



## **Committee on the Rights of Persons with Disabilities Day of General Discussion on “The Right to Accessibility”**

**7 October 2010**

### **Paper by the World Blind Union on a WIPO Treaty for Improved Access for Blind, Visually Impaired and other Reading Disabled Persons**

#### ***Executive summary***

Many millions of people have a disability, such as blindness or dyslexia, which prevents them from reading standard sized print. They can read the same books as their non-disabled peers, but to do so they require “accessible formats” of these books, such as large print, audio or braille. However, publishers rarely make such books, and so it is mostly left to charities to do so with scarce resources. As a result, only some five per cent of published works are ever made available in accessible formats. This is a “book famine”.

There are many ways to solve the “book famine”. The best would be for publishers to publish more accessible books. Cooperation between publishers and organisations making accessible books can also help with the transfer of digital files, licensing agreements and more.

However, there is an ongoing and unmet need for international copyright law to be changed, so that organisations which make accessible books can legally share their collection with others. That would significantly increase the number of accessible books available to print disabled people.

The World Blind Union has drafted a proposal for a World Intellectual Property Organisation (WIPO) treaty to tackle this problem. That proposal was tabled at WIPO by Brazil, Ecuador and Paraguay in May 2009. However, despite it receiving significant backing, several significant rich countries such as the USA and the EU's Member States opposed it. At WIPO in May and June 2010 the USA and EU made their own proposals for more limited and non-binding legal instruments. These met with no approval from the many disabled people's NGOs at WIPO.

**Now is the time for WIPO Member States to live up to their responsibilities under the UN Convention on the Rights of Persons with Disabilities. The World Blind Union asks the UN Convention Committee to use its influence and good offices to urge WIPO Member States to work actively and positively at WIPO to devise a binding legal norm, based on the treaty proposal drafted by the World Blind Union and tabled at WIPO in 2009.**

## ***1. Background***

This paper offers a short explanation of the treaty proposal made by Brazil, Ecuador and Paraguay at WIPO SCCR 18 in May 2009.

### **1.1 Who are “visually impaired and reading disabled persons?”**

The term visually impaired persons refers to blind and partially sighted people. According to the WHO, 161 million people worldwide are blind or visually impaired; a further 153 million have an uncorrected visual impairment. 87 per cent live in developing countries.

Reading disabled people are all those who, due to an impairment that may be physical, sensory or other, cannot read standard print. For example, a person without sight, a person whose sight is severely impaired, a person unable to hold or manipulate books or to focus or move his or her eyes. It also applies those who have a perceptual or cognitive disability which prevents them from reading standard print.

To be clear: the term does NOT apply to all disabled people. For instance, a person with a perceptual or cognitive disability, but who is able to read standard print, is not “reading disabled”.

In theory, reading disabled people can read any book a non-reading disabled person can read, thanks to so-called “accessible formats”. These formats do not change the

content of a work, but rather the way in which the person reading accesses it. They include large print audio, Daisy [<http://www.daisy.org/>] and braille.

## **1.2 Book famine**

In practice, even in the wealthiest markets, less than 5 percent of published books are accessible in the formats mentioned above to people who are reading disabled.

For example, even in the Netherlands, where there is a partnership between Dutch Publishers and specialist agency Dedicon, only 2000 new adapted Dutch titles a year are available to people with reading disabilities out of some 40,000 new titles that are published in the Netherlands market.

This is a “book famine” depriving people of access to education, culture and entertainment.

## **1.3 Sharing scarce resources**

Ideally a treaty would not be needed if publishers always published in accessible formats enabling persons with reading disabilities to buy books in the format of their choice. But until this day comes we need the treaty to enable resources to be shared worldwide. This will avoid duplication of expense and effort and provide a wider range of resources for education, life long learning and recreation to the millions of people who are currently denied this access now

Most accessible books are made by specialist agencies using charitable money. In over 90% of cases they use copyright exceptions to produce accessible books. Their resources are scarce even in high-income developed countries.

At present specialist agencies in different countries, but with a common language, often both transcribe the same book. They cannot avoid this needless duplication by sharing one accessible file or copy. This is because the copyright exceptions they use to make the accessible version are national in scope.

Below are two examples of the problem the treaty proposal seeks to resolve. The first demonstrates needless duplication. In the second, the five countries mentioned have not found the resources to make accessible copies of the books held in Argentina and Spain. Due to copyright barriers they have to go without these books altogether.

#### Example 1.

When Harry Potter and the Chamber of Secrets (Book 2) by J.K. Rowling was published the English speaking visually impaired organisations around the world had to produce 5 separate national braille master files and 8 separate national Daisy audio master files. Had they been able to avoid the unnecessary use of financial and production resources for this duplication they could have produced a further 4 braille titles and a further 7 Daisy audio titles for sharing around the world.

#### Example 2.

Voluntary organisations in Chile, Columbia, Mexico, Nicaragua and Uruguay have only 8,517 books in alternative formats between them. However, Argentina has 63,000 books and Spain 102,000. All these countries speak Spanish.

Imagine if reading disabled people in Argentina and Spain were able to legally share their alternative format books with their Latin American colleagues in other countries thanks to a copyright exception permitting cross-border exchanges. That would immediately and radically increase the number of readable titles for reading disabled people in the five countries mentioned above.

### **1.4 Need for treaty**

To achieve the sharing of accessible books between reading disabled people's organisations and resolve the problems mentioned above, there is a need for international harmonization of limitations and exceptions to copyrighted works. An international treaty on copyright exceptions for reading disabled people would be an effective way to do this.

On numerous occasions the World Blind Union, the International Federation of Library Associations (IFLA) and others have asked WIPO to address the need for new global norms to expand access to works under copyright limitations and exceptions, focusing in particular on the need for sharing copies of accessible works across borders.<sup>1</sup>

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<sup>1</sup> In fact, as far back as 1985, the Executive Committee for the Berne Convention and the Intergovernmental Committee of the Universal Copyright Convention published a report by Ms Wanda Noel, a Barrister and Solicitor from Ontario, Canada, on the topic of Problems Experienced by the Handicapped in Obtaining Access to Protected Works, as Annex II to a report of an agenda item "Copyright Problems Raised by the Access by Handicapped Persons to Protected Works." Ms Noel focused on the barriers to both the production and distribution of such materials. She recommended to WIPO and

Therefore, in May 2009 Brazil, Ecuador and Paraguay proposed a "WIPO Treaty for Improved Access for Blind, Visually Impaired and other Reading Disabled Persons". Please find copies in various languages at the link below:

[http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=122732](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=122732)

The draft treaty that was devised would remove the copyright grey area identified by the WIPO Sullivan Study (2006) by formally allowing works made accessible under a copyright exception in one country to be shared with other countries, whilst respecting the rights of the authors and other rights holders. (The Sullivan study can be found at:

[http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=75696](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=75696))

## 1.5 WIPO Stakeholder Platform

When the WBU treaty was proposed, copyright holder organisations immediately called for the setting up of a WIPO "Stakeholder Platform" where the publishing industry and disabled people's organisations could explore licensing-led solutions to the "book famine". Rights holders maintained that this Platform should replace the treaty proposal.

However, the proposed treaty is not anti-market and for WBU is not an alternative to the WIPO "Stakeholder Platform". The two approaches are complementary.

The Stakeholder Platform work is indeed designed to improve both the availability of commercial versions that are accessible and to improve the flow of suitable files to be converted. It also uses licensing to achieve its goals. However, a copyright exception is always going to be needed. Exceptions are designed to solve problems that arise where commercial licensing is not effective. They come into play, for instance, where

- Publishers select not to produce accessible digital versions
- Libraries need to provide braille and tactile graphics, and descriptions in the case of audio works, which commercial publishers are not expected to make available. (Even if a commercial version has basic accessibility features, there will be the need to provide these tactile versions through copyright exceptions.)

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UNESCO "an entirely new international instrument which would permit production of special media materials and services in member states, and with the distribution of those material and services amongst member states without restriction."

## **2. The main aims of the treaty proposal**

This section outlines the main concepts and aims of the treaty proposal.

This treaty is about enabling parity and equity to all persons who are reading disabled throughout the world being able to access published material ensuring they can participate in every part of life they choose education, employment, life long learning or just for pure pleasure and recreation

### **2.1 Who are the beneficiaries?**

The beneficiaries would be reading disabled people only. (See 1.1 above)

### **2.2 What kinds of works does the treaty cover?**

Article 4 sets out the criteria. The work must be legally obtained, converted to an accessible format and supplied exclusively for reading disabled people

### **2.3 Which exceptions and limitations are being proposed?**

The treaty would create limited exceptions to the exclusive rights of authors under copyright, in order to make an accessible format of a work, and to distribute copies to persons who have reading disabilities. The treaty would allow the cross-border export and import of accessible works that are created under such exceptions.

There is a right to circumvent technological protection measures, when this is necessary to render a work accessible.<sup>2</sup>

Provisions in private contracts that are contrary to the exceptions would be null and void.

The exceptions in the treaty are split into two categories. For activities undertaken on a non-profit basis, the exception is easier to use, and does not require payment of royalties to authors. There is also the possibility of a for-profit company using the exceptions, but only when an accessible format is "not reasonably available in an identical or largely equivalent format" from the copyright owner, and when the for-profit entity provides both notice and "adequate remuneration" to the copyright owner.

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<sup>2</sup> For instance, where a protection measure stops a blind person from using a text-to-speech screen reader to read a legally acquired book

The non-profit exception is mandatory, but countries are allowed to opt out of the for-profit exception.

## **2.4. What will the treaty achieve that the Stakeholder Platform will not?**

Collaboration with rights holders is very important. However, there are many instances where specialist agencies and reading disabled people will need to make and share accessible format works themselves. Currently over 90% of accessible works are made available by specialist agencies using national copyright exceptions without publisher files.

Notwithstanding the work of the Stakeholder Platform and other collaboration with rights holders, the treaty would, alone, provide for:

- The sharing of existing files/ collections (see the Latin American example, but note that such benefits would also help French, Portuguese, Arabic speaking and all other multi-national language groups).
- The sharing of new books/ files made accessible by exceptions rather than licensing (90%+ of current files are made that way by specialist agencies)
- Legal cover to modification of works to better describe them to blind people, such as descriptions of images

Importantly, the treaty ensures that reading disabled people's organisations can help themselves (while doing no harm) rather than leaving them to merely hope for help from others - help which the 5 per cent figure proves has been lacking for many years.

Even with the best will from all parties, and great progress, nobody can sensibly argue that ALL books will be provided by ALL rights holders to ALL reading disabled people in the foreseeable future. For the many instances where the rights holder files cannot be obtained, national and international law should provide for reading disabled people's organisations to make and share accessible copies.

## **2.5 Consistency with international law**

The text is consistent with obligations set out under core international treaties and conventions, such as the Declaration of Human Rights, the UN Convention on the Rights of Persons with Disabilities. (See in particular Articles 9, 21 and 30)

<http://www.un.org/disabilities/default.asp?id=150>

Article 32 of the Convention, on "International Cooperation", calls for States around the world to work together to meet the aims of the Convention. Were the WIPO treaty proposal to be adopted, it would represent a tangible example of such cooperation.

The proposal is modest and limited in scope, and it respects the rights of rights holders. We are not proposing a "revolution"!

### **3. Conclusion**

The World Blind Union and our colleagues have worked hard in the WIPO Stakeholder Platform, and the European Blind Union has done likewise at EU level in a similar voluntary EU activity, the "Stakeholder Dialogue". We are keen to ensure the resulting projects deliver success. At the time of writing, their outcome remains to be seen. However, these projects cannot provide the legal fall-back for the many situations where publishers do not provide licenses or accessible books. We need **both** collaboration with publishers and a binding international treaty.

The World Blind Union believes that the UNCRPD Committee should encourage WIPO Member States to live up to their responsibilities. The Member States should not hide behind the WIPO Stakeholder Platform (or the "EU Stakeholder Dialogue") or support weak and rights-holder orientated proposals at WIPO.

WBU believes that WIPO Member States should support the WIPO treaty drafted by the World Blind Union and proposed by Brazil, Ecuador and Paraguay (and latterly Mexico). Brazil, Ecuador and Paraguay have proposed a reasonable timetable for the achievement of this treaty. WIPO Member States cannot therefore hide behind the much-used formula that "treaty-making takes too long" as an excuse not to support a binding and comprehensive legal instrument to address the book famine.

**Now is the time for WIPO Member States to live up to their responsibilities under the UN Convention on the Rights of Persons with Disabilities. The way to do this is to work actively and positively at WIPO to devise a binding legal norm, based on the treaty proposal drafted by the World Blind Union and tabled at WIPO in 2009. The time to do so is at the WIPO General Assembly in September 2010 and at the next WIPO SCCR meeting in November 2010.**