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Vision Australia Submission to the Joint Standing Committee on Treaties

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**Submission to: Joint Standing Committee on Treaties
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Introduction

Vision Australia welcomes the opportunity to submit comments, as part of the National Interest Analysis (NIA) process, to the JSCT inquiry into the Marrakesh Treaty to Facilitate Access to Published Works for People who are Blind, Visually Impaired or otherwise Print Disabled (Marrakesh, 27 June 2013).

We would welcome the opportunity to appear before the Committee in the event that external stakeholders are invited to a hearing.

We have made several submissions in relation to copyright, including to the Australian Law Reform Commission's inquiry into Copyright and the Digital Economy (2012), and in response to the Attorney-General's Marrakesh Treaty Implementation Options Paper (2014). We have actively promoted the potential benefits of the Marrakesh Treaty to our clients, and we continue to advocate strongly for its ratification by all countries.

Ratification

We have studied the National Interest Analysis produced to inform the Committee's Inquiry, and we commend the Government for its positive and proactive approach to the ratification of the Treaty. In particular, we emphasise that ratification of the Marrakesh Treaty will be an important step in meeting Australia's obligations under Article 30 of the UN Convention on the Rights of Persons with Disabilities (CRPD), providing greater access to books and other published materials to Australians who are blind, have low vision, or have another print disability.

The World Blind Union estimates that less than 5% of books that are published in print are ever produced in formats such as DAISY audio, braille, e-text or large print, which are accessible to people who are blind or have low vision. This results in a "book famine" for our clients and others who cannot read standard print. However, it also means authors are missing out on potential sales and exposure to a broader audience because people with a print disability are unable to read their books, recommend them to friends, or engage in review and discussion. Ratification of the Marrakesh Treaty is therefore in the best interests of authors, as well as people with a print disability.

Vision Australia strongly recommends the early ratification of the Marrakesh Treaty. We do, however, have some objections about the notification, proposed within the NIA, amending Australia's ratification. This notification, declared under Article 4 of the Treaty, reinforces the current requirement to comply with the so-called 'commercial availability test'.

Commercial Availability Test

The obligation to comply with s135ZP the 'commercial availability test', which requires that if a book is already available in one of the five formats specified, it cannot be reproduced in a similar alternative format presents as a significant barrier. For example, one consequence currently faced by Vision Australia, and other producers and distributors of accessible materials, is that time-consuming and extensive research must be undertaken to ascertain if a work is already commercially available.

Vision Australia has received legal advice that the commercial availability test applies regardless of whether the format that is commercially available is actually suitable for a particular individual with a print disability, blindness or low vision, or not. This is contrary to Article 2 (b) of the Treaty which defines "accessible format copy" as meaning "a copy of a work in an alternative manner or form which gives a beneficiary person access to the work, including to permit the person to have access as feasibly and comfortably as a person without visual impairment or other print disability." For example, if a title has been produced by a commercial publisher in audio format, then Vision Australia cannot legally produce the same title in DAISY (structured audio) format. This is in spite of the fact that commercial audio formats do not include print-page references or navigation information such as: a contents page, section headings or, in the case of many non-fiction titles, an index. Recently a publisher withdrew their permission because the audio rights had now been licenced to an audio publisher. The work in question was three quarters of the way through production.

This results in significant disadvantage for people with a print disability, who are compelled to use a format that is not reasonably suited to meet their specific needs. It is also worth noting that audio CDs, produced by commercial publishers, never include accessible package labelling, and often do not even include audio labelling of CD numbers and chapter titles. Therefore, a person with a print disability is not able to easily identify which CD or book chapter they are about to listen to. This suggests that the retention of the Commercial Availability Test as it currently operates would be in breach of Article 2, and the general purpose and intent of the Treaty.

We understand the inclusion of the commercial availability test in the Copyright Act was intended to protect the legitimate rights of authors and publishers. However, in practice, the prescriptive terms in which the test is framed prevents it from achieving its primary aim in benefit of copyright holders. Copyright holders do not benefit because in almost all cases the formats that are commercially produced aren't suitable for people who are blind or have low vision (no structure, no audio labelling,

no spelling of proper names, no contents page, etc.). These formats are simply not purchased, even if the accessible formats are not produced either. People just go without, or else they find alternatives, such as illegal book download sites. Also people who are blind or have low vision can't recommend or discuss books they haven't read, and so potential sales are lost. Simultaneously the test creates unnecessary barriers and restrictions for people with a print disability, and the organisations assisting them.

It is our view that the ratification of the Marrakesh Treaty provides a unique opportunity to simplify the commercial availability test so that it achieves its intended purpose, without unfairly restricting the right of people with a print disability to have equal access to books that are readily available to the rest of the community.

We also wish to draw the Committee's attention to another unintended consequence of the retention of the commercial availability test. Bookshare is an accessible online library of more than 300,000 titles, contributed by more than 500 publishers. Bookshare was established following the passage of the Chaffey Amendment to the Digital Millennium Copyright Act in the United States. Bookshare is available to readers with print disabilities in more than 50 countries, but not all titles are available in all jurisdictions, due to copyright restrictions. People with a print disability in Australia only have access to 169,000 titles, whereas people in the UK, Canada, Nigeria, Spain, Brazil, Ghana, and New Zealand all have access to more Bookshare titles than readers in Australia.

Many books become available on Bookshare soon after they are published in print. An example is Stephen King's latest novel, *Finders Keepers*. It was released in print on June 2, and was uploaded to Bookshare the same day. People who are blind, have low vision, or another print disability in the US were therefore able to read this widely-promoted book as soon as it was made available to the rest of the community. Comparatively, copyright restrictions in Australia mean that people cannot access this title on Bookshare, and *Finders Keepers* is not yet available in an accessible format here; a month after it was released and available to readers with a print disability in the US.

Ratification of the Marrakesh Treaty in Australia, and in the US, has the potential to make the full Bookshare library available here. However, Bookshare have indicated to us that if the commercial availability test is retained in its current form in Australia, then they may not be able to make further material available. This is mainly due to the fact that it will be largely impossible for them to ascertain whether the thousands of titles in their library are commercially available in an accessible format within Australia.

If the Committee's view is that ratification of the Marrakesh Treaty by Australia must be accompanied by retaining the commercial availability test, then we urge the Committee to take steps to ensure that commercial availability is in relation to the accessible format (a standard audio book, even mP3 format is not DAISY format) and that organisations like Bookshare will nevertheless be able to make their entire libraries available to readers in Australia. Anything less than this will result in continuing disadvantage for Australians with a print disability, and will dramatically reduce the benefits of the Treaty. Until such time that accessible formats are available commercially at reasonable costs and available through standard public libraries, it is critical that organisations which support persons who are blind, vision impaired or otherwise print disabled are enabled to provide accessible versions of any book.