

Reply Comments of James Love, Knowledge Ecology International

December 4, 2009

This is a reply to comments by the AAP, the MPAA, RIAA, the SIIA, addressing two topics.

- (1) The benefits of cross-border sharing of accessible works,
- (2) The advantages of global harmonization of minimum rights for persons with disabilities, and
- (3) The need for the United States government to actively support the treaty effort.

1. The benefits of cross-border sharing of accessible works.

The primary motivation for the WIPO treaty for disabilities is to facilitate the import and export of works created under limitations and exceptions to copyright. The need for facilitating cross-border sharing of works was highlighted by Wanda Noel in the 1985 report for WIPO and UNESCO, it has been a staple of the interventions and presentations by the World Blind Union to WIPO for the past eight years.

The benefits of the cross border sharing of accessible works are significant.

The United States will benefit by importing works from other countries. Persons living in other countries will benefit from importing works from the United States.

One issue concerns works that are published in languages other than English. According to the 2000 Census, among the languages most frequently spoken at home other than English, 28 million persons speak Spanish, 2 million speak Chinese, 1.6 million speak French, 1.4 million speak German, and another 6 million persons speak Tagalog, Vietnamese, Italian, Korean, Russian, Polish or Arabic. Collectively some 40 million persons living in the United States speak one of these 11 languages at home, or about one of seven persons included in the 2000 census. Millions more speak other minority languages.

As one might expect, the vast majority of accessible works now available in the United States are in English. For example, in the category of literature, Bookshare.Org currently has a catalog of 28,190 books. Of these, 27,304 or 97 percent, are published in English. Three percent are in Spanish. Only 65 books are available in all other languages.

One obvious benefit of the proposed WIPO treaty would be to expand the number of titles

published in languages other than in English, for persons living in the United States.

A second benefit would be an expansion of the number of works published in English made available in all countries.

As we all know, but sometimes fail to consider, the global community of persons reading English is much larger than the United States. People in England, Canada, Australia, New Zealand, Kenya, South Africa, India, Jamaica and many other countries read English. Indeed, English is widely spoken or an official language in more than sixty countries, including:

Antigua and Barbuda, Australia, The Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei, Cameroon, Canada, Dominica, Ethiopia, Eritrea, Fiji, The Gambia, Ghana, Grenada, Guyana, Hong Kong (People's Republic of China), India, Ireland, Jamaica, Kenya, Kiribati, Lesotho, Liberia, Malawi, Maldives, Malta, Marshall Islands, Maritius, Micronesia, Namibia, Nauru, New Zealand, Nigeria, Pakistan, Palau, Papua New Guinea, Philippines, Rwanda, Saint Kitts and Nevs, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somolia, South Africa, Sri Lanka, Swaziland, Tanzania, Tonga, Trinidad and Tobago, Tuvalu, Uganda, United Kingdom, United States, Vanuatu, Zambia, Zimbabwe.

English is also spoken widely as a second language. The European Union estimates that 51 percent of the residents of the European Union read English. English has become the dominant language of business, diplomacy and scholarship, and it is important language for persons all over the world.

The hundreds of millions of persons who speak English outside of the United states constitute an important market for English language accessible works. English language works from the United States could be made available to persons living outside the United States who are blind or have other reading disabilities. Accessible works from outside the United States would be available to persons living in the United States.

Publishers of accessible works in the United States and in foreign countries could all reach larger markets, and reduce the costly and time consuming duplication of effort that is economically irrational but legally required under the current system.

A treaty that facilitates the cross border sharing of accessible works will also offer important benefits in other countries that share a common language, such as Spanish, French, German, Portuguese, Arabic, Russian or Tamil, or in any country where people would benefit from foreign works in any language.

To make the benefits more concrete, consider the case of Uruguay, a country with a population of 3.3 million persons, and one of 20 Spanish speaking countries,¹ in a world where more than 420

¹ Argentina, Bolivia, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Spain, Uruguay, Venezuela. One

million persons speak Spanish.

The national library for the blind in Uruguay has approximately 3,000 audio books available for persons who are blind. These audio books are largely produced in a small in-house recording facility that allows a single book to be recorded at a time. In 2008, the library said it created just 49 new titles for persons who are blind. The Uruguay situation is far better than many Latin American countries. Some have only a few hundred accessible books available. None of the accessible books in Uruguay and few of the accessible books in any Latin American country are available in the DAISY format, which can be used by powerful and feature-rich reading devices by persons with disabilities.

It is appalling that blind persons in Uruguay and other Latin American countries have so few accessible works. Both Spain and Argentina have tens of thousands of accessible books that could and would be shared under a treaty that clarifies the legality of exporting and importing works created under exceptions.

In many Latin American countries, the exceptions under a treaty would be self executing, if the treaty was signed. It would have a transformative impact on the lives of millions of persons with disabilities living in Latin American countries.

2. Benefits of global harmonization of minimum rights for persons with disabilities.

In a world where every country creates its own accessible works, as is the case today, one could argue, as the publishers have, that a patchwork of different national laws providing for exceptions would be a satisfactory approach. But even in this backward looking analysis, it is clear that many countries have shockingly outdated and inadequate legal exceptions for persons with disabilities. For example, some countries only have exceptions that apply to raised paper printed Braille, and would not permit the creation of DAISY formatted works that could be read with refreshable Braille readers, computer generated synthetic speech or large type.

WIPO's own efforts at publishing model laws, beginning with the first model exceptions published in 1983, have had very limited success. It is often quite difficult to engage a parliament to amend national copyright laws, and in many countries, persons with disabilities lack the resources and organization to effectively lobby for the needed changes.

With U.S. signature to the UN Convention on Disabilities, we have obligations under Articles 9, 30 and 32 to update our laws, including laws relating to access to information. Many other countries are presented with the same obligations. A WIPO treaty on disabilities can and should be an effective instrument to speed up and improve the nature of legislative changes that relate to expanding access to works protected by copyright.

might also add the State of New Mexico and the Territory of Puerto Rico, where Spanish is an official language.

A second and very important reason for harmonization of minimum exceptions is to create a system that is consistent enough that publishers engaged in cross-border distribution of works can operate with greater efficiency. A patchwork of laws that lack such consistency will raise the costs of distribution of works across borders, and shrink the benefits of cross border exceptions.

In 1996, WIPO held a diplomatic conference to create global harmonization of minimum rights for copyright owners, in the digital age. Today at WIPO broadcasters and performers are seeking new treaties to set global norms to advance their interests. The United States and 37 other countries are trying to create a new Anti-Counterfeiting Trade Agreement, to harmonize the enforcement of intellectual property laws. In each of these cases the owners of rights are lobbying for harmonization and binding agreements. There is no talk of WIPO providing for a model law for broadcasters, or the 38 ACTA negotiators providing for model laws that may or may not be implemented.

People with disabilities are important, and their needs deserve the utmost respect and attention by policy makers. The benefits of global harmonization of minimum exceptions for persons who are blind or have other disabilities are great, and the realization of those benefits is an issue of human rights.

3. The need for the United States government to actively support the treaty effort.

A number of copyright owners trade associations have mobilized opposition to a treaty for persons who are blind or have other reading disabilities, not because there is a serious risk of financial harm from the treaty, but because they are concerned it will present an unwanted precedent.

Publishers in Germany, England, France and other European countries have lobbied the EU to oppose a treaty for disabilities.

Unless the United States actually supports the treaty, it is difficult to imagine a scenario where WIPO will agree in the near term to a negotiation and diplomatic conference.

Countries that want to block progress on the treaty will likely argue at the December 14, 2009 WIPO SCCR meeting that a treaty is “premature,” or that voluntary actions by publishers, now only represented by lobbyists for trade associations, will offer an acceptable alternative to norm setting at WIPO.

There are many difficult issues in life and in politics. This is not one of them. There are no serious arguments against consideration of a treaty to liberalize cross border sharing of accessible works. There has been a lack of interest and leadership among members of WIPO's Group B to support this effort.

We are not sure what it takes to get the United States to support the treaty. But in the end, only a handful of people in the U.S. government will determine if this treaty moves forward. We hope those few people will do something that improves the lives of millions of persons who have

disabilities, in order to “support their full and effective participation in society on an equal basis with others, and to ensure their opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.”