

Submission to Marrakesh Treaty Implementation Options Paper

Respondents details

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Response to options paper

Please provide your response to the Marrakesh Treaty Implementation Options Paper below. You can respond to some or all of the options outlined in the paper, and/or you can discuss other options not covered in the paper.

Submission to the
Attorney-General's Department
Marrakesh Treaty Implementation
Consultation

Pirate Party Australia

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Pirate Party Australia appreciates the opportunity to comment on proposals to implement the *Marrakesh Treaty*.¹ The Pirate Party recognises the importance of improving access to and dissemination of materials in ways that encourage broad cultural participation and allow all persons to benefit from a vibrant global culture. Given the 2013 estimate of the World Blind Union that only 7% of published books are made accessible in formats such as braille, audio and large print in the richest countries and less than 1% in the poorer countries,² the Pirate Party welcomes the *Marrakesh Treaty* and its implementation in Australia.

The Pirate Party strongly urges swift implementation of the recommendations of the Australian Law Reform Commission's report *Copyright and the Digital Economy*³ rather than using the *Marrakesh Treaty* implementation as a stepping stone or stopgap measure. In the Attorney-General's Department's options paper it is stated that option three, a fair dealing exception, 'could then be incorporated into a consolidated fair dealing or fair use provision in the future, should the department decide to undertake broader ALRC related reform.'⁴ It is the Pirate Party's view that implementing the recommendations of the *Copyright and the Digital Economy* would kill two birds with one stone: it would comprehensively modernise Australia's copyright law and, with other measures outlined by the Department, meet Australia's obligations under the *Marrakesh Treaty*.

The Pirate Party has in the past noted that the ad hoc, piecemeal amendment of the *Copyright Act 1968* has not been conducive to developing a robust, modern, simplified, technology- and medium-neutral copyright regime in Australia.⁵ Reviews of copyright and related issues have been spread across multiple inquiries conducted by various parliamentary, departmental and independent bodies including the House of Representatives Standing Committee on Infrastructure and Communications, Attorney-General's Department, Australian Law Reform Com-

¹*Marrakesh Treaty to Facilitate Access to Published Works for People who are Blind, Visually Impaired or otherwise Print Disabled*, opened for signature 27 June 2013, [2014] ATNIF 15 (not yet in force).

²World Blind Union, 'June 17 Press Release for WIPO Book Treaty' (Press Release, 17 June 2013) <<http://worldblindunion.org/English/news/Pages/June-17-Press-Release-for-WIPO-Book-Treaty.aspx>>.

³Australian Law Reform Commission, *Copyright and the Digital Economy*, Report No 122 (2014).

⁴Attorney-General's Department, *Marrakesh Treaty implementation options paper* (2014).

⁵See eg Pirate Party Australia, Submission to Attorney-General's Department, *Online Copyright Infringement Public Consultation*, 1 September 2014, 3; Pirate Party Australia, Submission to Australian Law Reform Commission, *Copyright and the Digital Economy* (Discussion Paper No 179), 30 July 2013, 1.

mission and Joint Standing Committee on Treaties.

Of course it is often difficult to preempt international and judicial developments with regard to copyright, and therefore it is sometimes necessary to address copyright and related issues separately as they arise. Nevertheless, there is yet to be a concerted effort to comprehensively modernise the *Copyright Act*.

The Pirate Party, while supportive of all the ALRC recommendations, is particularly in favour of a fair use provision. Three different bodies in the last 16 years have recommended a fair use exception — the Copyright Law Review Committee,⁶ the Joint Standing Committee on Treaties,⁷ and the Australian Law Reform Commission.⁸ Rather than add a further fair dealing exception it would be more beneficial to finally implement a flexible fair use exception alongside the other proposals.

The Pirate Party considers the implementation of the *Marrakesh Treaty* to be an opportunity to go beyond improving accessibility for the blind, visually impaired or otherwise print disabled. A flexible fair use provision with additional legislative support could be a means for making materials accessible to a variety of persons who may be disabled or otherwise disadvantaged. This could extend to, for example, the distribution of motion pictures with third-party or crowd-sourced subtitles for the deaf and hearing-impaired and the translation of materials into minority languages that lack significant commercial value to copyright holders and are thus disadvantaged due to the lack of market expansion.

The Pirate Party also submits that there ought to be, as a result of either a new fair dealing or flexible fair use exception, an exemption to the prohibition on circumventing technological protection measures. Copyright exceptions are of little use if their exercise is hampered by TPMs.

It is therefore the Pirate Party's position that the Attorney-General's Department ought to implement at least the recommendation of the ALRC's *Copyright and the Digital Economy* Report that Australia adopt a fair use exception that goes further than the *Marakesh Treaty* and

⁶Copyright Law Review Committee, *Simplification of the Copyright Act 1968 Part 1: Exceptions to the Exclusive Rights of Copyright Owners* (1998) [6.10].

⁷Joint Standing Committee on Treaties, Parliament of Australia, *Report 61: The Australia-United States Free Trade Agreement* (2004) xx.

⁸Australian Law Reform Commission, *Copyright and the Digital Economy*, Report No 122 (2014) 13.

a general TPM exemption that allows the circumvention of TPMs for the purposes of exercising fair dealing or fair use exceptions. The Pirate Party also recommends that the Attorney-General's Department introduces the more comprehensive reforms outlined by the ALRC and the Inquiry into IT Pricing.