



supporting blind and
partially sighted people

Consultation response

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

Dear Ms. Pallante,

Please find attached the Royal National Institute of Blind People's (RNIB) 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.

Sincerely,

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About RNIB

Royal National Institute of Blind People (RNIB) is the UK's leading charity offering information, support and advice to over two million people with sight loss.

As a UK organisation we will not comment on the USA's domestic situation. We also note that many respondents have commented on question 4, and so we limit our response to question 3 of this inquiry.

Overview

Even in the wealthiest markets, less than 5 percent of published books are made accessible in formats that reading disabled people can use. In many developing countries the figure drops to one per cent. We call this a "book famine".

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.

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.

RNIB's ideal world would be one in which publishers would make all their works commercially available to reading disabled people in formats they can access, such as large print, navigable Daisy files and audio.

What is certain is that the market has failed to deliver anything like this ideal scenario, despite the best efforts over many years of campaigning organisations like ours and of some examples of "best practice" from publishers.

The five per cent figure shows that mainstream publishing, which quite legitimately exists to make a profit, has not catered for the "reading disabled market" to any significant extent. To hope therefore that "market forces" will resolve the book famine problem would be to put faith in a tried and thus far failed model.

The book famine arises for a variety of reasons, and certainly requires a number of measures to resolve it.

At WIPO, broadly speaking, rights holders and some Member States maintain that the solution can be found entirely through the use of voluntary, cooperative measures between rights holders and members of the reading disabled community. They therefore "back" the WIPO Stakeholder Platform and oppose the treaty proposal.

However, it is worth examining whether this opposition to a treaty proposal comes from a conviction that norms are really not a useful way to solve some of the access problems reading disabled people face. After all, the World Blind Union proposed a legal norm because it encountered copyright barriers to its efforts to share accessible books, taking the problem to WIPO, the worldwide forum that deals with international intellectual property law. WIPO commissioned the Sullivan Study as a result, and this study agreed that the sharing of books made under exceptions across national borders was indeed a legal gray area.

A worldly observer might therefore suggest that opposition to a treaty stems more from a dislike of any kind of exception to copyright, than from a conviction that a treaty would not help increase access to books.

In any case, RNIB's sole objective is to ensure the best possible measures 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. After all, when solving a jigsaw puzzle one cannot favour some pieces and not others.

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 creation of the Stakeholder Platform we had been discussing the book famine for some years with the International Publishers Association among others.

In summary, since the start of 2009 the Stakeholder Platform has been working actively on two main areas. One is the technical change needed to ensure that publisher workstreams produce accessible digital files, which organisations such as RNIB can then use to make accessible format books. The other is on a "trusted intermediary" pilot scheme, whereby accessible files are shared between publishers and certain accredited accessible format provider organisations. For full details see www.visionip.org/stakeholders/en/.

But it is also necessary to have minimum legal requirements not just in national law, such as the "Chafee amendment", but also in international law. For this reason especially RNIB also supports the treaty proposed by Brazil, Paraguay, and Ecuador.

Question 3

What benefits or concerns would the treaty proposal create?

Exceptions and specialist organisations

World Blind Union research shows that over 90 per cent of the five per cent of books which are made accessible are transcribed not by publishers but by specialist organisations such as RNIB in the UK and Bookshare in the USA. In many cases these organisations use copyright exceptions such as the "Chafee amendment" 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 across national borders. This is because the copyright exceptions they use to make the accessible versions are national in scope. (See the WIPO Sullivan Study at http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=75696)

USA-UK sharing of accessible books

For instance, Bookshare in the USA has a total of around 40,000 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 titles. As Bookshare's website explains:

“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. Most are willing to provide such permissions, 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.

Likewise, RNIB's National Library Service is the largest specialist library in the UK for readers with sight loss, with over 40,000 titles. American blind and partially sighted readers could certainly benefit from reading those titles in our collection which are not available in accessible format in the USA. However, once again due to copyright restrictions, RNIB feels unable to share these works with US users.

How the treaty would help

The treaty proposal seeks to resolve two key logistical problems.

Firstly, the needless duplication in transcription cost and time which often arises because accessible books cannot be shared across borders and the same book has to be transcribed twice.

For example, 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.

Secondly, the establishment of a system by which books in currently established collections can be shared across national borders without hindrance from unfair copyright restrictions.

For example, 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. Given the large number of Spanish speakers in the USA, such a system could enrich the reading of a significant number of reading disabled American citizens too.

What does the treaty do that the “Stakeholder Platform” would 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 among language groups (see the Latin American example, but note that such benefits would also help English, 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 (Please see George Kerscher's submission to this consultation for more detail on this point)

Conclusion

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 securely among themselves. This provision is not currently in place.

RNIB welcomes the USA's backing for the work of the Stakeholder Platform. 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.

No doubt the wording of this treaty proposal-as with all such proposals-will be the subject of scrutiny and discussion from 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”.