

Questions and Answers concerning the Trusted Intermediaries (TI) Guidelines

Document approved by the Working Group Members¹

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Q1: The proposed WBU Copyright Treaty now tabled by Brazil, Paraguay, and Ecuador is still needed in the light of the Trusted Intermediaries proposal. Is that correct?

A1: This Q&A document is intended to respond to questions pertaining to the Guidelines for the proposed TI pilot. Discussions pertaining to the proposed WBU Copyright Treaty tabled by Brazil, Paraguay and Ecuador are the purview of the WIPO Member States.

Q2: Is it part of the vision of the WIPO stakeholders that an international body be formed that authorizes or grants applying institutions the status of TI.

A2: The mechanism to identify TIs in a country would be a national issue. It seems that the first step is for a TI to agree to the terms and conditions for participation in the TI network. Continued participation in the TI network depends on conformance to the agreed upon guidelines which specify monitoring, reporting and, if necessary, the taking off corrective action.

Q3: Is the phrasing "perceivable, operable, understandable and robust" a further elaboration of the more known phrase "accessible"? Does it entail more/less than the term "accessible"? Why not use the term "accessible"? (Guidelines, 4d)

A3: The terminology is drawn from the W3C WAI Guidelines, and is intended to more clearly define what was meant by a functional accessible title, without increasing or decreasing the meaning of the term "accessible".

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Q4: How can cross-border exchange between two TIs take place, when the national copyright exceptions of the two countries differ? Do we need harmonization of the copyright exceptions for print-disabilities before we can establish the international network of TIs?

A4: We do not need to harmonize copyright exceptions for this pilot. Each TI can distribute titles as permitted by the laws of their country. If they distribute under a license granted by the rightsholder (RH), then people who qualify according to the license may be served.

Q5: Is cross-border exchange possible if the title is published in only one of the countries?

A5: The goal of the TI Guidelines is equal access. Without a specific instruction from the RH to the contrary, a TI may transfer a title in an accessible format to another TI irrespective of prior publication in the recipient country.

Q6: Can cross-border exchange between TIs happen, when there is already an accessible translated version of the original title? (Can end-users rightfully claim access the original title if there is a translated accessible copy?)

A6: If there is a version that effectively meets the needs of the print-disabled person, then a TI would not wish to consume scarce resource by remanufacturing the title. If it is available for sale from the RH, then it should be purchased. However, if an accessible version does not effectively work for a person, then another version may be created. For example, a braille version may be produced if an audio version is available and the braille is more appropriate for that person, or a full-length, structured audio version may be produced if an abridged audio version is available commercially.

Q7: Is it fair or not to have only a one-time remuneration for one and the same title if it is “exported” to another country? (Guidelines, 4c)

A7: Cooperation between the TI and RH should result in costs savings. Payment to the RH may occur for the provision of a structured file. It would be a one-time payment to recover direct costs. Remuneration for the copyright license will be decided by the RH, aiming at modest or zero remuneration.

Q8: On what grounds can the copyright holder deny transfer of a title to the national TI? (Lawful access to the works, 4a)

A8: If the TI is producing under a license agreement with the RH, the conditions in which works would be excluded from transfer should be defined at the outset in the license agreement. More generally, the pilot will explore and address availability of useful titles.

Q9: How can we solve disputes between copyright holder and end-user about the alternative accessible file-format (Can the end-user rightfully claim a text version when there is a Daisy audio only version available?) (Formats, 4b)

A9: The agreements are between the TI and the RH. Issues related to end users, i.e. the print-disabled person, are out of scope for these agreements. It is expected that the TI would be dealing with the needs of their end users. If an end user needs a certain format, then the TI would need to address that issue.

Q10: It is clear that reporting to rightsholders for materials covered under license is needed. However, the reporting to rightsholders on titles produced and transferred through copyright exceptions seems inappropriate; the rightsholders in these cases do not want to grant licenses and provide files, so how can one report to a rightsholder who is not participating?

A10: For works produced under a license agreement, reporting to the RH is needed. To support this reporting, a system would be developed to ensure the reporting process is not onerous. During the TI pilot project, the TI will report to the RH on titles produced under copyright exception that are being transferred across borders. As a result of receiving this information, if the RH elects to produce an accessible format version of a title, there is no expectation that the TI will remove the accessible copy produced under copyright exception.

Q11: The desired path is for mainstream availability, but recognizes the likely interim need for TI intervention. If the TI has had to invest the cost of production, albeit with the provision of RH master digital files, is it then reasonable to expect the TI to withdraw its accessible title in favor of a late coming RH accessible title without compensation for the original TI investment

A11 First, with good communications between the RH and the TI, we hope this will not happen. If the RH intends to produce an accessible version, the TI would know in advance that the title would likely need to be removed once the accessible version is made available. Practical experience will be gained during the piloting of the TI Guidelines. More work is foreseen on this issue during the pilot project.

Q12: If a title is being requested to be withdrawn, but it was originally produced under exceptions, it must presumably fall outside the legal contractual relationship between the RH and the TI?

A12: If a title was produced under an exception, then there would be no license that applies and the title would remain in the TI's collection for use in accordance with national law.

Q13: It is reasonable to expect that some titles that a RH produces will be accessible to some, but not all persons with disabilities. For example an audio version will not meet the needs of a deaf & blind person. In such cases if a TI requests a title, but the RH has produced an accessible version, would a license and the files be granted?

A13: It is expected that the RH will produce versions that are not effective for the whole print-disabled community. As such, other versions that do meet the needs of the end user would be produced by the TIs.

Q14: It would be difficult or impossible to have multiple different licenses from the RH. Is it anticipated that a single license would be established that can be used in the TI network?

A14: Yes, the goal is to develop a standard license that would be used globally between RH and TI.

Q15: If a TI already has a worldwide license, is there any need to do something different to collaborate in the TI network.

A15: If the TI has already a more favorable license, nothing prevents the participation in the TI networks with that license.

Q16: The TI network and the White Paper talk about libraries, but it seems that other types of organizations should be allowed to participate. Will there be a list of types of TI organizations created?

A16C: The TI Guidelines and the file transfer agreement under preparation talk about organizations and intermediaries in generic terms, instead of using the term “library”. (The White Paper is outside the scope under review.)