

Library Copyright Alliance

Issue Brief

**Treaty for Improved Access for Blind, Visually Impaired
and Other Reading Disabled Persons**

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The World Blind Union (WBU), with the support of numerous civil society and library organizations, is engaged in an effort to transform the possibilities for blind, visually impaired and other reading disabled persons to access reading materials. A proposed WIPO Treaty for Improved Access for Blind, Visually Impaired and Other Reading Disabled Persons is aimed at providing a minimum standard for copyright laws internationally to ensure full and equal access to information for blind and other reading disabled persons.¹

Digital technology has expanded the range of possibilities for creating works accessible to blind and visually impaired persons. Works can be made available at the same time that published works are made available for sighted persons. They can be produced at reasonable costs, and they can be distributed efficiently to people in all parts of the world using new technologies. They can transform the lives and economic possibilities of people with disabilities related to reading. A major obstacle to these possibilities is copyright law.

There is no international copyright treaty or convention that contains a specific provision relating to the needs of blind and visually impaired people. The matter of adopting exceptions and limitations to permit the creation and distribution of copyrighted works in accessible formats such as Braille, audio, or large print formats, is left to national policy makers. The result is that provisions in national laws for the benefit of the blind and reading disabled vary great from country to country. Most national laws restrict in some way the reproduction and distribution of accessible works. There is no international framework that facilitates distribution of accessible versions from one country to another.

Copyright laws worldwide need to be changed to allow for full and equal access to copyrighted works. This means greater flexibility for creating affordable accessible works at the same time as publication in standard formats, and for import and export of accessible works, summed up by WBU advocates as “same book, same time, same price.” The proposed treaty was officially introduced in the WIPO Standing Committee on Copyright and Related Rights (SCCR) in May 2009, and is available at <http://www.keionline.org/content/view/210/1>. The Library Copyright Alliance (LCA) strongly supports this proposal.

The Need for a Treaty

The need to maintain a balance in copyright law between the interests of rightsholders and the broader public interest is a longstanding principle in the international copyright system. The barriers experienced by blind, visually impaired and other reading disabled persons in accessing copyrighted works reflect an

imbalance that needs to be addressed in order to equalize possibilities for all people to read copyrighted works. In addition to visually impaired persons are those with other disabilities that prevent them from being able to read, such as those who are unable to turn pages of books, or who have limited mobility, or those who suffer from dyslexia, other learning disabilities, or cognitive limitations.

- The World Health Organization estimates that there are 314 million people worldwide who are visually impaired. Of these, 45 million are blind, of whom 90% live in low-income countries. According to a recent report on blindness and visual impairment, the actual magnitude of blindness and visual impairment is likely to be higher than estimates indicate.²
- It is estimated that in the United States, less than 5% of published works are available in accessible formats. Some 95 percent of books never become available to blind and partially sighted readers, who use alternative formats such as audio, Braille or large print. The figure is even lower in developing countries.³
- The majority of accessible format books are produced by specialized charitable organizations with limited resources. These organizations use copyright exceptions to produce books in the countries where they exist.
- The recent WIPO *Study on Copyright Limitations and Exceptions for the Visually Impaired*, prepared by Judith Sullivan, reports that significantly fewer than half of WIPO Member States have been found to have a provision for visually impaired people in the national copyright law. The study identifies and analyzes 57 specific exceptions in national laws.⁴
- It is believed that 95% of accessible works are produced under copyright exceptions, and that only 5% are produced through licenses with copyright holders.

Representatives of the blind, visually impaired and other reading disabled communities refer to the “Knowledge Famine” or the “Book Famine” to describe the current situation. While it is technically possible to produce published works in accessible digital formats such as the Digital Access Information SYstem (DAISY) at the time that a book is published in a standard print or digital format, and it is less expensive and labor intensive to make an accessible copy during the initial book production process, this is not standard publishing practice. The most efficient way to produce a book in Braille is to use the electronic text file produced by the publisher. Publishers, however, generally do not incorporate accessibility in their business models. Creating accessible formats of copyrighted works after initial publication of a book can be time-consuming and costly. Copyright issues are a major consideration.

Copyright Issues

Visually disabled people need to have access to copyright protected works in readable formats, such as Braille, large print, and audio versions, and other formats that can be made using innovative technologies. National laws in some countries allow such copying and adaptation without the permission of the rightholder. In other countries, however, these acts could infringe copyright if undertaken without authorization.

The making of accessible copies implicates exclusive, or economic rights, of the copyright holder, variously formulated in national laws, including reproduction; adaptation; distribution, including rental and lending; broadcasting by wireless means; other communication to the public by electronic transmission; public performance; making available to the public; and other rights. The process of obtaining permissions to use works is often complex, due to the nature of publishing and licensing practices. Exclusive rights are a bundle of rights that may be divided up and licensed to different entities,

each of which may control distribution in different geographical locations, or control certain formats or editions of works, or languages of publication. There may be many different copyright holders to locate, involving complex negotiations.

In addition, even in countries where copyright exceptions exist that allow for the making of accessible versions, they are territorial in nature. For example, the exception in U.S. law that allows for a copyrighted work to be reproduced and distributed in a specialized format for blind or other disabled persons applies only within the U.S., and does not allow for export of that version into another country. The possibility of creating an international framework for the distribution of accessible copies from one country to another is a major challenge. According to the WIPO study by Judith Sullivan, it is reasonable to assume that the laws of the country where the copy is made would govern export of the copy, and the laws of the country where the accessible copy is received would govern import, with respect to copies for individuals. It is possible that an international organization, acting as a “trusted intermediary,” could be established to facilitate the exchange of accessible copies between countries, but at present, there is no known model for this in a national law, and there are many considerations concerning this possibility.⁵

Some countries have provisions in the national copyright law that allow uses of copyrighted works without authorization of the copyright owner, for the benefit of visually impaired persons. Many more need to adopt them. Fifty-seven countries are known to have specific provisions permitting assistance to visually impaired people or the making of a copyrighted work in an accessible form. There is great variation across the laws in the scope and wording of these provisions. Minimum exceptions for the visually disabled in world copyright laws would resolve many of the issues hindering access to information for blind and reading disabled persons. Harmonization of exceptions, including those allowing for import and export internationally, would allow works to be shared legally across borders.

Setting the Stage for a New Treaty

Since 2003, the WBU has urged WIPO to address the needs of the visually impaired concerning publication and distribution of copyrighted works. It has emphasized the need for greater harmonization in copyright limitations and exceptions, and for export and import of works in accessible formats.

In October 2004, the government of Chile requested that WIPO address the subject of exceptions and limitations to copyright and related rights for the purposes of education, libraries, and disabled persons.⁶ Chile identified the importance of strengthening international understanding of the need for adequate limitations for public interest purposes.

In November 2005 the government of Chile requested that WIPO undertake the establishment of an agreement on exceptions and limitations for the public interest, to serve as minimum standards in all legislations. It highlighted needs for exceptions needed to promote creation and innovation, and in the interests of disabled persons, libraries and archives, and education.⁷

In response to the 2005 proposal by Chile, WIPO commissioned three new studies on limitations and exceptions in the digital environment for the visually impaired, for libraries and archives; and on educational activities and distance education, including cross-border aspects. The first two studies comparing levels of limitations and exceptions across national laws, have been completed.⁸ The *Study on Copyright Limitations and Exceptions for the Visually Impaired* by Judith Sullivan, and the *Study on Copyright Limitations and Exceptions for Libraries and Archives* by Kenneth Crews, illustrate the imbalance and inadequacy of copyright limitations exceptions internationally. They clarify the need to expand the range and scope of limitations and exceptions to support access to information and knowledge, and the benefits that can this effort can achieve for individuals and society.

In March 2008 a new proposal was presented by Brazil, Chile, Nicaragua and Uruguay, recommending that the Committee implement a plan for achieving a consensus on minimum mandatory exceptions and limitations, particularly with regard to educational activities, people with disabilities, libraries and archives, and exceptions that foster technological innovation.⁹

In October 2008 the WBU submitted to WIPO the proposal for a Treaty for Improved Access for Blind, Visually Impaired and Other Reading Disabled Persons. It was formally introduced at the May 2009 SCCR meeting by Brazil, Ecuador and Paraguay, and will be discussed at the SCCR committee meeting in December 2009.¹⁰ The two main features of the proposed treaty are to provide a minimum standard for limitations and exceptions for the blind and visually impaired and reading disabled, reflecting current technological opportunities, and to allow for the import and export of works in accessible formats by eligible parties.

World Blind Union Proposal for WIPO Treaty for Improved Access for Blind, Visually Impaired and Other Reading Disabled Persons

The treaty proposal seeks to create mandatory minimum limitations and exceptions to copyright for the benefit of blind, visually impaired, and reading disabled persons, and to ensure that accessible works may be exported and imported across borders. Its purpose highlights the need for all persons to participate in society on an equal basis and to fulfill their individual potential for their own benefit and for the larger social good.

It proposes an exception allowing for persons or organizations to make and supply an accessible format of a work to a visually impaired person by any means under certain conditions, on a nonprofit basis, without authorization of the copyright holder. The user would be permitted to copy the work for personal use under certain conditions. For-profit entities could also avail themselves of the exception, and commercial rental of copies would be possible, under certain conditions. The conditions are designed to keep works affordable.

The treaty would allow for export to another country of an accessible version made under the terms of the treaty, and for import in the other country, without authorization of the copyright owner. The proposal includes a provision for a WIPO database to facilitate notice to rightholders of reproduction and distribution being made under the provisions of the treaty, and to provide information on available accessible works. It also contains a provision limiting liability for use of orphan works to 24 months.

The text of the WBU proposal for a WIPO Treaty for Improved Access for Blind, Visually Impaired and Other Reading Disabled Persons is available at http://www.keionline.org/misc-docs/tvi/tvi_en_pdf.pdf.

Related Developments

In the U.S. blind and reading disabled persons benefit from Section 121 of the U.S. copyright law, also known as the Chafee Amendment, that limits exclusive rights of copyright holders for the social benefit of blind or other people with disabilities.¹¹ The provision allows authorized entities—certain types of nonprofit organizations or governmental agencies serving blind or other persons with disabilities—to reproduce and distribute copies of published nondramatic literary works in specialized formats exclusively for use by blind or other persons with disabilities, under certain conditions.

In connection with WIPO discussions of the proposed treaty, the U.S. government supported fact finding and the exploration of best practices, leading to a U.S. Copyright Office study of Section 121 of the U.S.

copyright law. Stakeholders were asked for comments in 2009 spring and a discussion was held in Washington, DC to help formulate the U.S. position.¹² The American Library Association, Association of College and Research Libraries, and Association of Research Libraries provided written comments and oral testimony to the U.S. Copyright Office on the effectiveness of Section 121 after interviewing librarians nationwide familiar with the needs of visually impaired persons and persons with disabilities.

Among the conclusions of the three U.S. library organizations are that Section 121 could be improved in the area of eligibility requirements and allowed formats; that contract law should not be permitted to expand the exclusive rights of copyright holders at the expense of information access for visually impaired persons; that interlibrary loan cannot meet the needs of the visually impaired in foreign countries because Section 121 applies only within the U.S.; and that technological innovations to improve access to information for the visually impaired should be encouraged. The submission is available at <http://www.copyright.gov/docs/sccr/comments/2009/russell.pdf>.

Introduction of the proposed WIPO Treaty for Improved Access for Blind, Visually Impaired and Other Reading Disabled Persons coincided with the public reaction over Amazon's Kindle 2 E-book reader. The Kindle debuted in February 2009 in spring 2009. The Authors Guild objected to the device's text-to-speech function, and pressured Amazon to disable the synthetic speech function of Kindle 2, which it stated was a violation of copyright law. In late February, Amazon allowed publishers and writers to disable Kindle 2's read-aloud feature, by permitting rights holders to disable the feature for individual titles. On April 7, 2009 hundreds of people organized by the Reading Rights Coalition gathered in front of the headquarters of the Authors Guild in New York to protest the removal of the text-to-speech capabilities in Amazon's new Kindle 2 E-book device.

The Kindle controversy also led domestically to a lawsuit filed by the National Federation of the Blind (NFB) and the American Council of the Blind (ACB) on June 25, 2009 against one university to prevent the university from implementing Amazon's Kindle DX electronic reading device as a method of distributing electronic textbooks to its students, on the grounds that the device cannot be used by blind students. The NFB and ACB also filed complaints with the Office for Civil Rights of the U.S. Department of Education and the Civil Rights Division of the U.S. Department of Justice, requesting investigations of five other institutions. The lawsuit and the complaints allege that the institutions are in violation of the Americans with Disabilities Act and the Rehabilitation Act of 1973.

These developments reveal common concerns relating to information access for visually impaired persons at a time when digital opportunities are available to end the "Book Famine." New technologies can facilitate full and equal access to reading materials for the visually impaired, if copyright limitations and exceptions are sufficiently robust and are respected.

Conclusion

LCA provided input in the drafting of the Treaty for Improved Access for Blind, Visually Impaired and Other Reading Disabled Persons, and has co-authored several joint statements on the importance of limitations and exceptions, including those for the visually impaired. At WIPO, LCA continues to endorse the WBU treaty proposal.

Limitations and exceptions benefit all members of society. If they did not exist, copyright holders would have a monopoly over all uses except reading. In the case of visually impaired persons, even the act of reading is compromised if there are not sufficient exceptions in national copyright laws to support the creation and distribution of accessible and affordable versions of works. LCA is committed to advocating

for adequate limitations and exceptions, higher than those that currently exist, for blind, visually impaired, and other reading disabled persons.

1. The text of the proposed treaty and the letter addressed to the Director General of WIPO are available on the website of Knowledge Ecology International at <http://www.keionline.org/content/view/210/1>.
2. World Health Organization, "Prevention of Avoidable Blindness and Visual Impairment: Report by the Secretariat," Sixty-Second World Health Assembly, Provisional Agenda Item 12.3 (A62/7), April 2, 2009, http://apps.who.int/gb/ebwha/pdf_files/A62/A62_7-en.pdf.
3. Letter of Christopher E.B. Friend, Chair, WBU Copyright and Right to Read Working Group, to Dr. Francis Gurry, WIPO Director General, October 28, 2008, http://www.keionline.org/misc-docs/tvi/wbu_coverletter_gurry.pdf.
4. WIPO Standing Committee on Copyright and Related Rights, Fifteenth Session, *Study on Copyright Limitations and Exceptions for the Visually Impaired*, prepared by Judith Sullivan (SCCR/15/7), February 20, 2007, 28, http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=75696.
5. Sullivan, *WIPO Study*, 57-6.
6. WIPO Standing Committee on Copyright and Related Rights, Twelfth Session, "Proposal by Chile on the Subject 'Exceptions and Limitations to Copyright and Related Rights'" (SCCR/12/3), November 2, 2004, http://www.wipo.int/meetings/en/archive_docs.jsp.
7. WIPO Standing Committee on Copyright and Related Rights, Thirteenth Session, "Proposal by Chile on the Analysis of Exceptions and Limitations" (SCCR/13/5), November 22, 2005, http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=53350.
8. In addition to the WIPO Study by Judith Sullivan is: WIPO Standing Committee on Copyright and Related Rights, Seventeenth Session, *Study on Copyright Limitations and Exceptions for Libraries and Archives*, prepared by Kenneth Crews (SCCR/17/2), August 26, 2008, http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192.

WIPO had earlier commissioned studies addressing limitations and exceptions with respect to the digital environment: WIPO Standing Committee on Copyright and Related Rights, Ninth Session, *WIPO Study on Limitations and Exceptions of Copyright and Related Rights in the Digital Environment*, prepared by Sam Ricketson, (SCCR/9/7), April 5, 2003, http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=16805; WIPO Standing Committee on Copyright and Related Rights, Fourteenth Session, *Automated Rights Management Systems and Copyright Limitations and Exceptions*, prepared by Nic Garnett (SCCR/14/5), April 27, 2006, http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=59952.
9. WIPO Standing Committee on Copyright and Related Rights, Sixteenth Session, "Proposal by Brazil, Chile, Nicaragua and Uruguay for Work Related to Exceptions and Limitations" (SCCR/16/2), July 17, 2008, http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=107712.
10. WIPO Standing Committee on Copyright and Related Rights, Eighteenth Session, "Proposal by Brazil, Ecuador and Paraguay, Relating to Limitations and Exceptions: Treaty Proposed by the World Blind Union (WBU)" (SCCR/18/5), May 25, 2009, http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=122732.
11. See <http://www.copyright.gov/title17/92chap1.html#121>.
12. See <http://www.copyright.gov/docs/sccr>.