

Maria Pallante
Associate Register, Policy & International Affairs
U.S. Copyright Office
Office of Policy & International Affairs
Copyright GC/I & R
P.O. Box 70400
Washington, DC 20024

Friday 4th December 2009

Dear Ms. Pallante,

Please find below the World Blind Union's (WBU) comments in response to the Notice of Inquiry and Request for Comments on the Topic of Facilitating Access to Copyrighted Works for the Blind or Other Persons with Disabilities published in the Federal Register on October 13, 2009.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Chris Friend", with a stylized flourish at the end.

Christopher E.B. Friend MBE FInstF
World Blind Union Strategic Objective Leader – Accessibility
Chair WBU Global Right to Read Campaign

World Blind Union
1929 Bayview Avenue
Toronto Ontario Canada M4G 3E8

Telephone: +1 416-486-9698
Fax: +1 416-486-8107
E-mail: info@wbuoffice.org
Website: www.worldblindunion.org

OPENING COMMENT

1. WBU addresses here comments filed by Microsoft; Association of American Publishers (AAP); Independent Film and Television Alliance (IFTA); Motion Picture Association of America (MPAA); National Music Publishers' Association (NMPA); Recording Industry Association of America (RIAA); the Software & Information Industry Association (SIIA); Columbia University; the Content Control groups: Advanced Access Content Protection, Licensing Administrator, LLC, Content Management License Administrator, LLC, Digital Transmission License Administrator, LLC, DVD Copy Control Association 4C Entity, LLC, and National Public Radio, who all opposed in their earlier submissions the Treaty Proposal tabled by the Governments of Brazil, Ecuador and Paraguay at WIPO's SCCR for further discussion on 14 -18 December 2009.

2. WBU is encouraged by Professor Daniel Gervais of Vanderbilt University Law School in commenting in his earlier submission that "I support the development of an international framework to facilitate the production of copies or versions of copyrighted works for access by the Blind and Other Persons with Disabilities."

Furthermore his comprehensive analytical scrutiny of the international legal environment in this regard is supportive of our statement in our Conclusion that the initial draft Treaty Proposal will in the process of undergoing discussion and scrutiny at SCCR expect to undergo appropriate amending.

3. Our response recognises the Professor's comments and those by some other contributors, and so will concentrate on highlighting arguments around the benefits and shortcomings of both the Treaty Proposal and the Stakeholder Platform as single or multiple approaches to a comprehensive solution to the inaccessibility of published works to the visually impaired and other print disabled readers, as these have clearly not been articulated by many of the Rights Holders original submissions, even though they all professed at their outset that they recognise the need for a solution to the problem and state that they are committed to work for a resolution.

BACKGROUND TO THE WORLD BLIND UNION

4. The term visually impaired persons refers to blind or 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, and moreover, approximately 80% of blindness is, preventable or curable.

Blind and partially sighted persons are considered among the poorest of the world's poor, having very limited access to education, literacy, healthcare and

employment and are often excluded from full inclusion in family and community life.

5. The World Blind Union, through and with its member organizations in 190 countries including the United States of America, represents the interests of blind and partially sighted persons at the world level to raise awareness about, and develop strategies to address these issues. Its Global Right to Read Campaign and its promotion of the WIPO Treaty on Copyright and the Visually Impaired and other Reading Disabled is an example of this.

OVERVIEW

6. In most Least Developed Countries (LDC) and Developing Countries visually impaired and other print disabled readers experience a choice of less than one per cent of all published books made accessible in formats such as large print, audio and braille that they can use, and even in the wealthier markets in industrialised countries WBU research finds that the choice is still less than 5 percent. We call this the “book famine”.

7. We are pleased therefore that the USA has acknowledged that the copyright treaty proposed by Brazil, Paraguay, and Ecuador has significantly raised the interest in this problem across the world.

8. Our ideal world would be one in which Rights Holders would make all their works commercially available to reading disabled people in formats they can access, such as large print, braille, navigable Daisy files and audio. What is certain is that market forces have failed to deliver this, despite publishers’ continued assertions that they would.

9. The fact that 95% of all published works are still inaccessible demonstrates that mainstream publishing, which is a ‘for profit’ business, has not and cannot supply the “reading disabled constituency” to any significant extent. Therefore to rely on “market forces” as a single strategy solution to the book famine would be to believe in an already failed model.

10. WBU believes that the book famine is being sustained by a number of barriers, and certainly requires a multi-pronged approach to resolve it. But at WIPO, rights holders are recommending to Member States that the resolution can be achieved through just cooperation between the publishing industry and organisations serving the reading disabled. They therefore are suggesting the WIPO Stakeholder Platform as the perfect and only solution, and oppose the need for any form of norms such as the treaty proposal.

11. However, WBU suggests that it is unnecessary to prematurely close off any possible avenues, which might contribute towards a fully comprehensive solution. WBU drafted a proposal for a legal instrument because its member organizations were encountering copyright barriers, based on national jurisdiction, to their efforts to cross-border share accessible books from within

their current collections amongst other WBU member organisations around the world.

12. As a result after lobbying from WBU, WIPO commissioned the 2006 Sullivan Study on Copyright Limitations and Exceptions for the Visually Impaired and this study agreed that the sharing of books made under exceptions across national borders was indeed a legal grey area.

13. A worldly observer might therefore suggest that determined opposition to a treaty stems more from a premeditated opinion on how, rather than an open commitment, to find the solution which would increase access to books for this particular reading community.

14. WBU's sole objective is to ensure that whatever measures are needed are in place to improve access to books for reading disabled people, whilst respecting the rights of rights holders. To this end we support a "twin track approach" rather than exclusively calling for either change to copyright law or cooperation with rights holders. We see the two initiatives as essential and complementary.

15. We warmly welcome the opportunity to work with rights holders groups to improve the exchange of files and publisher technology. To this end we have been active in the WIPO Stakeholder Platform. Indeed, prior to the establishment of the Stakeholder Platform earlier this year we had been seeking solutions to the book famine with the International Publishers Association and other Rights Holders Groups outside of WIPO's auspices for over a decade but without significant progress.

16. But it is also necessary to have relevant legal requirements not just in national law, such as the "Chafee amendment", but also in international law as recommended by the Wanda Noel Report to WIPO and UNESCO as long ago as 1985. For this reason WBU drafted the treaty Proposal now tabled by Brazil, Ecuador and Paraguay.

17. World Blind Union research shows that over 90% of the 5% of books which are made accessible are transcribed not by publishers but by specialist organisations such as Recordings for the Blind and Dyslexic and by Bookshare and others in the USA and in the UK by RNIB. In most cases these organisations and those in other countries, currently have to use copyright exceptions such as the "Chafee amendment" to produce accessible books.

18. Their charitable resources are scarce even in high-income developed countries and the need to fund accessible books has to compete with other much-needed services also required by the visually impaired community the organisations are serving.

19. At present specialist agencies like these named above in different countries, but with a common language, both often have to transcribe the

same book. Due to current copyright at national jurisdiction they cannot avoid this needless and expensive duplication because sharing one accessible file or copy across national borders is not permissible. (See the WIPO Sullivan Study at http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=75696)

USA SHARING OF ACCESSIBLE BOOKS

20. For instance, Bookshare in the USA has a total of around 60,000 titles available for reading disabled US citizens to read. (See <http://www.bookshare.org/>)

However, although Bookshare has a UK site too, UK reading disabled members can only access around 5,000 of these titles. As Bookshare's website explains:

21. In many countries, there are accessibility laws that permit the creation of accessible versions of books for people with disabilities. Unfortunately, these are national laws not global laws. So, to distribute books around the world, Bookshare needs to ask permission from publishers and authors. Some are willing to provide such permissions and some books are out of copyright, but it takes time to solicit their assistance.

In fact, Bookshare actively seeks this permission but the difficulty in obtaining it for all of Bookshare's titles for use overseas is demonstrated by the fact that it can currently only make on twelfth of its titles available to UK users.

22. Likewise, RNIB's and CNIB's and Vision Australia's National Library Services are the largest other specialist accessible libraries in the English speaking world, with hundreds of thousands of titles amongst them. American blind and partially sighted readers could certainly benefit from reading those titles in these overseas collections, which are maybe not available in accessible format in the USA. However, once again due to copyright restrictions, these three major national libraries are unable to share these works with US visually impaired and other print disabled users.

In addition, the USA now plays host to many other foreign language diasporas and the Treaty would, if passed, enable their visually impaired and other print impaired readers to also access titles in their native languages from the specialist libraries in their original mother tongue countries.

HOW THE TREATY WOULD HELP

23. The treaty proposal has been designed to resolve two key logistical problems.

24. Firstly, the needless and expensive duplication in re-engineering cost and time that often arises because accessible books cannot be shared across borders and so two identical versions of the same book have to be made. The UK's RNIB often quotes, for example, that 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.

25. Secondly, the Treaty would enable the establishment of a system by which books produced under Exceptions in currently established collections can be shared across national borders without hindrance from copyright restrictions. For example, voluntary organisations across the 19 Spanish-speaking countries of Latin America would love to share Argentina and Spain's collections, which combined, total 160,000 accessible books. Currently copyright barriers mean that those 19 countries each would have to re-engineer their own version of each title at an approximate cost of US \$5000 whereas a shared title from Argentina or Spain could be put into the hands of a VI or PD reader in, for example, Panama or Paraguay for as little as just a few dollars. Given the large number of Spanish speakers in the USA, such a system could also enrich the reading of a significant number of reading disabled American citizens.

WHAT DOES THE TREATY DO THAT THE "STAKEHOLDER PLATFORM" WOULD NOT?

26. WBU recognises that collaboration with rights holders is very important. However, there are many instances where WBU National Member Organisations and specialist agencies serving reading disabled people will need to make and share accessible format works themselves.

27. Currently over 90% of all available accessible works are made available, not by the publishers, but by specialist charitable agencies using national copyright exceptions without publisher files.

28. 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 among language groups (see the Latin American example above, but note that such benefits would also help English, French, Portuguese, Arabic, Chinese speaking and all other multi-national language groups). Also the sharing of new books/ files made accessible by exceptions rather than licensing (90%+ of current files are made that way by specialist agencies)

29. Furthermore, legal cover is needed to modify works to provide essential descriptions for blind people, such as descriptions of graphics, images and photographs etc. (Please see George Kerscher's submission to this consultation for more detail on this point)

CONCLUSION

30. Importantly as other WBU members responding to this consultation have commented, the treaty would ensure that reading disabled people's organisations can help themselves, whilst doing no harm to the Rights Holders who, through choosing not to publish accessible formats for this reading community, have self-suspended their own economic interests which might otherwise arise from this market segment. The alternative, being promoted as the market forces solution, is to leave this reading community to merely hope for help from the Rights Holders - help, which the 5% figure proves, has been lacking for many years.

31. 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. This provision is not currently in place.

32. WBU and its National Member Organisations around the world welcome the USA's backing for the work of the Stakeholder Platform as one component of a complex solution. Given the need for the "twin track approach" we mention above, we urge the USA delegation to WIPO's December SCCR to also respond positively to the treaty proposal from Brazil, Ecuador and Paraguay.

33. No doubt the wording of the initial draft of this treaty proposal - as with all such proposals - will be the subject of scrutiny, discussion and appropriate amendment by Member States. We do not expect the USA to agree with every word of the proposal as it stands. But we urge the USA to show the same leadership in supporting the treaty as it has demonstrated in support of the Stakeholder Platform, thereby ensuring progress on a comprehensive solution to the "book famine".

34. President Barack Obama in his comments at the 24 July White House Press Conference, announcing that the US would sign the UN convention on the Rights of Persons with Disabilities, said "we recommit ourselves to building a world free of unnecessary barriers and full of that deeper understanding." A few days later, on 30 July, Susan Rice, the U.S. Ambassador to the United Nations, said after signing the Convention "Discrimination against people with disabilities is not simply unjust; it hinders economic development, limits democracy, and erodes societies. These

challenges will not disappear with the stroke of a pen. Our work is not complete until we have an enduring guarantee of the inherent dignity, worth, and independence of all persons with disabilities worldwide. Let the signing of the Treaty today be an ongoing source of inspiration for us all in our shared struggle to bring old barriers down.”

35. Copyright, with its current national jurisdiction, is one of those barriers to which the President and Ambassador Rice are referring. Article 32 of the UNCRPD encourages States to cooperate together to operationalise the provisions of the Convention and the USA Delegation to WIPO SCCR 19 later this month could demonstrate that its signature on the Convention was not just a passive gesture but a wish to lead internationally the road map of change against barriers which are currently disadvantaging visually impaired and other print disabled persons their Right to Read.