

# Departmental Disclosure Statement

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Copyright (Marrakesh Treaty Implementation) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

7 September 2018

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## Part One: 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 copies 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 accessible format copies without the permission of the copyright owner provided that the entity fulfils the conditions set out in *new section 69A*.

An authorised entity in New Zealand will also be able to import accessible format copies and reproduce 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.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>NO</b>

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>YES</b>
<p>The Bill will, when enacted, enable New Zealand to accede to the <i>Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled</i> (<b>the Marrakesh Treaty</b>).</p> <p>The text of the Marrakesh Treaty can be found at: <a href="http://www.wipo.int/treaties/en/ip/marrakesh/">http://www.wipo.int/treaties/en/ip/marrakesh/</a></p>	

<b>2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?</b>	<b>YES</b>
<p>A National Interest Analysis was prepared by the Ministry of Business, Innovation and Employment. The text of the Analysis can be found on the Ministry's website at: <a href="http://www.mbie.govt.nz/publications-research/publications/copyright/national-interest-analysis.pdf">http://www.mbie.govt.nz/publications-research/publications/copyright/national-interest-analysis.pdf</a></p>	

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>A Regulatory Impact Statement was prepared by the Ministry of Business, Innovation and Employment. The text of the Analysis can be found on the Ministry's website at: <a href="http://www.mbie.govt.nz/publications-research/publications/copyright/ris-marrakesh-treaty.pdf">http://www.mbie.govt.nz/publications-research/publications/copyright/ris-marrakesh-treaty.pdf</a></p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
<p>The RIS did not meet the threshold for RIA Team assessment.</p>	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
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#### Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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The Ministry of Foreign Affairs was consulted during the drafting of the Bill, and has indicated that the Bill is consistent with New Zealand's existing international obligations, as well as those imposed by the Marrakesh Treaty.
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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The amendments in the Bill expand on an existing exception in section 69 the <i>Copyright Act 1994</i> by increasing the number of entities that can make use of the exception. They do not affect the criteria for copyright protection, or the rights provided by copyright.
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The effect of expanding the section 69 exception will be to increase the availability of literary and artistic works in accessible formats. This could lead to the production of more Māori or Pacific works in accessible formats.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>
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NO
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### Offences, penalties and court jurisdictions

#### Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>
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NO
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## External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>A consultation document seeking public submissions on whether or not New Zealand should accede to the Marrakesh Treaty was released in February 2016. The 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.</p> <p>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 current section 69 of the <i>Copyright Act 1994</i> exception and the expected impacts of the Marrakesh Treaty.</p> <p>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.</p>	

## Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO



## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

### Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

### Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

### Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

### Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

### Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>

**Any other unusual provisions or features**

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>