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"authorized entity":

means a governmental entity; a [non-profit] educational or teaching institution; [libraries;] or a non-profit organization, including non-governmental organizations and entities authorized or enabled by the governments [pursuant to national law in conformity with this [instrument/treaty]] that addresses the needs on a non-profit basis of beneficiary persons as one of its [primary] activities or institutional obligations, including providing them with services relating to education instructional training, adaptive reading or information access needs, in accordance with national law; and

[establishes and follows] [may maintain] rules and procedures

i) to establish that the persons it serves are beneficiary persons;

ii) to limit to beneficiary persons and/or authorized entities its distribution and making available of accessible format copies;

iii) to discourage the reproduction, distribution and making available of unauthorized copies [including by informing authorized entities and beneficiary persons that any abuse will lead to stopping the supply of accessible format copies]; and

iv) to maintain reasonable care in, and records of, its handling of copies of works, while respecting the privacy of beneficiary persons in accordance with Article H; in the case of an authorized entity that serves a rural or small population and does not distribute accessible format copies in electronic form for whom record keeping would constitute an undue burden such record keeping may be appropriately adjusted.

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ARTICLE A

DEFINITIONS

For the purposes of these provisions

"work" *(Proposed by Mexico)*

means a literary and artistic [or scientific] work within the meaning of the Berne Convention, [in the form of text, notation and/or related illustrations], whether published or otherwise made publicly available [in any media].

"accessible format copy" *(Proposed by the United States)*

means 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/print disabilities. The accessible format copy is used exclusively by beneficiary persons and it must respect the integrity of the original work, taking due consideration of the changes needed to make the work accessible in the alternative format and of the accessibility needs of the beneficiary persons.

Algeria suggested to include the clarification that an accessible format copy should not only include printed works, but also digital works.

"reasonable price for developed countries" (Proposed in SCCR/23/7)
means that the accessible format copy of the work is available at a similar or lower price than the price of the work available to persons without print disabilities in that market.

"reasonable price for developing countries" (Proposed in SCCR/23/7)
means that the accessible format copy of the work is available at prices that are affordable in that market, taking into account the needs and income disparities of persons who have limited vision and those with print disabilities.

United States of America and Barbados proposed to delete both definitions.

India and the African Group proposed to keep the definitions.

African Group proposed the alternative definition:
"Reasonable price for developing countries" is a price at which the accessible format copy of the work is available at prices that reflect national economic realities,"

Iran proposed the alternative definition:
"Reasonable price for developing countries" is a price at which the accessible format copy of the work is available at prices that reflect national economic realities, taking into account the needs and income disparities of persons who have limited vision and those with print disabilities."

References to "copyright" include copyright and any rights related to copyright recognized by Member States in accordance with national law.

European Union and its Member States, African Group and India proposed to delete this definition.

Ecuador and Iran suggested to keep the definition.

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ARTICLE B

BENEFICIARY PERSONS (Proposed in SCCR/23/7)

A beneficiary person is a person who

(a) is blind;

(b) has a visual impairment or a perceptual or reading disability [or any other print disability], which [cannot be/is not] improved by the use of corrective lenses 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 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.

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ARTICLE C (Proposed in SCCR/23/7)

NATIONAL LAW EXCEPTIONS ON ACCESSIBLE FORMAT COPIES

1. A Member State/Contracting Party should/shall provide in its national copyright law for an exception or limitation to the right of reproduction, the right of distribution and the right of making available to the public, to facilitate the availability of works in accessible formats for beneficiary persons as defined herein.

India proposed to add after "making available to the public" the phrase "as defined in Article 8 of the WCT."

African Group, India, Argentina and Iran proposed to add after "the right of distribution" the phrase "the right of performance."
It also proposed to add after "making available to the public" the phrase "as defined in Article 8 of the WCT, where applicable."

United States of America proposed that the Article is titled:
National Law Limitations and Exceptions on Accessible Format Copies

India and Iran endorsed the proposal of the African Group and proposed to add the right of translation.

Ecuador endorsed the proposal of the African Group and proposed to add the right of adaptation.

2. A Member State/Contracting Party may fulfill Article C (1) by providing an exception or limitation in its national copyright law such that:

(A) Authorized entities shall be permitted without the authorization of the copyright rights holder to make an accessible format copy of a work, obtain from another authorized entity a work in accessible format, and supply those copies to a beneficiary person by any means, including by non-commercial lending or by electronic communication by wire or wireless means, and undertake any intermediate steps to achieve those objectives, when all of the following conditions are met:

1. the authorized entity wishing to undertake said activity has lawful access to that work or a copy of that work;
2. the work is converted to an accessible format copy, which may include any means needed to navigate information in the accessible format, but does not introduce changes other than those needed to make the work accessible to the beneficiary person;
3. copies of the work in the accessible format are supplied exclusively to be used by beneficiary persons; and
4. the activity is undertaken on a non-profit basis.

(B) A beneficiary person or someone acting on his or her behalf may make an accessible format copy of a work for the personal use of the beneficiary person where the beneficiary person has lawful access to that work or a copy of that work.

African Group proposed to delete in Article C(2)(A) the phrase between commas "obtain from another authorized entity a work in accessible format, and supply those copies to a beneficiary person by any means,"

USA and African Group proposed
[it is understood that a primary caretaker of a beneficiary person may assist a beneficiary to undertake the activities described in Article B (a-c).]

3. A Member State/Contracting Party may fulfill Article C(1) by providing any other exception or limitation in its national copyright law that is limited 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.

4. The Member State/Contracting Party may limit said exceptions or limitations to published works which, in the applicable special format, cannot be obtained within a reasonable time and at a reasonable price.

5. It shall be a matter for national law to determine whether exceptions or limitations referred to in this Article are subject to remuneration.

[End of Article C]

European Union proposed to replace paragraph 3) as follows:
"A Member State/Contracting Party may fulfill Article C(1) by providing any other limitation or exception in its national copyright law pursuant to Article Ebis."

United States of America proposed a new paragraph C(4)
"A Member State/Contracting Party may confine limitations or exceptions under this Article to published works which, in the particular accessible format, cannot be obtained commercially under reasonable terms, including at prices that take account of the needs and incomes of beneficiary persons in that market."

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ARTICLE D (1)

CROSS-BORDER EXCHANGE OF ACCESSIBLE FORMAT COPIES

(Proposed by *the African Group)*

A Contracting Party shall provide that if an accessible format copy of a work is made under an exception or limitation, import or export license in accordance with national law, that accessible format copy may be distributed or made available to a beneficiary or authorized entity in another Member State.

India proposes to add "import/" before "export" in the second line of the SCCR/23/7 text and to add "or otherwise" in the second line after "exception or limitation or export license."

India also proposes to delete the text after "beneficiary person" in the last line.

Argentina proposes to delete "where that other Member State would permit that beneficiary person to make or import that accessible copy" at the end of the SCCR/23/7 text.

ARTICLE D (2)

(Proposed by the *United States of America*)

2. A Member State/Contracting Party may fulfill D1 by providing a limitation or exception in its national copy law such that an authorized entity shall be permitted, without the authorization of the rightsholder, to distribute or make available accessible format copies to:

(A) an entity or organization in another Member State/Contracting Party that the originating authorizing the entity has identified as another authorized entity as described in Article A;

(B) a recipient person in another Member State/Contracting Party, where the authorized entity has established the individual is a beneficiary person as described in Article B.

Provided that prior to the making available or distribution the originating authorized entity did not know or have reasonable grounds to know that the special format copy would be used for any purpose other than the needs of beneficiary persons.

African Group proposes to delete "verified" in the SCCR/23/7 text and replace it with "good faith reason to believe."

India proposes to substitute "has reason to believe" for "has verified" in the SCCR/23/7 text.

The European Union proposes to delete paragraph (B) and the final paragraph in the SCCR/23/7 text, and to substitute the following for the final paragraph: "A Member State/Contracting Party should/shall confine said distribution or making available to published works which, in the particular accessible format, cannot be obtained commercially under reasonable terms, including at prices that take account of the needs and incomes of beneficiary persons in the country of importation."

The United States of America proposes the addition of "as well as the cost of producing and distributing the work" at the end of the EU's substitute final paragraph.

Iran prefers to retain the SCCR/23/7 text.

ARTICLE D (3)

(Proposed by the *European Union*)
A Member State/Contracting Party may fulfill Article D(1) by providing any other limitation or exception in its national copyright law pursuant to Article Ebis.

(Proposed by the *European Union*)
To add the following paragraph [Previous v) of the authorized entities definition]: to enable the transmission of anonymous and aggregated data of records to rightholders on request.

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ARTICLE E
IMPORTATION OF ACCESSIBLE FORMAT COPIES

(Proposed in SCCR/23/7 text):

To the extent that national law would permit a beneficiary person or an authorized entity acting on the beneficiary person's behalf to make an accessible format copy of a work, the national law should/shall permit a beneficiary person or an authorized entity acting on that person's behalf to import an accessible format copy, without the copyright rights holder's authorization.

Ecuador and *India* propose to delete "an authorized entity" and to substitute "someone acting on his or her behalf, including an authorized entity."

The *European Union* proposes to delete the second reference to "the national law" and to substitute "a Member State/Contracting Party" in its place.

India proposes to add "likewise" after "the national law should/shall" and to add the following sentence at the end of Article E: "Nothing in this article shall derogate from the flexibility provided in Art. 6 of the TRIPS Agreement."

African Group proposes the addition of "including digital files," before the phrase "without the copyright rights holder's authorization."

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ARTICLE E*bis* (Proposed by European Union and its Member States)

All exceptions and limitations provided for in this instrument shall be limited 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.

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ARTICLE F
OBLIGATIONS CONCERNING TECHNOLOGICAL MEASURES

(Proposed by *Australia*):

Member States/Contracting Parties shall ensure that beneficiaries of the exception provided by Article C are not prevented from enjoying the exception in cases where technological protection measures have been applied to a work.

A Member State/Contracting Party may fulfill Article F(1) by permitting, under its national copyright law, circumvention of technological protection measures for the purposes of, and to the extent necessary for benefiting from an Article C exception.

(Proposed by *Peru*):

A Contracting Party shall adopt effective and necessary measures to ensure that a beneficiary person may enjoy limitations and exceptions provided in that Contracting Party's national law, in accordance with Article C, where technological measures have been applied to a work and the beneficiary person has legal access to that work, in circumstances such as where appropriate and effective measures have not been taken by rights holders in relation to that work to enable the beneficiary person to enjoy the limitations and exceptions under that Contracting Party's national law.

India proposes to delete "have the means to enjoy" and to substitute "are not prevented from enjoying" in the SCCR/23/7 text, and to delete the second paragraph of that text.

Iran and *Ecuador* propose to delete the first two lines of the second paragraph in the SCCR/23/7 text and to start the paragraph with "Member States/Contracting Parties."

Iran proposes to add the following paragraph to the end of the SCCR/23/7 text: "Nothing in this article prevents a contracting party from adopting effective and necessary measures to ensure that a beneficiary would enjoy limitations and exceptions provided in its national law where technological measures have been applied to a work and appropriate and effective measures have not been taken by right

holders in relation to that work to enable the beneficiary to enjoy the expectations or limitations under its national law."

Switzerland proposes to add "In particular" to the beginning of paragraph 2 in the SCCR/23/7 text.

The *United States of America*, *Switzerland*, and *Peru* propose to consider the use of language from the TPM agreed statement in the Beijing Treaty in this article.

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ARTICLE G
RELATIONSHIP WITH CONTRACTS

(Proposed by *African Group*):

Contracts that override the exercise of the provisions herein specified shall be null and void.

(Proposed by *India*):

The limitations or exceptions to beneficiary persons provided under this treaty are immune from private contracts and such contracts entered into in violation of provisions of this treaty are null and void.

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ARTICLE I

INTERPRETATION OF THE THREE-STEP TEST

(Proposed by *Ecuador*):

The three-step test should be interpreted in a manner that respects the legitimate interests of third parties, including:

a) interests deriving from human rights and fundamental freedoms;

b) interests in competition, notably on secondary markets; and

c) other public interests, notably in scientific progress and cultural, educational, social, or economic development.

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ARTICLE J

REGISTRY OF AUTHORIZED ENTITIES

(Proposed by the *European Union*):

Member States/Contracting Parties shall/should set up a voluntary registry of authorized entities which may be used by authorized entities to identify one another for the purposes of Article D.

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ARTICLE X

NATURE AND SCOPE OF OBLIGATIONS

1. Member States/Contracting parties should/shall adopt appropriate measures to implement the provisions of this international legal instrument/joint recommendation/treaty.

2. Member States/Contracting Parties should/shall apply the international legal instrument/joint recommendation/treaty transparently, taking into account the priorities and special needs of developing countries as well as the different levels of development of the Member States/Contracting Parties.

3. Member States/Contracting parties should/shall ensure the implementation of this international legal instrument/joint recommendation/treaty allows for timely and effective exercise of actions covered, including expeditious procedures that are fair and equitable