# Comments on the Copyright Amendment (Disability Access and Other Measures) Bill 2016

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1. The new fair dealing exception in s 113E(1) is a clear and useful addition to the law that will simplify access to people with disabilities.
2. Nevertheless, this Bill does not alleviate the broader need for a Fair Use exception as recommended by the ALRC.
3. The anti-circumvention exceptions in Schedule 10A of the Copyright Regulations 1969 (Cth) must be amended in line with the new fair dealing exception. A new ‘Prescribed act’ should be introduced to enable any person to circumvent a technological protection measure and to deal with circumvention devices, and to provide circumvention services, for the purposes of assisting people with disabilities gain access and make use of copyright material.
   1. For example, under the proposed legislation, a person who is blind and purchases an eBook with DRM that does not allow the use of a screen reader may not circumvent these restrictions in order to access the work. He or she may not enlist the assistance of others to gain access to the work. A clear exception is required to give effect to the new fair dealing exception in these circumstances.[[1]](#footnote-1)
   2. Consequential amendments are also required to remove references to Part VB.
4. Subsection 113E(2) is not required and should be removed. Most fair dealing exceptions do not explicitly contain the four fairness factors. The four fairness factors are particularly not required in the context of disability access and are likely to make interpretation more difficult and more narrow than necessary. [[2]](#footnote-2) In particular:
   1. Purpose and character: the legislation should clearly reflect the intent that the purpose of enabling access is explicitly fair (which means that this factor will always be satisfied if s 113E(1) is satisfied);
   2. Nature of the copyright material is irrelevant – people with disabilities have clear rights under the CRPD to access all forms of copyright material.
   3. Effect on the market: this factor is effectively covered by the requirement that a dealing be ‘fair’ and does not need to be explicitly stated.
   4. Amount and substantiality is irrelevant in the context of disability access. The Marrakesh Treaty is specifically designed to promote access to entire works.
5. The term ‘using the material’ in s 113F is ambiguous. The legislation should clearly set out that assisting people with disabilities to access and consume copyright material is not an infringement of copyright.
6. The introduction of workable Safe Harbours through the new definition of ‘service provider’ is a welcome resolution to a longstanding problem.

1. See Harpur, Paul & Suzor, Nicolas P. (2014) [The paradigm shift in realising the right to read : how ebook libraries are enabling in the university sector.](http://eprints.qut.edu.au/78325/)Disability and Society, 29(10), pp. 1658-1671. [↑](#footnote-ref-1)
2. See Harpur, Paul & Suzor, Nicolas P. (2013) [Copyright protections and disability rights : turning the page to a new international paradigm.](http://eprints.qut.edu.au/61501/)University of New South Wales Law Journal, 36(3), pp. 745-778 at pp 753-7. [↑](#footnote-ref-2)