

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

We do not know how prescribed bodies apply the commercial availability test and would like to see a system with checks and balances in place to ensure the copyright exception is functioning as intended.

Question 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?

A: Referencing paragraph 50: Authors can have a licensing agreement directly with CLNZ, it does not have to be via a New Zealand Publisher. This will happen when rights revert from the publisher back to the author.

Question 5: Are there any other relevant organisations or individuals?

A: Authors who independently publish commercial works are rights holders involved in the publication of written material.

Questions 6: What kind of services do these organisations currently provide for the blind and people with other forms of print disability?

A: New Zealand Libraries also make available large print books and audio books.

The Public Lending Right (PLR) for New Zealand Authors is a scheme established to compensate New Zealand authors, illustrators, and editors for the use of their books in New Zealand libraries. There is no such scheme for books produced and held in libraries by prescribed bodies for distribution to beneficiaries. It would be beneficial to the rights holders to have compensation for these library holdings as well e.g. Print Disability Lending Right.

Question 10: Do you agree with the problem definition? What relative weight do you put on each problem listed above?

A: With regard to paragraph 65 (b) & (c). People with print disability have more choice now than ever before when accessing books in formats they can use. They can buy accessible books at the same time and at the same price as people without a print disability. However there are some exceptions to this.

Due to the size of New Zealand's population there is a barrier to our publishers producing books first published in New Zealand, in audio format (over and above EPUB) due to the relatively low demand compared to the production costs. So this is a problem that is shared by all readers in New Zealand who want titles, first published in New Zealand, in audio format.

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Question 12: Are there any other problems with the current exception?

A: There are problems with the existing section 69 exception in the Copyright Act.

1. It is not clear about the limitations prescribed bodies have after producing accessible formats for beneficiaries using Section 69 of the Act.

For example, the Blind Foundation has monetised their Audio Book library, created under Section 69, by making it available for commercial sale on Amazon's audio book platform Audible, and on iTunes.

Section 69 (2) states copies made by prescribed bodies should only be provided to persons with a print disability, and the print disabled person need only pay for a copy until the cost of production is covered. Section 69 (3) states a body shall not be prescribed for the purpose of creating accessible formats if is conducted for profit.

Despite this the Blind Foundation entered into a licensing arrangement with a New Zealand publisher and they are selling audio books via commercial channels, for profit. Royalties are paid to the publisher who in turn pays the author. Blind Foundation, through this license is able to make books available to any buyer and profit from sales which is in contradiction to Section 69 (2) and (3). The Blind Foundation asserts they are acting legally due to the license they have with the Publisher.

After the audio books were created under the exception, a separate license between the Publisher and the Blind Foundation has negated the specifications the Blind Foundation should be bound to by the Act. This example demonstrates lack of certainty in the way the Act can be interpreted by prescribed bodies.

If the Blind Foundation was not able to create audio formats for sale, as the market for audio books increases it is possible an innovative New Zealander could start a viable business creating audio versions of published books.

- 2 EPUB 3 books featuring synchronized audio narration are found in mainstream e-books, educational tools and e-books formatted for persons with print disabilities. It is not clear if a prescribed body can produce a narrated version of an audio book because they see this as a need for a beneficiary person despite the EPUB 3 version being available.

The exception under the copyright Act would need to be quite precise to clarify limitations prescribed bodies have and to allow certainty around nuances such as what satisfies commercially availability.

Question 13: Do you agree with the policy objectives?

Yes.

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Questions 14: Are there any other objectives that should be taken into account?

A: Yes

Better information that interested parties can access. For example, the establishment of an information access point holding a database of print disability formats that have been created in New Zealand and reporting on borrowings from library holdings of print disability formats.

Question 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.

A: As mentioned in our response to Question 3, we do not know how prescribed bodies apply the commercial availability test and would like to see a system with checks and balances in place to ensure the copyright exception is functioning as intended for both prescribed bodies and individuals with print disability and their caregivers should this benefit come about.

Questions 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?

A: A disadvantage of greater levels of access to print disability formats by individuals is that beneficiaries and their carers may be less careful keeping secure files or respecting the boundaries around the exception in the Act. It is also harder to monitor breaches and respond to breaches at an individual level compared to a limited number of authorised prescribed bodies.

Question 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?

A: If the scope of the term *beneficiary persons* is increased, the exception under the copyright act needs to be very clear about the disabilities it covers. It is clear that a blind person should have access to braille formats, but as an example, it is not so clear that all people with visual perception disability should have access to royalty free audio books because there are varying degrees of the disability.

Access should be limited to those with a disability that leaves them disadvantaged, in comparison to a person without a print disability, if they do not have access to royalty free print disability formats. We would like to see measures in place to ensure the rights of copyright holders are respected whilst meeting the needs of persons with print disability.

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Question 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?

A: Yes. It would be beneficial for there to be a database of print disability formats and reporting on the uses of those formats.

Rights holders should have access to information about holdings and borrowings from libraries with print disabled formats. This should be an obligation of the prescribed bodies.

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

A: The public libraries have a Public Lending Right. It would be appropriate for there to be a Print Disability Lending Right facilitating compensation to rights holders whilst broadening the availability of formats to the print disabled.

Question 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?

A: As suggested above, the public libraries have a Public Lending Right. It would be appropriate for there to be a Print Disability Lending Right facilitating compensation to rights holders whilst broadening the availability of formats to the print disabled.

Questions 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?

A: Yes.

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

A: Yes, the establishment of mandated reporting system is desirable. It would be good if there is one information access point where rights holders, prescribed bodies and the print disabled are able to find out about

- a. print disability formats created in New Zealand / available in New Zealand
- b. where the format is held (ie Blind Foundation Library / Uni of Auckland Library)
- c. number of holdings and / or number of borrowings

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Questions 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?

A: If this model of an individual providing a medical certificate or other documentation to establish that they have a print disability is used the exception under the copyright act needs to be very clear about the disabilities that are eligible. If the scope is too wide rights holders may be disadvantaged. However if there is a Print Disability Lending Right put in place, this could balance out the increasing number of print disabled persons accessing royalty free print disability formats.

Question 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?

A: Yes

Question 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?

A: Broadening the term for print disability formats, and broadening the scope of the term beneficiary persons (number 24) each increases the number of people able to access royalty free works. As mentioned, we support facilitating access to published works for persons with print disability but we would also like to see measures in place to ensure the rights of copyright holders are respected whilst meeting the needs of persons with print disability.

Question 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?

A: Yes, we support Option 3.

We would like the issues we have raised to inform the National Interest Analysis on whether the Government should take the decision to join the treaty and if it does, what should be considered when changes are made to the Copyright Act.

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