

Marrakesh Note 3: Evolution of Reasonable Price Text

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June 9, 2013

Introduction

This note looks at the evolution of the definitions for a “reasonable price.” This definition is relevant to the efforts to narrow exceptions in cases where there is a commercially available source for a work in an accessible format. Among the issues raised in the negotiations are whether or not there should be different definitions for developed and developing countries, and whether a “reasonable” price should be “affordable” and/or reflect differences in incomes for persons with disabilities. The United States and the European Union have repeatedly sought to eliminate references to “affordable,” and the US has made several efforts to eliminate the separate definition for developing countries. The EU has preferred “sufficient and adequate market solutions for persons with a print disability.”

2009

SCCR/18/5, Proposal by Brazil, Ecuador, Paraguay, Relating to Limitations and Exceptions: Treaty Proposed by the World Blind Union

The first reference to “price” appeared in the original proposal tabled by Brazil, Ecuador and Paraguay (proposed by the WBU) in Article 4(d)

“In determining if a work is reasonably available in (c)(3), the following shall be considered:

- 1. for developed economies, the work must be accessible and available at a similar or lower price than the price of the work available to persons who are not visually impaired; and*
- 2. for developing countries, the work must be accessible and available at prices that are affordable, taking into account disparities of incomes for persons who are visually impaired.”*

Commentary:

In the original WBU proposal, the concept of a work being available at a reasonable price was linked to the use of an exception by a for-profit entity. The reason for having two definitions was to recognize the lower incomes of persons who have disabilities, in developing countries.

2010

There were three new proposals consider during SCCR 20, June 21-24, 2010.

SCCR/20/10, Proposal by the Delegation of the USA

“reasonable price”

“For the purposes of this [consensus instrument], in determining if a special format copy of a work is available at a “reasonable price,” the special format copy of the work should be available at a similar or lower price than the price of the work available to persons without print disabilities in that market.”

Commentary:

The United states proposal eliminated the use of exceptions for for-profit entities, but in anticipation of narrowing the non-profit exception to works not commercially available, keep the definition of reasonable price. The US proposed a single definition that eliminated “at prices that are affordable, *taking into account disparities of incomes for persons who are visually impaired.*”

SCCR/20/11, Proposal by the African Group

The reference to the price of the work in the African group proposal is enshrined in Article 5(d) SCCR/20/11. It was nearly identical to the approach proposed by the WBU. The only difference in language was the use of the word “disabled” as opposed to “visually impaired”

Article 5(d)

“(d) In determining whether a work is reasonably available according to (c)(3), the following criteria shall be considered:

- 1. for developed economies, the work must be accessible and available at a similar or lower price than the price of the work available to persons who are not disabled; and*
- 2. for developing countries, the work must be accessible and available at prices that are affordable, taking into account disparities in income levels for disabled persons.”*

SCCR/20/12, EU PROPOSAL

No mention of reasonable price in the EU proposal. A reference was made to the inapplicability of the copyright exception if there “ [were] sufficient and adequate market solutions for persons with a print disability.”

2011

SCCR/22/12, Proposal by the African Group

Article 8: Criteria for determining reasonable availability

"In determining whether a work is reasonably available under Article 7 (c) of this Treaty, the following criteria shall be considered:

(a) for developed economies, the work must be accessible and available at a similar or lower price than the price of the work available to persons who are not disabled; and

(b) for developing countries, the work must be accessible and available at prices that are affordable, taking into account disparities in income levels for persons with disabilities."

June 22

SCCR/22/15, Consensus document on an international instrument on limitations and exceptions for persons with print disabilities presented by Argentina, Australia, Brazil, Chile, Ecuador, Mexico, Paraguay, and the United States of America

"reasonable price for developed countries"

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"

means that the accessible format copy of the work is available at prices that are affordable in that market, taking into account the humanitarian needs of persons with print disabilities.

June 22

SCCR/22/15 REV.1, Proposal on an international instrument on limitations and exceptions for persons with print disabilities document presented by Argentina, Australia, Brazil, Chile, Colombia, Ecuador, the European Union and its Member States, Mexico, Norway, Paraguay, the Russian Federation, the United States of America and Uruguay

"reasonable price for developed countries"

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"

means that the accessible format copy of the work is available at prices that are affordable in that market, taking into account the humanitarian needs of persons with print disabilities.

November 4

***SCCR/22/16 Proposal on an international instrument on limitations and exceptions for persons with print disabilities
Document prepared by the Chair***

"reasonable price for developed countries"

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"

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.

Commentary:

The Chair's draft eliminated the word "affordable" for developing countries.

December 16

***SCCR/23/7, WORKING DOCUMENT ON AN INTERNATIONAL INSTRUMENT ON LIMITATIONS AND EXCEPTIONS FOR VISUALLY IMPAIRED
PERSONS/PERSONS WITH PRINT DISABILITIES
adopted by the Committee***

A discussion ensued over the term "reasonable price". The following comments were made:

European Union and its Member States

A.21 *The definition of "reasonable price for developing countries" should be replaced by "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, taking into account the needs and income disparities of visually impaired persons/persons with print disabilities in that market."*

Pakistan

A.21 *ibis* The word “affordable’ must be retained in the definition of “reasonable price for developing countries”. Each developing country Member State must have the flexibility to determine what “reasonable price” is

European Union and its Member States

A.22 Further discussions and debates are essential on the complex issue of “reasonable price” as it is not mature

"reasonable price for developed countries"

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"

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.

A footnote was provided for the definition of reasonable price for developing countries by the European Union and its member states which read as follows

"reasonable price for developing countries" 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, taking into account the needs and income disparities of visually impaired persons/persons with print disabilities in that market

2012

July 26

SCCR/24/9, REVISED WORKING DOCUMENT ON AN INTERNATIONAL INSTRUMENT ON LIMITATIONS AND EXCEPTIONS FOR VISUALLY IMPAIRED PERSONS/PERSONS WITH PRINT DISABILITIES

adopted by the Committee

"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.

Alternative A

Delete both definitions.

Alternative B

Keep both definitions

Alternative B.1

"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,

Alternative B.2

"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.

October 19

WIPO/IS/VIP-PPD/GE/12/REVKGDOC, Revised Working Document on an International Instrument on Limitations and Exceptions for Visually Impaired Persons/Persons With Print Disabilities - WORKING TEXT October 19, 2012

"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.

Alternative A

Delete both definitions.

Alternative B

Keep both definitions

Alternative B.1

"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.

Alternative B.2

"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.

2013

February 22

SCCR/25/2 REV. DRAFT TEXT OF AN INTERNATIONAL INSTRUMENT/TREATY ON LIMITATIONS AND EXCEPTIONS FOR VISUALLY IMPAIRED PERSONS/PERSONS WITH PRINT DISABILITIES
adopted by the Committee

"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.

Alternative A

Delete both definitions.

Alternative B

Keep both definitions

Alternative B.1

"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.

Alternative B.2

"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.

April 20

SCCR/SS/GE/2/13/4, DRAFT TEXT OF AN INTERNATIONAL INSTRUMENT/TREATY ON LIMITATIONS AND EXCEPTIONS FOR VISUALLY IMPAIRED PERSONS/PERSONS WITH PRINT DISABILITIES
adopted by the Committee

"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.

Alternative A

Delete both definitions.

Alternative B

Keep both definitions.

Alternative B.1

“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.

Alternative B.2

“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.