



ROYAL NEW ZEALAND
FOUNDATION OF
THE BLIND

TE TUÁPÁPÁ O TE HUNGA KÁPÓ O AOTEAROA

**Submission on Enforcement in the Digital
Environment**

31 March 2010

Introduction

This is the Royal New Zealand Foundation of the Blind's submission on the Ministry of Economic Development consultation document on the Anti-Counterfeiting Trade Agreement (ACTA) titled Enforcement in the Digital Environment.

The Royal New Zealand Foundation of the Blind

The Royal New Zealand Foundation of the Blind (the Foundation) is New Zealand's primary provider of vision-related habilitation and rehabilitation services to blind and partially sighted people. The Foundation's vision is empowering and supporting blind and partially sighted New Zealanders to ensure that they have the same opportunities and choices as everyone else.

One of the Foundation's strategic priorities is supporting an accessible and equitable society by removing barriers to full participation. Many of these barriers relate to information access. Blind and partially sighted people are at a major disadvantage in a society that still presents most information in a visual format. It is estimated that globally, less than 5% of information available in print is also available in formats accessible to blind and partially sighted people.¹ Because of cost, copyright, format and availability, only a fraction of the accessible information produced is readily available to an individual blind person in New Zealand.

To counteract barriers to accessing information, the Foundation's library and information service converts information published in inaccessible print and electronic formats into accessible audio, braille, electronic formats and large print for reading by Foundation members. The Foundation's library works with other libraries for the blind around the world to share accessible content where possible, and works with publishers to encourage accessible publishing. An increasing amount of information is published in digital formats. Some electronic information can be accessed directly by blind people using adaptive technology, while other digital formats are as inaccessible as regular print.

Enforcement in the Digital Environment

ACTA deals with cross-border transport of copyrighted materials. The Foundation is concerned that agreements reached through ACTA may affect the ability of our blind

¹ The Royal National Institute of the Blind (U.K.) bases this figure on Lockyer, S., Creaser, C. & Davies, J. E., 2004, *Availability of Accessible Publications*, Library and Information Statistics Unit, Loughborough University, Loughborough.

and partially sighted members to readily access the information they need. The Foundation:

1. submits that the proposed ACTA text should be shared in full with the New Zealand public, and extensive public consultation should be sought.
2. asks for assurance that ACTA negotiations will not affect section 69 of the Copyright Act 1994.
3. asks for assurance that ACTA negotiations around cross-border movement of copyrighted materials will not undermine the negotiations around cross-border sharing of accessible formats currently occurring at WIPO.
4. submits that ACTA should not create rules which prevent a person from circumventing a TPM to exercise a permitted use of the protected content.
5. submits that remedies for online copyright infringement should not include terminating internet connections.

1. Public transparency

The Foundation is concerned that ACTA is being negotiated in secret. While providing very little detail, the consultation document makes it clear that the scope of ACTA is broader than traditional counterfeiting, and covers issues of copyright, internet use and reading in digital formats. All of these issues have the potential to affect blind and partially sighted New Zealanders' access to information.

This opportunity to provide feedback on the negotiations is welcomed, however not enough information has been provided to allow the Foundation to assess ACTA's possible positive or negative effects on access to information.

The Foundation submits that any international agreements which may affect New Zealand copyright law should be shared in full with the New Zealand public, and extensive public consultation should be sought. In particular, the Foundation asks to be consulted on any provisions that may affect blind and partially sighted New Zealanders' access to information.

2. Protection of section 69 of the Copyright Act 1994

Copyright law can present a discriminatory barrier to print-disabled people.² To read printed information, print-disabled people rely on conversion into accessible formats

² Section 69 of the Copyright Act 1994 defines print disability:

(4) For the purposes of this section, a person has a print disability if he or she—
(a) Is blind; or

like braille, audio, accessible digital formats or large print. The process of converting material into another format to enable reading comes under the jurisdiction of copyright law, while the moral right of print-disabled people to read society's written information is basic.

New Zealand was a world leader in introducing section 69 of the Copyright Act 1994, a human rights based provision that permits prescribed bodies, such as the Royal New Zealand Foundation of the Blind, to make accessible copies or adaptations of published materials without the need to obtain copyright permissions, given certain conditions that include checking whether material has been published commercially in an accessible format.

Before the Copyright Act 1994, the Foundation was required to obtain copyright permission for each title, and spent around \$30,000 per year on this activity. More importantly, access to information could be delayed or denied if a publisher refused permission to convert their book into an accessible format. The passing of Section 69 of the 1994 Act was hugely significant in removing barriers in accessing information.

The Foundation asks for assurance that ACTA negotiations will not affect section 69 of the Copyright Act 1994.

3. Cross-border sharing of accessible formats

The WIPO Standing Committee on Copyright and Related Rights (SCCR) is currently considering a proposed Treaty for Improved Access for Blind, Visually Impaired and other Reading Disabled Persons. This treaty aims to improve access to information by allowing cross-border movement of reading material in accessible formats.

Accessible format library services in the US, in particular, contain tens of thousands of accessible books in digital formats. These are not easily available to blind people in New Zealand because international copyright law does not adequately allow cross-border sharing, even though both the US and New Zealand have similar specific provisions in copyright legislation to promote information access for print-disabled people. At the last SCCR meeting, the US delegation made a statement calling for

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- (b) Suffers severe impairment of his or her sight; or
 - (c) Is unable to hold or manipulate books; or
 - (d) Is unable to focus or move his or her eyes; or
 - (e) Suffers a handicap with respect to visual perception.

http://legislation.govt.nz/act/public/1994/0143/latest/DLM346211.html?search=ts_act_copyright_resel&p=1#DLM346211

international consensus and rejecting claims that copyright exceptions would weaken copyright law.³

The Foundation asks for assurance that ACTA negotiations around cross-border movement of copyrighted materials will not undermine the negotiations around cross-border sharing of accessible formats currently occurring at WIPO.

4. Technological Protection Measures and accessibility

Some Technical Protection Measures which are designed to prevent unlawful copying also affect lawful uses of the material. For example, the emerging e-book standard ePub has been designed to be accessible to print-disabled people⁴. However, many publishers lock their accessible e-books inside TPMs to prevent unlawful copying. In many cases, the particular TPM implementation also locks out access by screen reader technology,⁵ so that the TPM stops a blind person from being able to read a book that they have legally bought.

If a publisher chooses to implement a TPM which creates this discriminatory situation, an individual blind person who circumvents the TPM in order to read the book should not be criminalised. New Zealand's copyright law balances this well by stating that the law does not prevent any person from using a TPM circumvention device to exercise a permitted act⁶.

The Foundation submits that ACTA should not create rules which prevent a person from circumventing a TPM to exercise a permitted use of the protected content. In particular, ACTA must protect the rights of print-disabled people to read protected content using adaptive technology.

³ United States of America Statement on Copyright Exceptions and Limitations for Persons with Print Disabilities, available online at <http://keionline.org/node/723>

⁴ Making e-Publishing Accessible -- and Not Just for Kindle by Susan Hall, IT Business Edge. Available online at <http://www.itbusinessedge.com/cm/community/features/interviews/blog/making-e-publishing-accessible--and-not-just-for-kindle/?cs=32639>

⁵ The Soundproof Book: Exploration of Rights conflict and Access to Commercial EBooks for People with Disabilities by George Kerscher, DAISY Consortium and Jim Fruchterman, Benetech. Available online at http://www.openebook.org/doc_library/informationaldocs/soundproof/soundproof.htm

⁶ Copyright Act 1994 s226E. http://www.legislation.govt.nz/act/public/1994/0143/latest/DLM1706100.html?search=ts_act_copyright_resel&p=1#DLM1706100

5. Remedies for copyright infringement

The internet has been hugely liberating for blind and partially sighted people. Internet access reduces social isolation and enables blind and partially sighted people to access a wide range of information in a time-relevant way. Internet access can remove many of the barriers to participation that exist in a society where information is presented in print and other visual formats. Access to information is directly related to independence, community involvement, education, employment and engagement in everyday life.

Broadband internet is fast becoming an essential part of modern life. Dr Hamadoun Toure, secretary-general of the International Telecommunication Union (ITU), told BBC News that governments must “regard the internet as basic infrastructure – just like roads, waste and water”.⁷ For blind people in particular, internet access is an essential tool.

In cases of copyright infringement, remedies should be proportionate to the harm that the copyright holder suffers. The harm caused by non-commercial copying amounts to loss of potential revenue, and fines are a more appropriate remedy than terminating internet access. While the Foundation supports protections for copyright holders, we do not support enforcement measures that include terminating internet connections.

The Foundation submits that remedies for online copyright infringement should not include terminating internet connections.

Further Information

The Foundation would welcome opportunities to provide more information if required. Please direct any questions to:

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⁷ Internet access is 'a fundamental right' by BBC. Available online at <http://news.bbc.co.uk/2/hi/technology/8548190.stm>