

23 May 2017

National Interest Analysis:

Proposed accession to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled

Executive Summary

1. The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (the **Marrakesh Treaty**) is a multilateral treaty that was concluded on 28 June 2013 and entered into force on 30 September 2016.
2. An estimated 90% of all written materials published worldwide are unable to be accessed in a format that meets the particular needs of individuals who are blind or have a print disability. Limited access to works in accessible formats is a barrier to participation in public life and restricts employment, educational and recreational opportunities for the estimated 168,000 New Zealanders with a print disability.
3. New Zealand has an exception to copyright infringement for the benefit of individuals with a print disability in section 69 of the Copyright Act 1994. It allows bodies prescribed in Regulations to produce and provide accessible format copies domestically for individuals with a print disability subject to specific conditions.
4. The Marrakesh Treaty aims to address the lack of access to copyright works in accessible formats by providing an international legal framework for copyright exceptions that facilitates the cross-border exchange of works in accessible formats (such as braille, audio and large print) by providing an international legal framework that allows for the cross border exchange of accessible format works between countries party to the treaty.
5. The Marrakesh Treaty requires member countries to provide exceptions for the:
 - a. reproduction of works, by certain individuals and/or organisations, for the purposes of converting them into accessible format copies exclusively for individuals with a print disability (described in the Marrakesh Treaty as “beneficiary persons”);
 - b. distribution of accessible format copies exclusively to individuals with a print disability;
 - c. export of accessible format copies, for the purposes of making them available to individuals with a print disability in other member countries; and

- d. import of accessible format copies from member countries for the purposes of making them available domestically to individuals with a print disability.
6. To ensure compliance with these obligations amendments are required to the Copyright Act. These are to:
 - a. explicitly provide for the import and export of accessible format copies between member countries;
 - b. extend the definition of 'works' (to which the section 69 exception applies) to include artistic works;
 - c. expand the conditions applied to prescribed bodies in the section 69 exception to include the maintenance of due care in, and records of, its handling of copies of works; and
 - d. clarify that the definition of print disability includes individuals who have a visual impairment or perceptual or reading disability, which cannot be improved to give substantially similar function as a person without such an impairment.
7. Acceding to the Marrakesh Treaty¹ is expected to have positive social, economic and cultural impacts on New Zealand. Individuals with a print disability are expected to be the primary beneficiaries. It is likely to improve access to education, enhance participation in public life, provide greater autonomy and independence, and improve health outcomes. Acceding to the Marrakesh Treaty is also expected to achieve better value for money from the Government's investment in the production of educational material for individuals with a print disability, which is currently provided by the Blind Foundation.
8. However, it will only partially address the lack of access to works in accessible formats for individuals with a print disability. This is because of two specific issues:
 - Issue 1: Only a small number of organisations (with limited resources) are providing accessible copies of works to a small subset of individuals with a print disability (i.e. individuals who are blind or students with low or impaired vision); and
 - Issue 2: There is a lack of clarity around the extent to which individuals with a print disability (or someone acting on their behalf) can convert lawfully obtained copyright works into accessible format copies for personal use.

¹ As the timeframe for signature to the Marrakesh Treaty expired on 30 June 2014, New Zealand must undergo a process of accession rather than ratification.

9. A Regulatory Impact Statement (**RIS**) has been prepared to assess options to further improve access to a greater variety of copyright works for New Zealanders with a print disability. For the purposes of the analysis we assume that New Zealand will accede to the Marrakesh Treaty.
10. Options were based on provisions provided (but not required) within the Treaty framework, and international experience of disability exceptions from the United Kingdom (UK) and policy development in this area in Australia.
11. The preferred options within the RIS address the two specific issues and allow New Zealand to better address the lack of access to works in accessible formats for individuals with a print disability. The preferred options:
 - Allow all organisations that meet the definition of “authorised entity” under Article 2(c) of the Marrakesh Treaty to both provide and produce accessible format copies for individuals with a print disability and also, in legislation, clarify how authorised entities should observe each condition when providing or producing accessible format copies of works
 - Adopt an exception for individuals with a print disability (or someone acting on their behalf) to:
 - i. produce an accessible format copy of a work provided the individual has lawful possession of, or lawful access to, the material in question and the copy is produced only for the personal use of an individual with a print disability; or
 - ii. import copies from an authorised entity in a country party to the Marrakesh Treaty under the same conditions in (i) above.
12. Stakeholders were supportive of New Zealand joining the Marrakesh Treaty and considering further options to improve access.

Nature and timing of the proposed treaty action

13. The Marrakesh Treaty is a multilateral treaty that was concluded on 28 June 2013. It entered into force on 30 September 2016.
14. The Government intends to lodge its Instrument of Accession with the Director General of the World Intellectual Property Organisation (**WIPO**) as depositary and accede to the Marrakesh Treaty as soon as practicable after the Parliamentary treaty examination process is complete, and required changes to the Copyright Act 1994 have been implemented. The Marrakesh Treaty would enter into force in New Zealand three months after the date of accession.
15. Tokelau is currently being consulted.

Reasons for New Zealand becoming Party to the treaty

Development of the Treaty

16. While many countries have a disability exception to copyright infringement, the need for an international instrument allowing for the cross-border distribution of accessible format copies was identified as far back as the 1980s. This need intensified as technological advances made it increasingly easy for sighted people to access a wider range of knowledge goods.
17. Calls for the development of broader user rights and the full enjoyment of human rights for everyone culminated in a proposal for a more inclusive and pluralistic development agenda at WIPO. This represented a significant shift in the WIPO development agenda from a sole focus on harmonising and prescribing minimum levels of intellectual property protection to considering a more development-orientated approach to international law-making. Four years of intensive negotiations amongst member states of WIPO resulted in the Marrakesh Treaty, which creates the first mandatory exceptions and limitations to copyright protection.

Main reasons for New Zealand becoming a party

18. Becoming a Party to the Marrakesh Treaty would allow New Zealand to be part of an international regime for copyright exceptions that facilitate the cross-border exchange of works in accessible formats (such as braille, audio and large print). This is likely to:
- a. provide more timely access to a greater variety of such works for New Zealanders with a print disability; and
 - b. improve adherence to New Zealand's international obligations under the United Nations Convention on the Rights of Persons with Disabilities (**UNCRPD**) and the United Nations Convention on the Rights of the Child (**UNCROC**).

More timely access to a greater variety of accessible format works for New Zealanders with a print disability.

19. An individual with a print disability is defined as a person who 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. Prescribed bodies can provide individuals with a print disability copyright material that is in an accessible format that meets their specific needs. For example, braille, large print, or audio versions (**accessible format copies**).

20. An estimated 90% of all written materials published worldwide, are unable to be accessed in a format that meets the particular needs of individuals who are blind or have a print disability.² Limited access to works in accessible formats is a barrier to participation in public life and restricts employment, educational and recreational opportunities for the estimated 168,000 New Zealanders who have a print disability.³
21. New Zealand already has an exception to copyright infringement for the benefit of individuals with a print disability in section 69 of the Copyright Act 1994 (**the section 69 exception**). It allows bodies prescribed in Regulations (**prescribed bodies**) to produce⁴ and provide⁵ accessible format copies of copyright works domestically for individuals with a print disability subject to conditions specified in the section 69 exception⁶, including the commercial availability test.⁷
22. However, access to works in accessible formats remains limited for New Zealanders with a print disability. This is thought to be due to two main factors:
- a. *Uncertainty over the legality of prescribed bodies importing accessible format copies of works.* Whether or not the section 69 exception allows for import and export of accessible format copies is a grey area that has not been tested in the courts, which in practice has resulted in a barrier to the importation of accessible format works.⁸ This uncertainty can result in time-intensive and costly duplication of efforts for prescribed bodies e.g.

² According to the World Blind Union, see webpage: <http://www.worldblindunion.org/English/our-work/our-priorities/Pages/default.aspx>

³ Statistics New Zealand 2013 Disability Survey, see webpage:

http://www.stats.govt.nz/browse_for_stats/health/disabilities/DisabilitySurvey_HOTP2013/Commentary.aspx

⁴ The term 'produce' is used to describe the process of taking a legally obtained copyright work (electronic or hardcopy) and making it into an accessible format copy for the personal use of individuals with a print disability.

⁵ The term 'provide' refers to the distribution or communication of an accessible format copy for the personal use of individuals with a print disability.

⁶ The section 69 exception states that:

- a) the organisation must make 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 made in the required format is provided only to individuals with a print disability;
- c) reasonable steps are taken to notify the copyright owner that the copy has been made, as soon as practical; and
- d) the reproduction of the work is not-for-profit.

⁷ The commercial availability test requires a prescribed body to make reasonable efforts to establish that the work is not commercially available in the format required for the needs of the individual before an accessible format copy is created or distributed. This means that the financial incentive for rights holders to produce their own accessible works is retained, and that organisations using the section 69 exception do not compete with rights holders.

⁸ The section 69 exception is silent on importation and clarification is essential. The section 69 exception 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 e.g. transferring a digital file to a foreign authorised entity which would pass the work on to a person with a print disability in that foreign entity's country. However, this is not clear and clarification is highly desirable.

reproducing works in accessible formats that are available in other jurisdictions and would otherwise be easy and inexpensive to import and distribute.

- b. *The high cost of producing an accessible format work combined with relatively low demand for many individual titles in New Zealand.* This makes it hard to justify production costs, particularly recognising the limited resources at the disposal of agencies that fund and/or are the bodies prescribed to produce accessible format copies. For example, the Blind Foundation⁹ is facing increasing demand (with an aging population) and rising costs of production.¹⁰ These factors combined with complex production processes, often result in long delays in delivering the works to members. There is also the risk of 'passive censorship', as prescribed bodies may be required to prioritise which works are produced as accessible format copies.

23. The Marrakesh Treaty aims to facilitate greater access to works in accessible formats by allowing for and encouraging cross-border exchange of such works between countries party to the treaty (**member countries**). Joining the Marrakesh Treaty would allow prescribed bodies to better utilise existing resources available for the benefit of a wider number individuals with a print disability.

24. As more countries join the Marrakesh Treaty, the variety of accessible format works that are available on a timely basis will improve. As of 23 May 2017, 27 countries have acceded or ratified the Marrakesh Treaty.¹¹ Australia, a key exchange partner for works in accessible formats, was one of the first countries to ratify the Marrakesh Treaty in December 2015. Canada deposited its instrument of accession in June 2016. The United States (the largest producer of works in accessible format copies) and the European Union have both signed the Treaty, but are yet to complete the domestic Treaty processes required before ratification.

25. The problems described above for prescribed bodies and individuals with a print disability could partly be addressed by clarifying that prescribed bodies can import accessible format copies in the section 69 exception. However, this would not achieve the same level of benefits associated with participation in the international framework provided by the Marrakesh Treaty. This is because:

⁹ The Blind Foundation is New Zealand's primary producer and supplier of accessible format copies in braille, talking book, electronic and large print formats, and the only prescribed body with the expertise to create braille.

¹⁰ Recording a single book is estimated to cost around \$3000 and producing a braille book can cost up to \$5000 per book depending on factors such as the length, complexity and the inclusion of diagrammatic content.

¹¹ In order of accession or ratification, these countries are India, El Salvador, the United Arab Emirates, Mali, Paraguay, Singapore, Argentina, Mexico, Mongolia, Korea, Australia, Brazil, Peru, Korea, Israel, Chile, Ecuador, Guatemala, Canada, Saint Vincent and the Grenadines, Tunisia, Botswana, Sri Lanka, Liberia, Panama and Honduras.

- a. Laws in foreign countries may be unclear about the export of accessible format copies or put restrictions on the export of accessible format copies e.g. only export to member countries.
- b. New Zealanders with a print disability and organisations who provide for them would not be able to benefit from the sharing arrangements developed in tandem with the Marrakesh Treaty.¹²

Improve adherence to New Zealand's international obligations

26. Acceding to the Marrakesh Treaty would also help New Zealand meet its international obligations under the UNCRPD and UNCROC:

- The UNCRPD guarantees full equality under the law for persons with disabilities, requiring that the Government promote, protect and ensure the full enjoyment of human rights just like everyone else, including taking steps to promote access to information and communication technologies as well as the right to education on an equal basis to others (articles 9 and 24). In October 2014, the UN Committee on the Rights of Persons with Disabilities recommended New Zealand take all appropriate steps to speedily accede to the Marrakesh Treaty.¹³
- Articles 28 and 29 of UNCROC provide 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.”¹⁴

Advantages and disadvantages of the treaty entering into force and not entering into force for New Zealand

27. The advantages of the Marrakesh Treaty entering into force include:

- *Increasing the availability and variety of works for New Zealanders with a print disability.* This is expected to have a range of positive flow-on effects, including improving access to education and employment, lifting overall wellbeing and allowing more opportunities for New Zealanders with a print disability to contribute to the economy.

¹² WIPO collaborates with several organisations through a multi-stakeholder partnership, the Accessible Books Consortium (ABC). ABC's activities include capacity building initiatives that provide training in accessible book production and distribution, the promotion of inclusive publishing standards and the ABC Book Exchange (TIGAR Service). The TIGAR Service is a secure and transparent file exchange system of accessible format files between institutions around the world (like New Zealand's Blind Foundation).

¹³ The report can be found on the Ministry of Business, Innovation and Employment's website at http://www.mbie.govt.nz/info-services/business/intellectual-property/copyright/marrakesh-treaty/consultation/committee-on-the-rights-of-persons-with-disabilities_concluding-observations-on-the-initial-report-of-new-zealand.docx

¹⁴ For the full text of the UNCROC, see the United Nations Human Rights webpage: <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

- *Ministry of Education, schools, libraries and prescribed bodies will get better value for money from the resources they spend on providing accessible format works for print disabled New Zealanders.* Organisations would be able to import and export works more easily, minimising duplication of effort and reducing the need for costly local production of works that have already been converted into accessible formats in other jurisdictions. For example, the Marrakesh Treaty would enable New Zealand organisations to fully utilise the TIGAR system¹⁵ and give authorised entities and individuals better access to international databases such as Bookshare.¹⁶
- *Assisting New Zealand to meet its international obligations under the UNCRPD and UNCROC.*

28. There are perceived disadvantages to New Zealand publishers and copyright owners arising from accession to the Marrakesh Treaty, relating to an expanded definition of print disability and an expanded group of organisations and entities that can produce and provide accessible format copies.

29. Stakeholders, representing the interests of publishers and copyright owners, consider that an expanded framework may increase the risk of copyright infringement unless there are sufficient safeguards in place. In particular they are concerned that:

- *Files supplied by publishers to authorised entities may be disseminated without permission.* Currently, with only two active prescribed bodies, there is a strong relationship built around mutual trust with rights holders. This type of relationship is less likely with a wider range of organisations that would be authorised entities
- *Accessible format copies may be provided to individuals who do not have a print disability (particularly audio copies).* Electronic files (particularly audio) are easily used by individuals who do not have a print disability, which can undermine the commercial market for the work in question. This could occur without the rights holders' knowledge.

30. Either of these actions would be well outside what is allowed under the exception and would likely constitute copyright infringement. This is because the Copyright

¹⁵ Trusted Intermediary Global Accessible Resources (**TIGAR**) involves the transfer of accessible format files between institutions like the Blind Foundation through a secure and transparent file exchange system. Permission must be obtained from rights holders before exchange of electronic files of accessible books can take place across borders, unless the country is a party to the Marrakesh Treaty.

¹⁶ Bookshare is an American initiative that receives books donated by publishers to share with individuals with a print disability in the United States and overseas. The availability of books in each country depends on the nature of the permission granted by the publishers and global market segmentation. As of 30 July 2015, just under half of the 352,000 e-text and e-braille titles currently available through Bookshare are available to New Zealanders with a print disability.

Act provides that subsequent dealings of a copy produced under the exception are treated as infringing copies.¹⁷

31. These potential disadvantages can also be mitigated by providing clearly defined parameters and conditions of use (e.g. a commercial availability test and strict reporting requirements). It is difficult to measure the likely impact of these potential disadvantages, but they are expected to be relatively low compared to the benefits.
32. The analysis in this NIA and the RIS confirm that the proposed treaty action is the best policy option. It will help achieve the Government's policy objectives to provide more timely access to a greater variety of copyright works in accessible formats for New Zealanders with a print disability, and improve adherence to New Zealand's international obligations.

Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms

33. The Marrakesh Treaty provides countries with considerable flexibility concerning the implementation of their obligations. It provides a template that countries may adopt. It also allows countries to develop or adapt their own existing exceptions for individuals with print disabilities, so long as any such exception meets each country's existing international obligations.
34. The Marrakesh Treaty requires member countries to provide exceptions for the:
 - a. reproduction of works, by certain individuals and/or organisations, for the purposes of converting them into accessible format copies exclusively for individuals with a print disability (described in the Marrakesh Treaty as "beneficiary persons");
 - b. distribution of accessible format copies exclusively to individuals with a print disability;
 - c. export of accessible format copies, for the purposes of making them available to individuals with a print disability in other member countries; and
 - d. import of accessible format copies from member countries for the purposes of making them available domestically to individuals with a print disability.
35. Organisations that reproduce accessible format copies must have lawful access to the work when making an accessible format copy, must not make any changes to the accessible format copy other than those necessary to make it accessible, and provide copies only to individuals with a print disability.

¹⁷ Under section 93 of the Copyright Act, copies made under a range of exceptions, including under section 69, are treated as infringing copies if they are subsequently dealt with.

36. The Marrakesh Treaty does not allow parties to make a reservation upon ratification or accession, nor does it contain any dispute settlement mechanism.

Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

Implementing the Treaty

37. New Zealand already largely complies with the Marrakesh Treaty obligations through the section 69 exception. It allows for the domestic creation and dissemination of accessible format copies for individuals with a print disability subject to a commercial availability test consistent with the requirements of Article 4 of the Marrakesh Treaty. However, New Zealand does not explicitly comply with the Marrakesh Treaty obligations to provide for:

- a. the import and export of accessible format copies;
- b. the full scope of the relevant works covered by the Marrakesh Treaty;
- c. the full scope of conditions that organisations must observe when providing or producing accessible format copies covered by the Marrakesh Treaty; and
- d. the full scope of individuals with a print disability covered by the Marrakesh Treaty.

38. The only feasible option to ensure compliance with these obligations would be to amend the Copyright Act. This would take the form of legislative amendments to the section 69 exception to:

- *Ensure the section 69 exception facilitates cross-border exchange.* Whether or not the New Zealand exception currently allows for import and export of accessible format copies is a grey area that has not been tested in the courts, which in practice has resulted in a barrier to importation of accessible format works.¹⁸
- *Extend the categories of works that the section 69 exception applies to include artistic works.* The Marrakesh Treaty covers not only literary and dramatic works but also artistic works. The existing exception under section 69 applies only to literary and dramatic works. New Zealand could implement this requirement of the Marrakesh Treaty merely by extending the section 69 exception to include artistic works.

¹⁸ The section 69 exception is silent on importation and clarification is essential. The section 69 exception 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 would pass the work on to a person with a print disability in that foreign entity’s country. However, this is not clear and clarification is highly desirable.

- *Expand the conditions applied to prescribed bodies in the section 69 exception to include the maintenance of due care in, and records of, its handling of copies of works.* The section 69 exception requires prescribed bodies to observe certain conditions when providing or producing an accessible format copy of a work. The conditions that must be observed by organisations providing or producing under the Marrakesh Treaty are slightly more prescriptive.¹⁹ New Zealand could align with these conditions by including an additional condition in the section 69 exception requiring prescribed bodies to maintain due care in, and records of, their handling of copies of works.
- *Clarify that individuals with low vision and reading disabilities are explicitly provided for by the section 69 definition of persons with a print disability.* The section 69 exception provides that a person has a ‘print disability’ if that person is blind, suffers severe sight impairment, is unable to hold or manipulate books or has an impairment with respect to visual perception. Under Article 3 of the Marrakesh Treaty a ‘beneficiary person’ includes individuals who have a visual impairment, perceptual or reading disability which cannot be improved to give substantially similar function as a person without such an impairment. The Marrakesh Treaty definition includes individuals who may not meet the existing threshold of ‘severe sight impairment’. Similarly, dyslexia is clearly a ‘reading disability’ but may not be considered ‘a handicap with respect to visual perception.’ New Zealand could meet this requirement of the Marrakesh Treaty by clarifying and updating the definition of print disability.

Regulatory Impact Statement on options to further improve access to a greater variety of copyright works for New Zealanders with a print disability

39. Taking the minimum necessary steps to accede to the Marrakesh Treaty is expected to go some way towards addressing the lack of access to works in accessible formats for individuals with a print disability in New Zealand however it will only partially address the problem. This is because of two specific issues:

- a. Issue 1: Only a small number of organisations (with limited resources) are providing accessible copies of works to a small subset of individuals with a print disability (i.e. individuals who are blind or students with low or impaired vision); and

¹⁹ In the definition in the Marrakesh Treaty, organisations that produce or provide accessible format copies are required to observe certain conditions. They are to:

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

- b. Issue 2: There is a lack of clarity around the extent to which individuals with a print disability (or someone acting on their behalf) can convert lawfully obtained copyright works into accessible format copies for personal use.

40. A RIS has been prepared to assess options to further improve access to a greater variety of copyright works for New Zealanders with a print disability. For the purposes of the analysis we assume that New Zealand will accede to the Marrakesh Treaty.

41. Options were based on provisions provided (but not required) within the Treaty framework, and international experience of disability exceptions from the United Kingdom and policy development in this area in Australia

42. The preferred options within the RIS address the two specific issues and allow New Zealand to better address the lack of access to works in accessible formats for individuals with a print disability in New Zealand. They are to:

- Allow all organisations that meet the definition of “authorised entity” under Article 2(c) of the Marrakesh Treaty to both provide and produce accessible format copies for individuals with a print disability and also, in legislation, clarify how authorised entities should observe each condition when providing or producing accessible format copies of works; and
- Adopt an exception for individuals (or someone acting on their behalf) to:
 - i. produce an accessible format copy of a work provided the individual has lawful possession of, or lawful access to, the material in question and the copy is produced only for the personal use of an individual with a print disability; or
 - ii. import copies from an authorised entity in a country party to the Marrakesh Treaty under the same conditions in (i) above .

43. The RIS can be found [here](#). For analysis of preferred options see paragraphs 32-37 of the RIS.

Proposed action requires a Bill

44. Domestic changes required to comply with Marrakesh Treaty obligations and give effect to the preferred options in the RIS, would be made via a bill to amend the Copyright Act and regulation 5 of the Copyright (General Matters) Regulations 1995. A bill to this effect has been included in the Government’s 2017 legislative programme.

Plans to notify affected parties of changes

45. Affected parties will be notified of these changes through existing communication channels. This includes emailing organisations and individuals that submitted in

the consultation process (who can then inform their membership), updating MBIE's website and issuing a press release.

Monitoring, evaluation and review

46. Officials will proactively meet with domestic stakeholders who support individuals with a print disability. They will also monitor any issues that may emerge as the international legal framework provided by the Marrakesh Treaty is adopted by more countries.
47. Officials will evaluate the impact of minimum necessary steps to accede to the Marrakesh Treaty and preferred options under the RIS two years after the Marrakesh Treaty enters into force in New Zealand. The evaluation will draw on data collected by authorised entities as part of their record keeping requirements (mandated by the amendments required to the section 69 exception to align with Marrakesh Treaty obligations).
48. A review of the legislative amendments to the section 69 exception would be held as part of any future review of the Copyright Act.

Economic, social, cultural and environmental costs and effects of the treaty action

49. The section below outlines the economic, social and cultural effects expected from New Zealand's accession to the Marrakesh Treaty. No environmental effects have been identified.

Social effects:

50. Acceding to the Marrakesh Treaty is expected to have significant, positive, long term social impacts for individuals with a print disability. More timely access to a greater variety of accessible format works has the potential to give individuals with a print disability:
 - *Greater access to education.* 7% of respondents to the Blind Foundation's 2014 Client Needs survey²⁰ indicated that limited access to accessible material was the reason for discontinuing their studies. For respondents who said they had studied since the onset of their vision loss, 40% felt that a lack of support had a significant negative impact on their results.²¹ Working age respondents tended to have less tertiary education than the national average. For respondents aged 15-64, 33% had tertiary education versus 41% of the national population.

²⁰ 653 people within the Blind Foundations membership responded to the Blind Foundation 2014 client needs survey.

²¹ 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. 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.

- *Enhanced social integration/participation in public life.* Employment or professional development is an important part of social integration and wellbeing. The Blind Foundation's 2014 client needs survey highlighted that the overall labour force participation rate for survey respondents with a print disability was 54% compared to 69% for the general population.
- *Greater autonomy and independence.* Under the Marrakesh Treaty a wider group of individuals with print disabilities are likely to have increased access to written content, including recreational and foreign texts. This could allow greater autonomy and independence particularly for those with special interests. Autonomy and independence would be improved further if individuals were permitted to convert lawfully obtained works into accessible format copies for personal use.
- *Improved health outcomes.* Access to a wider range of written content is likely to help individuals with a print disability improve their capacity to find, interpret and use information and health services to make effective decisions related to their health and wellbeing.²²

Economic effects

51. New Zealand's accession to the Marrakesh Treaty is expected to have a small beneficial impact on the economy. Schools, libraries and prescribed bodies that serve the interests of New Zealanders with a print disability would be able to use current resources more effectively. This is particularly important given that costs relating to the production of accessible format copies are increasing.²³

52. Uncertainty over the legality of importing and exporting accessible format copies of works has resulted in time-intensive and costly duplication of efforts to reproduce works that have been produced in other jurisdictions and would otherwise be easy and inexpensive to share and distribute. A clear legal framework to facilitate cross-border exchange of works in accessible formats would free up resources to:

- *Achieve better value for money from existing Government resources.* The Ministry of Education provides \$1.05 million in funding for production and delivery of accessible format copies and for requests management and library services (includes accessible format copies bought from overseas & licences). There is increasing demand for accessible format copies due to an increase in population, school roll growth and more students with vision impairments. Production costs are increasing due to more requests for

²² This is supported by Outcome 3 of the New Zealand Disability Strategy 2016 see webpage: <https://www.odi.govt.nz/nz-disability-strategy/about-the-strategy/new-zealand-disability-strategy-2016-2026/> and New Zealand Health Strategy 2016 see webpage: <https://www.health.govt.nz/publication/new-zealand-health-strategy-2016>

²³ In 2015, the production of braille books costs from \$9.91 to \$94.06 per page and collage books on average cost \$850 per book. In 2012, braille book costs ranged between \$8.16 and \$74.01 per page; collage books were \$673 per book.

curriculum resources (including music scores and complex diagrams) and text books (there are no standardised text books or resources in New Zealand). This trend is expected to continue.

- *Produce more New Zealand accessible format content for distribution both domestically and to a wider international audience.* Current investment in accessible formats could be focussed more on producing New Zealand-specific resources that are not already commercially available. This could allow for greater dissemination of New Zealand content, for example the production of more Māori or Pacific works in accessible formats.

Cultural effects

53. Accession to the Marrakesh Treaty is also expected to deliver cultural benefits.

Faster access to a greater variety of accessible format copies of works would allow individuals with a print disability in New Zealand and member countries of the Marrakesh Treaty to have:

- *Greater access to works in other languages.* New Zealanders with a print disability would have better access to material in a variety of languages, assisting those with English as a second language, as well as those who wish to learn another language.
- *Greater access to New Zealand accessible format works* — Prescribed bodies could use resources freed (from managing costly duplication) to convert more New Zealand material, including Māori or Pacific works.²⁴

The costs to New Zealand of compliance with the treaty

54. No immediate costs to government would arise from New Zealand becoming a party to the Marrakesh Treaty. Member states of WIPO (including New Zealand) pay one membership fee irrespective of the number of WIPO treaties to which they are a party.

55. The Ministry of Business, Innovation and Employment may be required to participate in the assembly of the Marrakesh Treaty (the **Treaty Assembly**). However, considering a New Zealand representative already attends the General Assembly of WIPO, which is where the assembly of the Marrakesh Treaty will be held, it is unlikely that any extra cost will be incurred.

56. In addition to the evaluation discussed in paragraph 47, the preferred options in the RIS will require the Government to provide guidance on the rights and responsibilities of organisations and individuals under the new section 69 exception. Guidance would be released at least three months before the Marrakesh Treaty enters into force in New Zealand.

²⁴ This assumes that resources saved will be spent on New Zealand works rather than overseas works.

Completed or proposed consultation with the community and parties interested in the treaty action

57. Public consultation on acceding to the Marrakesh Treaty took place between 30 October 2015 and 26 February 2016.²⁵ A discussion document gathered feedback on a range of options, including possible legislative changes related to acceding to the Marrakesh Treaty. The discussion document also sought views on additional options to further improve access to a greater variety of copyrights works for New Zealanders with a print disability.
58. A total of 29 submissions were received on the discussion document from a range of stakeholders. Stakeholders included individuals, organisations representing and providing services for individuals with a print disability, copyright holders, universities and libraries. Officials also coordinated a series of meetings and site visits with key stakeholders to hear their views on the operation of the status quo and the expected impacts of acceding to the Marrakesh Treaty.²⁶
59. Consulted stakeholders were supportive of New Zealand joining the Marrakesh Treaty and considering further options to improve access.²⁷ Stakeholders agreed that joining the Marrakesh Treaty would likely improve access to works and the quality of life of New Zealanders with a print disability.
60. Stakeholders expressed support for the necessary amendments to extend the definition of 'works' to include 'artistic works' and to explicitly allow for the import and export of accessible format copies. Clarifying the law regarding individuals with low vision and reading disabilities was not tested as part of the minimum necessary obligations of New Zealand to comply with the Marrakesh Treaty.
61. Some rights holder organisations raised concerns through the consultation process relating to potential risks presented by an expanded group of organisations and individuals being able to use the section 69 exception. These concerns are outlined and addressed in paragraphs 41-45 of the RIS.
62. The following departments and agencies have been consulted on this national interest analysis: Office for Disability Issues; Ministry of Education; Ministry of Health; Ministry for Arts; Culture and Heritage; the Treasury; and the Ministry of Foreign Affairs and Trade. In addition, the Department of Prime Minister and Cabinet have been informed.

²⁵ A longer time period was factored in to give organisations enough time to fully engage their membership.

²⁶ In February 2015 officials held open forums with individuals from the Blind Foundation and the Blind and Low Vision Network of New Zealand (BLENNZ). Officials also held meetings with representatives from the University of Auckland, Copyright Licencing New Zealand (CLNZ), the New Zealand Society of Authors (NZSA) and the Publishers Association of New Zealand (PANZ).

²⁷ All stakeholders officials met with and 28 out of 29 submissions from public consultation expressed strong support for New Zealand joining the Marrakesh Treaty and considering further options to improve access allowed for by the treaty.

Subsequent protocols and/or amendments to the treaty and their likely effects

63. The Treaty Assembly may call a diplomatic conference for the revision of the Marrakesh Treaty (Article 13). The rules governing such a diplomatic conference would need to be agreed to by the Treaty Assembly in advance.

64. There is no provision for amendments to enter into force automatically or for the negotiation of future related legally binding instruments. Any amendments to the Marrakesh Treaty would be required to go through New Zealand's standard domestic approval processes before New Zealand would be legally bound by them.

Withdrawal or denunciation provision in the treaty

65. Any Party may denounce the Marrakesh Treaty by notifying the Director General of WIPO (Article 20). The denunciation takes effect 1 year after the Director General receives the notification.