

Copyright (Marrakesh Treaty Implementation) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Copyright Act 1994 to allow New Zealand to accede to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (the **Marrakesh Treaty**).

The Marrakesh Treaty is a multilateral treaty that was negotiated by members of the World Intellectual Property Organization. The objective of the Marrakesh Treaty is to provide an international framework for the production and dissemination of copies of books and other literary works in formats that are accessible to persons with a print disability. These accessible formats include Braille, large print, and audio books.

Persons with a print disability have an impairment that prevents them from enjoying a printed copyright work to the same degree as those who do not have that impairment. However, an impairment of visual function is excluded if it can be improved to a normal reading level with glasses but without special lighting.

The Marrakesh Treaty achieves its objectives by requiring member states to provide copyright exceptions that allow authorised entities to make accessible format copies of literary and artistic works without the permission of the owner of the copyright in those works. It also requires member states to allow authorised entities in those states to export the accessible format copies they make to, and to import accessible format copies from, other Marrakesh Treaty member states. Marrakesh Treaty member states may also provide for a copyright exception to allow persons with a print disability to make accessible format copies or import accessible format copies for their personal use.

Section 69 of the Copyright Act 1994 already provides an exception that enables prescribed bodies to make accessible format copies without the permission of the copyright owner. However, section 69 does not permit the import of accessible format cop-

ies from other countries. Many other countries do not permit accessible format copies made under those countries' equivalents of section 69 to be exported.

The Bill will replace section 69 of the Copyright Act 1994 so references to prescribed bodies in the current section 69 are replaced with references to authorised entities. An authorised entity can be 1 or more of—

- an educational establishment:
- an educational resource supplier:
- a prescribed library:
- a charitable entity that has a purpose consistent with making accessible format copies available to persons with a print disability:
- an authorised entity in a Marrakesh Treaty member state.

An authorised entity in New Zealand will be able to make or import accessible format copies without the permission of the copyright owner provided that the entity fulfils the relevant conditions set out in *new section 69A*.

Authorised entities will also be able to reproduce accessible format copies that they have made or imported and distribute them to persons with a print disability and other authorised entities in New Zealand. Accessible format copies made by New Zealand authorised entities can be exported to authorised entities and persons with a print disability in other Marrakesh Treaty countries.

Authorised entities must notify the ministry responsible for administering the Copyright Act 1994 (currently, the Ministry of Business, Innovation, and Employment) before beginning activities under *new section 69A* for the first time. They must also keep records of the accessible format copies they make, reproduce, import, or export, and allow copyright owners to inspect these records.

Persons with a print disability in New Zealand, or persons acting on their behalf, will be able to make accessible format copies without the permission of the copyright owner. They will also be able to import accessible format copies made by authorised entities in other Marrakesh Treaty member states. The copies must be for the personal use of the person with a print disability. The copies may also be provided to a New Zealand authorised entity which may reproduce and distribute them to persons with a print disability within New Zealand.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2018&no=109>

National interest analysis and regulatory impact assessment

To help inform the decisions taken by the Government relating to the contents of this Bill, the Ministry of Business, Innovation, and Employment produced a national interest analysis and, in May 2017, a regulatory impact assessment.

A copy of the national interest analysis can be found at <http://www.mbie.govt.nz/publications-research/publications/copyright/national-interest-analysis.pdf>

Copies of the regulatory impact assessment can be found at—

- <http://www.mbie.govt.nz/publications-research/publications/copyright/ris-marrakesh-treaty.pdf>
- <https://treasury.govt.nz/publications/risa/regulatory-impact-statement-assessment-options-further-improve-timely-access-greater-variety>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill comes into force on a date appointed by the Governor-General by Order in Council, which will be the date on which the Marrakesh Treaty enters into force for New Zealand. The Ministry of Business, Innovation, and Employment, as the administering department for the Copyright Act 1994 (the **principal Act**), advises that the reasons why the commencement is to be by Order in Council are as follows:

- commencement of the Bill by Order in Council is necessary as the Bill cannot commence until the Marrakesh Treaty enters into force for New Zealand; and
- this will occur on the date that is 3 months after New Zealand has deposited its instruments of accession to the Marrakesh Treaty; and
- the instruments of accession cannot be deposited until the Bill is passed, and the date of deposit will not be known until shortly before deposit takes place.

Clause 3 provides that the Bill amends the principal Act.

Part 1

Amendments to principal Act

Clause 4 amends section 2, which concerns interpretation. Definitions of accessible format copy, authorised entity, charitable entity, Marrakesh Treaty country, and print disability are inserted.

Clause 5 inserts *new section 12A*, which refers to the transitional, savings, and related provisions set out in Schedule 1. *Clauses 9 to 13* insert new transitional provisions for the purposes of this Bill, and amend sections 235, 236, and Schedule 1 accordingly.

Clause 6 replaces section 69, which relates to the provision of Braille copies of literary or dramatic works to persons who have a print disability, with *new sections 69 to 69D*.

New section 69 lists the types of entities that are authorised to carry out the activities set out in *new section 69A* and requires the authorised entities to give notice to the Ministry before beginning activities under *new section 69A*.

New section 69A sets out activities that an authorised entity may carry out in relation to an accessible format copy of a published work without infringing copyright in the work.

New section 69B describes activities in relation to an accessible format copy of a published work that may be carried out by persons other than an authorised entity without infringing copyright in the work.

New section 69C sets out duties of an authorised entity in regard to record keeping and the fees it may charge in relation to accessible format copies.

New section 69D requires the Ministry to publish on its Internet site the authorised entities that give notice that they will carry out activities in relation to accessible format copies.

Clause 7 amends section 93, which relates to subsequent dealings with copies made under Part 3, by replacing cross-references that are changed by the amendments made by *clause 6*.

Clause 8 amends section 234, which provides regulation-making powers, by removing the power to prescribe bodies who may make Braille copies. Types of authorised entities, which may make accessible format copies (including Braille copies) are listed in *new section 69(1)*.

Clause 9 repeals section 235 and the cross-heading above it, as *new section 12A*, inserted by *clause 5*, provides that transitional, savings, and related provisions are set out in Schedule 1.

Clause 10 inserts a *new cross-heading* above section 236 that is relevant to that section, as the cross-heading above section 235 is repealed by *clause 9*.

Clause 11 replaces the Schedule 1 heading, in accordance with *new section 12A*, as inserted by *clause 5*.

Clause 12 amends Schedule 1 by inserting a *new Part 1 heading* into Schedule 1, indicating that clauses 1 to 43 of Schedule 1 relate to the Act as it was originally enacted.

Clause 13 inserts *new Part 2* into Schedule 1. *New Part 2* of Schedule 1 provides, in *new clauses 44 and 45*, for the transition between section 69 as in force immediately before this Bill comes into force and the new sections that the Bill inserts as replacements for section 69. *New Part 2* of Schedule 1 relates to copies of works made or communicated under section 69 before the Bill's commencement date. *New clause 44* defines terms used in *new Part 2* of Schedule 1. *New clause 45* provides for Braille copies made under section 69, before the Bill's commencement date, to be treated as if made under *new sections 69A and 69B*.

Part 2
Consequential amendment to Copyright (General Matters)
Regulations 1995

Clause 14 provides that Part 2 makes a consequential amendment to the Copyright (General Matters) Regulations 1995.

Clause 15 revokes regulation 5, which relates to prescribed bodies for the purposes of section 69 of the Act, as the types of authorised entities are now listed in *new section 69(1)* of the principal Act.

Hon Kris Faafoi

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Copyright (Marrakesh Treaty Implementation) Amendment Act **2018**.
- 2 Commencement** 5
(1) This Act comes into force on a date appointed by the Governor-General by Order in Council.
(2) That date must be the date on which the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, done at Marrakesh on 27 June 2013, enters into force for New Zealand. 10
- 3 Principal Act**
This Act amends the Copyright Act 1994 (the **principal Act**).

- Part 1**
- Amendments to principal Act** 15
- 4 Section 2 amended (Interpretation)**
In section 2(1), insert in their appropriate alphabetical order:
- accessible format copy** means a copy of a published literary, dramatic, musical, or artistic work, or a part of the work, in an alternative manner or form that gives persons who have a print disability access to the work 20
- authorised entity** means—
- (a) an entity of a type set out in **section 69(1)**; and

(b) in relation to the import into and export from New Zealand of accessible format copies, includes an entity authorised or recognised by the government of the relevant Marrakesh Treaty country as an authorised entity for the purposes of the Treaty

charitable entity has the meaning given in section 4(1) of the Charities Act 2005 5

Marrakesh Treaty country means a Contracting Party to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, done at Marrakesh on 27 June 2013 10

print disability, in relation to a person,—

(a) means an impairment that prevents the person from enjoying a printed copyright work to the same degree as a person who does not have that impairment; but

(b) excludes an impairment of visual function that can be improved, by the use of corrective lenses, to a level that is normally acceptable for reading without a special level or kind of light 15

5 New section 12A inserted (Transitional, savings, and related provisions)

After section 12, insert:

12A Transitional, savings, and related provisions 20

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

6 Section 69 replaced (Provision of Braille copies of literary or dramatic works)

Replace section 69 with: 25

69 Authorised entity types

(1) An entity that is 1 or more of the following may undertake the activities set out in **section 69A**:

(a) an educational establishment: 30

(b) an educational resource supplier:

(c) a prescribed library within the meaning given in section 50(1):

(d) a charitable entity that has a purpose consistent with making accessible format copies available to persons who have a print disability.

(2) Before beginning activities under **section 69A** for the first time, an authorised entity must give notice to the Ministry that it intends to do so. 35

69A Accessible format copy activities by authorised entity

- (1) An authorised entity does not infringe copyright in the relevant work if the entity acts in accordance with this section.
- (2) An authorised entity may make an accessible format copy if the entity—
 - (a) has made reasonable efforts to obtain an accessible format copy of the work in the manner or form needed by the persons to whom it is to be provided, within a reasonable time and at an ordinary commercial price, but has been unable to do so; and 5
 - (b) has taken all reasonable steps to notify the owner of the copyright in the work of its intention to make an accessible format copy; and 10
 - (c) is making the copy to provide it only to persons who have a print disability, persons acting on their behalf, or other authorised entities; and
 - (d) ensures that the copy respects the integrity of the original work, as far as is reasonably possible and taking into account changes needed to make the work accessible in the alternative format. 15
- (3) An authorised entity (**A**) may import an accessible format copy from an authorised entity (**B**) in another Marrakesh Treaty country if A—
 - (a) has made reasonable efforts to obtain an accessible format copy of the work in the manner or form needed by the persons to whom it is to be provided, within a reasonable time and at an ordinary commercial price, but has been unable to do so; and 20
 - (b) has taken all reasonable steps to notify the owner of the copyright in the work of its intention to make an accessible format copy; and
 - (c) is importing the copy to provide it only to persons who have a print disability, persons acting on their behalf, or other authorised entities; and 25
 - (d) has taken all reasonable steps to ensure that the copy respects the integrity of the original work, as far as is reasonably possible and taking into account changes needed to make the work accessible in the alternative format.
- (4) An authorised entity may do 1 or more of the following: 30
 - (a) export an accessible format copy to an authorised entity, or a person who has a print disability, in another Marrakesh Treaty country;
 - (b) reproduce copies made or imported under this section or provided to the entity under **section 69B(2)(c)**;
 - (c) provide, by communication or otherwise, accessible format copies made or imported under this section or provided to the entity under **section 69B(2)(c)** to— 35
 - (i) persons in New Zealand who have a print disability or persons acting on their behalf; and
 - (ii) other authorised entities in New Zealand. 40

69B Accessible format copy activities by person who is not authorised entity

(1) A person who is not an authorised entity does not infringe copyright in the relevant work if he or she—

- (a) has a print disability or is acting on behalf of someone who has a print disability; and
- (b) intends the accessible format copy to be only for the use of the person who has a print disability; and
- (c) acts in accordance with **subsection (2)**.

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(2) The person may do 1 or more of the following:

- (a) make an accessible format copy that respects the integrity of the original work, as far as is reasonably possible and taking into account changes needed to make the work accessible in the alternative format:
- (b) import an accessible format copy from an authorised entity in another Marrakesh Treaty country:
- (c) provide the accessible format copy that he or she made or imported under **paragraph (a) or (b)** to an authorised entity.

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69C Duties of authorised entity in regard to records and fees

(1) An authorised entity must—

- (a) make and keep a record of a work of which it has made, provided, reproduced, imported, or exported an accessible format copy under **section 69A**; and
- (b) permit the copyright owner to inspect the record—
 - (i) during normal office hours; or
 - (ii) at any reasonable time, if the entity does not have office hours.

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(2) An authorised entity may charge a fee for providing an accessible format copy to a person, but the fee must not be higher than the sum of the cost to the entity of making, providing, reproducing, importing, or exporting the copy (as applicable) and a reasonable contribution to the general expenses of the entity.

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69D Ministry must publish list of authorised entities on Internet site

The Ministry must publish on its Internet site a list of authorised entities that have given notice under **section 69(2)**.

30

7 Section 93 amended (Subsequent dealings with copies made under this Part)

Replace section 93(2)(n) with:

- (n) **sections 69A and 69B** (which relate to accessible format copies):

35

8 Section 234 amended (Regulations)

Replace section 234(d) with:

- (d) prescribing bodies for the purposes of section 72, 89, 90, 185, 190, or 191:

9 Section 235 and cross-heading repealed

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Repeal section 235 and the cross-heading above section 235.

10 New cross-heading above section 236 inserted

Above section 236, insert:

Consequential amendments and repeals

11 Schedule 1 heading replaced

10

Replace the Schedule 1 heading with:

Schedule 1
Transitional, savings, and related provisions

s 12A

12 Schedule 1 amended

15

After the heading to Schedule 1, insert:

Part 1
Provisions relating to this Act as enacted

13 New Part 2 of Schedule 1 inserted

In Schedule 1, after Part 1, insert the **Part 2** set out in the **Schedule** of this Act. 20

Part 2

**Consequential amendment to Copyright (General Matters)
Regulations 1995**

14 Consequential amendment to Copyright (General Matters) Regulations 1995

25

This Part amends the Copyright (General Matters) Regulations 1995.

15 Regulation 5 revoked (Prescribed bodies for purposes of section 69 of Act)

Revoke regulation 5.

Schedule
New Part 2 of Schedule 1 inserted

s 13

Part 2
**Provisions relating to Copyright (Marrakesh Treaty
Implementation) Amendment Act 2018**

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44 Interpretation

In this Part,—

commencement date means the date on which this Part comes into force

former section 69 means section 69 as in force immediately before the com- 10
mencement date

prescribed body means a body declared in regulation 5 to be a prescribed
body for the purposes of former section 69

regulation 5 means regulation 5 of the Copyright (General Matters) Regula- 15
tions 1995 as in force immediately before the commencement date.

**45 Braille or otherwise modified copies made under former section 69 treated
as if made under Act as amended**

A copy or an adaptation made or communicated by a prescribed body before 20
the commencement date in compliance with the conditions of the former sec-
tion 69 is to be treated on and after the commencement date as an accessible
format copy that was made or provided in compliance with **sections 69A
and 69B.**