

# Submission to Marrakesh Treaty Implementation

## Options Paper

### Respondents details

Name/organisation: Australian Publishers Association

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Please select: YES



Ms Haipola  
Commercial and Administrative Law Branch  
Civil Law Division  
Attorney-General's Department

Dear Ms Haipola

The Australian Publishers Association (APA) congratulates the Government in signing the Marrakech Treaty. The APA is highly supportive of the aims of the Treaty in facilitating access for the print-handicapped.

The Australian publishing industry has had a long history of supporting the print-handicapped community through supply of publication master files and accessible format copies on demand. The APA is currently working with the International Publishers Association (IPA) as part of the Accessible Book Consortium (ABC). The APA has embarked on a proactive process of educating all our members on being Treaty-ready. We see the Treaty as an operational, legal and moral priority for the publishing industry and we welcome its pending ratification.

We thank the Attorney General's Department for the opportunity to comment on the Marrakech Implementation Options Paper. The underlying principle that has guided our response to the three options presented is to seek the most efficient application of current legislative mechanisms. Like the Attorney General's Department, we view that the Copyright Act is already largely Marrakech-compliant.

We look forward to engaging with the Government and all stakeholders in order to achieve the right implementation plan for this important Treaty.

Yours sincerely,

Louise Adler AM  
President

Michael Gordon-Smith  
Chief Executive

**Australian Publishers Association 60/89 Jones Street Ultimo NSW 2007**

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## ABOUT THE AUSTRALIAN PUBLISHERS ASSOCIATION

The Australian Publishers Association (APA) is the peak industry body in Australia for publishers of books and journals, hard copy and electronic publications. Established in 1948, the APA is an advocate for all Australian publishers large or small, commercial or non-profit, educational or popular; locally or overseas owned. The Association represents over 90% of the industry based on turnover.

## RESPONSE TO OPTIONS PAPER

The Australian publishing industry and the APA are very supportive of the principles of non-discrimination, equal opportunity and accessibility for the print-handicapped, covering the spectrum from visual to perceptual impairment. The cultural importance and legacy of the publishing industry, is based on the very concept of the dissemination of ideas in an inclusive society and global market economy.

The scope of the Association comment is limited to those elements of the legislation and the outlined options that directly affect the interests of publishers. The concerns of publishers are:

- recognition of intellectual property rights
- security for master file and accessible copy
- risk management of cross-border exchange
- accountability of authorised entities.

### What option would work best for you or your organisation? Can you recommend an alternative approach?

The APA supports the minimal change approach outlined in Option 1 but with the proposed addition of non-legislative solutions to some of the problems outlined in the Options paper. Our view is that changes to legislation to comply to the Treaty ought to be made only when it is necessary to avoid unintended consequences and regulatory confusion. It is generally accepted that the Copyright Act 1968 is largely compliant with the terms of the Marrakech Treaty. We support the alternative approach of extending s200AB to apply to 'export' of accessible copies as a way of addressing the cross-border exchange element to the Treaty.

The APA strongly opposes the proposed Option 2 amendment to Part VB, Div 3 statutory licence in which the commercial availability test is expanded to cover any accessible format. If user reasonable needs are met with a scope of format substitutability, then commercial availability should be deemed to have been met. A commercial availability test based on user needs without defining parameters would potentially impose an insupportable burden for publishers to provide publications in more than the five standard formats (audio, Braille, large print, photographic and electronic). To require that all formats and their permutations must be provided to meet the commercial availability test could act as a disincentive for publishers to invest in producing commercially accessible publications in the first place and work against the intentions of the Treaty.

The APA strongly opposes the Option 3 in which a US-style 'fair dealing' provision in line with the recommendations of the Australian Law Reform Commission Report would be added to current legislation. In our view, such a radical change is outside the scope of implementing the Marrakech Treaty. It would have far-reaching implications for copyright owners and potentially undermine the commercial market.

[Does the statutory licence at Part VA of the Act need consideration for the Marrakech Treaty to be properly implemented?](#)

No. There is no need to change Part VA of the Act in order to implement the Marrakech Treaty.

[What is the appropriate way to reduce the regulatory burden associated with s10A declaration process?](#)

The APA is not aware of specific operational or administrative burdens for recognised entities so cannot comment on the current operation of the s10A declaration process. The APA supports efficient regulation and reduction of costs both for regulated organisations and for the government bodies responsible for the administration. However, regulations should meet minimum standards of protection and security for the property rights of copyright owners. The risk to publishers is genuine. Particularly in the early years of a new scheme, efficiency should be accompanied by transparency and effective management of risk.

The APA supports delegation of the approval of recognised entities provided recognised entities are listed on a public register and there are opportunities for review. The current declaration process does not address the concerns of publishers with regards to protection of copyright, master file and accessible copy security and accountability. There is a need for greater transparency of governance of copy and master file management within recognised entities and a need for greater 'whole-of-industry' collaboration and communication.

[Would it be helpful for the Department to issue guidelines for the use of s200AB? If so, what information would be most useful for you?](#)

Yes. The APA would welcome clear guidelines that communicate to all key stakeholders regarding the use of s200AB, particularly should the option of extending s200AB to cover export is implemented.

[Would it be helpful for the Department to issue guidelines on the application of the commercial availability test under Part VB, Div 3 and if so, what information would be most useful for you?](#)

Yes. The APA would welcome clear guidelines on the commercial availability test for both the publishing industry and recognised entities. However, there is a broader communications need in communicating with booksellers and print-handicapped consumers that requires a 'whole-of-industry' collaborative approach.

## Would any of the proposed options remove the practical obstacles to the creation of an online repository of accessible works?

The APA is not aware of any practical obstacles to the creation of an online repository of accessible works. The APA, and a number of individual members, support the Accessible Book Consortium and are participating in the TIGAR. What is of greater urgency for the publishing industry is ensuring that there is readily available information on commercial accessible publications. From a commercial perspective, a single repository is less important than effective discovery for print-handicapped consumers. To this end, the APA has begun a project of developing the capability of listing accessible copies in TitlePage. TitlePage is an online service developed and maintained by Australian publishers that allows bibliographic details of publications to be viewed and downloaded by over 2,000 booksellers, suppliers and libraries in Australia and also provides booksellers accurate and up-to-date price and availability data. TitlePage currently lists more than 1.2 million titles.

## CONCLUSION

In conclusion, the publishing industry views the Marrakech Treaty as an important step in strengthening the market for commercially available accessible formats for the print-handicapped community in Australia and internationally. However, the Treaty also covers non-commercial mechanisms that, if not well-managed, could undermine market operation and raise risks for intellectual property owners. The APA is of the view that investment in educating recognised entities on their obligations to respect copyright – both here and overseas – is an important part of the operation of current legislation and the future implementation of the Marrakech Treaty. This may take the form of guidelines or of mandatory advisories attached to master or copy files exchanged between recognised entities. However, we propose that a broader communications exercise be considered by the Department in collaboration with all key stakeholders.