether the work is commercially available in New Zealand in the format required for the needs of the individual. This involves making reasonable efforts within a reasonable period of time but does not go as far as requiring exhaustive efforts such as evidence that an accessible format copy does not exist.
43. Where the accessible format copy required is braille, it is unlikely that the publisher will have that format available. But if the required format is audio or large print then the publisher may already have the book commercially available in that format. Converting existing published works into accessible format copies is typically expensive and time-consuming.
44. We understand that the relationship between prescribed bodies and rights holders in New Zealand is positive and collaborative, with a mutual desire to ensure that both the rights of copyright holders are respected and that the needs of those with a print disability are met.

More than two thirds of requests for electronic files are met by rights holders, which can largely be attributed to this relationship.

45. For example, the University of Auckland and the Blind Foundation, both significant producers of works in accessible formats, have established processes for determining if a work is commercially available. This process has the trust of rights holders, a necessary condition for the continued success of the relationship.
46. However, these processes are voluntary. The absence of a system with checks and balances in place to ensure that the exception is functioning as intended creates uncertainty as to whether some uses of the exception are resulting in breaches of copyright.

Question

3. How do other prescribed bodies apply the commercial availability test?

Rights holders and the publishing industry

47. In addition to facilitating the creation of accessible works under the exception, rights holders and the publishing industry also have a part to play in the commercial availability of accessible format copies. Technological advances mean that works are now being created in formats that can be made accessible to wider audiences, such as e-books.
48. However, many works remain only partially accessible. For example, navigation tools in e-books often remain inaccessible and non-textual materials such as diagrams and illustrations may not be described. The cost to convert such works can be prohibitive for New Zealand's small market, resulting in a small number of fully accessible commercial works.
49. The majority of primary producers of published copyright works in New Zealand belong to the Publishers Association of New Zealand which, together with the New Zealand Society of Authors, owns the non-profit organisation Copyright Licensing New Zealand (**CLNZ**). CLNZ is the sole recognised reproduction rights organisation in New Zealand for text based copyright works and is responsible for the collection and distribution of copyright licencing fees. The licensing services provided by CLNZ are supported by agreements with the majority of New Zealand publishers (and through them authors) and through reciprocal arrangements with overseas-recognised reproduction rights organisation.
50. There is also an emerging group of producers of educational resource material who are more closely aligned with the technology sector and are not members of the Publishers Association of New Zealand. These producers are now creating content for schools and the wider education sector in multiple formats and are also likely to be approached by prescribed bodies in the process of determining whether works are available in particular accessible formats.

Questions

4. Does this section correctly describe the rights holders and organisations that represent rights holders in New Zealand who are involved in the publication of written material?
5. Are there any other relevant organisations or individuals?

Other organisations that provide services for people with print disabilities

51. A number of organisations in New Zealand work closely with people with print disabilities but are not listed as prescribed bodies in the Copyright Act.
52. Groups advocating and/or providing services specifically for the blind and/or for those with a print disability more generally include the Albinism Trust, VISION 2020 New Zealand, Blind and Low Vision Education Network New Zealand, Parents of Vision Impaired (NZ) Inc, Association of Blind Citizens of New Zealand, Ngāti Kāpō O Aotearoa Inc, the Braille Authority of New Zealand Aotearoa Trust and the Dyslexia Foundation of New Zealand.
53. As a provider of a public service, libraries and library groups including the National Library of New Zealand and the Library and Information Association of New Zealand also have an interest in providing accessible format copies to people with a print disability. Many New Zealand public libraries now provide e-Book lending services via Overdrive and other providers. It would be difficult to quantify how many more titles are now available via libraries than the Blind Foundation is able to provide. However as mentioned earlier, the e-Book format does not always meet the needs of people with certain print disabilities.
54. Similarly, universities and other educational institutions have an interest in ensuring students with a print disability have access to the same resources as other students.
55. Activities undertaken by these organisations relating to providing materials to people with a print disability are not covered by the New Zealand exception, but they may fall within the Treaty definition of authorised entity.

Questions

6. What kind of services do these organisations currently provide for the blind and people with other forms of print disability?
7. Does the current operation of the exception limit what they can provide and if so, how?

New Zealand's obligations under United Nations Conventions

56. New Zealand is a Party to the United Nations Convention on the Rights of Persons with Disabilities (**UNCRPD**). This is an international human rights treaty that guarantees full equality under the law to persons with disabilities, requiring that the Government promote, protect and ensure their rights.
57. The right of accessibility forms the basis of Article 30 (1) (a), requiring that "Parties recognise the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities...enjoy access to cultural materials in accessible formats".¹¹

¹¹ For the full text of the UNCRPD, see the United Nations website:
<http://www.un.org/disabilities/convention/conventionfull.shtml>

58. As part of New Zealand's first examination by the UNCRPD in late 2014, the Government was required to provide information on measures taken to sign, ratify and ensure the effective implementation of the Marrakesh Treaty. The Government signalled a commitment to undertake necessary preparatory work to enable a decision on accession to the Marrakesh Treaty.¹²
59. New Zealand is also a Party to the United Nations Convention on the Rights of the Child (UNCROC). Articles 28 and 29 of UNCROC say that all children have a right to education on the basis of equal opportunity and education of the child shall be directed to the "development of the child's personality, talents and mental and physical abilities to their fullest potential."¹³

Other initiatives to improve access for people with a print disability

60. In tandem with the development of the Marrakesh Treaty, a searchable, cross-border database titled Trusted Intermediary Global Accessible Resources (TIGAR) has been created with the aim of advancing the practical implementation of the Treaty's objectives.¹⁴ TIGAR involves the transfer of accessible format files between institutions like the Blind Foundation through a secure and transparent file exchange system. The TIGAR system requires that rights holders grant permission before exchange of electronic files of accessible books can take place across borders. Rights holders' permission is not required for countries that are signed up to the Marrakesh Treaty.
61. Also operating internationally is the Digital Accessible Information System Consortium (DAISY), which works to ensure equal access to information for the people with a print disability. DAISY has developed an open source conversion tool and has been a key player in the evolution of EPUB, the mainstream e-book format which has the potential to be a fully accessible e-book format.¹⁵
62. Bookshare is an American initiative that receives books donated by publishers to share with people with a print disability in the United States and overseas. While this is a valuable resource, the availability of books in each country depends on the nature of the permission granted by the publishers and global market segmentation.¹⁶ As of 30 July 2015, just under half of the 352,000 e-text and e-Braille titles currently available through Bookshare to US readers are available to members of the Blind Foundation. Bookshare also allows individuals to access its books directly (rather than through an intermediary such as the Blind Foundation) if the individual provides a medical certificate or other documentation to establish that they have a print disability.

¹² The full Government response to the 2014 UNCRPD examination can be viewed at: <http://www.odi.govt.nz/what-we-do/un-convention/monitoring-implementation/2014-review.html>

¹³ For the full text of the UNCROC, see the United Nations Human Rights webpage: <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

¹⁴ This programme has now been subsumed into the Accessible Books Consortium (ABC) hosted by WIPO and with representation from the print disability sector and rights-holders

¹⁵ More on the DAISY formats can be viewed at: <http://www.daisy.org/daisypedia/daisy-digital-talking-book>

¹⁶ This market segmentation is explained on the Bookshare website: <https://www.bookshare.org/cms/get-started/how-find-books/books-country>

63. Australia's Copyright Agency hosts an online catalogue of accessible format copies of works called the *Master Copy Catalogue*. CLNZ is negotiating an agreement with the Copyright Agency to secure New Zealand access to the database, opening up a greater range of works available to people with a print disability in New Zealand. This will include streamlining the provision of files and avoiding duplication of processes for schools.

Questions

8. What impact, if any, are initiatives like DAISY, TIGAR and Bookshare having on the availability of accessible format copies of works in New Zealand? To what extent is this impact likely to change in future? What could be done to enhance their reach?

9. What challenges are faced by people with print disabilities in obtaining accessible format copies to meet their particular needs? Has this changed over time? Do you think any other factors are relevant in the description of the current circumstances facing people with a print disability when trying to access works?

Problem definition

People with a print disability have limited access to published works

64. The existing section 69 exception in the Copyright Act appears to work well for the production and distribution of accessible format works domestically. The problem is that people with a print disability continue to have limited access to published works. This is due to:
- a. uncertainty over the legality of importing and exporting accessible format copies of works, which has resulted in time-intensive and costly duplication of efforts to reproduce works that would otherwise be easy and inexpensive to share and distribute;
 - b. the high cost of producing an accessible format work combined with the relatively low demand for many individual titles in New Zealand makes it hard to justify production costs, particularly as resources at the disposal of agencies representing the blind and people with any other form of print disability are stretched thin; and
 - c. the ability of most individuals with print disabilities to access published works in accessible formats is very limited. Even those that do qualify for services provided by prescribed bodies can only access a limited range of available works and often face significant delays.
65. Limited access to works for the blind and people with any other form of print disability has been identified as a barrier to full participation in public life, and the magnitude of the problem is significant. An estimated 168,000 people in New Zealand live with some form of sight loss that limits their everyday activities.

The existing exception creates uncertainty over what is allowed

66. While the two major prescribed bodies and rights holders have developed a positive and collaborative relationship, a lack of clarity under the existing section 69 exception may give rise to breaches of rights holders rights or potentially lead to fewer accessible format copies being produced. The exception does not provide guidance on appropriate steps to comply with the commercial availability test or guidance on whether and how prescribed bodies should be required to make their practices and records available to others.

Questions

10. Do you agree with the problem definition? What relative weight do you put on each problem listed above?
11. Is the uncertainty resulting in either breaches of rights holders rights or leading to fewer accessible books being produced? Please provide details.
12. Are there any other problems with the current exception?

Objectives and options

Policy objectives

67. We consider that there are three core objectives:
- A. Improved access to accessible format copies for New Zealanders with a print disability.
 - B. Greater certainty in the section 69 exception as to what prescribed bodies can and cannot do.
 - C. Adherence to New Zealand's international obligations: the three-step test (which requires that the exception not conflict with the normal exploitation of the work and not unreasonably prejudice the legitimate interests of the rights holder) and the United Nations Convention on the Rights of Persons with Disabilities and the United Nations Convention on the Rights of the Child (collectively the **United Nations Conventions**).

Questions

13. Do you agree with the policy objectives?
14. Are there any other objectives that should be taken into account?

Options

68. We consider that there are three viable options to be assessed against the objectives identified above:
- Option 1: Retain the status quo.
 - Option 2: Join the Marrakesh Treaty and make the minimum legislative amendments required to align with Marrakesh Treaty obligations and ensure that the exception facilitates cross-border exchange.
 - Option 3: Join the Marrakesh Treaty and make the amendments required to align with Treaty obligations and facilitate cross-border exchange as well as consider any other amendments to improve the operation of the exception within the framework allowed for by the Treaty (preferred option).
69. Two other options were considered and dismissed on the basis that we do not consider them feasible given the objectives. They were:
- *Non-legislative interventions, such as increased funding for prescribed bodies.*
- Increased funding cannot address time delays for producing accessible formats. The Government is unlikely to choose to invest money to support the domestic production of accessible format copies given the alternative options.

- *Revising the section 69 exception to allow for import and export without joining the Marrakesh Treaty.*

While this option would address the uncertainty regarding cross-border exchange, it would not enable New Zealand prescribed bodies to fully benefit from the sharing arrangements developed in tandem with the Marrakesh Treaty. Access to accessible format copies from many jurisdictions would remain limited due to geographical segmentation and the requirement to seek permission clearances from publishers.

Question

15. Do you think there are any other viable options? If so, please provide details.

Impact analysis

70. The following analysis summarises our views on the likely impacts of each option. This assessment may change after hearing from submitters and other stakeholders during the consultation process.

Option 1: Retain the status quo

71. Under Option 1, New Zealand would not accede to the Marrakesh Treaty and would not make any amendments to the Copyright Act.

Objective A: Improved access to accessible format copies for New Zealanders with a print disability

72. Technological changes and international arrangements may increase access to works independently of the Marrakesh Treaty, either through in-built accessibility options or via existing international file sharing arrangements. Such arrangements have been progressed by rights holders and organisations representing people with a print disability and appear to balance the interests of both parties. These include the TIGAR initiative and CLNZ's ongoing negotiations with Australia's Copyright Agency to secure New Zealand access to a database of accessible format copies.
73. However, significant barriers to access remain. For prescribed bodies who wish to produce an accessible format copy, it generally takes considerable time to obtain an electronic file from a publisher and files may be a combination of manual and electronic forms, which can further delay the process.
74. As the rights agency for the publishing sector, CLNZ may be able to use contacts and systems established by WIPO during the development of TIGAR to address these timing issues. However we consider it very unlikely that the full benefit of technological developments and international arrangements will be attained without an international framework to facilitate distribution of accessible format copies of works.
75. Furthermore, the publishing industry has indicated that increased access to works under the current regime generally applies only to fiction and text-based non-fiction, while other types of publications face ongoing conversion challenges. This means that accessible format copies of highly imaged non-fiction and educational materials, for example, are likely to remain scarce in the foreseeable future.
76. In addition, the lack of legal clarity around the import and export of accessible format copies would continue to result in costly duplication of efforts to produce copies required to meet the needs of New Zealanders with a print disability. The waste of resource in producing such copies is worsening a situation where resources are already stretched thin. Accessible format copies of works that have already been converted elsewhere would otherwise be relatively easy and inexpensive to share and distribute across borders.

Objective B: Certainty in the section 69 exception as to what prescribed bodies can and cannot do

77. Our view is that the issue of cross-border exchange and what prescribed bodies can and cannot do is unclear. Failing to remedy this risks ongoing uncertainty, with downstream negative impacts on access for works in accessible format copies.

Objective C: Adherence to New Zealand’s international obligations: the three-step test and the United Nations Conventions

78. The section 69 exception already meets New Zealand’s international obligations under the Berne Convention and TRIPS.
79. However, in 2014 the United Nations Committee on the Rights of Persons with Disabilities expressed concern that New Zealand had not yet ratified the Marrakesh Treaty, citing the importance of the Treaty in ensuring participation in cultural life, recreation, leisure and sport.¹⁷

Questions

16. Do you think there are any other advantages or disadvantages in retaining the status quo?

17. How could access to works in accessible formats be improved without acceding to the Marrakesh Treaty and implementing legislative change?

Option 2: Join the Marrakesh Treaty with minimum legislative amendment

80. Under Option 2, New Zealand would make the minimal legislative changes to the Copyright Act required to align with Marrakesh Treaty obligations and ensure that the exception facilitates cross-border exchange. This approach would both remove the main area of uncertainty in the current exception and ensure that domestic settings facilitate the cross-border exchange encouraged by the Marrakesh Treaty.
81. As discussed above, the New Zealand exception already complies with Treaty requirements for domestic exceptions. Article 4 of the Marrakesh Treaty requires Parties to have an exception to copyright in their national law to allow for the reproduction of works, by an authorised entity, for the purposes of converting them into accessible format copies. Parties can implement or adapt existing exceptions so long as the Party’s existing obligations to comply with the three step test are observed, or Parties may implement the template provided by the Treaty.

¹⁷ Concluding observations from the Committee can be viewed at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fNZL%2fCO%2f1&Lang=en

82. Article 4(4) allows Parties to opt to make reproduction and distribution subject to commercial availability requirements, so long as this is applied on a format-by-format basis according to the needs of the beneficiary person. The New Zealand exception is subject to a commercial availability requirement and meets this standard.
83. To meet Marrakesh Treaty requirements it is likely that only a minor amendment to the definition of “works” is required. Explicitly providing for cross-border exchange is also highly desirable. Before we consider the overall impacts of becoming a Party to the Marrakesh Treaty, we discuss the Articles of the Treaty relating to works and cross-border exchange and consider issues that may be raised or addressed in implementing these obligations.

Legislative change required to meet Treaty obligations

Scope of “works”

84. The Marrakesh Treaty contains four key defined terms. While section 69 of the Copyright Act does not use these defined terms, the language and scope generally complies with the Treaty terms. Only a very minor amendment will be required to align with the Treaty.
85. Article 2(a) of the Marrakesh Treaty sets out the “works” covered by the Treaty. These are literary (including dramatic) and artistic works. The existing New Zealand exception applies only to published literary or dramatic works. New Zealand could implement this requirement of the Treaty merely by extending the exception to include artistic works.

Question

18. Should the definition of works be extended to include artistic works? What would the consequences be?

Cross-border exchange

86. Article 5 requires each Party to the Marrakesh Treaty to allow for the export and import of accessible format copies between authorised entities for the purposes of making them available to people with print disabilities in other countries.
87. It also provides the option for Parties to allow for export and import directly from one authorised entity to individuals in other countries. Article 6 is the bookend to Article 5 and allows for the import of accessible format copies, for the purposes of making them available domestically.
88. Articles 5 and 6 provide countries with great flexibility in how they meet these obligations. However, whether or not the New Zealand exception currently allows for import and export is a grey area that has not been tested. The existing exception is silent on importation. It arguably allows for export as the words “*communicate copies or adaptations of... works for the purpose of providing persons who have a print disability with copies that are in Braille or otherwise modified for their special needs*” could be interpreted as including communicating an accessible format copy to a foreign authorised entity which will pass the work on to a person with a print disability in that foreign entity’s country. However, this is not clear.

89. We consider that to effectively meet the requirements of the Treaty it would be useful to amend the section 69 exception to explicitly provide for cross-border exchange.

Question

19. Is clarity on export and import useful? What are the advantages? Are there any disadvantages?

Objective A: Improved access to accessible format copies for New Zealanders with a print disability

Improved availability and access to internationally produced works

90. In practical terms, the expected impact of the Marrakesh Treaty is that by facilitating greater cross-border exchange between countries, people with print disabilities in countries that have joined the Treaty will have greater access to accessible format copies of works.
91. This exchange would largely take place through existing international file sharing arrangements. The Marrakesh Treaty would allow greater ease of participation in such initiatives. For instance, databases like TIGAR currently require permission from the original copyright holders for the cross-border exchange of electronic files of accessible format copies. Joining the Marrakesh Treaty would remove this barrier and permission clearance would no longer be required for accessible copies produced in countries such as Australia and Canada. This would allow for a significantly greater volume of independent exchange of such works. If the United States and New Zealand both joined the Treaty, a further benefit would be the doubling of the number of titles available to New Zealand from Bookshare.

Improved availability and access to locally produced works

92. It is anticipated that greater access to works produced overseas would significantly free up resources by removing the need for unnecessary duplication of works. One advantage of this could be an increase in the production of accessible format copies of New Zealand works, not only in audio copies¹⁸ but in other formats, potentially exposing New Zealand works to a larger international audience.
93. This greater resource could also fund more accessible copies of works in Te Reo Māori. In its concluding observations on the initial report of New Zealand in October 2014, the United Nations Committee on the Rights of Persons with Disabilities expressed concern that Māori with disabilities find it more difficult to access information in their own language, and urged the New Zealand Government to make greater efforts to assist Māori and Pacific people with disabilities to access information.

Expanded resource capacity to serve more New Zealanders with a print disability

94. Another potential advantage of increased access and the accompanying reduction in unnecessary duplication of works is the ability of prescribed bodies to expand their services to a greater number of New Zealanders with a print disability.

¹⁸ In 2009-2010, 69% of audio titles produced by the Blind Foundation library comprised local works.

95. For instance, the Blind Foundation currently does not serve individuals with a visual impairment who do not meet membership criteria as it does not have the resources to do so. As a result, a significant proportion of New Zealanders with a print disability are excluded from accessing the same information as both (a) sighted individuals and (b) the more severely visually impaired. By reducing the need for unnecessary duplication the Blind Foundation has indicated that it would have additional resource capacity to begin to provide works in formats to meet the needs of a wider group of people.
96. Another potential benefit for Government is that it would get better value from the arrangements in place between the Ministry of Education and the Blind Foundation for the production of accessible format copies of works for school students. In some cases the Blind Foundation would be able to import the required accessible format copies at low cost compared to producing it locally at significant expense.
97. Ministry of Education officials have advised that joining the Treaty could mean that the Ministry's current investment in accessible formats could be focussed more on New Zealand-specific resources.

Objective B: Certainty in the section 69 exception as to what prescribed bodies can and cannot do

98. The Marrakesh Treaty is designed to provide certainty around the legality and process for cross-border exchange of works. In New Zealand's case this would be achieved by amending the existing exception to explicitly provide for cross-border exchange.
99. The Marrakesh Treaty also provides greater certainty on the role of authorised entities both as producers and distributors of content. However there is still some uncertainty around the relationships in this exchange, including what individual parties can and cannot do in terms of the application of the commercial availability test.

Objective C: Adherence to New Zealand's international obligations: the three-step test and the United Nations Conventions

100. Joining the Marrakesh Treaty does not undermine New Zealand's obligations to adhere to the three-step test. The Treaty provides minimum standards for exceptions for people with a print disability and requires that any exception is in line with any existing obligations to observe the three step test. The Treaty also provides a template for exceptions which must be read as satisfying the three-step test requirements. Within this framework, the New Zealand exception complies.
101. In addition, joining the Marrakesh Treaty would be a significant step for the New Zealand Government toward better meeting its obligations under the UNCRPD, particularly Article 30(1)(a), which concerns ensuring access to cultural materials in accessible formats. This is an integral aspect in meeting the overarching objective of the UNCRPD to achieve full equality under the law for people with disabilities.

Question

20. Do you think there are any other advantages or disadvantages of Option 2 (joining the Treaty and making the minimum legislative amendments required to meet our obligations and make the exception workable for cross-border exchange)?

Option 3: Join the Marrakesh Treaty and update the existing exception

102. This is our preferred option. Under this option New Zealand would join the Marrakesh Treaty and:
- a. make the necessary amendments to the section 69 exception to align with the obligations of the Marrakesh Treaty, and consider any other amendments to ensure that New Zealand gains the maximum benefit of joining the Treaty; and
 - b. update elements of the exception to ensure that it is clear, and that the passage of time and technological developments are taken into account.
103. This option has all of the benefits listed in Option 2 and, depending on the final look of this option following consultation, is likely to provide further benefits. Under each of the policy objectives we will consider whether any other changes should be made to the existing exception (within the framework allowed for by the Marrakesh Treaty) to better meet the policy objectives or to otherwise update the exception.
104. In our analysis of the overall impacts of this option we seek stakeholder feedback on each of the proposed additional changes to help inform whether and to what extent the proposal is desirable and should be included in this option.

Objective A: Improved access to accessible format copies for New Zealanders with a print disability

105. This option provides all the benefits of Option 2. There is also the potential to explore further benefits by allowing for potentially greater levels of access by allowing people with a print disability to reformat works themselves. This is allowed by the Marrakesh Treaty but is not compulsory.

Allowing persons with a print disability to reformat works themselves

106. Under Article 4 of the Marrakesh Treaty, Parties to the Treaty may allow individuals with a print disability or a person acting on their behalf to reformat works themselves.
107. The importation obligation under the Treaty applies only to the extent that the national law of the importing country permits an authorised entity or a person with a print disability to make an accessible format copy. As the New Zealand exception applies only to prescribed bodies (authorised entities), the importation right is only required to extend to those authorised entities.

108. While not required to meet Treaty obligations, extending the section 69 exception to specifically include people with a print disability and their caregivers will provide clearer rights and potentially greater benefits for people with a print disability.
109. In an online context it appears sensible to allow individuals with a print disability to access accessible format works from an authorised entity outside the country rather than having to go through a second authorised entity in their own country.
110. Taking up this option may also enable the Blind Foundation to better meet the needs of New Zealanders with a print disability who live overseas and might request works from the Blind Foundation. The Foundation could supply accessible format copies directly rather than through an overseas authorised entity.
111. The Ministry of Education has advised that this option would support students with a print disability in the classroom by increasing their ability to better customise their learning materials, and giving them more independence from teacher aides and resource teachers.

Questions

21. Do you agree there is benefit in extending the exception to specifically allow people with a print disability and caregivers acting on their behalf to make and import accessible format copies themselves? If possible, please provide examples.

22. Are there any other advantages or disadvantages in allowing people with a print disability and caregivers acting on their behalf to make and import accessible format copies?

23. Would further guidance be required on the relationships between local authorised entities and authorised entities and beneficiaries in other countries?

Scope of the term 'Beneficiary Persons'

112. The definition of beneficiary persons in Article 3 of the Treaty is broad and inclusive covering any disability that interferes with effective reading of print material. "A person with a print disability" under the New Zealand exception broadly covers the same range of print disabilities.
113. However, whether the same spectrum of disabilities is covered by "handicap with respect to visual perception" under the Act and "reading disability" under the Treaty is uncertain. For instance, while dyslexia is clearly a reading disability it may not be considered a handicap with respect to visual perception.
114. The section 69 exception appears to comply with Article 3 but some clarification may be desirable to ensure that New Zealanders with any disability that interferes with effective reading of print material are able to benefit from the exception.

Questions

24. Is amendment required to provide clarity that reading disabilities such as dyslexia are included? What would be the impact of specifically extending the definition to include those with reading disabilities?

25. Would it be useful to modernise the language used in the current definition of print disability?

Objective B: Certainty in the section 69 exception as to what prescribed bodies can and cannot do

115. All of the benefits discussed in Option 2 exist under this option. There is also the potential to explore further benefits by considering other changes to clearly set out what authorised entities can and cannot do, and provide greater guidance on the application of the commercial availability test. These changes are not required to join the Marrakesh Treaty but may make the operation of the exception more workable in practice.

Greater certainty around the role and responsibilities of authorised entities

116. Article 2(c) of the Marrakesh Treaty defines an authorised entity as a non-profit or government agency that is recognised or authorised by government to provide education, training, adaptive reading or information access to people with a print disability on a non-profit basis either as its sole function or as one of its primary activities or institutional obligations. It also covers for-profit entities that provide such services using public funds and on a not-for-profit basis.

117. The Treaty requires authorised entities to establish and follow their own practices in four defined areas and, if they are engaging in import or export, to make those practices available to other authorised entities (Article 9). The requirements are to:

- establish that the persons it serves are persons with a print disability;
- limit distribution and making available of accessible format copies to persons with a print disability and/or authorised entities;
- discourage the reproduction, distribution and making available of unauthorised copies; and
- maintain due care in, and records of, its handling of copies of works, while respecting the privacy of people with a print disability.

118. Under New Zealand's existing exception, organisations that are authorised by Government to produce and communicate accessible format copies are described as "a body prescribed by regulations". The only requirements under the exception are that the organisation is not-for-profit and the copies are produced only for people with a print disability.

119. As there is no specific process or approval mechanism to qualify as an authorised entity, joining the Marrakesh Treaty may include a wider range of New Zealand institutions such as educational institutions and libraries, in their capacity as distributors of accessible format copies. These institutions would still be subject to Treaty requirements, such as needing to be able to establish that their customer/client has a print disability.

120. There are a number of existing issues relating to prescribed bodies, which will also apply to the potentially wider pool of authorised entities under the Treaty. These include:

- a. how to deal with breaches;

- b. whether and to what extent reporting is required;
 - c. whether further guidance or regulation is required on how the commercial availability test should be applied; and
 - d. how to ensure that any register of prescribed bodies and authorised entities is kept up to date.
121. These issues largely already exist and do not need to be resolved as a prerequisite to becoming a Party to the Marrakesh Treaty because the Treaty is carefully worded so that countries can leave existing arrangements in place. However, while the section 69 exception appears to comply with Article 2(c), further regulation or guidelines for prescribed bodies may be desirable.

Questions

26. Do prescribed bodies currently have practices and procedures along the lines prescribed by the Marrakesh Treaty?

27. Would it be useful to provide greater clarity around the role and obligations of authorised entities, and make the role and obligations of prescribed bodies more explicit?

28. How will libraries and educational institutions use this exception compared to the normal library lending model?

29. Would opening up the exception further, for example by allowing a wider range of entities to use the exception pose problems for rights holders? If so, how could those problems be addressed?

30. Should there be specific remedies for rights holders in instances where a prescribed body or authorised entity is found to be breaching the Copyright Act, or where an organisation that is not prescribed undertakes accessible format production without permission?

31. Would a mandated reporting system, for example replicating the TIGAR system, be desirable?

32. Is the Bookshare model for determining whether a person has a print disability (requiring medical certificate or other prescribed documentation) useful? If not, are there alternative useful models?

Commercial availability

122. The Marrakesh Treaty allows (but does not require) a ‘commercial availability’ test. Our understanding from stakeholders is that the New Zealand test for commercial availability works well to balance the interests of rights holders and end users. Stakeholders have also advised that retaining the commercial availability test will address concerns that the Marrakesh Treaty may undermine the developing market for e-books, in particular e-books that also enable accessibility for people with a print disability (such as a read aloud function). It also incentivises publishers to produce such e-books. Therefore we are not proposing any change to the existing commercial availability requirement but some guidance may be required on how it is applied in cross-border exchange.

123. Our understanding is that in a cross-border exchange the New Zealand authorised entity must make reasonable efforts to check that the accessible format copy is not commercially available in New Zealand before importing an accessible format copy that was produced in compliance with the originating state’s copyright laws.
124. Given that under the Marrakesh Treaty a potentially wider group of organisations may distribute accessible format copies, there may be value in providing further guidance on appropriate steps to establish commercial availability. This could involve formalising the current practice by making the first step in a commercial availability test to contact the rights owner.

Questions

33. Should further guidance or regulation be provided on how the commercial availability test should be applied? If so, what sort of guidance would be useful?

Use of the term ‘accessible format copy’

125. Article 2(b) of the Marrakesh Treaty provides the defined term ‘accessible format copy’. The term provides scope for broad interpretation so long as the work is clearly provided exclusively for the use of beneficiary persons and clearly includes Braille, audio books and large print adaptations.
126. While we consider that the New Zealand exception provides for the same range of accessible format copies as set out in the Marrakesh Treaty, it does not include a definition of accessible format copy or a similar defined term. Rather it lists the kinds of copies that can be made of works. The section 69 exception appears to comply but some clarification may be desirable.

Questions

34. Would it be useful to include a defined term similar to the Marrakesh Treaty which focusses on the needs of the end user rather than the format?

35. Would providing a defined term that could encompass changing technologies and formats ensure that the exception is better future-proofed?

Objective C: Adherence to New Zealand’s international obligations: the three-step test and the United Nations Conventions

127. This option could provide greater benefits than listed under Option 2, if New Zealand opts to allow people with a print disability (and their caregivers) to produce accessible format copies themselves. This would likely be viewed as better meeting the overarching objective of the UNCRPD to achieve full equality for people with disabilities under the law. This option would also enable New Zealand to better meet its obligations under Articles 28 and 29 of the United Nations Convention on the Rights of the Child.

Conclusion

128. Technological innovation and the continued development of international arrangements such as DAISY and Bookshare are likely to further increase the availability of works in accessible formats for New Zealanders with a print disability. While this is a step in the right direction, the lack of legal clarity and stretched resources of prescribed bodies means that such developments in isolation are unlikely to meet the needs of those who are unserved by the current regime.
129. Option 2 would see New Zealand enjoy the benefits of becoming a Party to the Marrakesh Treaty and adhering to New Zealand's international obligations. However, in isolation this change does not address some of the existing uncertainties around what prescribed bodies can and cannot do and does not explore other possible ways to improve the existing exception.
130. Option 3 involves joining the Marrakesh Treaty and considering other changes to improve the operation of the exception within the framework allowed for by the Treaty. We consider this option contains all of the benefits of Option 2 and is likely to better meet the stated objectives of increasing availability and access to accessible format copies of works, as well as providing greater legal certainty around the practices of prescribed bodies.

Questions

36. Do you agree that joining the Marrakesh Treaty and considering other changes to improve the operation of the exception within the framework allowed for by Marrakesh is the best option?

37. Are there any concerns regarding the quality of accessible format copies of work that may be imported or created under the Marrakesh Treaty framework?

38. Are there any other advantages or disadvantages in terms of greater certainty around legal rights and obligations?

39. Do you foresee any other advantages or disadvantages for New Zealand in joining the Marrakesh Treaty?

Annex 1: Targeted list of key Questions

The questions below are the key questions that target the experiences and views of people with a print disability. The questions are numbered as they appear in the document and links are included to the relevant page for context.

- Q8.** What impact are international file sharing initiatives like DAISY, TIGAR and Bookshare having on the availability of accessible format copies of works in New Zealand? [18](#)
- Q9.** What challenges do people with print disabilities currently face in obtaining accessible format copies of works to meet their particular needs? Has this changed over time? Do you think any other factors are relevant in the description of the current circumstances facing people with a print disability when trying to access works? [18](#)
- Q10.** Do you agree with the problem definition outlined in this document? [19](#)
- Q13.** Do you agree with the policy objectives outlined in this document? [20](#)
- Q15.** Do you think there are any other viable options in addition to the ones explored in this document? [22](#)
- Q20.** Do you think there are any other advantages or disadvantages in joining Marrakesh under Option 2 (by making the minimum legislative amendments required to meet our obligations and make the exception workable for cross-border exchange)? [26](#)
- Q21.** Do you agree there is benefit in specifically allowing people with a print disability and caregivers acting on their behalf to make and import accessible format copies themselves? If possible, please provide examples. [28](#)
- Q24.** Is amendment required to provide clarity that reading disabilities such as dyslexia are included? What would be the impact of specifically extending the definition to include those with reading disabilities? [28](#)
- Q25.** Would it be useful to modernise the language used in the current definition of print disability? [28](#)
- Q35.** Do you agree that Option 3 of joining the Marrakesh Treaty and considering other changes to improve the operation of the exception within the framework allowed for by Marrakesh is the best option? [32](#)

Annex 2: Full list of Questions

1. Do other prescribed bodies use the section 69 exception? If so, how do they create accessible format copies?
2. Are there any other barriers or impediments to produce accessible format copies under the existing exception that have not been canvassed above?
3. How do other prescribed bodies apply the commercial availability test?
4. Does this section correctly describe the rights holders and organisations that represent rights holders in New Zealand who are involved in the publication of written material?
5. Are there any other relevant organisations or individuals?
6. What kind of services do these organisations currently provide for the blind and people with other forms of print disability?
7. Does the current operation of the exception limit what they can provide and if so, how?
8. What impact, if any, are initiatives like DAISY, TIGAR and Bookshare having on the availability of accessible format copies of works in New Zealand? To what extent is this impact likely to change in future? What could be done to enhance their reach?
9. What challenges are faced by people with print disabilities in obtaining accessible format copies to meet their particular needs? Has this changed over time? Do you think any other factors are relevant in the description of the current circumstances facing people with a print disability when trying to access works?
10. Do you agree with the problem definition? What relative weight do you put on each problem listed above?
11. Is the uncertainty resulting in either breaches of rights holders rights or leading to fewer accessible books being produced? Please provide details.
12. Are there any other problems with the current exception?
13. Do you agree with the policy objectives?
14. Are there any other objectives that should be taken into account?
15. Do you think there are any other viable options? If so, please provide details
16. Do you think there are any other advantages or disadvantages in retaining the status quo?
17. How could access to works in accessible format copies be improved without acceding to the Marrakesh Treaty and implementing legislative change?
18. Should the definition of works be extended to include artistic works? What would the consequences be?

19. Is clarity on export and import useful? What are the advantages? Are there any disadvantages?
20. Do you think there are any other advantages or disadvantages in joining Marrakesh by making the minimum legislative amendments required to meet our obligations and make the exception workable for cross-border exchange?
21. Do you agree there is benefit in extending the exception to specifically allow people with a print disability and caregivers acting on their behalf to make and import accessible format copies? If possible, please provide examples.
22. Are there any other advantages or disadvantages in allowing people with a print disability and caregivers acting on their behalf to make and import accessible format copies?
23. Would further guidance be required on the relationships between local authorised entities and authorised entities and beneficiaries in other countries?
24. Is amendment required to provide clarity that reading disabilities such as dyslexia are included? What would be the impact of specifically extending the definition to include those with reading disabilities?
25. Would it be useful to modernise the language used in the current definition of print disability?
26. Do prescribed bodies currently have practices and procedures along the lines prescribed by the Marrakesh Treaty?
27. Would it be useful to provide greater clarity around the role and obligations of authorised entities, and make the role and obligations of prescribed bodies more explicit?
28. How will libraries and educational institutions use this exception compared to the normal library lending model?
29. Would opening up the exception further, for example by allowing a wider range of entities to use the exception pose problems for rights holders? If so, how could those problems be addressed?
30. Should there be specific remedies for rights holders in instances where a prescribed body or authorised entity is found to be breaching the Copyright Act, or where an organisation that is not prescribed undertakes accessible format production without permission?
31. Would a mandated reporting system, for example replicating the TIGAR system, be desirable?
32. Is the Bookshare model for determining whether a person has a print disability (requiring medical certificate or other prescribed documentation) useful? If not, are there alternative useful models?
33. Should further guidance or regulation be provided on how the commercial availability test should be applied? If so, what sort of guidance would be useful?
34. Would it be useful to include a defined term similar to the Marrakesh Treaty which focusses on the needs of the end user rather than the format?

35. Would this ensure that the exception is better future-proofed by being able to respond to changing technologies?
36. Do you agree that joining the Marrakesh Treaty and considering other changes to improve the operation of the exception within the framework allowed for by Marrakesh is the best option?
37. Are there any concerns regarding the quality of accessible format copies of work that may be imported or created under the Marrakesh Treaty framework?
38. Are there any other advantages or disadvantages in terms of greater certainty around legal rights and obligations?
39. Do you foresee any other advantages or disadvantages for New Zealand in joining the Marrakesh Treaty?