

**The Potential Significance for Print Impaired New Zealanders
of Accession to the Marrakesh Treaty.**

by

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Significance for New Zealanders of the Marrakesh Treaty.

“Blind people dream of a world in which we can have access to the same information as what sighted people already enjoy. When I was younger, we just accepted that it was physically impossible for us to read, so we made do with the assistance of others to do the reading for us. But that was before today's world of information being published electronically... But can I access all the books out there?”

-Clive Lansink



Sile O'Modhrain using electronic braille display
Photo: (Joseph Xu) (Radio New Zealand 2016)

“Disability is the process which happens when one group of people create barriers by designing a world only for their way of living, taking no account of the impairments other people have”.

- The New Zealand Disability Strategy. April 2001.

Abstract

Keywords: Marrakesh Treaty, Print Impaired, Copyright, New Zealand.

This project investigates the potential significance of NZ's accession to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled for our print disabled community and their information providers.

The project uses a qualitative approach to analyze submissions made to the Ministry of Business Innovation and Employment in response to their discussion document on the Marrakesh Treaty using the research question: "How are New Zealanders responding to the consultation process on whether New Zealand should accede to the Marrakesh Treaty? What new local issues are raised?" Three background questions were also explored to establish what information access barriers currently exist for print impaired communities.

It transpired that print impaired communities are very diverse with a range of needs that may be met by the Marrakesh Treaty. It is anticipated that the treaty will speed up and free the flow of information internationally which will assist both individuals and the organisations that serve them. However, potential security issues were raised by copyright holders which would be an excellent subject for future research once the treaty had been in effect for some time. Future researchers may also investigate the interaction between the Trans-Pacific Partnership Agreement and the Marrakesh Treaty especially in relation to technological protection measures (TPMs).

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At the time of writing, 20 states have acceded to or ratified the Marrakesh Treaty and it will take effect on September 30, 2016. (WIPO, 2016). New Zealand has signed it and is in the process of discussing whether we should also accede to it. Many organisations like the World Blind Union are concerned that this process is taking too long and major players like the USA are not yet fully committed to change.

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Problem Statement.

Copyright laws and publishers currently limit access to published works in a restrictive manner that many argue is a violation of the basic human rights of the print disabled community. It is estimated that only 5% of the world's written materials are available in accessible formats for print disabled people. This is commonly referred to as the book famine.

The Marrakesh Treaty addresses the book famine by providing exemptions to copyright laws for print impaired people and their information access providers. Hungry minds may be fed by facilitating accessible formats of texts (braille, DAISY formatted audio books and large print) to cross international borders legally and allowing print impaired people to legally unlock blocked digital texts to make their own accessible formats.

We are in a time of technological and legal change with the TPP also being signed and adaptive technologies rapidly developing. Many of the signatory states currently have very different copyright laws to New Zealand that will require changes to allow for the Marrakesh Treaty. What problems may arise with the attempt to harmonize these laws?

Literature Review

From the discourse on The Marrakesh Treaty arises the call from all stakeholders for clarity around the issues of copyright law. This review investigates legal commentary on copyright issues applying to the print impaired community and compares these with the views of other stakeholders such as digital rights campaigners, information access providers, advocates for people with impairments and champions for the blind and low vision community. The Blind Foundation Library is the main information provider to print impaired people in New Zealand. The Association of Blind Citizens of New Zealand Incorporated (ABC NZ) is the longest standing advocacy organisation in New Zealand's disability sector. (The terms print impaired and print disabled are used interchangeably within this text as both are acceptable within the discourse.)

Promoting a human rights based legal framework for disability law.

Lida Ayoubi proposes that a human rights framework be adopted when copyright restricts the access of the visually impaired. She argues comprehensively in her 2015 thesis that the visually impaired have a legitimate claim to better access to information as a human right. She details a legal framework to provide better access that builds on both existing domestic and international copyright law with two main categories of measures involving the adoption of new mechanisms and the optimisation of existing options.

1. "The first category discusses minimum mandatory copyright limitations and exceptions and the possibility to harmonise them" (Ayoubi, 2015).

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2. "The second category covers extra measures such as clarifying the implications of different human rights and copyrights in the context of the book famine; ensuring compatibility of human rights and copyright when adopting policy and law; and, regular monitoring of the impact of copyright law on human rights" (Ayoubi, 2015).

Lansink suggests that the necessary models already exist from the civil rights movements. He states that a civil rights model exemplifies how society must change. "In this model, the barriers preventing people with disabilities from participating fully in society are said to be rooted in ignorance, stigma and prejudice. The model upholds the principle that the inclusion of people with disabilities into all aspects of society is a civil right" (Lansink, 2008, p. 3). He details the history of disability law internationally emphasizing the adoption of human rights based practice. Lansink tracks this trend by mapping out other landmark agreements like the Council of Europe's Disability Action Plan, (adopted in 2006) which he praises for its focus on encouraging full participation for people with disabilities, non-discrimination and human rights. 'It promotes the paradigm shift from a health-related to a rights-based approach to disability - from the patient to the citizen" (Lansink, 2008, p. 4).

Ayoubi's work is a rich and detailed study of the intersection of copyright law with human rights but it primarily focuses on the blind and vision impaired. She mentions dyslexia as a condition that is included internationally in a definition of print disabled but does not refer to other types of print impairment consistently throughout her work. The Blind Foundation librarians Hogan and Nasmith recognize the issues for other print disabled citizens who do not have the strong and organised systems available to blind

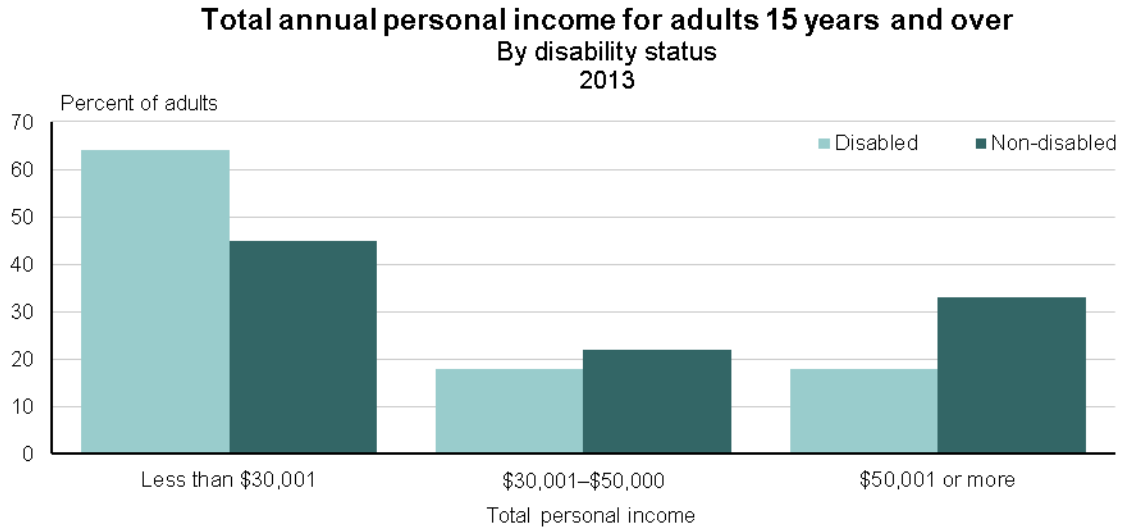
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people who are struggling with information access. These citizens may be users of the public libraries housebound or outreach services or access the National libraries print disabled collection.

“There are New Zealanders who are print-disabled and don’t meet the RNZFB’s membership criteria but also have barriers to overcome in terms of access to information. Stroke victims, arthritis sufferers, people with dyslexia or neurological conditions such as Parkinson’s disease may all have difficulty reading print, holding a book or acquiring reading material in a format that best suits their individual needs. In some cases, isolation is a contributing factor to how a person acquires their information or recreational reading material” (LIANZA Conference, 2011).

Ayoubi (2015) claims that “there is no discrimination when a visually impaired individual cannot afford an accessible copy of a work that has the same price and physical availability of the normal copy.” This may be legally correct but in our communities disabled people are likely to be living in poverty, so even the cost of normally priced books may be prohibitive and prevent access. “The right to knowledge is critical in achieving the principle of “leaving no one behind”, which depends on eliminating poverty and improving education and employment, including for those with disabilities” (UNDP & WBU, 2016, p. 1). The Office for Disability Issues maintain that disabled people generally have low incomes (see table below) combined with high costs related to their disability. 71% of disabled New Zealand women are living on less than \$15,000 compared with 55% of disabled men (Statistics New Zealand, 2013).

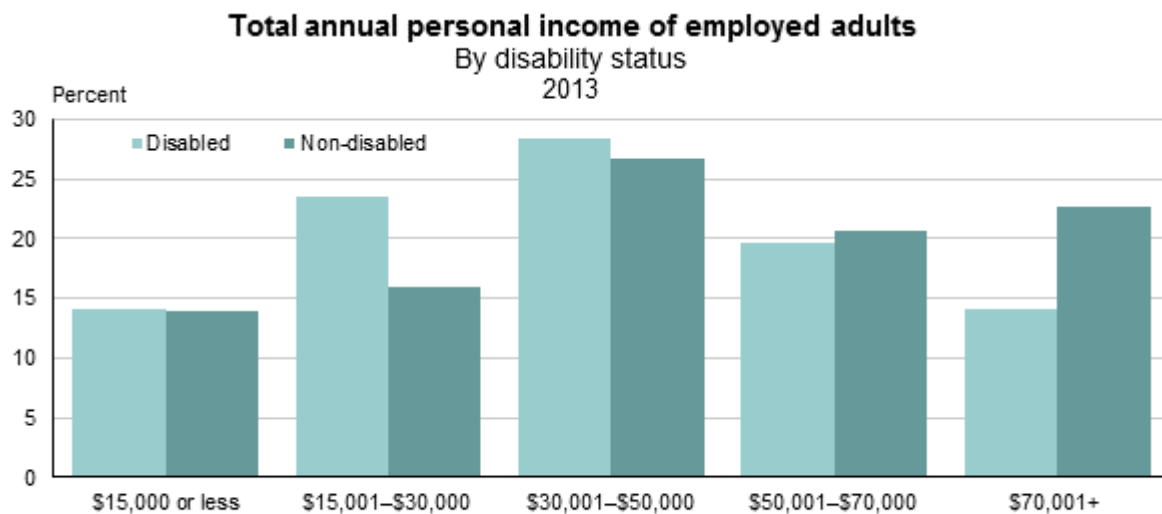
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Source: Statistics New Zealand

38% of employed disabled workers are still living on less than \$30,000 (Statistics New Zealand, 2013). Access to information therefore needs to be extremely low in cost for the end user to be practically accessible to this community.

Figure 8



Source: Statistics New Zealand

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Not only are disabled people more likely to be living in poverty, there is evidence to support the idea that living in poverty means people are more likely to become disabled. “Disability is a development issue, because of its bidirectional link to poverty: disability may increase the risk of poverty, and poverty may increase the risk of disability. A growing body of empirical evidence from across the world indicates that people with disabilities and their families are more likely to experience economic and social disadvantage than those without disability” (WHO & World Bank report cited in UNDP & WBU 2016, p. 7).

Accessible Formats

ABC NZ (2003) provide a wonderful description of access in a broader sense as a continuing process, a journey that society is on. “Access, in the former sense, relates to the effort to modify social and cultural norms to be accepting—even embracing—of groups of people possessing characteristics that distinguish them from the majority of society...” ABC NZ believe that this “revolution in understanding” is a prerequisite for the practicalities of implementing or even contemplating the functionalities of access.

“Access in practical terms, involves the modification, augmentation, or supplementation of items or places so that they might be fully used by those who employ alternative or unconventional means for performing tasks or acquiring information” (ABC NZ 2003). Ayoubi posits an interesting question about what constitutes an “accessible format” of a book within international copyright law. New

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Zealand's section 69 of our Copyright Act deals with exemptions for print disabled people.

69. Provision of Braille copies of literary or dramatic works.

- (1) A body prescribed by regulations made under this Act may, if the conditions contained in subsection (2) are complied with, **make or communicate copies or adaptations of published literary or dramatic works for the purpose of providing persons who have a print disability with copies that are in Braille or otherwise modified for their special needs,** without infringing copyright in those literary or dramatic works.

Ayoubi argues that in many countries "...it is not clear whether a copy of a work in any accessible format is considered an accessible copy or whether a copy is commercially available when it is in the format that is desired by the visually impaired" (Ayoubi 2015, p. 16). Many print disabled people do not have Braille literacy, so if the only "accessible copy" was in Braille it would be useless to them. In countries such as China, Ukraine, Vietnam and Indonesia only Braille texts may be produced under their current copyright laws (UNDP & WBU, 2016).

In section 69 (2a) of the New Zealand Copyright Act it states that a copy of a text may be provided "in Braille or otherwise modified as required by the person or persons to whom it is to be provided." This wording makes clear the intention to provide an appropriate format for the individual. However, problems may arise with cross-border exchange if a particular format is allowed in one state but not another.

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Barriers to cross-border exchange of texts.

There is also variation between states in the local definition of what type of works may be made accessible and who is a “beneficiary person” which may impede the flow of cross border exchange (Trimble, 2014). Like Ayoubi, Trimble is concerned about old barriers being inadvertently reinforced within the Marrakesh treaty. He states that within the Marrakesh Treaty another “possible constraint is remuneration; a country may decide that the making and supplying of accessible format copies under the limitations and exceptions will only be possible if subject to remuneration that will be paid to the copyright holder” (Trimble, 2014). Ayoubi is also concerned that the Marrakesh Treaty allows for the remuneration of copyright holders to vary among states (Ayoubi, 2015, p. 160). Where the rules are allowed to vary between states, in a cross-border exchange situation, which “countries law should be applied to the determination?” (Trimble, 2014). This confusion applies to all parts of the treaty that are open to local definition like definitions of “accessible format”, “authorized entities”, “beneficiaries” and “permissible acts” (Trimble, 2014).

Trimble lists the limiting obligations imposed on the authorized entities who will provide accessible copies to print disabled people. These responsibilities may prove onerous for developing countries. Trimble states that the following demands may prove difficult to achieve.

Authorized entities are required to:

- Confine distribution and making available of accessible format copies to beneficiaries and authorized entities

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- Discourage the reproduction, distribution and making available of unauthorized copies
- Establish that the persons [they] serve...are beneficiary persons under the Treaty
- Record “handling of copies of works”
- Respect the privacy of the beneficiary persons (Trimble, 2014).

Trimble states that is particularly unclear what measures authorized entities must take to discourage reproduction and distribution of unauthorized copies. Ayoubi also points out that even though in New Zealand Section 69 of the Copyright Act allows for domestic production of accessible formats of texts they may only do so after failing through reasonable investigation, efforts and time to obtain a commercial copy at an ordinary price.

69. Provision of Braille copies of literary or dramatic works.

(2) The conditions referred to in subsection (1) are—

(a) that the prescribed body has made reasonable efforts to obtain a copy of the complete work, in Braille or otherwise modified as required by the person or persons to whom it is to be provided, within a reasonable time at an ordinary commercial price, but has been unable to do so;

Ayoubi states that this statement needs clarification. She claims that Marrakesh Treaty, by following previous guidelines set out in the Berne Convention and TRIPS Agreement also fails to define clearly the meaning of “reasonable effort”, “reasonable investigation”, “reasonable time”, and “ordinary commercial price” (Ayoubi, 2015, p. 16).

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ABC NZ are also concerned about the concept of “reasonableness” within the New Zealand legal system, particularly as it is interpreted by those who do not have experience with disability. “The standard of reasonableness in New Zealand law is such a dominant concept that it is difficult to say with certainty that anything (e.g. legislation or otherwise) creates a minimum standard of protection” (ABC NZ, 2003).

Ayoubi argues (Ayoubi, 2015, p. 159) that ambiguity around copyright permissions and costs wastes time, delaying access and may “keep individuals or institutions in fear of infringement, especially in places where there is no comprehensive database of commercially available accessible works.” Lack of information may also mean that print disabled people or their information providers end up paying twice, once for a print copy of a text and again for the right to make it accessible. Below is the relevant text from section 69 of the New Zealand Copyright Act, again it is ambiguous, using the words “reasonable” and “general” and does not provide clear guidelines.

(b) that, the copies are provided only to persons having a print disability; and (c) that, where any body makes a copy or adaptation of a published literary or dramatic work under this section, the body shall, as soon as is reasonably practicable, take all reasonable steps to notify the owner of the copyright in the work of the making of the copy or adaptation; and (d) that, where any person to whom a copy is provided is required to pay for the copy, the payment required is no higher than a sum consisting of the total cost of the production of the copy and a reasonable contribution to the general expenses of the prescribed body.

The Blind Foundation library use section 69 in their work daily. Chris Pigott, the library manager states that their “pretty good relationship with publishers” allows them to

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enter into discussions if their request for material is initially rejected. He allows that there are still occasions when they are not able to get titles for patrons. Pigott maintains that section 69s requirements of going to a “reasonable” effort to look for a “reasonably” priced text is not a problem. Issues for the library arise from “an occasional interpretation of what is/isn’t available in an accessible format, and New Zealand sometimes having different rights agreements than other countries” (personal communication, 2016, April 7). This may become a greater problem if the range of countries New Zealand is sharing with increases under the Marrakesh Treaty. ABC NZ maintain that some overseas accessibly produced materials remain out of reach not only because of the originating country’s copyright laws but because these laws may be interpreted in a restrictive or erroneous manner (ABC NZ, 2003).

The Max Planck Institute disagree with calls for globalization, claiming that leaving these definitions to the discretion of individual states is appropriate and desirable. In their notes on the Marrakesh Treaty’s provision for the cross-border exchange of works they state that the definition of “reasonable”, “is rightly left up to the national legislator or rather the respective jurisprudence” (Max Planck Institute, 2015, note 31). They clarify this by making the practical suggestion that databases be created, maintained and made freely available to both authorized entities, publishers and right holders to provide current information on the commercial availability of accessible copies of works (Max Planck Institute, 2015, note 32).

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Problems around the distribution of accessible formats of texts.

Fitzpatrick (2014, p. 156) states that most countries with exemptions in their copyright laws for print disabled people allow only for the reproduction, not the distribution of accessible formats of works. Section 69 of the New Zealand Copyright Act allows “(b) that the copies are provided only to persons having a print disability.” It does not provide specific guidance on the legality of distribution processes. Trimble (2014) similarly argues that definition of what constitutes distribution, or making available to the public differs between countries. Trimble contends further that with the digital transfer of works geolocation or geoblocking must be used to establish “that the receiver of the work is indeed in a signatory country and that it will be difficult to establish beneficiary persons”. The Blind Foundation library remove some of these problems locally by acting as both a portal and gatekeeper to internationally owned digital libraries. They require medical certification of a print disability from their patrons and thus provide protection to authors and rights holders.

Fitzpatrick concurs with many of Ayoubi’s criticisms of the ambiguous and confusing nature of international copyright laws but he is more positive about the potential of the Marrakesh Treaty to resolve some of these issues, particularly those of the facilitation of cross-border exchanges of accessible works, “this new multilateral treaty harmonizes the insufficient patchwork of existing national copyright exceptions for people with print disabilities” (Fitzpatrick, 2014, p. 161-162). However, like Ayoubi he is sceptical that the Marrakesh treaty will provide a global panacea for the book famine.

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He suggests that the USA also needs to address aspects of its domestic copyright laws to make changes that complement and support the gaps in the Marrakesh Treaty to provide maximum access to information for print disabled people. The USA has not signed the Marrakesh Treaty yet. If they do not, it will have a hugely negative impact as they are the largest producer of accessible formats of works.

The Three Step Tests.

The three step tests contained in the Berne Convention and the TRIPS Agreement are commonly used internationally to determine whether it is legally possible to produce an accessible copy of a text. The three step test is about protecting the copyright holders. Proving whether usage of a text interferes with the interests of the author or publisher may also be subjective, contentious and may put off information providers. The Electronic Frontier Foundation, who campaign for digital rights, point out the inconsistencies between the two tests. The Berne Convention focuses on the interests of the author while TRIPS protects the interests of the right holder.

The Berne Convention

The 1967 revision of the Berne Convention states in article 9(2)

“It shall be a matter for legislation in the countries of the Union to permit the reproduction of [literary and artistic] works [a] in certain special cases, [b] provided that such reproduction does not conflict with a normal exploitation of the work and [c] does not unreasonably prejudice the legitimate interests of **the author.**”

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TRIPS

Article 13 requires Members to confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the **right holder**.

EFF also state that in Europe the same three step tests have been interpreted differently by the courts in cases of dispute. (Europe has also not yet ratified the Marrakesh Treaty which is a major concern to the World Blind Union) (WBU, 2016). EFF point to the Max Planck Institute declaration which aims to clarify this problem by proposing that rather than focusing on each individual step all three steps should be considered together in a comprehensive assessment. They ask that copyright protection is kept in check when it threatens human rights and fundamental freedoms, scientific progress, cultural, social and economic development. “The Max Planck Institute proposal upholds the underlying purpose of copyright as a whole: seeking to balance the interests of creators with the interests of society at large in maximizing access to ideas and information” (EFF). Ayoubi suggests that if a holistic view be applied to the three step test it may still be an effective protection for the visually impaired information seeker, “If the steps of the Test are considered holistically rather than cumulatively or sequentially, a limitation or exception that does not meet the requirement of the second test could still be justified as a whole, by application of the third step” (Ayoubi, 2015, December 1, p. 272).

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The EFF argue that the three step tests are fundamentally biased towards right holders no matter how they are interpreted and that “what was essentially a norm of international copyright has morphed into a norm of international trade law, thereby losing much of its original normative content.” EFF also point out that the needs of developing nations are not met by the three step tests. They also make an interesting point that the Marrakesh Treaty was originally intended to be more inclusive of disabled people, including deaf people but lobbyists managed to get the deaf excluded. The intention was that the Marrakesh Treaty would form a baseline for inclusion rather than an upper limit, or another barrier for those not included already in this document. However, with the inclusion of the three step test within the TPPA the barrier to further inclusion becomes entrenched in trade law as seen below.

TPPA Article 18.65: Limitations and Exceptions

1. With respect to this Section, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.

2. This Article does not reduce or extend the scope of applicability of the limitations and exceptions permitted by the TRIPS Agreement, the Berne Convention, the WCT or the WPPT. (TPPA)

Part one of section 18.65 may also be problematic in that what actions may be considered as conflicting with “normal exploitation of the work” may be a highly subjective matter. Ayoubi describes how this has been tested by the World Trade Organization, “According to the Panel for a limitation or exception to be in conflict with

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the normal exploitation of a work it needs to "enter into economic competition" with the normal exploitations defined above and rob the right holders of "significant or tangible commercial gains" (Ayoubi, 2015, December 1, p. 266). The following section of the TPP seems to suggest that there is an intention to provide exceptions for a wide range of purposes and needs as evidenced by "giving due consideration to but not limited to" an extensive list.

TPPA Article 18.66: Balance in Copyright and Related Rights Systems

Each Party shall endeavour to achieve an appropriate balance in its copyright and related rights system, among other things by means of limitations or exceptions that are consistent with Article 18.65 (Limitations and Exceptions), including those for the digital environment, giving due consideration to legitimate purposes such as, but not limited to: criticism; comment; news reporting; teaching, scholarship, research, and other similar purposes; and facilitating access to published works for persons who are blind, visually impaired or otherwise print disabled. (TPPA)

Technological Protection Measures (TPMs) and the Trans Pacific Partnership Agreement (TPPA)

The Marrakesh Treaty aims to bridge the gap between the interests of publishers and the print disabled community by creating exceptions to existing laws. Exceptions to rules can be tricky and even work against their intended purpose as described by Fitzpatrick in his discussion of the USA's role in alleviating the book famine. "The current legal landscape in national and international copyright law perpetuates the book famine, rather than alleviating it" (Fitzpatrick, 2014, p. 154-155).

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Fitzpatrick describes how, in America under the Digital Millennium Copyright Act (DCMA) publishers may place Technological Protection Measures (TPMs) on their digital works stopping them from being accessed in multiple ways. Legal protection makes the removal of these locks illegal, even though legally print disabled people are entitled to use screen reader software or text to speech that enable a text to be read aloud via a device. The sale, manufacture or trafficking of technologies that disable TPMs is also illegal in America. The Max Planck Institute claim that the “right to hack” TPMs would be problematic because many authorized entities would not have the capabilities to do so and would need to outsource this work, incurring more costs. They believe that a licensing system with clear directives on duties would be more effective (Max Planck Institute, 2015, notes 41-42).

“In response to the DMCA’s impact on the print-disabled, the Librarian of Congress granted an exception that allows assistive technologies such as read-aloud functions or screen readers in the use of ebooks. Although this exception protects print-disabled users from liability under the anti-circumvention provisions of section 1201(a), it does not grant access to the technology banned under section 1201(b).¹³⁶ Thus, the technology ban makes the rulemaking exception ineffective for its intended beneficiaries” (2014, Fitzpatrick. S., p. 154-155).

Library manager Chris Pigott describes how the Blind Foundation library balance the rights of users and rights holders. He says they are aware of their special exception and work carefully to ensure they remain within the law. They value their relationship with publishers and do not wish to jeopardize them by compromising on security. “If for example our Booklink app was available freely to everyone in the country, it would

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compromise the ability of authors and publishers to get a return on works” (personal communication, 2016, April 7). The Blind Foundation offer access to their app Booklink to all print disabled New Zealand citizens and are working to restrict unauthorized sharing as it grows in popularity. “We’re all for greater access to information, and more streamlined copyright clearance, and more people having access to our collection, but we do position ourselves clearly inside the parameters” (personal communication, 2016, April 7).

The value of existing good relationships with publishers does not seem to be taken into account by the commentators writing from a legal perspective but it is these relationships which have been developed over years which form a core part of the Library’s service. Having long standing relationships with publishers means there is a mutual trust there facilitating the sharing of books and the creation of accessible formats that overrides any current legal pedantry. However, as Chris mentions, their app Booklink is predicted to grow, making unauthorized sharing more difficult to regulate, potentially compromising these vital relationships.

In New Zealand it is currently legal to circumvent TPMs but this will change under the TPPA. The UNDP & WBU recommend that countries who signed the TPPA make provisions under domestic laws for the circumvention of TPMs by print disabled people (UNDP & WBU, 2016). If New Zealand’s copyright laws are to mirror aspects of the USA under the TPPA we may be restricting access as fast as we allow it. The Marrakesh Treaty allows for the creation of an accessible copy of a work for personal use but under

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the TPPA these authors believe that we may not be able to legally circumvent the TPMs that shut out that access. If print disabled New Zealanders are not legally allowed to circumvent TPMs even if they have legally purchased a work, they are either denied access to that work or forced into committing a crime.

However, I am not sure that these authors' interpretation of the TPPA is correct. In Article 18.68: Technological Protection Measures (TPMs) it discusses the illegality of providing services or technology to circumnavigate TPMs in paragraph 1(b) but also states that:

(b) any limitations or exceptions to a measure that implements paragraph 1(b) shall be permitted only to enable the legitimate use of a limitation or exception permissible under this Article by its intended beneficiaries and does not authorise the making available of devices, products, components, or services beyond those intended beneficiaries... (Trans-Pacific Partnership Agreement).

This seems to indicate that authorised beneficiaries may circumnavigate TPMs for their own personal use but not set up shop to provide such services to non-authorised persons.

Turner points out that under the TPPA New Zealand will experience other strengthening of barriers to information access. With the signing of the TPPA copyright periods will extend from 50 years after the death of an author to the American period of 70 years. However, we do not get the accompanying American concept of "fair use" which is far more flexible than our "fair dealings" (Turner, 2015). New Zealand's National

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Interest Analysis on the TPPA states concern for “locking in” intellectual property laws now when future needs are known.

“The new obligations would, however, place new limitations on the Government’s ability to modify New Zealand’s intellectual property settings to ensure they are appropriate for our domestic circumstances. Intellectual property regulation needs to be able to respond to new circumstances and technological change. ‘Locking in’ settings could have future implications for innovation that flow on to the wider economy, as well as implications for the Government’s ability to meet other social, cultural and economic objectives. The implication of this loss of policy flexibility is difficult to predict. The extent to which it restricted New Zealand’s intellectual property policy settings from being modified to meet future Government objectives would only become known in the future. Whether locking in current policy settings materially disadvantages New Zealand depends principally on how prescriptive the relevant obligation is and the availability of other policy tools to achieve the relevant future policy objectives” (New Zealand Foreign Affairs and Trade, 2016, January 25).

Copyright law in New Zealand is going through major change with the implementation of the TPPA. It remains to be seen how the TPPA will interact with the Marrakesh Treaty in practice. “The passage of the Marrakesh Treaty led to a change in the TPP’s Limitations and Exceptions section of the Intellectual Property chapter, expanding the definition of a legitimate use as one that is “facilitating access to works for persons who are blind, visually impaired, or otherwise print disabled” ...This was of course a welcome change to see in the TPP” (Sutton, 2015). However, the issue of TPMs remains. The Marrakesh Treaty is “... the world’s only IP treaty dedicated to *harmonizing* exceptions and limitations” (Hughes, 2013). In the quest for harmony will the Marrakesh Treaty take a back seat to the TPP? The Marrakesh Treaty states;

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Article 1 Relation to Other Conventions and Treaties:

- Nothing in this Treaty shall derogate from any obligations that Contracting Parties have to each other under any other treaties, nor shall it prejudice any rights that a Contracting Party has under any other treaties

It is to be hoped that the good relationships that access providers like the Blind Foundation library have with publishers and organisations like WIPO will transcend the legal barriers that remain to make the accession and implementation of the Marrakesh Treaty as harmonious as possible for all stakeholders.

Study Objectives

Middleton states that “research produces its subjects (researchers) as much as it does other objects of inquiry. As with other kinds of ‘data’, documents continue to work on and produce their ‘researcher-readers” (Middleton, S. [ed. Delamont. S.] 2012. p. 310). The advocates for the blind, vision impaired and print disabled community are a very active, passionate and committed community. Synthesizing their submissions on the Marrakesh Treaty makes a compelling and powerful statement.

Through thoughtful interpretation I have woven together these stories to deliver their message by collectively amplifying their voices. In the spirit of open access, I have drawn together theory with many practical accounts of lived experience as a print impaired New Zealander. “The important thing is not numbers but sharing concepts with each other. More opinions make for a lively debate and should by consensus, collaborate these opinions into a collective view which stands scrutiny from any critic who believe Blind Citizens are weak. Let’s stand together and be strong advocates” (ABC NZ, 2015). As ABC NZ describe the power and potential of their organisation, so I hope to synthesize the views of service providers with the voices of blind, low vision and print disabled people to create a strong piece of work.

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Research Question.

1. How are New Zealanders responding to the consultation process on whether New Zealand should accede to the Marrakesh Treaty? What new local issues are raised?

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Sample

Submissions made to the New Zealand Ministry of Business Innovation and Employment in response to their discussion document “Marrakesh Treaty: Possible Accession and Options for Implementation” will be reviewed in relation to international discourse on the Marrakesh Treaty. Other documents will be selected on the basis of relevance.

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Limitations and Assumptions.

This project will be necessarily limited by its size to exclude the views of all print disabled New Zealanders and their information providers who have not responded to the NZMB&D discussion document by making a public submission. If they have either made a submission requesting it remain out of the public domain or not made a submission it is beyond the scope of this project to include their point of view. Supplementary interviews and surveys will not be conducted. It is assumed that all major players in the business of providing information services to print disabled New Zealanders will be aware of the Marrakesh Treaty and will hold publicly available opinions on this subject.

An attempt has been made to employ an emic focus by using the submitters' own voices to express their views as far as possible. However, as the researcher is not a print impaired person or an official provider of information services to the print impaired community, this limits the depth and success of this focus. The researcher has experience running reading groups for older people, homeless people and prisoners that contain print impaired participants and currently works at the University of Auckland Library in an enquiries based position serving students. This background has provided some grass-roots understanding of several of the issues raised within this study. The researcher does not have a legal background so any legal discussion is limited by this factor.

Methodology

The methodology of qualitative document analysis will be employed to glean the most information from a small data set. “The rationale for document analysis lies in its role in methodological and data triangulation, the immense value of documents in case study research, and its usefulness as a standalone method for specialized forms of qualitative research” (Bowen, 2009). There are 29 submissions that have been made to the NZMB&D discussion document for the Marrakesh Treaty. The small number and the diversity of the groups and individuals making these submissions meant that quantitative analysis seemed inappropriate.

Qualitative document analysis has many advantages for a project of this small size. Because it requires selection rather than gathering of material it is efficient and cost effective. The documents are also in the public domain so it is not necessary to get ethics approval or rely on others to provide data. Documents are also stable and non-obtrusive. Disadvantages to this method include biased selectivity, the potential for insufficient detail and irretrievability (Bowden, 2009).

The researcher will attempt to represent the position of each author as faithfully as possible by exploring as many themes as is practical within the scope of the project. An emic focus will be therefore employed in an effort to represent the setting from the perspective of the print impaired community and their information providers. An emic focus may be described as “of, relating to, or involving analysis of cultural phenomena

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from the perspective of one who participates in the culture being studied” (Merriam Webster, 2013). Reading statistics cannot provide the level of understanding as a life experience related in the first person. Information access issues are pervasive in the lives of print impaired people as described by a blind restaurant customer who was told “If you can’t read the menu, you can leave” (Frank, J.J. 2003). Stories allow us to empathise. The everyday lived experiences of being print impaired in an information rich society were then woven into the larger story of accessibility.

A qualitative approach allows for the themes to overlap, emerge and fade in their various intensities in a natural way. “Qualitative research records, interprets and explains the rhythms colour and dynamics of everyday experience” (Middleton, S. [ed. Delamont. S.] 2012. P. 302). The submissions themselves are also dynamic in that the Blind Foundation’s submission is a long detailed document informed by a survey of over 600 BF members, other submissions from individuals were extremely brief and concise in content. Themes that some submitters are passionate about may be skimmed over or briefly mentioned by others.

Methods of data analysis

The submissions were compared thematically with international and academic discourse used as supplemental material to predict what issues may arise from NZs potential accession to the Marrakesh treaty. Patterns and relationships necessarily arose through a process of discovery. The discourse on the Marrakesh Treaty is interdisciplinary in nature as there is an intersection between the law, information studies, human and digital rights, new technologies, disability issues and other factors. It was anticipated that this diversity of ideas would bring a richness to the findings. It was necessary to select the supplementary materials extremely carefully as each citation would be representing many others whose voices were excluded due to the small size of the project. “Also, the researcher should ascertain whether the content of the documents fits the conceptual framework of the study. It is necessary, as well, to determine the authenticity, credibility, accuracy, and representativeness of the selected documents” (Bowden 2009).

Progressive focusing was employed with the data collection process adjusted as it became apparent that new relationships needed exploring or additional concepts were needed (Parlett & Hamilton 1976, cited in Bowen 2009). Both local and international discourse was compared thematically with the submissions to the NZMB&D discussion document to predict how the Marrakesh Treaty may impact print disabled New Zealanders and their information providers. “Thematic analysis is a form of pattern recognition within the data, with emerging themes becoming the categories

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for analysis (Fereday & Muir-Cochrane, 2006). The process involves a careful, more focused re-reading and review of the data” (Bowen, 2009). The submissions were coded line by line with the themes of:

- education
- definition of terms
- who should have access/ “beneficiary persons”
- braille and accessible formats
- authorized entities & copyright issues & commercial availability
- dis/empowerment & human rights
- technology

There was much intersection within the themes and the theme “braille and accessible formats” was ultimately merged within the other themes during the writing process.

Middleton (Middleton, S. [ed. Delamont. S.] 2012, p. 302) states that documents range widely in size and scope and are subject to the potential difference in interpretation according to the researcher’s disciplinary orientation. This is particularly appropriate to consider here as many diverse disciplines other than information studies are mined for supplementary information. This project contributes to a multidisciplinary topic which has made it intriguing to work on for as ABC NZ have said, “The fluid nature of technology, invention, cultural attitudes, and social growth will always render the topic of access a dynamic and ever changing discipline of study” (ABC NZ, 2003, p. 85).

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The following section provides background information on the print impaired community of New Zealand exploring their information requirements, new assistive technologies and the barriers faced by New Zealanders in accessing these technologies.

Background

1. Who are the print impaired community in New Zealand?

According to Statistics New Zealand 24% of New Zealanders identify as disabled, meaning that 1,062,000 people have a permanent condition that restricts their everyday activities. This is more likely to be a physical impairment in older people or a learning disability in children. These numbers have gone up by 20% since 2001 partly because of our ageing population and possibly because of improved methodology in data collection and higher rates of reporting. The origin of disability varies according to age. 42% of disabled children were born with an impairment. However most adult disabilities are the result of illness or disease. 53% of disabled people have multiple impairments.

- 59% of people over 65 have at least one impairment.
- 20% of adults under 65 are disabled.
- 11% of children are disabled.
- 52% of disabled children (6% of all children) have learning disabilities.
- 5% of New Zealanders have difficulty learning new things as a result of disability.

Statistics New Zealand states that New Zealand currently has 168,000 print disabled citizens, however The Dyslexia Foundation of New Zealand estimates that approximately one in ten New Zealanders are dyslexic including 70,000 school children. It appears therefore that some people with learning disabilities like dyslexia who struggle with numeracy and literacy are not included in the Statistics New Zealand

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figure of 168,000 print disabled people. The Dyslexia Foundation states that the oral delivery of information (including use of audio books) is an important tool for dyslexics.

Below are the definitions of the term “print disability” from both the Marrakesh Treaty and Section 69 of the New Zealand Copyright Act. (Section 69 allows accessible copies to be made of any New Zealand published text for print disabled citizens.)

Print Disabled Person/ Beneficiary Person

Article 3 Marrakesh Treaty

Beneficiary Persons

A beneficiary person is a person who:

(a) is blind;

(b) **has a visual impairment or a perceptual or reading disability** which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or

(c) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading; regardless of any other disabilities.

New Zealand Copyright Act Section 69

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

is blind; or

suffers severe impairment of his or her sight; or

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(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.

In the Marrakesh Treaty, provision is made for reading disabilities and in the NZ Copyright Act inclusion is offered to those handicapped with respect to visual perception. A distinction is made between visual perception and the severe impairment of sight. This implies that the impairment is a cognitive one. However, dyslexia was only officially recognised by the New Zealand Government as a condition in 2007. There may be a gap here where accessible formats of texts and the services around their provision may have a broader client base in New Zealand than expected.

Vision impairment affects:

- 4% of men and 5% of women
- 1% of children
- 11% of adults over 65
- 2% of adults aged 15-44 (Statistics New Zealand)

Macular degeneration is the most common cause of blindness affecting 1 in 7 of all New Zealanders over 50. If left untreated it causes blindness within 2 years. Macular Degeneration New Zealand (MDNZ) estimate that the numbers of people with macular degeneration will increase by 70% by 2030. Many older people are unaware of the risks and unaware that they have it (MDNZ). Another leading cause of blindness in New Zealand is diabetes, which currently affects 5-7% of our people. Maori, Pacific and Indo-

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Asian peoples are three times more likely than European New Zealanders to be affected. A recent study showed that retinopathy, the degeneration of the eye due to diabetes, was present in 19% of diabetics who were tested (Papali'i & Dalziel, 2013).

What is it like to be an older New Zealander who has become blind in later life?

- Many have low confidence and find it hard to get used to not being able to read.
- Arthritis and loss of sensation in the fingertips may further complicate access to information- physically preventing use of digital technologies like apps which require sophisticated touch screen manipulation.
- Most do not have Braille literacy.
- They may be afraid to go outside or do simple things like make a cup of tea.
- Many have multiple impairments, resulting from diseases such as diabetes.

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2. What are the information requirements of NZs print disabled community and how are they currently being met by information providers?

Older New Zealanders are already vulnerable to information access issues like the digital divide, isolation and poverty. When disability is added serious barriers arise that may seem insurmountable to the affected individual. Most Blind Foundation Library clients are not born blind so cannot read Braille or confidently interact with the world at large. They are dependent on this service which forms an essential link with the world for them. In a site visit to the Blind foundation library in 2015 I was able to discuss with the librarians the significance of their work for library users:

What does the Blind Foundation library service mean to its patrons?

- The Blind Foundation Library service is a large part of their life.
- Library patrons living in rest homes say that sighted residents are jealous because they receive “presents” in the mail, get picked up and taken out and can ring and chat on the phone.
- Patrons in their own homes enjoy the courier visits and the company of the well-known voices narrating the audio books produced in house at the Blind Foundation- there is a sense that “George is in my home.”

The Office for Disability Issues states that poor literacy causes problems for many disabled New Zealanders. Low levels of Braille and sign language literacy

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contribute to communication barriers. “The ability to use Braille is universally recognised as one of the most efficient tools for literacy and numeracy among blind and vision impaired learners, and to observe that only 6% of students in New Zealand, at the end of the assessment period in question, are using Braille as a primary learning medium is nothing less than appalling” (ABC NZ, 2003). There are also significant communication barriers for disabled people stemming from the ill-informed attitudes and prejudices they encounter in society. “Disabled people, especially those with psychiatric or intellectual impairments, are often shut out of social networks and full participation in community activities, because people are ignorant or fearful of behaviour they perceive as different” (Office for Disability Issues).

In a recent study even university level print disabled students struggled to access information on catalogues and databases, encountering a range of barriers:

Students indicated frustration with the search process and their comments ranged from: “I don’t really know what I’m doing. I spend a lot of time and sometimes end up with nothing” to “I find it difficult and time consuming it seems to take longer for me than for others (Dermody & Majekodunmi, p.8, 2011).

ABC NZ state that the Blind and Low Vision Education Network New Zealand (BLENNZ) currently face challenges with the modern learning methods, “One major challenge is that many schools nowadays are moving to technology-based learning and often these systems are designed in a way that makes them inaccessible for blind and vision impaired students” (ABC NZ, 2015). BLENNZ themselves feel confident that the

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Marrakesh Treaty would remove some information access barriers for their students.

“This is really exciting and it will be wonderful for BLENNZ students if the Marrakesh Treaty is ratified by New Zealand” (Blind and Low Vision Education Network New Zealand, 2015).

ABC NZ have previously suggested that legislation is required to ensure for students that all their textbooks will be preserved, collected, and quickly made available by publishers for production into Braille. They also believe that a child should have a legal right to be educated using Braille if they choose to or need to (ABC NZ, 2003, p. 50). ABC NZ suggest throughout their works that good intentions are not enough and that their right to access information quickly, in their chosen accessible formats needs to be protected within the law. Clive Lansink points out that New Zealand, unlike other countries has no specific legislation protecting disabled people’s rights to equal access to online information sources and websites, relying instead on the Human Rights Act 1993. “This Act requires organisations, both commercial and non-commercial, to take reasonable steps to avoid discriminating on the grounds of disability. When discrimination occurs, the organisation concerned is required to show that it would be unreasonable to avoid this happening” (Lansink, December 11, 2013). ABC NZ have made submissions to the Human Rights Commission calling for comprehensive reviews on web accessibility. Another of their recommendations suggests that Braille be recognized alongside the other official languages of New Zealand.

Adopt legislation recognising that Braille is a primary tool of hard copy access for blind and vision impaired people in New Zealand, and requiring that it be made

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available to the community on the same terms that literature in other languages are made available to non-English speaking populations. Clearly Braille is not being characterised here as a different language, but it is sufficiently unique as a tool for access that it should be recognised as such and made available on the same basis as are other languages which are officially acknowledged in this Country (ABC NZ, 2003 p .64).

Removing copyright barriers to sharing books across borders or allowing the creation of any book into an accessible form would facilitate the services currently provided by the Blind Foundation library that patrons find so enriching to their lives already. The library believes this to be the simplest way to open up access to a greater range of books for print disabled people and also to make the most of their limited resources.

This would free up resources to make audio books in Pacific languages and Te Reo. This is not currently feasible because the user group for these books is a minority within a minority. However, both Maori and Pacific Islanders have higher rates of disability so the requirement for these books may grow over time. The Max Planck Institute adds that while it may be relatively easy to get reasonably priced commercial copies of accessible texts in popular languages like English or Spanish,

“In contrast, the provision of a limitation or exception will be of significant importance to works of smaller language families, as it is presumable that such works are even more rarely available in an accessible format than works of larger language families. In other words, the statutory limitation or exception in no way loses its relevance by way of a subsidiarity rule”

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(Max Planck Institute 2015, note 29).

Allowing the cross-border exchange of accessible formats of texts would also allow New Zealand's growing immigrant communities to have access to a large range of audio books in their languages of choice. Allowing cross-border exchange would provide for the first time instant access to digital libraries from many different states, this is also a huge leap for developing countries where currently less than 1% of published works are available in accessible formats (World Blind Union, 2013). The Marrakesh Treaty... "is the first international IP treaty to address the problem of cross-border access to copyright works" (Trimble, M., 2014). The provision of accessible resources in indigenous languages would also allow the Blind Foundation to fulfill United Nations guidelines on human rights- the right to participate in cultural life (Odello, M., 2011).

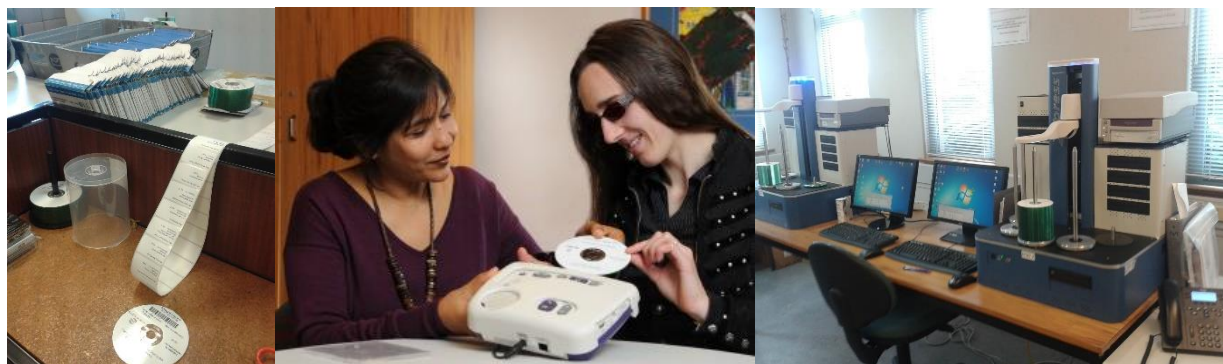
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3. How are new assistive technologies being implemented and what are the barriers print disabled New Zealanders face to accessing them?

The Blind Foundation library are the main information providers for older blind New Zealanders. Public libraries also provide audio books but there are access issues with using their cataloguing system and also they do not use the DAISY formatted audio books, meaning the books are more difficult to navigate and cue.

- Only 7000 print disabled New Zealanders are Blind Foundation Library patrons.
- 80% of Blind Foundation clients are over 75 years old.
- Only 0.8% of New Zealanders over 75 use the internet (Blind Foundation)

The Blind Foundation state that although 80% of their clients have internet access in their homes, only 20% use it themselves for things like downloading audio books.



Centre image: Blind Foundation website. Left and right photos of the Blind Foundation library: Kate Middleton.

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Their main information providing service is delivered via DAISY technology. Audio magazines and books are chosen by the patron from the library's extensive lists of genre then loaded onto CDs containing up to 40 hours of recording, which are posted for a loan period of 6 months. Patrons can deselect items on the basis of sex, bad language or violence as these are marked up. (This is particularly important to fans of the older romance style of novel as the romance genre has changed greatly over the years.) The gender of the narrator and whether it is a synthetic or human voice is also marked up as patrons may have strong preferences.

Image below: The DAISY Consortium newsletter "The DAISY Planet" (August 2011.)



The DAISY player is a portable CD player with simple cueing functions that allow bookmarking and navigation of chapters and pages. DAISY players also have a sleep timer so users can go to sleep with a book. Magazine CDs have a hole punched in the cover so the patron immediately can tell what they have received by feel. A self-addressed envelope is included in the package so the patron just has to put the CD in and drop it in a mailbox to return it. Older patrons are very comfortable and confident with this service and are very resistant to change.

The Blind Foundation is limited in their provision of services by budget restrictions. They are also restricted from broadening their client base too far by their

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mission, the people who donate their funds do so in the name of blind people. “This makes it difficult for us to provide library services on the same basis as we do for our own membership, that is, at no charge. It costs us about \$500 a year to provide services to each of our library users, and for that they receive as many books as they would like to read and access to 20 different magazine titles on a regular basis, all delivered directly to their letterboxes” (Hogan and Nasmith, 2011). The exception is with regards to their new app Booklink. Booklink is accessible to all print disabled New Zealanders and is not restricted to Blind Foundation clients. Access to this service does not require the same intensive use of human resources as other services they provide (like posting out audio books on CD or printing Braille books.) Also their client’s requirements will change over time as younger generations of print disabled people will be digital natives. Booklink has the potential to serve all future print disabled New Zealanders with access to a device and the internet.

Image below: Blind Foundation website.



New technologies such as the Braille tablet will also serve new generations of blind people but currently, these are very expensive. Traditionally mechanical Braille displays that work with digital devices are very expensive and

small as they need to be hand assembled and the more lines of Braille, the more expensive they are. Commonly the device provides only one line of Braille that

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refreshes as you read making it difficult to refer back to a part of the text you want to go over again. The Blind Foundation has recently released a small device of this type called the Orbit (pictured above) which they helped to develop, providing research and development funding, expertise and testing. The Orbit is the first reasonably priced refreshable Braille device, bringing the cost down from about \$3000 to \$742 (Blind Foundation, 2015).

To get an idea of the size of braille volumes below left is a comparison of a book in regular print, large print and in braille volumes. In the right image the five volumes pulled out comprise one book of text. These hefty tomes may be difficult for older people or people with other impairments to manipulate. Digital refreshable braille devices are light and easier to manage in this respect.



Blind Foundation library resources. Photos: Kate Middleton.

Newer technologies similar to an LCD are being developed to make a full size tablet that would make musical scores, diagrams and equations accessible. Currently

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users would pay around \$50,000 for a Braille reader that is about half a page in size. A reasonably priced Braille tablet will promote greater literacy in science and maths. Synthetic speech readers are basically free however (if you can access a modern PC.) One of the inventors Sile O'Modhrain argues that listening to synthetic speech is not necessarily the most rewarding way to interact with literature and maintains that Braille provides a better quality reading experience for visually impaired people (Radio New Zealand National, 2016, March 4).

The rapid pace of technological change has also meant that many common technologies have become less accessible for blind and vision impaired people. "With the increasing number of sophisticated appliances and electronic items appeared on the market, and with the growing complexity of website design, we as blind people find ourselves steadily losing ground in our ability to cope with these highly vision-dependent products and services" (ABC NZ, 2015). ABC NZ maintain that blind people may be unable to use their smartphones for banking, texting or emailing because these capabilities are accessed through digital display which blind people cannot independently access (UNCRPD – Article 9). Voice recognition software may help but is not universally available. Other technologies which have the potential to be accessible, like ATMs and eftpos machines are not standardised in design so blind people must still rely on third parties, exposing them to risk from criminals (UNCRPD – Article 9). "Flat-surface visual touch controls, and screen-driven items without audible signals to confirm selection of features, are commonplace in what has now become a more visually oriented world" (UNCRPD- Article 9).

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CAPTCHA is another commonly used technology that excludes blind people.

“CAPTCHA is a process that attempts to determine whether the response received by a server has come from a human (who is obviously using a computer) or from a computer under the control of an automated (and presumably hostile) application” (Lansink, 11 December, [blog] 2013). The most common implementation of CAPTCHA is a visual test where words are distorted. The expectation is that a human can decipher the text but a computer couldn't. Lansink maintains that this system inherently excludes the blind and low vision community by presenting an insurmountable barrier.

Image: Quantum website.



One exciting piece of information technology is the Australian product RealSAM. RealSAM is a hand-held device resembling a small mobile phone that promises to be “an accessible media resource for people who are not confident with technology” (Round Table on Information Access for People with Print Disabilities, 2016).

It runs solely on voice-input, (as desired by ABCNZ) instead of touch-screen or keypad commands. RealSAM has one button which you press when you speak to it, like a walkie talkie. It is connected via a mobile network so no computer is required. You can ask RealSAM in a normal voice “Get me BBC podcasts on astronomy” or “read me the

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business section of The Times.” RealSAM will give you numbered options to choose from. It is incredibly simple and accessible and content is constantly increasing and improving.

RealSAM can also access audiobooks from Project Gutenberg and Bookshare. It can tell you your location when you are out and any points of interest in the area. This is the type of technology that could prove a game changer for older blind or low vision New Zealanders if it became available here. This device would be an excellent way for The Blind Foundation library clients to access their services. Because it can be worn on a lanyard it is more portable even than the DAISY player. Magazines and newspapers may also be accessed and navigated instantly with RealSAM which would be very appealing to Blind Foundation library patrons.

While talking books may appear to be similar to audiobooks and, indeed, the two book formats share some basic features, an important distinction exists. The production of talking books for print-disabled users by special talking book agencies is made possible by exceptions in copyright laws. In contrast, because audio books are commercially produced for general use, they must be copyright compliant (Roos, 2007; Nilsson, 2008). However, this distinction may eventually become obsolete due to recent developments in e-book publishing that enable electronic texts to be readable in their original formats, with the help of assistive technologies such as synthesised speech (Petri, 2012).

The New Zealand Herald currently offers a phone accessed audio version of their news for registered members of the Blind Foundation which is appreciated by ABC NZ (they awarded the Herald their “Extra Touch” commendation for 2004). News items are

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selected using the keypad of the phone and synthetic speech reads the chosen material. ““Information is power and being able to read the Herald independently, and make my own choices is so invigorating and empowering” says Carolyn Weston, National President of the Association of Blind Citizens of New Zealand” (ABC NZ, 2003 [media release]).

The Blind Foundation Library are restricted by strict copyright laws that mean that instead of file sharing existing audio books with offshore libraries they waste resources making duplicates and waiting for publisher permissions to do so. They currently have access to the databases BookShare and TIGAR and aim to be fully digital by 2020. Their app Booklink allows patrons to select books from the catalogue individually by title (instead of choosing a whole subject area) and download them instantly.

The Blind Foundation library currently have a backlog of 1800 book requests pending using the TIGAR service. (Trusted Intermediary Global Accessible Resources) TIGAR allows special libraries for blind and print disabled patrons to share their catalogues (it is hosted by WIPO). Using TIGAR libraries may request titles from one another. However, there are long waiting periods for copyright permissions from the publishers before they may share books. Audio books are very expensive to produce so if this sharing system can improve under the Marrakesh Treaty it will free up a lot of extra books and make patrons happy. Access is also provided for patrons of the Blind Foundation library to Bookshare- the largest accessible online library for patrons with

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print disabilities. Over 120,000 books are available and it's free for the first year. (After that it costs the patron \$50 per year.)

There is also a growing interest from publishers in accessible formats. The Agatha Christie continuation novel *The Monogram Murders* was released in 2014 simultaneously in accessible formats by request of the estate. The publisher HarperCollins stated that it was easy to do because they were translating into other languages so the digital files could be also used to make accessible formats. SAGE also have a partnership with the American charities RNIB and Dyslexia Action where they make 2000 titles accessible for users of the Load2Learn service. RNIB are impressed with SAGE's proactive attitude and say they are the first publisher to provide in bulk to support their services. Francis Lincoln has also used Braille and innovated in the area of QR codes inserted into the Little Tim book series, linking smart phone users to an audio recording of the story performed by Stephen Fry. Publisher Rachel Williams states "QR codes are interesting...it's an economic way of making audio accessible" (The Bookseller, 2014. p. 7).

Although there are now internet services providing audio books and software that may translate digital texts into sound these services are beyond the reach of many of the elderly patrons of the Blind Foundation Library. They are on the wrong side of the digital divide. Even younger working people experience barriers through a lack of training opportunities to learn how to use new technologies, a computer programme that may take a sighted person half a day to learn independently is not as accessible to a

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visually impaired person. This is particularly concerning when technologies are updated in the workplace and training and/or the necessary adaptive technologies are not available resulting in a blind or vision impaired worker not being able to continue with all or part of their job. Sometimes tasks are allocated to co-workers which causes resentment or embarrassment.

“Access to a computer with adaptive software for use by blind and vision impaired people remains a luxury for many, training to effectively use such technology is a scarce commodity, and immediate access to technology is not always the most convenient method for reading. Consequently, progress in the technological arena alone is not sufficient in terms of offering quality access to official information for blind and vision impaired residents living in New Zealand...A similar if more fervent conclusion must be made with respect to the availability and accessibility of written information in the private sphere of New Zealand life” (ABC NZ, 2003).

Within the private sphere of New Zealand life social media is another form of popular culture that may be exclusive due to a heavy reliance on imagery. Facebook are tackling this issue by providing a feature that uses AI to recognize the content of photos and then visually describes them to users. Visually impaired Facebook engineer Matt King states that,

“Inclusion is really powerful and exclusion is really painful. The impact of doing something like this is really telling people who are blind, your ability to participate in the social conversation that’s going on around the world is really important to us. It’s saying as a person, you matter, and we care about you. We want to include everybody - and we’ll do what it takes to include everybody” (Martin, 2016, April 5).

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Television and movies are another source of both information and popular culture that can be made more accessible for print disabled people. “People with disabilities are entitled to be fully involved in the culture of Society, and there is no doubt that television and the media in general are central to our culture.” ABC NZ are impressed that the NZ government has recently allocated \$400,000 for screen description and captioning. Screen description has existed overseas for more than 30 years but is relatively new here. “Television and movies play a crucial role as a social and cultural medium. As blind people we are thus currently denied access to a major agent of influence and change in society” (ABC NZ, 2016). An audio description of visual action such as expressions and movements allows blind people to get a richer interpretation of movies and television. This service is freely available through Freeview decoders. Currently there is approximately 15 hours of audio described content available per week which will increase to about 30 hours. Again, ABC NZ express frustration that as blind people, the programmes that are accessible to you are chosen for you not by you. ABC NZ have a strong record for fighting the paternalism that many disabled people encounter and prompting cultural change within agencies. “The collective advocacy of blind people speaking for ourselves steadily encouraged and sometimes even forced the [Blind] Foundation to confront its historically paternalistic attitude to blind and vision impaired people” (ABC NZ, 2013).

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Research Question: How are New Zealanders responding to the MBIE's discussion document on the Marrakesh Treaty and what other local issues are raised?

There were 29 submissions made to the MBIE's comprehensive and well written discussion document on the Marrakesh Treaty, from 11 individuals and 18 groups. Questions were written within the document itself and a questionnaire was also provided with 39 comprehensive questions. Many submitters congratulated the ministry for creating such a well thought out and constructed document. The themes below reflected the interests of the submitters and also the guidance of the ministry as the responses were given to very specific questions. One glaring omission is that of the TPPA which will affect all stakeholders.

The six themes were as follows: education, definition of terms & transparency, who should have access "beneficiary persons", authorized entities & commercial availability, empowerment & human rights and technology. These themes necessarily intersect and overlap but have been teased apart to create a narrative flow. These sections may read slightly awkwardly as sources are named in a way that reads a little officiously. The reasoning behind this is that it is relevant to know exactly who is speaking since the submitters are so diverse, particularly the groups which serve the needs of different stakeholders.

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Education.

Eleven of the groups and three of the personal submissions specifically mentioned education issues for print impaired New Zealanders. There is a consensus among them that wait times for accessible format copies (AFCs) are too long for students and costs for organizations are high. Many submitters felt that accession to the Marrakesh treaty would help New Zealand fulfill its domestic and international obligations to the Convention on the Rights of Persons with Disabilities (CRPD) and Kia Orite New Zealand Code of Practice for an Inclusive Tertiary Environment for Students with Impairments to provide reasonable accommodations for students with impairments.

“As more high production countries accede [to] the treaty, New Zealand will be left behind and our blind and low vision learners will be disadvantaged when they can least afford it. It is difficult to see how New Zealanders would be able to benefit from the potential which electronic technology provides ...if we remain outside such a critical international agreement.” (BLENNZ)

Alongside human rights, there is also a censorship issue to consider. BLENNZ point out that a form of passive censorship is necessarily made when choices are made by information access providers who are short of funds and must choose between requests. When resources are tight prioritisation is made between different formats or requests. The Blind Foundation (BF), Blind Citizens New Zealand and also Public Libraries of New Zealand also use the term “passive censorship” to describe the control of AFCs by third parties. The slowing of access due to processes, workload or collection policies may also be considered passive censorship. The BF state that providing an

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exemption for print impaired people to independently make AFCs or access directly from overseas providers removes this barrier, getting the client “closer to the anytime, anywhere model prevalent for people who are not print disabled.” The Dunedin City Council concurred that cutting out the middle man would speed up access to AFCs.

One of the personal submitters noted that “In terms of education, gainful employment and social inclusion, blind and print impaired New Zealanders often rank well below the achievements of their peers and thus below their potential productivity.” This claim may be verified by viewing the 2013 Census, (NZ Statistics). The Disabled Persons Assembly of New Zealand (DPANZ) point out that the Marrakesh Treaty would support the CRDP as the *minimum* standard for participation in society. They point out that the CRDP states that inclusive education shall be ensured at all levels. The CRDP has a detailed section on education that emphasizes the need for the state to support the impaired individual to achieve to their highest potential. Article 24, section 2:5 agrees that “Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.”

BLENNZ believe that the Marrakesh treaty would open up access to tertiary study, supporting this goal of full inclusion. In their experience many disabled students struggle to complete their studies due to difficulties accessing texts in a timely manner. This limits not only their ability to get qualifications but also work. The respondents to a Blind Foundation survey cited in their submission also said that access to books was a

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precursor to success within education and employment. The public libraries considered that limited access to information, limited accessible titles and long waits for texts to be reformatted were a major impediment to career training.

Universities of New Zealand also clearly stated their obligations to print impaired students under Kia Orite New Zealand code of Practice for an Inclusive Tertiary Environment for students with Impairments, to provide reasonable accommodations for them. The universities felt that there were three challenges to achieving this accommodation that may be surmounted by accession to the Marrakesh Treaty;

- Students are currently waylaid in their studies by getting late access to their texts through having to wait for them to be made accessible. (Print impaired students currently need to plan courses in advance to ensure that resources are ready-limiting their flexibility in course selection.)
- Student's independence is restricted through lacking copyright permission to instantly access an available electronic text, thus disempowering them by necessitating intermediary assistance.
- The high costs of conversion and editing of course materials is a significant amount of money that could be redirected into the provision of other services for students with impairments, improving their university experience.

Many of the submitters commented on the financial wastefulness of duplicating existing texts and how that impacted on charities, educational institutions and the

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Ministry of Education. The time consuming process of Optical Character Recognition (OCR) is commonly used by New Zealand universities to make accessible copies of texts, if translation from another language is required this process is more expensive and onerous. This inefficiency is also lamented in the broader discourse on print impairment and education. McNaught and Featherston (2012) state that “For a variety of reasons, disabled learners in further and higher education tend to have their alternative format needs met by labour intensive processes.” They believe this system to be inefficient, expensive and also discriminatory. (As it is expensive it may not be offered to dyslexic or other print impaired individuals as there are many more of them compared to numbers of vision impaired students.) They also point out that not all digital platforms are equally accessible to different forms of print disability.

The Blind Foundation add that most accessible content in New Zealand is produced by them through funds donated by New Zealanders. BLENNZ and tertiary institutions may produce large print and OCR copies of books but only the Blind Foundation produce braille, a labour intensive task. Their members describe their frustrations below:

“I have experienced the annoyance of knowing a book is available in braille in Australia, but not being allowed to have it sent here because of copyright clearance. Knowing something has been brailled and not being allowed to read it is frustrating beyond belief.”

“I work with children who are blind or have vision impairment. It is vitally important that children have access to as many different reading experiences as possible to develop appropriate reading skills. The range of braille or talking books for children is very very limited.”

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The experiences described by submitters are reinforced by international discourse. Shah (2011) states that “Typically, students who can’t read traditional books begin falling behind on the first day of school.” The CRPN goals of high achievement and integration for print impaired students may be furthered by access to digital collections and technologies. Shah details the positive effect for American print impaired students within mainstream education that free access to Bookshare has had allowing them to integrate seamlessly into class reading activities. “Because of their disabilities, K. and M. struggle with traditional printed text. But, using Bookshare, a nonprofit that provides free electronic copies of books to students with certain disabilities, both boys watched computer screens scroll through the text of *The Chocolate Touch*, listening to it at the same time.” “Students who once found reading to be a chore, they started saying; “I want to read this other book on my own.” They want to read.” Shah stresses however that teachers must be trained to facilitate this integration. Teacher training is one of the things that may be funded if institutions do not have to pay to make duplicate copies of existing books (Shah, 2011).

Within the same article the general manager of Bookshare states “How do we use technology to make doing this cheaper and faster? When you think about education, that’s critical. When a student needs a book, they need a book” (Shah, 2011). The Marrakesh Treaty has the potential to further speed up access to books for students beyond the resources of services like Bookshare by sharing international collections but also by allowing students to make their own accessible formats. The

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Universities of New Zealand state in their submission that “more readily available access to accessible resources would positively impact the participation, achievement and enjoyment of study for students with print disabilities.” They point out that today’s students with disabilities are tech savvy and have a greater expectation of inclusion and consequently a greater experience of frustration if their expectations are not met. Allowing students to make their own accessible copies gives them the independence they expect.

Currently print disabled people may be forced into breaking the law to keep pace with their studies as described in one of the personal submissions discussing the importance of allowing print disabled students and their caregivers to make their own accessible copies of texts:

“Yes this is very important because if someone has made an accessible copy they can save others the time and effort required to make it again. As a student I found blind people doing the same course as me and we would share accessible materials- we were technically breaking the law but otherwise we couldn’t have completed our studies because the time it takes to make material accessible would have prevented us from having time to ever read the materials we needed. Sharing the workload meant that everyone could get on with their studies” (Individual Submitter 5).

Another personal submission supports this argument stating “Technically astute blind people currently ‘stretch’ copyright law by accessing books across borders, possibly illegally, and who can blame them when their own personal development and right to read what they want is at stake. Reading is for all” (Submitter 9). This

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perspective is backed by internet activists like Aaron Swartz (who was also one of the early architects of the Creative Commons license.) Swartz describes information sharing in a way that resonates with many people, particularly millennials. He states that “a piece of knowledge, unlike a piece of physical property, can be shared by large groups of people without making anybody poorer” (Swartz & Leibseig, 2015).

The law about what is stealing is very clear. Stealing is taking something away from someone so they cannot use it. There’s no way making a copy of something is stealing under that definition. If you make a copy of something, you’ll be prosecuted for copyright infringement or something similar — not larceny...Stealing, like piracy and intellectual property, is another one of those terms cooked up to make us think of intellectual works the same way we think of physical items. But the two are very different. You can’t just punish people because they took away a “potential sale”. Earthquakes take away potential sales, as do libraries and rental stores and negative reviews. Competitors also take away potential sales... (UTI interview with Aaron Swartz, 2004).

A point that the universities are uniquely conscious of is that tertiary students self-declare disabilities when they enroll or in a discretionary way during study. They emphasize that university is a safe place for disclosure but maintain that students may still be reluctant to declare their impairments and may attempt to cope alone without support. This means that statistics on impairments at universities may be much lower than the actual numbers. McNaught & Featherston (2012) believe that independent access to digital resources reduce the pressure to self-declare disabilities.

“Access to suitable learning resources is particularly difficult for students with print disabilities and a definite barrier to their participation in tertiary education. Better access to more flexible

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resources would help to ameliorate this barrier, improving student's choice of courses, ability to learn independently and reduce cost- for the universities as well as for the students themselves.”

The Blind Foundation surveyed 653 of their members about the Marrakesh Treaty, 74% of them said they could not access a book they wanted or needed because it was impossible to get an accessible format. “While I was studying it was common not to access the information I needed in a timely manner...not being able to access information for research and course completion was a major reason why I didn't finish my degree or take up further study.” 41% of the BF survey respondents said they had trouble completing studies because they could not access books. It may further be assumed that if there is anecdotal evidence within print impaired communities that studying is too difficult due to lack of access to AFCs then many people will choose not to take a risk on studying and potentially failing through no fault of their own.

The respect that the work of the Blind Foundation commands is evident from the submissions as many key points including the two listed below have been directly lifted from their submission and used in the submissions from Blind Citizens New Zealand and the Public Libraries:

“production of AFP is specialised and can be semi-automated in some cases like magazine styles and simple text but any graphic or pictorial content is very complex work and labour intensive NCEA maths book takes a trained braille producer 3-4 months. The ability to import this type of material...”

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“libraries and schools may use the treaty to obtain AFP directly without needing to involve a specialised AFP producer. These agencies are more likely to work diligently for print disabled clients where they are able to use non-commercial sources especially for electronic documents.”

The DPANZ also surveyed their members, who reported that they were missing out on education due to the unavailability of AFCs. DPANZ specifically mention the hardships faced by those print impaired people who do not qualify for Blind Foundation membership. Blind Citizens New Zealand add that people with dual sensory disabilities such as deafblind people also cannot access audio materials so are even more restricted. DPANZ felt the treaty would even the playing field for print disabled people. “With the ratification of the Marrakesh Treaty under Option 3 disabled people would be able to import accessible copies of textbooks enabling them to get an education on an equal basis with others.”

These findings are backed by a personal submission describing the experience of the submitter throughout his own education. The submitter thrived in the A stream at Auckland Grammar School with the support of volunteers then struggled at the University of Auckland to get Cs. The submitter subsequently obtained a scholarship to attend an international school that was focused on supporting blind students and attained the highest marks.

“I’ve had a wonderful and enriched personal and professional life but I’m sure I could have been more productive had I had better access to a wider range of reading material. The contrast between my dismal showing at university and much better performance at the specialised London Physiotherapy School for the Blind illustrates the difference access to books can make.”

Definition of Terms & Transparency.

11 groups and 2 individuals made specific comments regarding the necessity for clarification of terms. “Adding clarity to the exception is useful for all parties” (PAINZ). Some of the language regarding disability (impairment) was regarded as outdated and the need was felt for forward thinking terminology that would not be used to hinder future access. “One of the problems the Blind Foundation has had with section 69 in recent years is it is seriously out of date in terms of language and technology.” (BF) Currently there are “grey areas” within Section 69 and institutions may restrict access rather than risk legal problems.

One such grey area is whether “artistic works” should be included in any exemption. Many of the submitters specifically supported this change and the Blind Foundation state that it would remove confusion about the current terms “literary” and “dramatic.” BLENNZ add that this addition is forward thinking in reflecting the changing ways that content is published and looking to more works being multimedia in the future. (BLENNZ)

Blind Citizens NZ (BCNZ) believe “it would be useful to include a defined term that focusses on the needs of the end user rather than the format”. Technology is currently moving at such a pace that any specific technological terms may rapidly outdate. BCNZ

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state that “This approach will ensure that technological advancements are recognized.”

The universities also mention a preference for user focused language as a way to “future proof any legislative changes.”

In our view the role of prescribed bodies should be to work within the prescribed definitions of print disability and the qualifying formats. If providing greater clarity around the role and obligations of authorised entities, and making the role and obligations of prescribed bodies more explicit, [facilitates] greater understanding, yes this is supported. However, we do not believe the statutes should attempt to specify process, or limit which agencies might become prescribed bodies.” (BCNZ)

Universities NZ make the point that if there were more clarity around import and export between authorised entities in other countries it would give “those institutions who are risk averse i.e. most large institutions, confidence to share the content they have digitised.” The public libraries concurred stating that with clearer more straightforward definitions would be useful. “The more certainty we have about who we can provide service to, the more confidence we have that we are within the law.” This position confirms Lida Ayoubi’s argument that legal ambiguity creates fear within establishments and thus creates a barrier to access for print impaired people (Ayoubi 2015, p. 159).

There is a call for a straightforward definition for the term “print disability”. BLENNZ point out it is always useful to update language. They state that section 69 currently uses outdated terms which would not be used today like ‘handicap’. The Blind

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Foundation cite the New Zealand National Library definition (the National Library also have a print disabilities collection of audio books) which includes provision for such conditions as arthritis, dyslexia, hospitalisation, learning difficulties, medication or treatment side effects, multiple sclerosis, muscular dystrophy, paralysis and stroke:

“People with a print disability are those who cannot obtain access to information within a print format because they:

- Are blind or vision impaired
- Have physical disabilities which limit their ability to hold or manipulate information in a printed form
- Have perceptual or other disabilities which limit their ability to follow a line of print or which affect their concentration, or
- Cannot comprehend information in a print format due to insufficient literacy or language skills”

This definition is interesting and unusual in its inclusion of insufficient literacy as a print disability. The BF suggest that further technical advice on this point is required as other definitions are even more inclusive and encompass more cognitive causes of print impairment.

The New Zealand institute of Patent Attorneys point out that the number of individuals accessing AFCs is currently well defined using the current exception however, if it is extended clarity will be provided but the number of potential beneficiaries will significantly increase. “This underlines the need for transparent procedures on the operations of prescribed bodies in determining if an individual qualifies for the exception.” Copyright Licensing New Zealand (CLNZ) are also concerned at the current lack of transparency for the application of the commercial availability test within section 69 stating that they along with rights holders are “not

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aware of how it is applied in practice” (CLNZ). CLNZ feel guidance on compliance must be provided for “practices of prescribed bodies in relation to their use of the exception” (CLNZ).

The Publisher’s Association of New Zealand agree that there are currently problems with section 69 including those of transparency, confirming both Trimble and Ayoubi’s concerns:

While the two major prescribed bodies and rights holders have developed a positive and collaborative relationship, a lack of clarity under the existing section 69 exception may give rise to breaches of rights holders rights...The exception does not provide guidance on appropriate steps to comply with the commercial availability test or guidance on whether and how prescribed bodies should be required to make their practices and records available to others (PANZ).

BLENNZ believe that issues of transparency are best addressed immediately while monitoring the implementation of the Treaty. “A collaborative approach with rights-holders, Authorised Entities and the Ministry would be of value here” (BLENNZ). They believe that a mandated reporting system similar to TIGAR would “help with regards to transparency, and indeed the Authorised Entities’ ability to track how the Treaty is working. It does need to be simple and not onerous” (BLENNZ). The Public Libraries of New Zealand do not favour any reporting system that generates extra transaction costs or bureaucracy. They believe this contradicts the intention of the treaty and any system should be both simple and voluntary. (PLNZ believe that such a system may be worked out nationally between authorised entities, rights holders and MBIE.) BCNZ repeat this

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suggestion for a voluntary simple system adding that the data generated would be useful to understand how the Marrakesh Treaty is benefitting people.

Who Should Have Access? “Beneficiary persons.”

While there is little argument against blind or vision impaired people having free access to AFCs of books, issues arise for some stakeholders when caregivers are given free access. Conversely, all of the individual submitters responded that caregivers should be given access to AFCs. Authors and publishers are also concerned by the inclusion of less clearly defined issues such as dyslexia or dysgraphia which affect tens of thousands of New Zealanders, opening up access to many more users. These communities may not be members of organisations like the Blind Foundation who are trusted and have excellent working relationships with authors and publishers. Relinquishing the control that the BF currently provides as a gatekeeper is unnerving for rights holders as technology is moving at a rapid pace and copyright infringement is rife in the digital world.

The Blind Foundation concur with the universities in that their primary concern with the current exemption (section 69 of the Copyright Act) is the “relative lack of certainty about exactly who is permitted to access a print disability collection. This is double edged because a prescribed list could be equally problematic.” The Public Libraries also see this issue of definition as problematic “Technical advice on this point

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is needed. The definition should be sufficiently inclusive.” There is a consensus that it is the intention of the treaty to make legislative changes necessary to include broad definitions of print disability that include cognitive causes and support for New Zealand to embrace these changes. Blind Citizens New Zealand state that it is paramount to ensure that the legislation does not automatically preclude print disabled people who do not fall within it from accessing AFCs. BLENNZ point out the necessity for “a means by which people who are not members of such organisations could demonstrate their ability to meet the criteria.” Copyright Licensing New Zealand propose the Bookshare model for third party certification of disability but also suggest existing procedures may be useful such as NZQA’s requirements when considering an application for a reader-writer for exams.

DPANZ express similar concerns about the current reliance on organisations such as BF with their limited criteria for membership. (Retina New Zealand complain that print disabled New Zealanders are currently required to become associate members of the BF in order to gain access to Booklink stating this is counter-intuitive.) This is potentially an area of difficulty. Who would be qualified to diagnose a print disability and how would the qualification be communicated? PAINZ point to the TIGAR project as an example of how an AFC provider cooperates successfully with authorised entities. TIGAR provides the flexibility for each authorised entity to “determine... its own membership criteria” (PAINZ). Does New Zealand have a sufficient number of organisations serving these diverse print impaired communities or would existing gatekeepers like the Blind Foundation need to broaden their membership criteria? The

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University of Auckland “requires medical evidence or a report from a recognised learning assessor/ educational psychologist for registration and access to services.” The university believes that a one-time verification should be all that is required as students may be burdened by having to repeatedly prove their eligibility.

People First New Zealand is a disabled persons organisation run by and for people with learning disabilities. They provide self-advocacy. People First New Zealand provide a service called Easy Read where they translate information into everyday words and pictures. They raise the issue of promotion of the changes to legislation to people with low literacy or cognitive impairments who may not be aware of their new opportunities. CLNZ however, believe that the implementation of the Treaty would “enable easy discovery for New Zealanders who are print disabled...” PFNZ also note that “easy-read” is not mentioned as an accessible format and question whether it should be included.

Many People First New Zealand members have no or very low-literacy and require information in a more accessible format. Under the Marrakesh Treaty they would be considered print disabled however this is not a term that is known to them or used widely in New Zealand. Many People First New Zealand members would benefit from access to more accessible information, in particular audio and/ or speaking books (PFNZ).

The New Zealand Society of Authors are concerned that if the scope of the term ‘beneficiary persons’ is increased that measures are taken that only the “appropriate formats” would be provided to each individual that are appropriate to their particular

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impairment. “It is clear that a blind person should have access to braille formats but ... it is not so clear that all people with a visual perception disability should have access to royalty free audio books because there are varying degrees of the disability.” This level of specificity would demand a high level of third party involvement, removing the independence and empowerment of allowing beneficiaries to make their own AFCs in the format of their choice. This also discounts the majority of visually impaired people who lose vision in later life and do not have braille literacy. There is clearly a concern here from authors that their work should not just be given away freely.

The BF forcefully state the need to be certain that caregivers of print impaired people or third party helpers have access to create AFCs because the end user may not be physically able to manage the device being used. The Dunedin City council concurred that greater benefits and clearer rights would be provided with the extension of section 69 to include caregivers. BANZAT also supports caregivers access stating that it would increase the range of materials available and remove the current “doubt around the legality of print disabled individuals’ reformatting practices.”

BLENNZ also specifically addressed this issue pointing out the benefit to the BLENNZ community of empowering the parents and whanau who will be able to provide new levels of support for students. They state that freedom from third parties provides broader benefits such as facilitating autonomy and independence and creating understanding of both individual rights and responsibilities. The Universities of New Zealand reinforce this point, looking to Kia Orite’s key principle of independence for

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learners. They state that “if print disability includes people with limited mobility who may find it difficult to handle a book, it would be essential to include caregivers.” The Public Libraries reinforce this point, regarding it as a current barrier to access.

The NZ Society of Authors however, see disadvantages in giving caregivers access. They believe that “beneficiaries and their caregivers may be less careful keeping secure files or respecting the boundaries around the exception in the Act. It is also harder to monitor and respond to breaches at an individual level compared to a limited number of authorised prescribed bodies.” NZSA would like to see measures in place to ensure their rights as copyright holders are respected.

The Universities of New Zealand point out that most of the students served by Student Disability Services are not Braille users and require electronic versions of texts for magnification or other intervention. They state that “students with learning disabilities such as dyslexia or dysgraphia benefit from modifications that assist in their ability to read such as changes of font, background colour and use of text to speech software.” The universities stress that “by far the largest numbers of students who need assistance with print are students who have a learning disability which does not clearly fall within the print disability.” The greatest challenge the universities face in serving this community is a lack of electronic texts, particularly New Zealand and Australian texts. By broadening the definition of print disability these communities could be better served.

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Further to this they stress that students are often reluctant to declare disabilities or seek help from disability services. They may leave it until the last minute meaning that service providers scramble to accommodate them. If caregivers could make or import AFCs the universities believe the students would transition better from school.

The universities add that with the recognition and support now given at schools to those with reading disabilities like dyslexia they can expect rising numbers of these students to attend universities. They believe that AFCs make a meaningful impact to these students and “strongly support the inclusion of an amendment clarifying that reading disabilities like dyslexia are included in the definition.”

Empowerment and Human Rights.

Many of the submissions support the Blind Foundation’s position that acceding to the Marrakesh Treaty “would support New Zealand’s compliance with the United Nations Convention on the Rights of Persons with Disabilities.” The BF state that Article 9 (accessibility) would be supported but also other rights such as employment, education, freedom of expression and civic and political participation. The Dunedin city council add to this list Article 30 (1) (a) “which relates to ensuring access to cultural materials in accessible formats.” An individual submitter passionately agrees:

Unfettered access to information and to the cultural heritage of the world’s literature is one of the most significant factors that creates a sense of self, and makes us who we are as individuals. The

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greater our ability to read and write is, the greater our opportunities to become contributing citizens are, and the more enriched our lives become (Individual Submitter 1).

The same individual points out that New Zealand's other human rights obligations that include principles of non-discrimination and equal opportunity include The UN declaration of Human Rights 1948, The UN Declaration of the Rights of the Child 1959, the New Zealand Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990. This individual states that access to full literacy for the print disabled community is fundamental to fulfill these obligations.

The BF point out that access to information is limited by availability leading to an inequitable information society. They believe that we are a long way from all New Zealanders having access equivalent to that of the unimpaired public library user. The New Zealand Nurses Association also welcome improved information access for disabled people stating that health is also positively impacted with access to information. They have no doubt that "the ability to 'read' or 'not read' is a limiting factor in how people integrate into our world, and for extending personal, social and employment opportunities which generally have an impact on health and well-being."

As things stand, print impaired persons have their personal autonomy and self efficacy arbitrarily diminished by limited access to the printed word. Again the personal dignity and independence of print impaired persons is compromised by lack of access to printed information (Individual Submitter 1).

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Several individuals point out that they should have the right to choose the format that they feel is most suited to their needs rather than have it chosen for them. “Blind people need to be able to read published material in their preferred format whether Braille, large print audio or electronic and should not be subject to copyright restrictions” (Individual Submitter 2). One individual described e-books as accessible to the technically able but not providing the active and intimate and personal connection with the text that braille provides. Reading Braille “engages the reader directly with the page and the written word.” This submitter also points out that reliance on audible books can lead to “poor spelling and indifferent formal written work” (Individual Submitter 1). “Reading braille offsets these disadvantages.”

The BF conclude that if New Zealand were to be one of the first 20 countries to ratify the treaty New Zealand’s credentials as a global leader committed to increasing access for disabled people would be reinforced. Unfortunately, it is too late for that as the Treaty has already been signed by 20 countries and will be in force on September 30 2016.

India was the very first country to ratify on June 30, 2014. “India is pleased that the 20 ratifications have been achieved to allow entry into force of the Marrakesh Treaty,” said Ambassador Ajit Kumar, Expressing hope that more countries would join very soon, he added “We will now begin to see tangible benefits to the world’s blind and visually impaired communities” (WIPO June 30, 2016).

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Authorised Entities/ Prescribed Bodies & Commercial Availability.

Currently there are only six authorised entities (or ‘prescribed bodies’ under section 69) in New Zealand and they are not all operational: Blind Foundation, University of Auckland, Christian Ministries with Disabled Trust, the Correspondence School Te Kura a-Tuhi, New Zealand Radio for the Print Disabled Inc. and Wellington Braille Club (Dunedin City Council). Publishers are wary of increasing the numbers of prescribed bodies.

Doing a professional job of commercial availability tests, conversion, production, secure distribution, preventing piracy etc. is a major undertaking. We call for some regulation around the approval and ongoing standards of authorized entities so that they can build up trust around their activities and no rogue operators are let loose (PANZ).

Universities New Zealand do not believe that there would be problems for rights holders in allowing a more entities to use the exception if the commercial availability test is applied and only genuinely print impaired people access the content. They find the current commercial availability test clear.

The Bookshare model is commonly held up within the submissions as an example of a successful international model for information sharing. Large databases like this also reduce pressure on publishers. “Implementing Marrakesh could provide an opportunity for prescribed bodies to work more collaboratively (convert a file once rather than multiple times) to minimize their costs while providing better services to their

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members” (PANZ). The BF point out they are already collaborating nationally with other authorised entities like the public libraries and the National library, working together to build a national print disability collection. They are conducting pilots practicing extending these controlled collections to more diverse print disabled communities than have previously been served.

The BF state that uncertainty about the import and export of AFP (accessible format production) has resulted in a slow development of international exchange. There may be reluctance on either side as careful negotiation is required to ensure that copyright is not infringed. It is a balancing act between fulfilling the three step test requirements and protecting rights on education, freedom of expression employment and participation in political and civic life. The BF are dependent on public funding and must be stringent in their application of the law erring on the side of caution. Therefore, the balance tends to rest in favour of copyright holders, however this is a choice which may be altered if society chooses to prioritise human rights over those of corporations.

We are human beings with human rights. It's good for the individual, it's good for the society, it's even good for the economy, in the narrow sense, if people are creative and independent and free. Everyone benefits if people are able to participate, to control their fate, to work with each other- that may not maximize profit and domination, but why should we take those to be values to be concerned about? (Chomsky, 2014).

The BF point out that the current climate of cross-industry support for their work

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only exists because only authorised entities are allowed to provide AFCs, however under the Marrakesh Treaty print impaired people could directly make their own AFCs. Authorised entities will apply the commercial availability test to determine whether a commercial copy is readily available at a reasonable price. Ayoubi claims that “limitations and exceptions do not interfere with the empirical market of normal copies. In the absence of accessible works reproduced under limitations and exceptions, the visually impaired would not buy normal copies that normally have considerable economic or practical importance to the authors” (Ayoubi, 2015, December 1, p. 267). However, this is an outdated definition of “normal” now that published works are increasingly born digital and are accessible to not only limited numbers of visually impaired people but also large numbers of print impaired people. Ayoubi later allows that “It may, however, be more difficult to establish that reproduction of accessible formats under limitations and exception does not interfere with the normative markets of accessible copyright works” (Ayoubi, 2015, December 1, p. 267). However digital texts are the new “normal” and with the higher levels of technological literacies of new generations of print impaired people preferring to use their own technologies to access “normal” electronic texts, distinctions between accessible and non-accessible formats will surely disappear over time.

As a result, publishers are concerned that unlike braille digital AFCs are easily shared and accessible to mainstream audiences. They call for strict application of the commercial availability test stating that they should be asked if there is a commercial text available, not just be notified that an AFC is being created (PANZ). They state that

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under section 69 there is only a small chance that publishers would be aware if their rights were breached as prescribed bodies currently have no external accountability (PANZ).

CLNZ state that they are experienced in tracking down current rights holders and that rights holders should be contacted first (if not directly) then through them. They believe that a record of these transactions should also be archived by the prescribed body. Currency of copyright is also mentioned in the submission from Retina NZ. They describe a problem where a previously unavailable book had been made into an AFC by the BF. If an audio book is subsequently created by the original publisher, what should happen to the BF's copy? Publishers may decide to digitally publish their back catalogues in accessible audio formats with the rise in popularity of audio books. Retina New Zealand see a solution in databases like TIGAR. This reflects the position of the Max Planck Institute who also see international databases as a solution providing current information on commercial availability (Max Planck Institute 2015, note 32). If all cross-border shares were stored within TIGAR then publishers could alert them to delete their file should a commercial copy become available (Retina NZ).

The Publisher's Association of New Zealand state that their members are generally satisfied with the work of prescribed bodies. 56% of their members have received notices that AFCs are being made from their works, receiving on average 1-3 notifications within the past year, mainly from the Blind Foundation with a couple from a university and non-prescribed schools. 81% of the publishers supplied electronic files to

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the requesters to assist the production of AFCs. They said “We trust the Blind Foundation’; ‘because it’s the right thing to do’, ‘support accessibility of books and audio for people with disabilities’” (PANZ).

Publishers are not happy receiving requests from non-prescribed bodies such as schools on the behalf of individual students. They state that there is insufficient security control and expertise for this system to operate effectively. They also point out that only one individual may be served from such a transaction.

We call for an end to non-authorized/ non prescribed entities operating in this space. When such schools, universities or individuals ask publishers for files it is asking for charity. People with print disabilities should not have to beg and publishers should not be put in this position (PANZ).

Copyright Licensing New Zealand (CLNZ) agree that only authorised entities who undertake to maintain minimum standards of accountability and reporting for content distribution and creation should be able to use the exception.

There are a range of opinions around whether specific remedies should be available for rights holders if the Copyright Act is found to be breached. At one end of the spectrum CLNZ point out that the only current option is to sue for damages which is extremely costly. The universities are more circumspect and state that careful consideration on this matter is needed as charities who may struggle financially or not have access to legal advice may be impacted. They suggest that a “fair and reasonable license fee” (also suggested by the Max Planck Institute 2015, notes 41-42) which

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would limit the remedies rights holders may demand, may be a solution. Blind Citizens New Zealand concur with the public libraries, who fall on the more punitive side, stating that provision should be made that “the offending agency can have its prescribed nature rescinded in the event of proven deliberate violations.” However somewhat contradictorily BCNZ then suggest that entities work within guidelines rather than be specifically regulated. Retina NZ suggest that an element of “acting in good faith” be considered in such cases that are not blatant abuse (Retina NZ).

Technology

BLENNZ state that new technologies have been a double edged sword for their community because some are inaccessible and “in some cases have added layers of complexity to an already problematic situation. They are concerned about issues arising from TPMs. When texts are electronically locked new skill sets are required by providers to navigate these obstacles (BLENNZ). They are also concerned about the push towards online activity reiterating the problems of those who remain on the wrong side of the digital divide. There are clearly differences in the appropriateness of different technologies to best serve the information needs of different print disabled communities. The public libraries support the Blind Foundations findings that the majority of their vision impaired clients use hard copies of materials. However young university students with more diverse print impairments need instant electronic access to texts.

The libraries add that Bookshare uptake has been slow but that they will look at reinvigorating it. They estimate that with the Marrakesh Treaty the volume of ebooks

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available through TIGAR and Bookshare will double to around 350.000. They emphasize that the exception must include the potential for patrons to directly download from overseas sources to make TIGAR and Bookshare fully accessible. BCNZ concur that “while TIGAR and Bookshare provide a mechanism to obtain accessible format published works, implementation of the Marrakesh Treaty will facilitate instant ease of access.” An individual adds “The potential is huge but the reality is currently hampered by an inability to share across borders” (Individual Submitter 6).

The Visual Impairment Charitable Trust Aotearoa New Zealand (VICTA) holds a completely different view to the majority of submitters. They do not believe in the existence of a “book famine” doubting the scientific validity of this claim as it rests on estimating the volume of “materials published worldwide” available in DAISY format ignoring other accessible electronic text formats. VICTA state that this number also includes a large amount of local material (like bus timetables) that would have no worldwide relevance. VICTA describe their work in conjunction with Dunedin Public libraries empowering elderly people with failing eyesight to use tablets for reading books and newspapers, communicating with email and Skype and shopping online for groceries. They believe that this empowerment will stop the isolation of the elderly as more information goes online. VICTA believe that the greatest challenge lies in upskilling the elderly so that they may take full advantage of the technologies currently offered. VICTA state that there is no need for either DAISY formatting or the Marrakesh Treaty as “with appropriate training they can use commercially available tablets just fine.” Indeed they claim that with the advent of fully accessible iPhones in 2009 blind

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people have been abandoning DAISY technology in favour of commercially available software and hardware.

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Discussion & Conclusion

The freedom to access whatever information you need or desire easily is crucial to participation in our society, as is the ability to contribute information. With more diverse voices being heard a richer discourse and culture is developed that all New Zealanders may benefit from. ABC NZ point out that change needs to be both legal and cultural for blind and vision impaired people to fully participate in and contribute to society. “It is only after significant progress has been made in fundamentally altering social and cultural acceptance of traditionally disenfranchised minorities that [blind and vision impaired] people will be likely able to find the opportunities to share their talents and leave their marks upon the world in which they live” (ABC NZ, 2003, p. 6). Cultural change is occurring that will benefit minorities as the ideologies of open access become stronger and more prevalent.

It is clear from the submissions from the print impaired community that information access needs are not currently met, hindering educational, cultural and employment opportunities. The consensus is from information providers that the Marrakesh Treaty will empower the print impaired community by increasing the amount of reading materials available through international and local databases and by legally allowing them to access their own materials independently (or via caregivers) freeing them from third party interventions.

This is the most contentious issue for other stakeholders interested in protecting rights holders as they believe that without the third party supervising, keeping records

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and actively preventing piracy, their materials will not be safe from abuse. It is difficult to see how this issue may be resolved. If users are first identified as appropriate “beneficiaries” before independently accessing materials through databases then some of the problems resolve. However, if they wish to independently access materials not provided through databases it is difficult to see how rights-holders would access this data. Rights-holders are at odds with the zeitgeist in this respect. As the universities and individuals pointed out in their submissions, younger people will not passively sit back and accept delayed or unsatisfactory access to information. They have high expectations compared to the print impaired students of the past who were more accepting of the limitations imposed upon them. Swartz describes this conflict of ideologies as a battleground. “There’s a battle going on right now, a battle to define everything that happens on the Internet in terms of traditional things that the law understands” (Swartz, May 22, 2012).

Information providers are frustrated by current barriers and are excited about the prospect of being able to serve diverse communities more efficiently and with the assurance that they are working legally. Information providers are also sensitive to the need for print impaired people to be able to access information as independently as possible. The authors and publishers were not as sensitive to this issue, however the benefits and personal empowerment derived from *independently* accessing information should not be underestimated, as evidenced by the submissions.

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Independence and intellectual freedom, particularly for those who exist outside of first world academia, are currently hindered by copyright laws that protect commercial interests. It is argued by internet activists that scientific knowledge should not be locked down by large publishers who demand exorbitant fees from academic institutions for access (Wikler, Andraka & Yeo, in Hayoun, January 30, 2013). This gatekeeping reinforces fundamental social inequalities as only those attending universities (or who can afford to pay up to \$35 per article) can access this information. People with disabilities are therefore doubly disadvantaged as they are likely to be living in poverty and may struggle to maintain their education with limited support and resources available. Activists state that the work of researchers is a cultural capital that should be free to all. Much academic research is publicly funded by rich and poor alike so they argue that the results should be publicly accessible (Wikler, Andraka & Yeo, in Hayoun January 30, 2013).

Open access is a trend that is being adopted by some large institutions. Many databases now contain open collections, requiring payment for premium content. The Harvard Law Library are working on a project to digitize 40 million pages of case law for the purpose of analysis that will then become publicly available (Gellerman, 2016). The European Competitiveness Council have also announced an initiative to provide free access to all European scientific papers by 2020 (Creighton, 2016). This free access however, is contingent on digital literacies and access to technologies which many print impaired people, particularly the elderly, do not currently have.

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The internet is a relatively new space and people are behaving differently within it. Some behaviours are acceptable online that are not acceptable in the physical world. It is difficult to predict how ethics and the law will adapt in a way that is acceptable to young people who use technology in a much freer way. Millennials have grown up being encouraged by advertisers to “share” on social media in order to create a complex individual brand that allows targeted advertising. However young people constantly innovate and subvert technologies to allow genuine connection. One example of this was the group Anonymous’ use of RSS feeds to allow information to get out of Tunisia during the Arab Spring when internet access was censored by the Tunisian government. Following this success they collaborated with another group Telecomix, to create mirrors and proxies restoring Egyptians’ access to government censored sites.

All millennials are not activists but information as a commodity *is* tangibly different to younger people than previous generations and may be considered both cheap and invaluable as it is unlimited in quantity but also forms the fabric of their reality. If information is viewed as a collective resource existing copyright law will no longer be relevant as millennials ascend to positions of power within dominant structures. As the TPPA attempts to lock down copyright law for future generations and the Marrakesh Treaty aims to ameliorate the suffering caused by inequity of access for print impaired communities copyright law as we know it may be rapidly becoming technologically unsustainable and ideologically redundant.

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It is clear from both the literature and the submissions made on the topic of the Marrakesh Treaty that the print impaired community are a diverse range of people with different current needs that will alter as they age and as technology advances. The community themselves alongside information providers such as charities, education providers and caregivers are already knowledgeable about what they need to achieve better access to information. These diverse needs range between postal service of DAISY formatted texts for the elderly to instant electronic access to text books for young students. It is to be hoped that statements from information providers that money saved (on duplication of texts now made available from international databases) will be spent on improving and providing new services to print impaired communities as they have suggested in their submissions. However, efficiencies are constantly made and funding cut for libraries in particular so there is a strong possibility that this would not happen.

Some groups such as VICTA and the authors and publishers mainly limited their submissions to the presentation of their own stakeholder's interests however the majority of submitters chose to be more open and inclusive welcoming change. The rights holders fear of losing control of copyright through the inclusion of a large group of print impaired beneficiaries to the Marrakesh Treaty is not unjustified. However, for the blind and visually impaired community, who are used to being a minority, the broadening of the term print impaired through the implementation of the treaty may be an exciting prospect that opens up new possibilities of strength through numbers.

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There are currently exceptions provided within New Zealand's copyright laws for print impaired persons to access AFCs but the ambiguity of these laws prevents access for many people because either they are not aware of their eligibility or reluctant to pursue it. Another barrier to access for the print impaired is that providers may be slow to respond through a need to protect themselves legally or because they do not have the resources to provide for these larger groups. Promotion of new Marrakesh Treaty benefits would be necessary because, as pointed out by People First, many disabled people are not even aware of current copyright exemptions. Therefore, an effort would need to be made by information providers and others to ensure that all beneficiaries reap the full benefits of the treaty.

It is clear that implementing the Marrakesh Treaty alongside changes and clarification of New Zealand copyright law will free up the flow of AFCs to our print impaired community. Three main concerns remain:

1. The TPPA is locking down copyright laws for a dynamic unpredictable future environment and also the present, with the legal and technical issues of circumnavigating technological protection measures.
2. The potential variation between states in interpreting the treaty, (this may be ameliorated to some extent by the use of third party databases such as TIGAR.)
3. Rights holders are concerned about the security of their digital works and call for a system of accountability and reparation should their rights be abused.

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With the combination of new technologies and a human rights based approach to copyright law including the Marrakesh Treaty we can liberate print impaired information seekers and contributors. There is a growing awareness of this responsibility and potential within the field of information studies as eloquently described by Dermody and Majekodunmi (2011, p. 11) “The Academic library and database vendors must work together, in consultation with students with print disabilities, to ensure technology opens up doors and tears down walls. To allow barriers to exist in this technological advanced age would prove to be the greatest failure of the twenty-first century library.”

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