

TRUSTED INTERMEDIARY GUIDELINES

Approved by the Working Group Members¹ on July 31, 2009

Approved by the Stakeholders' Platform on November 3, 2009 with the following understanding:

These guidelines are not intended to be legally binding. Nothing in these guidelines changes anything in national or international law at any time.

Introduction

At national level intermediaries - mostly charities serving persons with print disability - play an important role in providing access to print-disabled people.

Representatives of rightsholders and print-disabled persons agree that intermediaries can also play an important role in the cross border transfer of content and rights. To serve the interests of both, these intermediaries must be trusted by both communities.

1) Prototype for Trusted Intermediary Guidelines

The Trusted Intermediary Guidelines (TI Guidelines) are developed at this stage as high level principles which the representatives of print-disabled persons and rightsholders accept to serve as a prototype for real life testing before finalisation. The overall aim of testing is to build mutual confidence in a system trusted by all stakeholders that can significantly increase the number of published works² available to print-disabled people.

Real life testing will serve as a learning process and show what concrete challenges are encountered and how they can be addressed in practice. Rightsholder contact and feedback should be ensured for all titles in the test, irrespective of whether the titles are licensed or produced on the basis of a national law rule. Further refinement of the guidelines, if necessary, will be based on experiences learnt from testing.

2) Shared Long Term Objectives

The ultimate aim is to have a seamless cooperation between offerings from rightsholders and trusted intermediaries.

The shared long term objective is for print-disabled persons to be able to read the full range of publications, obtained via mainstream channels, in a format that suits their individual requirements. The use of flexible production systems or accessible digital products could make this possible. As a fallback and to the extent necessary, access to works would take place through specialised service organisations. These services should work without unnecessary duplications at national or international level.

Seamless interaction should include, whenever possible, an early delivery of accessible digital files upon request for newly published works as part of the market place, or

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² At this stage only text-based works

alternatively structured files (for example in XML) to the trusted intermediary. Taking into account the amount of investment occurred in some cases, it should also include the possibility to remove a title from specialised services under certain circumstances to be negotiated. The need for removal should be eliminated or reduced to the extent possible with help of good communication.

3) Point of Departure

In order to gain mutual confidence in the process, the parties acknowledge that the word “Trusted” means the capability of delivering predictable results, including enforceable decisions. A Trusted Intermediary (TI) is thus an entity that facilitates interactions between two parties who both trust the third party. The objective of a TI is to facilitate the traffic between an indeterminate number of rightsholders as content providers and print-disabled persons as end users in a controlled manner.

The parties have agreed to work at first instance on the TI Guidelines for business-to-business (B2B) environment (, i.e. delivery between two TIs in the same or different countries).

Trusted Intermediary is a status that is obtained and kept on the basis of ongoing relationship and communication. In order to facilitate international transactions, reliable structures need to be found that monitor activities to ensure that the principles of the TI Guidelines are maintained.

4) Common Trust Guidelines

a) Lawful access to the works

The primary goal is that the rightsholder delivers a structured digital file, for instance in XML format, in the absence of an accessible format. The file transfer takes place on request or systematically by agreement, and is based on a contract allowing the controlled use of the file. The necessary rights can be licensed directly by the rightsholder or its designated representative, such as a Reproduction Rights Organisation (RRO).

In cases where a structured file is not available, the rightsholder can authorise by contract the TI to produce the file in a controlled environment. Also in this case, the necessary rights can be licensed directly by the rightsholder or its designated representative.

In cases where the rightsholder does not respond to a written request from a TI within an agreed period of time, the TI may produce the digital file, subject to a national law rule on silent consent or presumed consent, or similar local accepted practices established between organisations representing print-disabled persons and rightsholders, provided that the same safeguards are applied as if express consent had been provided.

b) Contractual relationships

A set of agreements will be drafted for the transfer of structured files and rights taking into account the different scenarios under 4.a.

c) Remuneration

Remuneration will be decided by the rightsholder or its designated representative, aiming at modest or zero remuneration. The rightsholders will consider zero remuneration as a default.

In cases where the publisher converts the digital content into a structured file, for instance in XML, the cost price of the conversion can be charged. The same applies, if the TI delivers a structured file it has produced to the publisher on his request.

d) Formats

The term “structured (XML) file” is used in the relationship from rightsholder to TI.

An “accessible file” is one that can be used directly by a person with a print disability. Some examples are provided to these guidelines. Accessible files may be provided to print-disabled persons by TIs, or by rightsholders as mainstream publishing products.

There is no obligation for the rightsholders to supply in all formats.

No other changes than those required to make the copy “perceivable, operable, understandable and robust”³ to the intended readership are allowed. For instance, different language versions are not allowed.

e) Supply of digital master files

The supply of a digital master file to a TI will take place through an accepted method of transfer, specified in the file transfer agreement between the publisher and the TI.

The requirements for secure storage and handling of content in digital form and for record keeping will be developed, including effective control and compliance procedures.

f) Delivery of content to qualifying end users

It is in the interest of both rightsholders and TIs that the delivery of accessible digital files to qualifying users takes place in a form where the content is protected by using appropriate technology. The security mechanisms include a possibility to trace the whereabouts of the copy, for instance by using IP tracking or watermarking/fingerprinting.

Security programs will be installed to follow the use of individual digital formats and report exceptional use. Their aim is to ensure compliance and eliminate repeated infringements.

In cases of digital material, an authentication process will be in place to ensure that the delivery takes place within a closed system, to registered users with qualifying print disability.

g) Approved Institution

The TI must have the trust of representatives of print-disabled persons and rightsholders.

The characteristics of an approved institution are the following:

- They operate on a not-for-profit basis;
- They register the people they serve;
- Each organisation has as a primary mission to provide specialized services relating to training, education, or adaptive reading or information access needs of print disabled;
- They maintain policies and procedures to establish the bona fide nature of people with print disabilities that they serve, as well as ensuring full and complete compliance with copyright law.

³ <http://www.w3.org/TR/UNDERSTANDING-WCAG20/intro.html#introduction-fourprins-head>

If the approved institution is a nation-wide network of organisations, then all organisations which are members of this network must adhere to all of the above mentioned characteristics.

Files will only be delivered to institutions that have subscribed to the TI Guidelines and each TI ensures that files are only transferred between TIs that belong to the network of TIs.

h) Beneficiaries

The TI or the member organisation of the TI must have a register of qualified recipients, who are persons with a print disability. The TI will inform the rightsholders the number of their qualified recipients.

i) Copyright Information

The copy must include relevant bibliographic and copyright information, including an identifier, and an international © symbol for information purposes. The copy must further include a notice identifying the copy as made specifically for the benefit of persons with print disabilities, including source TI and receiving TI.

j) Notification requirements to rightsholders and records

Notification requirements to be developed can be different for different formats (for instance Braille, audio, digital files).

Records of titles and formats and the number of copies or uses must be kept an agreed period and made available for inspection by rightsholders or their designated representative on request.

For copies made pursuant to the Guidelines, whether under license from rightsholders or under a national rule contemplated in para 4 (a) above, notification will be given to rightsholders or their designated representatives within an agreed time of the making of the copy, or at agreed intervals, provided electronic contact information to the rightsholder or its designated representative has been provided.