

Before the
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of Facilitating Access for the Blind or Persons With Other Disabilities

Reply Comments of Public Knowledge

Public Knowledge submits these reply comments in response to comments submitted by the Motion Picture Association of America (MPAA) and the Software and Information Industry Association (SIIA) in the above mentioned proceeding. Public Knowledge is a public interest advocacy organization dedicated to ensuring that consumers have access to information contained in copyrighted works on fair terms. Our reply seeks to rebut the following:

- The MPAA’s claim that any international treaty creating copyright limitations and exceptions to facilitate access by the blind, the visually impaired, and other reading-disabled persons would “damage the international regime for copyright protection” and deprive nations of needed flexibility to address the special needs of its citizens.
- The SIIA’s claims that an international treaty would antagonize ongoing cooperation between business, educational institutions, and representatives of the blind; and that technology and the marketplace are best suited to respond to the needs of the blind and other reading disabled persons.

Existing international treaties require and encourage countries to provide the disabled with the fundamental human rights of access to information and equal participation in society. To the extent that copyright laws and policies may hamper access and participation, limitations and exceptions are necessary to reconcile the simultaneous obligations that nations have to protect both the human rights of the disabled and the economic rights of copyright holders. A treaty requiring a baseline set of limitations and exceptions would merely provide a clear and harmonized means for nations to achieve this reconciliation. In addition, it would not antagonize ongoing market-place cooperation, which can co-exist with limitations to copyright.

- **A treaty addressing access by the blind, the visually impaired and other reading disabled persons to copyrighted works would facilitate the achievement of human rights and would not impair the existing copyright rights.**

Numerous international instruments, including the Universal Declaration of Human Rights¹ and the International Covenant on Civil and Political Rights² recognize that

¹ Article 19, G.A.Res. 217A, at 71, U.N.GOAR, 3d Session., 1st plen. Mtg. U.N. Doc A/810 (December 12, 1948).

access to information is a fundamental human right and as such should be available to all. Access to information enables education and participation in political, social, and cultural life. Many national copyright laws are not effective in promoting access to information by the blind, visually impaired and other reading disabled persons. The territorial nature of copyright laws and the resultant difficulty in moving accessible copies across borders is partly responsible for this situation. Thus, in order to ensure access to information for the greatest number of reading disabled persons, an international instrument providing for certain limitations on exclusive rights is necessary.

Contrary to claims made by the MPAA, such an instrument would not damage the international regime for protection of copyright. The current international regime for copyright protection, while securing to copyright owners certain exclusive rights, also acknowledges that these rights may be subject to certain limitations and exceptions. Specifically, three-step test established by the Berne Convention³ and adopted by the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) would act as the framework for such limitations and exceptions. A treaty for the blind can easily be crafted within the scope of the three-step test.

In addition, a treaty for the blind would not impede flexibilities available to countries in addressing the special needs of their citizens for the following reasons: First, like most international instruments—indeed, like existing treaties on copyrights and related rights—a treaty for the blind ought to be sufficiently broad to permit national implementation in countries following different systems of jurisprudence. Second, rather than being an imposition upon member nations, a treaty establishing exceptions in favor of the blind would be the result of agreement between nations engaged in an open multilateral process. Third, such a treaty would not reduce flexibilities beyond existing international obligations to provide access for the disabled. Thus, rather than impede flexibilities, the treaty would represent a common understanding among nations about how problems of access should be addressed.

- **A treaty that would establish minimum requirements for limitations and exceptions for blind, visually impaired and other reading disabled persons would not preclude market based solutions.**

Examples in the current market rebut SIIA's claim that government regulations would antagonize marketplace efforts to provide access. Bookshare.com, a market based system

² Article 19(2), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976. G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

³ Berne Convention for the Protection of Literary and Artistic Works, art. 9(2), Sept. 9, 1886 (Paris Text 1971), S. Treaty Doc. No. 99-27

provides access to copyrighted works to the blind and visually impaired. This program has been working successfully in the United States in conjunction with the limitations provided by the Chafee Amendment.

However, marketplace negotiations should not preclude a treaty because thus far, the market has failed to provide sufficient access to copyrighted works. As organizations representing the blind have pointed out, the blind and visually impaired have access to only 5% of printed material. Furthermore, the marketplace has not always been sensitive to the needs of the blind. For example, claiming infringement of their audio rights, publishers recently pressured Amazon to give them the ability to turn off the text-to-speech functionality, an assistive technology, on the Kindle reading device. Similarly, as the American Foundation for the Blind has repeatedly testified before this Office, digital rights management used on many eBooks prevents the blind, visually impaired and other reading disabled persons from accessing content using adaptive technologies.

Further, in support of its contention that technology and the market are best suited to address the needs of the blind, the SIIA claims that because of rapid changes in technology, any standards codified by WIPO would be outdated by the time the treaty could come to fruition. This statement incorrectly assumes that an international treaty has to codify standards, presumably technological standards. On the contrary, a treaty for the blind could be limited to requiring states to promote or allow accessible technologies without actually codifying standards.

Conclusion

An international treaty that would establish minimum requirements for limitations and exceptions for blind, visually impaired and other reading-disabled persons would promote the fundamental human right of access to information and thus enable the blind to participate in social, cultural, and political life. Such a treaty is fully consistent with international protection of copyright, and would assist member states in harmonizing the intersections of these two areas of national obligation

Respectfully Submitted,

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