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Proposals for Article D (3)

The Member State/Contracting Party may limit distribution and making available under this Article in cases where the work, in the particular accessible format, can be obtained commercially under reasonable terms for beneficiary persons in the receiving country.

EU Agreed Statement: It is understood that reasonable terms also take into account the needs and incomes of beneficiary persons in the receiving country and whether the works, in the particular accessible format, can be obtained through the distribution channels customary to beneficiary persons in that country. Furthermore, it is understood that this Article does not imply [that national law should impose] any duty on the exporting authorized entity to investigate whether the work in the particular accessible format can be obtained under reasonable terms for beneficiary persons in the receiving country or any action that will delay the distribution or making available of the accessible format copy to beneficiary persons.

US Agreed Statement: It is understood that the criteria for reasonable terms will be a matter for national determination consistent with that Contracting Party's existing international obligations. Furthermore, it is understood that this paragraph neither requires nor implies [that national law should impose] a duty on the exporting Authorized Entity to investigate whether the work in the particular accessible format can be obtained commercially in the receiving country and that national law pursuant to this paragraph should not prevent effective and timely access to works for beneficiary persons.

[Swiss proposed agreed statement replaced with reference to Article D(3) in footnote 8 to Article C(4).]

African Group - Paragraph under Article D: Whenever an Authorized Entity in a Contracting Party/Member State requests a copy of an accessible format copy, such request shall constitute sufficient evidence that the work requested is not commercially available in the importing country for beneficiary persons.

Informal Proposal:

The Member State/Contracting Party may limit distribution and making available under this Article in cases where the work, in the particular accessible format, can be obtained commercially under reasonable terms [including interoperability, time, and other terms] for beneficiary persons in the receiving country as determined by the Authorized Entity of such receiving country. Whenever an Authorized Entity in a Contracting Party/Member State requests a copy of an accessible format copy, such request shall [be presumed to be sufficient evidence] [creates a presumption of sufficient evidence] constitute sufficient evidence that the particular accessible format of the work requested is not commercially available in the importing country for beneficiary persons [cannot be obtained [commercially] [is not commercially available] under reasonable terms [in the importing country] for beneficiary persons in the receiving country].

Singapore Friendly Addition: Nothing in this article shall imply or require that a Contracting Party impose in its national law or otherwise a duty on an Authorized Entity that receives a request for an accessible format copy of a work to investigate whether the work in that particular accessible format can be obtained commercially under reasonable terms in the receiving country.¹

Ecuador Friendly Addition: Any Contracting Party availing itself of this possibility shall so declare in a notification deposited with the Director General of WIPO at the time of ratification of, acceptance or accession to this Treaty or at any time thereafter.

Ecuador Proposed Agreed Statement: If a Contracting Party cannot provide under its constitution an irrebutable presumption it might provide a legal one.

US Alternative to Ecuador Proposed Agreed Statement: It is understood that the nature of the presumption will be established in national law consistent with the Contracting Party's legal system and practice [and especially taking into account the needs and incomes of beneficiary persons in the receiving country and their right to access to works].

¹ Notification provision to be considered based on outcome of presumption discussion.