

**A Submission to
Commerce, Industry and Technology Bureau
in Response to the
Consultation Document on
Review of Copyright Exceptions for Persons with a Print Disability
by
Joint University Librarians Advisory Committee (JULAC)**

July 2017

This submission is made by the Joint University Librarians Advisory Committee and represents the collective views of 8 UGC-Supported University Libraries in Hong Kong regarding the current review of Copyright Exceptions for Persons with a Print Disability

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Preamble

The Joint University Librarians Advisory Committee (JULAC) was established in 1967 by the Heads of Universities Committee (HUCOM). It is a forum to discuss, coordinate, and collaborate on library information resources and services among the libraries of the eight tertiary education institutions funded by the University Grants Committee (UGC) of the Hong Kong SAR.

2. In most of the 8 UGC supported universities in Hong Kong, the libraries are responsible for helping students and staff with print disabilities obtain usable copies of necessary materials for learning, research, and study.

3. We welcome the commitment of the Government in reviewing the Copyright Ordinance in light of the Marrakesh Treaty and hope that such review will make it easier to supply for the educational and research needs of those with various disabilities.

Scope of the “beneficiary person”

4. Question posed in section 14.1 of the consultation document

14.1 Should the Copyright Ordinance be amended to expand the scope of “beneficiary person(s)” in line with Article 3 of the Marrakesh Treaty so that people with a “perceptual or reading disability” would be covered by the relevant exception?

5. Yes, it should be amended in line with article 3 of the Marrakesh Treaty. That would benefit more people with disabilities (e.g. dyslexia or ADHD).

6. Question posed in section 14.2

14.2 Is the generic reference to “perceptual or reading disability” clear enough for the operation of the exceptions? If not, how should the scope of “beneficiary person(s)” be better defined in the Hong Kong context? Is it necessary or practical to, say, list each specific type of perceptual or reading disability?

7. Yes, the wording of the Marrakesh Treaty is clear enough.

Scope of the “specified body”

8. Question posed in section 17.1

17.1 Should the definition of “specified body” in section 40A of the Copyright Ordinance be expanded? If so, what other kinds of organizations should be covered for the objective of aligning with the Marrakesh Treaty?

9. The present definition of “specified body” appears adequate and to align with the Marrakesh Treaty, so there appears to be no need to expand the definition.

Types of copyright works covered by the print-disability related exceptions

10. Question posed in section 20.1

20.1 Should the scope of the exceptions be amended in line with the Marrakesh Treaty to cover copyright works that are published or otherwise made publicly available in any media?

11. Yes, the scope should be amended in line with the Marrakesh Treaty.

12. Question posed in section 23.1

23.1 Are there any formats which should be added to the definition of “accessible copies” in section 40F(3) of the Copyright Ordinance?

13. Overall, the terms “any other specialized format of the work” from section c of the Copyright Ordinance section 40F(3) appears adequate, but JULAC would like to point out that due to technological change, formats in Augmented Reality (AR) or Virtual Reality (VR), or formats undreamt of in 2017 may not be covered by those terms in the coming years.

The acts which can be performed by persons with a print disability and/or specified bodies

14. Question posed in section 26.1

26.1 Do you agree that amendment should be made to clarify that supply of accessible copies to beneficiaries may include distribution as well as by way of making available to the public?

15. Yes, amendment should be made to clarify that supply of accessible copies to beneficiaries may include distribution as well as by way of making available to the public,

16. Question posed in section 26.2

26.2 Is there a need to provide for an additional exception to the right of public performance in order to facilitate access to works for beneficiary persons? If so, what are the circumstances justifying that such an exception is required?

17. Yes, an additional exception for non-commercial performance would be useful.

Conditions to be met under the existing provisions

18. Question posed in section 28.1

28.1 Do you agree that the current conditions (such as the requirement to make reasonable enquiries as to “commercial availability” and to notify the copyright owner of intention to make or supply accessible copies) for utilizing the exceptions provided under the Copyright Ordinance should be retained?

19. Overall, making “reasonable enquiries as to ‘commercial availability’ and to and to notify the copyright owner of intention to make or supply accessible copies” is a fine idea. However, in practice, tracking down the rights owner and getting a response in a timely fashion often proves difficult. This is especially troublesome in a university context, where a term or semester usually lasts 13 weeks or less.

20. Question posted in section 28.2

28.2 If not, in what ways can we modify the terms of the conditions or requirements before one may invoke the exceptions and why?

21. Legislation could be amended to also include that that response from rights owners (publishers) to requests or enquires should be in a 'reasonable time' (e.g. 2 weeks, or 10 working days).

The application of anti-circumvention of technological measures provisions

22. Question posed in section 31.1

31.1 Whether persons with a print disability or the specified bodies have in practice any difficulties in gaining access to copyright works for the purpose of making accessible copies? If so, please briefly explain the problems encountered.

23. Yes, as stated above in section 19, there are problems. Here are some examples.

- A. Often **no response** is received from local Hong Kong publishers or copyright owners after making a request for accessible copies.
- B. E-books provided by some publishers are not accessible, as navigation within the e-book is cumbersome.
- C. Very often, e-books delivered by aggregators are not screen-readable, which means users with a print disability will still need an accessible copy made.
- D. And, those aggregators that do provide "accessibility mode" will often still need a formal request to turn on the accessibility mode.

24. Question posed in section 31.2

31.2 Whether the above difficulties could be resolved by non-legislative means such as requesting the copyright owner concerned to provide copies of the works for making the accessible copies?

25. Legislation is preferred, since the problems outlined in paragraph 23 (above) may otherwise not be resolved in a legal and timely way.

26. Question posed in section 31.3

31.3 If non-legislative means are not desirable, whether the Copyright Ordinance should be amended to exempt print disability-related exceptions from technological protection measures provisions and if so, under

what conditions should the persons with a print disability (or the specified bodies) be allowed to use the exception?

27. Yes. After the specified bodies have written to the publishers/aggregators to request accessible copies; but no response is received for a certain period of time (say 14 calendar days; or 10 working days after initial request), the specified bodies would be allowed to use the exception.

Cross-border exchange of accessible copies

28. Question posed in section 34.1

34.1 Do you agree that cross-border exchange of accessible copies should be permitted? Should any additional conditions be imposed in relation to cross-border exchange of accessible copies, so as to strike a reasonable balance between the rights of copyright owners and the users, and to avoid abuse?

29. Yes, agree that cross-border exchange of accessible copies should be permitted. We see no need to create additional conditions.

Conclusion

30. JULAC supports the effort to have Hong Kong's legislation aligned with the Marrakesh Treaty in regards to making accessible copies available to those with different disabilities.

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