

The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired, or Otherwise Print Disabled: Approval to accede

Proposal

- 1 I propose that Cabinet authorise New Zealand's accession to the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or Otherwise Print Disabled (the **Marrakesh Treaty**) following the completion of the Parliamentary treaty examination process and implementation of necessary legislation.

Executive summary

- 2 The Marrakesh Treaty is a multilateral treaty that was concluded on 28 June 2013 and came into force on 30 September 2016. The text of the Treaty is attached as Appendix A.
- 3 It is estimated that 90 per cent of all written materials published worldwide are not published in formats accessible to individuals with a print disability. This lack of access 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.
- 4 The Marrakesh Treaty aims to address this problem by providing an international legal framework for copyright exceptions to improve access to copyright works in accessible formats (such as Braille, audio or large print books) for individuals with a print disability.
- 5 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 produce¹ and provide² accessible format copies of copyright works domestically for individuals with a print disability subject to conditions specified in the section 69 exception, including the commercial availability test.³ However it does not facilitate cross-border exchange of copyright works in accessible formats, resulting in costly duplication efforts to convert works that would otherwise be easy to import.
- 6 Acceding to the Marrakesh Treaty is expected to provide benefits to New Zealand and is fully supported across the spectrum of stakeholders. In particular, it is likely to provide more timely access to a greater variety of accessible format works for New Zealanders with a print disability, better value for money from existing resources of the Ministry of Education, schools, libraries and prescribed bodies, and improved adherence to international

¹ 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.

² The term 'provide' refers to the distribution or communication of an accessible format copy for the personal use of individuals with a print disability.

³ 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.

obligations under the United Nations Convention on the Rights of Persons with Disabilities and United Nations Convention on the Rights of the Child.

- 7 New Zealand already largely complies with the Treaty obligations through the section 69 exception, which provides that there is no infringement of copyright in making copies for a person with a print disability. Amendments are, however, required to align the section 69 exception with the Marrakesh Treaty obligations. These are to:
 - 7.1 explicitly provide for the import and export of accessible format copies between countries party to the Marrakesh Treaty;
 - 7.2 extend the definition of 'works' (to which the section 69 exception applies) to include artistic works;
 - 7.3 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
 - 7.4 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.
- 8 As an international treaty subject to accession, the Marrakesh Treaty must be presented, along with a National Interest Analysis (**NIA**) to the House for Parliamentary treaty examination in accordance with Standing Order 397. The NIA is attached as Appendix B.
- 9 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. Specifically it is expected to result in:
 - 9.1 *more timely access to a greater variety of accessible format works for New Zealanders with a print disability* — This would have a range of positive flow-on effects, 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.
 - 9.2 *better value for money from existing resources of the Ministry of Education, schools, libraries and prescribed bodies to provide accessible format works for print disabled New Zealanders* — Organisations would be able to more easily exchange works across borders, reducing the need for costly local production of works that have been converted into accessible formats in other jurisdictions.
 - 9.3 *improved adherence to international obligations* — This would help New Zealand meet its obligations under the United Nations Convention of the Rights of Persons with Disabilities (**UNCRPD**) and United Nations Convention on the Rights of the Child (**UNCROC**).
- 10 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:
 - 10.1 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

- 10.2 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.
- 11 Given the two issues above, I have recommended further changes to the section 69 exception. The options considered were based on provisions provided (but not required) within the Marrakesh Treaty framework, and experience of disability exceptions from the United Kingdom and policy development in this area in Australia. See Appendix C for the Regulatory Impact Statement (**RIS**).
- 12 The preferred options address the two specific issues and allow New Zealand to better address the access problem. They are to:
- 12.1 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
- 12.2 Adopt an exception for individuals with a print disability (or someone acting on their behalf) to:
- 12.2.1 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
- 12.2.2 import copies from an authorised entity in a country party to the Marrakesh Treaty under the same conditions in (12.2.1) above.
- 13 Legislative changes required to comply with Marrakesh Treaty obligations and give effect to the additional amendments in the RIS, would be made via a bill to amend the *Copyright Act* and regulation 5 of the *Copyright (General Matters) Regulations 1995*.

Background

- 14 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**).

The Marrakesh Treaty

- 15 Within the World Intellectual Property Organization (**WIPO**), New Zealand voiced support for the goals of the draft Marrakesh Treaty and participated in its development. The negotiations for the Marrakesh Treaty concluded in 2013. It currently has 84 signatories⁴ and 26 countries have acceded or ratified.⁵ The Marrakesh Treaty came into force in September 2016,

⁴ New Zealand did not participate in the final negotiations. Signatories were required to sign the Marrakesh Treaty within one year of its conclusion. New Zealand had not completed the necessary policy work to make a decision about signing the Marrakesh Treaty within the required timeframe.

⁵ 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 and Panama.

following the required ratification of 20 countries. The text of the Treaty is attached as Appendix A.

- 16 It is estimated that 90 per cent of all written materials published worldwide are not published in formats accessible to individuals with a print disability.⁶ This lack of access 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.⁷
- 17 The Marrakesh Treaty is a multilateral treaty that aims to address this problem by providing an international legal framework for copyright exceptions to improve access to copyright works in accessible formats for individuals with a print disability.
- 18 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. This allows bodies prescribed in Regulations to produce and provide accessible format copies of copyright works for a person with a print disability subject to conditions specified in the section 69 exception, including the commercial availability test. However, it does not facilitate cross-border exchange of copyright works in accessible formats, resulting in costly duplication efforts to convert works that would otherwise be easy to import.
- 19 Countries party to the Marrakesh Treaty (**member countries**) are required to provide an exception for the reproduction⁸, distribution, export and import of copyright works in accessible formats without having to obtain the permission of, or provide compensation to, right holders.⁹ Member countries can choose to make the exception subject to a commercial availability test.

The United Nations Convention of the Rights of Persons with Disabilities

- 20 New Zealand is a party to the UNCRPD, which guarantees full equality under the law for persons with disabilities, requiring that the Government promote, protect and ensure their rights.
- 21 In late 2014, the United Nations Committee on the Rights of Persons with Disabilities reviewed New Zealand's implementation of the UNCRPD and recommended that the New Zealand Government take all appropriate steps to accede to the Marrakesh Treaty.
- 22 In its formal response in June 2015, the Government signaled a commitment to undertake necessary preparatory work to enable a decision on acceding to the Marrakesh Treaty.

Release of a discussion document

- 23 In October 2015 Cabinet agreed to release a public consultation document, *Marrakesh Treaty: Possible Accession and Options for Implementation*, considering whether New Zealand should accede to the Marrakesh Treaty [EGI-15-MIN-0113 refers]. 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.

⁶ According to the World Blind Union, see webpage: <http://www.worldblindunion.org/English/our-work/our-priorities/Pages/default.aspx>

⁷ Statistics New Zealand 2013 Disability Survey, see webpage: http://www.stats.govt.nz/browse_for_stats/health/disabilities/DisabilitySurvey_HOTP2013/Commentary.aspx

⁸ 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 people with a print disability.

⁹ Refer to articles 4 and 5 of the Marrakesh Treaty.

- 24 A total of 29 submissions were received from a range of stakeholders. Stakeholders included individuals, organisations representing and providing services for people with a print disability, copyright holders (publishers, authors and licensing organisations), 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 section 69 exception and the expected impacts of the Marrakesh Treaty.¹⁰
- 25 In the public consultation process, submitters strongly supported making the necessary amendments to the section 69 exception to align with the obligations of the Marrakesh Treaty. They also supported considering further options to improve access. Submitters agreed that joining the Marrakesh Treaty would improve access to works and the quality of life of New Zealanders with a print disability.

Comment

Development of the Treaty

- 26 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.
- 27 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.

Why New Zealand should join the Marrakesh Treaty

- 28 Acceding to the Marrakesh Treaty is expected to provide New Zealand with:
- 28.1 *more timely access to a greater variety of accessible format works for New Zealanders with a print disability.* This would have a range of positive flow-on effects, 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.
- 28.2 *better value for money from existing resources of the Ministry of Education, schools, libraries and prescribed bodies to provide accessible format works for print disabled New Zealanders.* Organisations would be able to more easily exchange works across borders, reducing the need for costly local production of works that have been converted into accessible formats in other jurisdictions. This is particularly relevant given rising production costs and increasing demand (with an aging population).
- 28.3 *improved adherence to international obligations.* This would help New Zealand meet its obligations under the UNCRPD and UNCROC. In particular the Marrakesh Treaty will promote access to information and improve the right to education on an equal basis to others.

¹⁰ 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).

Perceived disadvantages

- 29 There are perceived disadvantages to New Zealand publishers and copyright owners arising from accession of the Marrakesh Treaty due to an expanded definition of print disability, and an expanded group of organisations and entities that can produce and provide accessible format copies.
- 30 Stakeholders, representing the interests of publishers and copyright owners, consider that an expanded framework may increase the risk of misuse unless there are sufficient safeguards in place. In particular they are concerned that:
- 30.1 *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.
- 30.2 *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.
- 31 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 Act provides that subsequent dealings of a copy produced under the exception are treated as infringing copies.¹¹
- 32 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).
- 33 It is difficult to measure the likely impact of these potential disadvantages, but they are expected to be relatively low compared to the benefits.
- 34 The analysis in the attached NIA and 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 such works for New Zealanders with a print disability and improve adherence to New Zealand's international obligations.

Changes required to align the section 69 exception with the Marrakesh Treaty obligations

- 35 New Zealand already largely complies with the Treaty obligations through the section 69 exception. However, amendments are required to align the section 69 exception with the Marrakesh Treaty obligations. These are to:
- 35.1 explicitly provide for the import and export of accessible format copies between member countries;
- 35.2 extend the definition of 'works' (to which the section 69 exception applies) to include artistic works;
- 35.3 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

¹¹ 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.

35.4 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.

36 As a treaty subject to accession, it must be presented, along with a NIA to the House for Parliamentary treaty examination in accordance with Standing Order 397. The NIA is attached as Appendix B for approval.

Limited access to works in accessible formats will likely only be partially addressed if New Zealand only takes the minimum necessary steps to accede to the Marrakesh Treaty

37 Taking the minimum necessary steps to accede to the Marrakesh Treaty would 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:

37.1 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).

37.2 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.

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

38 There are only two prescribed bodies that are active producers under the section 69 exception. Both have limited resources and serve a small subset of individuals with a print disability.¹² They are:

38.1 The **Blind Foundation** is the primary producer and supplier of accessible format copies in Braille, talking books, electronic and large print formats and the only prescribed body with the expertise to create braille. The Blind Foundation has approximately 12,000 members.¹³ Membership is restricted to severely visually impaired adults, children and young adults with a referral from an ophthalmologist or optometrist.

38.2 The **University of Auckland** scans text using optical character recognition technology to make accessible copies for its students with a print disability, including students with learning disabilities such as dyslexia and dysgraphia.

39 An application from the **Blind and Low Vision Education Network New Zealand** to become a prescribed body is currently under consideration. Its sole function is to provide educational services to 1557 blind, deafblind and low vision learners throughout New Zealand up to the age of 21.

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 works into accessible formats for personal use.

40 It is likely that some individuals with a print disability (or someone acting on their behalf) may want to produce their own accessible format copies, or import directly from overseas

¹² Material produced or sourced by the two current prescribed bodies are only available to their members.

¹³ According to Blind Foundation webpage: <https://blindfoundation.org.nz/about-us/>

organisations authorised to provide and produce accessible format copies, for personal use. This may occur in a range of circumstances including:

- 40.1 some works may not be appropriate for conversion into the required accessible format by authorised entities e.g. current events reports, instruction manuals or legal information;
 - 40.2 some works may not be prioritised for conversion into the required accessible format by authorised entities;
 - 40.3 the individual may not meet specific criteria e.g. the Blind Foundation only provides accessible format copies to members (who are legally blind), and primary and secondary school students with a print disability; and
 - 40.4 some individuals may prefer to have a direct relationship with an overseas organisation that produces accessible format copies, rather than going through a prescribed body.
- 41 An individual with a print disability (or someone acting on their behalf) generally cannot produce an accessible format copy without infringing copyright. The Copyright Act does not provide a broad exception to copyright for individuals with a print disability copying for personal use.
- 42 The *Copyright Act* has a number of fair dealing exceptions¹⁴, such as for the purpose of research or private study, and criticism review and news reporting, that may be potentially relevant for individuals wanting to produce an accessible format copy for personal use.¹⁵ However the extent to which an individual could rely on the fair dealing provisions is untested and unclear. Furthermore producing a copy of a work for recreational reading is likely to be out of scope of the fair dealing exceptions.

Options to further improve access to a greater variety of copyright works for New Zealanders with a print disability

- 43 Given the two issues above, I have recommended further changes to the section 69 exception. The options considered were based on provisions provided (but not required) within the Marrakesh Treaty framework, and experience of disability exceptions from the United Kingdom and policy development in this area in Australia. See Appendix C for the Regulatory Impact Statement (**RIS**).
- 44 The preferred options address the two specific issues and allow New Zealand to better address the access problem. They are to:
- 44.1 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

¹⁴ Determining whether making a copy of a work satisfies fair dealing involves considering the following factors:

- the purpose of the copying
- the nature of the work copied
- whether the work could have been obtained within a reasonable time at an ordinary commercial price
- the effect of the copying on the potential market, or value, of the work
- the amount and substantiality of the part copied in relation to the whole work.

¹⁵ Refer to s40-43A of the Copyright Act.

- 44.2 adopt an exception for individuals with a print disability (or someone acting on their behalf) to:
 - 44.2.1 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
 - 44.2.2 import copies from an authorised entity in a country party to the Marrakesh Treaty under the same conditions in (44.2.1) above .

Recommendation on the Marrakesh Treaty and options to further improve access to a greater variety of copyright works for New Zealanders with a print disability

- 45 I recommend that New Zealand accede to the Marrakesh Treaty and support the preferred options in the RIS *on further improving accessibility to a greater variety of copyright works for New Zealanders with a print disability*.
- 46 To do so, I recommend amendments to the Copyright Act 1994 and the Copyright (General Matters) Regulations 1995 are made to:
 - 46.1 provide for the import and export of accessible format copies between countries party to the Marrakesh Treaty;
 - 46.2 extend the definition of 'works' (to which the section 69 exception applies) to include artistic works;
 - 46.3 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;
 - 46.4 clarify that the definition of print disability includes individuals who have a visual impairment or perceptual or reading disability;
 - 46.5 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 but also, in legislation, clarify how authorised entities should observe each condition when providing or producing accessible format copies of works; and
 - 46.6 adopt an exception for individuals with a print disability (or someone acting on their behalf) to:
 - 46.6.1 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
 - 46.6.2 import copies from an authorised entity in a country party to the Marrakesh Treaty under the same conditions in (46.6.1) above.
- 47 A bill to amend the *Copyright Act* has been given a priority level 6 on the Government's legislative programme (instructions to the Parliamentary Counsel Office in 2017). Once the amending legislation has been implemented, I recommend that New Zealand deposit its Instrument of Accession with the Director General of WIPO as depositary for the Marrakesh

Treaty. The Marrakesh Treaty would enter into force in New Zealand three months after the date of accession in accordance with Article 19.

- 48 For expediency, I also seek delegated authority from Cabinet to approve and release an exposure draft of the Bill and related commentary for public consultation, once complete. This would allow the consultation on the exposure draft to get underway by early 2018, which in turn would allow the Bill to be finalised and introduced into the House earlier than it otherwise would be.
- 49 Officials are continuing to analyse the detail of options to further improve access to a greater variety of copyright works for New Zealanders with a print disability, so minor policy questions regarding the preferred options may yet arise. I seek your agreement to delegate authority to me to make decisions on any minor policy issues that arise, consistent with the objectives in the RIS. This will allow any minor and technical matters to be dealt with efficiently.

Financial Implications

- 50 There are no immediate fiscal implications arising from New Zealand acceding to the Marrakesh Treaty. This is because member states of WIPO (including New Zealand) pay one membership fee irrespective of the number of WIPO treaties to which they are a party.
- 51 The Ministry of Business, Innovation and Employment may be required to participate in the assembly of the Marrakesh Treaty. 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.
- 52 Officials will evaluate the impact of the 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).
- 53 The preferred options 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.

Human Rights

- 54 There are no inconsistencies with the *Human Rights Act 1993* and *New Zealand Bill of Rights Act 1990* arising from acceding to the Marrakesh Treaty.

Legislative Implications

- 55 Legislative 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 1994* and regulation 5 of the *Copyright (General Matters) Regulations 1995*. I am advised a bill to this effect has been accepted as a category 6 (instructions to the Parliamentary Counsel Office in 2017) on the Government's legislative programme.

Regulatory Impact Analysis

- 56 The Regulatory Impact Analysis (RIA) requirements apply to the proposal in this paper and a RIS has been prepared and is attached.

- 57 The Regulatory Impact Analysis Review Panel has reviewed the attached Regulatory Impact Statement (RIS) prepared by the Ministry of Business, Innovation and Employment. They consider that the information and analysis summarised in the RIS meets the criteria necessary for Ministers to fairly compare the available policy options and take informed decisions on the proposals in this paper.

Publicity

- 58 Should Cabinet approve this proposal, I would release a media statement announcing the decision to accede to the Marrakesh Treaty, subject to the completion of the Parliamentary treaty examination process and implementation of necessary legislation. This Cabinet paper is to be published on the Ministry of Business, Innovation and Employment's website, subject to any necessary deletions justified in accordance with the Official Information Act 1982. In addition, the text of the Treaty and NIA would be tabled in Parliament.

Consultation

- 59 Submissions were sought and received on the discussion paper *Marrakesh Treaty: Possible Accession and Options for Implementation* (as discussed in paragraphs 23-25), which was published by the Ministry of Business, Innovation and Employment in October 2015.
- 60 The following departments and agencies have been consulted on this extended 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.
- 61 Tokelau is currently being consulted.

Recommendations

I recommend that the Cabinet Economic Growth and Infrastructure Committee:

Background

- 1 **Note that:**
- 1.1 the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or Otherwise Print Disabled (the **Marrakesh Treaty**) entered into force in September 2016;
 - 1.2 the purpose of the Marrakesh Treaty is to provide an international legal framework for copyright exceptions to improve access to copyright works in accessible formats (such as Braille, audio or large print books) for individuals with a print disability;
 - 1.3 acceding to the Marrakesh Treaty provides benefits to New Zealand, in particular individuals with a print disability;
- 2 **Note that:**
- 2.1 on 21 October 2015, EGI agreed to the release of a discussion document on *Marrakesh Treaty: Possible Accession and Options for Implementation*;
 - 2.2 the proposal to accede to the Marrakesh Treaty is supported across the spectrum of stakeholders;

Accession to the Marrakesh Treaty

- 3 **Agree** to accede to the Marrakesh Treaty, subject to the satisfactory completion of the Parliamentary treaty examination process and implementation of necessary legislation;
- 4 **Approve** the content of the National Interest Analysis (**NIA**), which is attached to the paper;
- 5 **Agree** that the Marrakesh Treaty and the NIA be presented to the House of Representatives for the purposes of the Parliamentary treaty examination process, under Standing Order 397;

Legislative implications

- 6 **Note** that to incorporate the Marrakesh Treaty into domestic law amendments to the Copyright Act 1994 and the Copyright (General Matters) Regulations 1995 are required to:
 - 6.1 provide for the import and export of accessible format copies between countries party to the Marrakesh Treaty;
 - 6.2 extend the definition of 'works' (to which the to the section 69 exception applies) to include artistic works;
 - 6.3 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;
 - 6.4 clarify that the definition of print disability includes individuals who have a visual impairment or perceptual or reading disability;
- 7 **Note** that taking the minimum necessary steps to accede to the Marrakesh Treaty will only partially address the lack of access to works in accessible formats for New Zealanders with a print disability, and as a result further amendments to the Copyright Act 1994 and the Copyright (General Matters) Regulations 1995 are recommended to:
 - 7.1 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;
 - 7.2 clarify how authorised entities should observe each condition when providing or producing accessible format copies of works;
 - 7.3 adopt an exception for individuals with a print disability (or someone acting on their behalf) to:
 - 7.3.1 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;
 - 7.3.2 import copies from an authorised entity in a country party to the Marrakesh Treaty under the same conditions in (7.3.1) above;
- 8 **Invite** the Minister of Commerce and Consumer Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;
- 9 **Authorise** the Minister of Commerce and Consumer Affairs to:

- 9.1 approve and release an exposure draft of the legislation and related commentary;
- 9.2 make further decisions, consistent with the objectives outlined in the Regulatory Impact Statement, attached to this paper, in relation to any other issues that arise while the exposure draft and commentary of the legislation is being developed;
- 9.3 make minor amendments to the wording of any provisions in respect of the amendments necessary to the Copyright Act 1994 and the Copyright (General Matters) Regulations 1995 required to implement the Marrakesh Treaty and give effect to the preferred options in the Regulatory Impact Statement on options to further improve access to copyright works for New Zealanders with a print disability;

General

- 10 **Authorise** officials, following completion of the Parliamentary treaty examination and implementation of amendments to the Copyright Act 1994 and regulation 5 of the Copyright (General Matters) Regulations 1995, deposit the Instrument of Accession to the Marrakesh Treaty with the Director General of WIPO as depositary, as soon as practicable;
- 11 **Note** that the Marrakesh Treaty will enter into force for New Zealand three months after New Zealand's Instrument of Ratification is deposited with the Director General of WIPO; and
- 12 **Note** that this Cabinet paper is to be published on the Ministry of Business Innovation and Employment's website, subject to any necessary deletions justified in accordance with the Official Information Act 1982.

Hon Jacqui Dean
Minister of Commerce and Consumer Affairs

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Appendix A

Text of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or Otherwise Print Disabled

Appendix B
NATIONAL INTEREST ANALYSIS

Appendix C
REGULATORY IMPACT STATEMENT