

Reply-comments from Steven M. Rothstein, President
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To 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 submitted comments in opposition to an international treaty to facilitate access and sharing of accessible formats of works for blind people and people with reading disabilities.

The Perkins School for the Blind is replying to Comments on behalf of the tens of thousands of individuals who are blind, visually impaired and deafblind we serve in the United States and around the world. Perkins School for the Blind, the nation's first school for the visually impaired, provides education and services to help build productive, meaningful lives for 100,000 children and adults who are blind, deafblind or visually impaired with or without other disabilities in the U.S. and 63 countries worldwide. Founded in 1829, Perkins pursues this mission on campus, in the community and around the world.

Twenty years ago, a child who was deafblind or blind with additional impairments in developing countries had almost no chance to attend school. At most, they might have received medical treatment or physical therapy. They might have been kept at home altogether -- that's why Perkins began a formal international program in 1980's--to provide these children with the opportunity to attend school, grow to their greatest potential, learn to read and have access to information and knowledge and realize their dreams. Today, we partner with hundreds of local agencies worldwide. Our programs empower and unite community leaders with a shared vision to enrich children's lives, provide much-needed support to families and their communities, and transform educational priorities. Each year, Perkins International's efforts touch the lives of thousands of children and adults who would otherwise be denied educational opportunities.

I would like to first address an issue that the opponents of a treaty have not covered in their comments and which is the main need and reason for a treaty, i.e. the issue of importation and exportation of accessible format materials across nation borders. People who are blind, visually impaired, deafblind and those who have other reading disabilities are confronted with two main barriers to access to works: the lack of production of works in accessible formats and the restrictions on sharing the few works in accessible formats among countries. An international agreement, a treaty or protocol, is the only way to ensure that sharing works in accessible format is done legally and in a timely manner. For blind people and

people with other reading disabilities, global access to works in specialized formats is essential and long overdue.

Adoption of the treaty proposal would immediately create a legal global platform to share accessible works for people with print disabilities. The United States has the largest collection of accessible titles and would be able to export its titles to countries with limited or non-existent collections¹. Of particular value would be the ability of authorized US organizations to be able to import foreign language accessible works. There are many US residents who read another language other than English. This provision would open opportunities for sharing materials in countless other languages. With our more global society, access to materials in other languages is essential to meet the educational, professional and life needs of residents of the United States as well.

In response to the criticism from Keith Kupferschmid that a treaty would be “premature and counter-productive to prescribe in treaty form the very technologies and market that is facilitating, for the first time in human history, the very accessibility long sought by blind and visually impaired individuals. There is a real danger that these cooperative efforts could be adversely affected if WIPO or any government were to step in and attempt to create and implement copyright-specific mandates or exceptions that bind the hands of the stakeholders, especially those being proposed in the draft Treaty”

The US already has an exception (as well as 63 other countries) to copyright for people with disabilities. One of the “new” elements for the US would be to extend the exception to cover commercial entities if some conditions were fulfilled. It would be welcome addition to have commercial entities join the nonprofit and government sectors in the provision of accessible format materials. Until fairly recently, commercial publishers have not been a viable source of accessible format material. Improving limitations and exceptions for people with disabilities needs to be the end goal, and such progress in this direction does not impact negatively the opponents’ various industry segments.

The Chafee amendment did not “dismantle” the US publishing industries. It simply made it easier for the organizations making accessible format to produce what is still less than 5% of what is available today to sighted people. There is simply no evidence that an exception to facilitate access for blind people and people with other reading disabilities has ever created a problem for the publishing industry (anywhere in the world). Large print and braille books and unabridged audio books almost always cost more than the “standard” version to produce.

According to James R. Fruchterman, CEO of Benetech, an innovative and leading nonprofit providing secure and accessible electronic works and private sector initiatives, “We believe that these have been largely unsuccessful in delivering

¹ See data here: <http://www.keionline.org/blogs/2009/04/28/accessible-spanish>

substantial numbers of accessible books. Disability access is often linked with potentially promoting piracy, and technology vendors and publishers have regularly locked people with print disabilities out of the electronic book market. Our paper, the Soundproof Book, talks about the background of this problem. In contrast, with supportive laws in place internationally, successful nonprofit models, such as Bookshare in the US or RNIB in the UK, could be utilized to deliver books to fill the market gap."

There are currently several U.S. businesses and for-profit organizations that are involved in mass digitalization of millions of books that if allowed to by law, could make accessible copies available to blind people or people with other reading disabilities.

In closing, generally, treaties are effectively drafted when national laws alone do not fix the problem at hand. Regarding the "premature" aspect of the treaty, I would urge the US Delegation at WIPO to examine the various WIPO model laws that have been circulated as well as the reports from WIPO and UNESCO meetings over the past twenty-five years to dispel any notion that this treaty proposal is premature. To illustrate the longstanding discussion and thoughtful nature of the conversation on this topic, Ms Wanda Noel recommends "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." from the 1985 Report of the Executive Committee for the Berne Convention and the Intergovernmental Committee of the Universal Copyright Convention.

Ultimately, what is the most important thing is that people, who are blind, visually impaired, deafblind and those with other types of physical and reading disabilities, should have access to the broadest range and scope of materials to meet their educational, professional, recreational and lifelong learning needs. In an era when financial resources are scarce, elimination of duplication of effort where one entity in the U.S. is producing a book, and then another entity in England is producing the same book, while another organization in New Zealand is further producing a copy of the same title. Sharing of accessible format materials will facilitate the greater availability of items to people who need access to these books and will not jeopardize publisher's rights. It isn't people with disabilities or the legitimate entities that are producing accessible format materials that are a threat to copyright. All authorized entities are willing to work collaboratively to secure access and protect copyright at the same time we broaden the availability of materials across borders and languages to meet the reading needs of people with disabilities. I urge you to move forward with adoption of this treaty proposal and support the right of people with disabilities to have access to printed information.

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