



IPA and STM Comments on the “non-paper resulting from informal discussions”

IPA and STM acknowledge the efforts of the negotiators to conclude their discussions successfully. We share the view that every effort should be made to arrive at an appropriate legal instrument this week. This instrument must, however, not overturn important principles of copyright law and must arrive at a fair and balanced solution.

The current “non-paper” does not reflect the clear vision, shared among rightsholders and persons with print disability alike, that full, equal access will only come where publishers offer accessible copies themselves. This will depend not primarily on copyright exceptions; priority must therefore be given to making commercial e-books accessible and encouraging publishers to offer accessible formats themselves, nationally and internationally. Success will also depend on the kind of collaboration and projects that the participants in the WIPO Stakeholder Platform have successfully been working on. These find no mention in the non-paper.

We attach a revised non-paper with specific edits and proposals for alternative wording that we believe can transform this document, in the form of a recommendation, into a legal instrument that is acceptable to publishers.

Our chief concerns are as follows:

1. The scope of the recommendation must give priority to copies of works published commercially, in any media that are in fact accessible. Unless this point is clearly stated and applied uniformly, the instrument would cause harm and discourage publishers who are serving all customers, whether disabled or not, on an equal footing.
2. Rightsholder authorisation must be included for international file exchange. The current draft explicitly says that permissions for international file exchange may not require rightsholder permission. This runs counter to our key demand: a fair and equal part in international file licensing arrangements. Exceptions without rightsholder involvement should apply only to the extent that authorisation cannot be granted individually or collectively, through representative organisations or through another effective and expeditious mechanism. This would include the option to make use of the International Trusted Intermediary Network or another mechanism that does not require an exception.
3. The three-step-test should not be changed or weakened. The recitals should not contain wording that could be misinterpreted as a general re-interpretation of the three-step test, including for other treaties and international instruments. Instead, a

recital must make clear that this legal instrument does not seek to change the existing obligations of member states, including the three-step-test. When making reference to the “acquis”, it should always include all treaties whose rights may be affected, including the World Copyright Treaty.

4. The current non-paper should make clear that where the recommendation enables member states to export works, this applies to domestic works only. No country should export works that have not been published there. Otherwise the country with the most generous interpretation of the export clause will become the international source of that file, thus circumventing any more carefully crafted export conditions.
5. Re-exporting accessible files must be disallowed. It should be made clear that any accessible file imported under this instrument must stay in the importing country and cannot itself be re-exported into third countries or back into the country of origin (“round-tripping”). The draft recommendation currently does not foresee a prohibition on re-exporting files obtained through digital file exchange.

IPA and STM remain opposed to the discussion of an international treaty. The many controversial and ambiguous clauses in the current draft show that the time is not yet right to even consider the calling of a diplomatic conference.

On behalf of IPA and STM
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