

The following comments are submitted by the American Council of the Blind (ACB) and the American Foundation for the Blind (AFB). These comments are submitted by the American Council of the Blind and the American Foundation for the Blind in response to a Notice of Inquiry put forth by the United States Copyright Office and the United States Patent and Trademark Office (USPTO).

ACB is a leading U.S. consumer organization of blind or visually impaired individuals. Access to information is a critical area of interest for ACB, and expanding the availability of accessible format materials is viewed as highly beneficial to the blindness community in the United States and throughout the world.

AFB is a leading national nonprofit working to expand possibilities for the more than 25 million Americans living with vision loss. Founded in 1921 and recognized as Helen Keller's cause in the United States, AFB strives to promote effective public policy, solutions to the challenge of technology accessibility, and services to consumers and professionals alike that meet the unique needs of all individuals who are blind or visually impaired.

ACB and AFB are active member organizations of the World Blind Union (WBU), and the WBU is an active participant in the deliberations of the World Intellectual Property Organization (WIPO) and the Standing Committee on Copyright and Related Rights (SCCR). Of primary relevance to these comments is the ongoing topic of limitations and exceptions to exclusive rights, including limitations and exceptions for visually impaired persons.

In November 2008, the SCCR stressed the importance of dealing “without delay and with appropriate deliberation” with the issue of facilitating and enhancing access to protected works.” The American Council of the Blind and the American Foundation for the Blind fully support the implementation “without delay and with appropriate deliberation” with the issue of facilitating and enhancing access to protected works benefitting people who are blind, visually impaired, and other people with reading disabilities.

At the May 2009 session of the SCCR, the delegations of Brazil, Ecuador, and Paraguay formally introduced a proposal for a new treaty for the benefit of blind, visually impaired, and other reading disabled persons, based on draft language that was prepared by the WBU. This treaty would require the implementation of prescribed copyright exceptions and limitations.

The American Council of the Blind and the American Foundation for the Blind agree fully with the proposal to “provide the necessary minimum flexibilities in copyright laws that are needed to ensure formats that are accessible for persons who are blind, have low vision, or have other disabilities in reading text, in order to support their full and effective participation in society on an equal basis with others, and to ensure the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.” This level of access will go far in

eliminating one of the largest barriers facing people with disabilities who are unable to read print – that being access to information and the printed word.

During difficult economic times, and to maximize scarce resources (both domestically as well as internationally), eliminating duplication of effort and promoting more effective use of financial resources in the production of accessible format materials requires the most flexibility possible to, “permit the cross-border import, export and qualified distribution of copyrighted works in accessible formats without the permission of the rights holders, including to countries that presently lack, in their national laws, a specific copyright exception or other legal framework for serving the visually impaired.” In addition, it is clear that with technology going so far to level the playing field for people with disabilities, it is essential that the proposal also allow “the circumvention of technological protection measures for the purpose of making works accessible.”

It is clearly recognized by ACB and AFB that the United States has long been a leader in the area of providing popular books, textbooks, magazines, newspapers and other materials to the blind community, through the services of many recognized organizations, including, but not limited to, the Library of Congress/National Library Service for the Blind and Physically Handicapped; American Printing House for the Blind; Recording for the Blind & Dyslexic; Bookshare.org; Perkins School for the Blind; and many other volunteer organizations working to produce audio and braille materials. It is vital that any established policies, procedures or guidelines allow for an exception that “permits these and other authorized entities to reproduce and distribute certain literary works in specialized formats exclusively for use by blind or other persons with disabilities.”

In the education area, the Chafee Amendment exceptions apply jointly with the requirements of the Individuals with Disabilities Education Act (IDEA) of 2004, which contains provisions for publishers to create and distribute print instructional materials for elementary and secondary schools in the National Instructional Materials Accessibility Standard (NIMAS) file format. ACB and AFB also recognize the significant work of the DAISY Consortium, in working globally in the development of technical standards required to “ensure interoperability of file formats and actual access by the blind, not only with respect to works made pursuant to copyright exceptions but also for works sold to visually impaired persons on the open market.”

ACB and AFB commend the United States and President Barack Obama for signing the United Nations Convention on the Rights of Persons with Disabilities on July 30, 2009. ACB is anticipating that the President will soon request that the Senate agree to ratification and authorize the treaty package. Of particular note is Article 30 of the Convention which requires that “States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and take all appropriate measures to ensure that persons with disabilities enjoy access to cultural materials in accessible formats.”

We truly appreciate the statement made at the eighteenth session of the SCCR (May 2009) by the delegation of the United States affirming its commitment to working jointly

with stakeholders to find “timely, effective and practical solutions” to further enhance the accessibility of protected works, taking into account the complex and interrelated issues of copyright law, business models, technology and human and financial resources.” At that meeting, the United States stressed the importance of consultation as an important step in addressing specific provisions of concern to stakeholders. It is pivotal that representatives of blindness organizations, publishers and copyright owners be involved jointly in finalizing provisions of copyright protections and exceptions to benefit accessibility for people with disabilities.

We believe strongly that incentives need to be implemented to encourage the marketplace to grow the availability of accessible works to its fullest potential. ACB and AFB can attest to the fact that there are willing buyers within the disability community interested in purchasing accessible materials, not available from any other source. At the same time, it is vital that concerns over rights clearances, downstream infringement, and high costs of materials be discussed. These areas should not be allowed to create insurmountable obstacles to people with disabilities or in turn create formidable barriers for sellers of materials.

ACB and AFB encourage implementation of existing legal and regulatory provisions as well as changes in regulations or statutes that may be needed in order to maximize the accessibility of works to the blind and other persons with disabilities.

In the area of maximizing resources, we agree fully and support better coordination between authorized organizations, educational institutions, and publishers to reduce duplication of effort and thus encourage better variety and availability of titles in accessible formats. Recognition of and adherence to technical standards would further improve the interoperability of file formats and increase accessibility to hardware, including for refreshable Braille and text-to-speech capabilities. Long delays in the production process pose a significant barrier to people with disabilities and more clearly defined practices would help reduce or eliminate unfortunate delays in providing time-sensitive materials to some visually impaired students, especially in secondary and post-secondary educational settings. Of course, it goes without saying that increased funding would further help implementation in all of these areas.

At the international level, WIPO is attempting to address practical obstacles to accessibility by creating a group of publishers and visually impaired persons, known as the WIPO Stakeholders' Platform. The Stakeholders' Platform is exploring the “concrete needs, concerns, and suggested approaches” for facilitating access to materials. For example, one subcommittee has been working on a series of private sector guidelines and pilot projects related to trusted intermediaries and cross-border access for registered, qualified users. These efforts should not be the exclusive avenues taken to remedy the many barriers to access for printed information by people with disabilities. A multi-pronged approach that includes implementation of the treaty provisions is essential to overcoming the longstanding barriers to information access that have faced people with disabilities for decades.

The American Council of the Blind and the American Foundation for the Blind submit the following responses to four questions posed in the Notice of Inquiry:

Question 1: How would the treaty proposal interact with United States law under Title 17 or otherwise? The US Copyright Office and the USPTO seek to learn interested parties' views on how the treaty proposal compares to U.S. law under Title 17, or any other statutory or regulatory provisions that might be affected. How consistent is the treaty proposal with current U.S. law? If the treaty proposal is adopted, would any changes to U.S. law be required in order to implement its provisions? Please reference with as much specificity as possible any U.S. statutes, regulations, or other provisions that should be considered in a review of the treaty proposal's implications on U.S. law.

There is a strong tradition of support from the US Congress that supports the concept that copyrighted works should, with respect to fair use, be accessible to and usable by people who are blind. In 1931, the Pratt-Smoot Act established a free national library program of braille reading materials for blind adults. The program was expanded in 1934 to introduce “talking books” on phonograph records, and in 1952, it was expanded to cover blind children. In 1962, the program was broadened to include music scores and instructional materials, and in 1966, it was again expanded to include individuals with physical and reading disabilities that prevent the reading of standard print materials. At that time, the program depended on the cooperation of authors and publishers who granted permission to reproduce works in special formats without royalty on a case-by-case basis.

While the United States is held as a model by other countries in the area of developing policies that positively affect people with disabilities, it is essential that the U.S. continue to grow and develop policies that move forward to improve the accessibility to printed information in all of its varied formats and technologies in today's world.

The Chaffee amendment of the copyright act has been a significant improvement for people who are blind in accessing printed information. While it has made the production by authorized entities easier and faster, it is far from being a perfect tool for accessibility to materials. There are several elements of the current statutes that need to be either clarified or changed to reflect available technologies. At the time Sec. 121 was adopted, the concept of accessibility was limited to “the production of unique, individual, physically accessible copies (in braille or recorded book format), which were intended to be used by individual users. Request from such users would typically trigger the production by an authorized entity of an accessible copy. On demand production is not a responsive model for collection development due to long delays in getting needed materials. This is also not an appropriate process for e-texts, which once produced, can then be shared at relatively low cost” with eligible users who have assistive technologies.

One area needing expansion is the definition of a “specialized format,” which Sec. 121(d) (4) defines as “exclusively for use by blind or other persons with disabilities” is too limiting in what constitutes a specialized format. While it is recognized that braille, and audio materials in a specialized format are covered, digital and electronic formats for the use of the blind and print-disabled are also emerging as an extremely useful and viable

format and should be included. The relatively low cost to produce electronic materials and advances in assistive technologies have made these formats particularly attractive to users and authorized entities to produce. In addition, to restrict the use of a specialized format to only a person who is blind or print-disabled is limiting, and does not reflect the real-life educational uses of special format materials by parents or teachers who may need access to such materials to assist a blind or print disabled child or student.

Likewise, Sec. 121 of the Act permits production and distribution of texts in specialized formats only by an “authorized entity,” defined as a “nonprofit organization or government agency that has a primary mission” to promote accessibility. This definition needs to be more inclusive to clearly cover college or university offices of disability services and public libraries. In an educational context, colleges and universities are heavily involved in the provision of accessible format materials; and it is a fundamental role of a public library to provide access to information in whatever format may be required. In addition, a mechanism must be included in this definition to cover commercial entities that may have produced an accessible version for sale. The marketplace, while not the sole source of materials, should be considered as an option for access to accessible materials whenever such entities can be encouraged to produce accessible format materials. A nonprofit entity, when provided with an option to purchase a copy of a needed title, may well find that it is more cost effective than investing staff time and resources into the production of the same item.

ACB and AFB strongly believe that, throughout every rulemaking, the Library of Congress must continue to ensure that the Digital Millennium Copyright Act (DMCA) “Circumvention of Copyright Protection Systems” provisions do not undermine the nation’s commitment to fair use rights that enable access and participation by blind and visually impaired people to digital materials.

With respect to the treaty proposed by Brazil, Ecuador and Paraguay, and if it is adopted as proposed, our belief is that it would be consistent with historical and current US policies and practices on copyright exceptions.

Two important elements of US law and policy would be clarified by the adoption of a treaty to facilitate sharing of accessible work:

- 1) A better definition of who would benefit from an exception
- 2) The possibility to allow for the import and export accessible work.

Regarding a consistent and functional definition of beneficiaries of an exception, a more inclusive definition would be helpful. The Chafee amendment to chapter 1 of title 17, U.S. Code, adds section 121, establishing a limitation on the exclusive rights in copyrighted works. The amendment allows authorized entities to reproduce or distribute copies previously published non-dramatic literary works in specialized formats exclusively for use by “blind or other persons with disabilities”. Relating to the certification of eligible users by such entities as the Library of Congress/National Library Service for the Blind and Physically Handicapped, revisions to the regulations defining a “certifying authority” would be extremely useful. Currently, the definition of a certifying

authority is very restrictive. Proper certifying authorities are defined as: “doctors of medicine; optometrists; registered nurses; therapists; and professional staff of hospitals, institutions, and public or welfare agencies (such as social workers, case workers, counselors, rehabilitation teachers, and superintendents). In place of any of these, certification may be made by professional librarians or by any person whose competence under specific circumstances is acceptable to the Library. In the case of a reading disability from organic dysfunction, certification must be made by a doctor of medicine or doctor of osteopathy who may consult with colleagues in associated disciplines.” This definition was established over 25 years ago, and does not recognize such professionals as certified reading specialist and neuropsychologists as experts in diagnosing reading disabilities.

In other related US laws, such as the Education for All Handicapped Children Act (P.L. 94-142) of 1975 and the Individuals with Disabilities Education Act (IDEA) (P. L. 101-476) the term "child with a disability" means a child: "with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and who, by reason thereof, needs special education and related services."

Article 15 of the treaty proposal would reconcile the various definitions in US laws.

(a) For the purposes of this Treaty, a ‘visually impaired’ person is:

1. A person who is blind; or
2. A person who has a visual impairment which cannot be improved by the use of corrective lenses to give visual function substantially equivalent to that of a person who has no visual impairment and so is unable to access any copyright work to substantially the same degree as a person without a disability.

(b) Contracting Parties shall extend the provisions of this Treaty to persons with any other disability who, due to that disability, need an accessible format of a type that could be made under Article 4 in order to access a copyright work to substantially the same degree as a person without a disability.

This language is consistent with recommendations made to the Standing Committee on Copyright and Related Rights, (Fifteenth Session Geneva, September 11 to 13), 2006 Study on Copyright Limitations and Exceptions for the Visually Impaired: “The best way to define the end beneficiary is likely to be by using a functional definition. A functional definition would be based on a person’s inability to read the material that has already been published.” (p. 111).

This is also consistent with George Kerscher, Secretary General of the DAISY Consortium, who also works for the non-profit Recording for the Blind & Dyslexic (RFB&D). George Kerscher has been a longtime advocate for document access and coined the term “print disabled” to describe people who cannot effectively read print because of a visual, physical, perceptual, developmental, cognitive, or learning disability.

The proposed functional definition would not only allow the clarification of the US definitions but also be consistent with Canada ¹, the UK², the EU³, Denmark⁴ and Australia⁵.

Probably the most important standard is the inclusive standard incorporated in the UN Convention on the Rights of Persons with Disabilities in Article 1 Purpose:

“The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”

This broader definition of persons with disabilities includes those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various

¹ In Canada, Section 32 of the Copyright Act of 1997:” Persons with Perceptual Disabilities” Persons with Perceptual Disabilities 32. (1) It is not an infringement of copyright for a person, at the request of a person with a perceptual disability, or for a non-profit organization acting for his or her benefit, to (a) make a copy or sound recording of a literary, musical, artistic or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability; (b) translate, adapt or reproduce in sign language a literary or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability; or (c) perform in public a literary or dramatic work, other than a cinematographic work, in sign language, either live or in a format specially designed for persons with a perceptual disability.

² In the United Kingdom, the Visually Impaired Persons, Act 2002: A visually impaired person is defined broadly, as a person (a) who is blind; (b) who has an impairment of visual function which cannot be improved, by the use of corrective lenses, to a level that would normally be acceptable for reading without a special level or kind of light; (c) who is unable, through physical disability, to hold or manipulate a book; or (d) who is unable, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for reading.

³ In the EU: “people with a disability” Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society 5. 3. Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases: [...] (b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;

⁴ In Denmark: Section 17 of the Danish Copyright Act of 2003: “blind, visually impaired, the deaf and sufferers from speech impediments, and besides persons who on account of a handicap are unable to read printed text.” 17.(1) It is permitted to use and distribute copies of published works if the use and the distributed copies are specifically intended for the blind, visually impaired, the deaf and sufferers from speech impediments, and besides persons who on account of a handicap are unable to read printed text

⁵ In Australia, the Copyright Act of 1968, as amended, defines Print Disabled as follows: COPYRIGHT ACT 1968 – SECT 10 Interpretation “person with a print disability” means: (a) a person without sight; or (b) a person whose sight is severely impaired; or (c) a person unable to hold or manipulate books or to focus or move his or her eyes; or (d) a person with a perceptual disability.

barriers may hinder their full and effective participation in society on an equal basis with others.

Secondly, the Chaffee Amendment does not expressly allow for exportation and importation of works in accessible formats which is inefficient and contributes to the unnecessary scarcity of available titles not only for print disabled persons in the United States but around the world. This is a serious limitation of the current law that must be remedied.

It is through more flexibility that the Treaty proposed by Brazil, Ecuador and Paraguay seeks to greatly expand access to works by allowing a global platform for distributing accessible materials. It will create a unified global minimum standard for copyright limitations and exceptions for print disabled persons. Such a minimum standard will clearly authorize exports and imports of accessible works to qualified entities and persons. The treaty will facilitate greater access to works under copyright limitations and exceptions, and will hopefully motivate publishers to produce works in accessible formats.

The basic structure of the proposal by Brazil, Ecuador and Paraguay, which is based on a proposal by the World Blind Union, is a two-pronged set of limitations and exceptions to the rights of copyright owners for the benefit of print-disabled persons. The first prong, which gives expanded rights to nonprofit institutions, is similar to the Chaffee Amendment (with needed improvements in the area of definitions, export/import and technological applications).

Non-profit institutions would have the right to publish and distribute works in accessible formats if four conditions were met:

- “1. The person or organization wishing to undertake any activity under this provision has lawful access to that work or a copy of that work;
2. The work is converted to an accessible format, which may include any means needed to navigate information in the accessible format, but does not introduce changes other than those needed to make the work accessible to a visually impaired person;
3. Copies of the work are supplied exclusively to be used by visually impaired persons
4. The activity is undertaken on a non-profit basis.”

In the second level of the proposal, the Treaty also provides for much more limited exceptions for commercial publishers to make works available to the visually impaired in some specified and limited cases. If: “the work or copy of the work that is to be made into an accessible format is not reasonably available in an identical or largely equivalent format enabling access for the visually impaired, and the entity providing this accessible format gives notice to the owner of copyright of such use and adequate remuneration to copyright owners is available.”

In addition, Article 19 (Reservations) states that "Any Contracting Parties may declare that they decline to implement" the article extending the exceptions to commercial entities. (Article 4(c) (3) of the proposed Treaty.) However, it is hoped that the US government would see this possibility as a positive step for private entities such as Google or Yahoo or any other US corporations which could benefit from this exception; thus being able to significantly and rapidly increase the number of available accessible works. This would indeed be a powerful incentive for the publishers to provide access themselves since the exception would not be applicable if the publishers made the works accessible at the point of publication. Again, only authorized entities would be qualified to determine when and if a format is fully accessible to people with various print disabilities. An important example to illustrate this point is the difference between an audio book and a book with text to speech and navigation. Both versions are "accessible" but not to the same people in the same ways. For educational or professional uses, an audio-book could not be considered accessible to a person with print disabilities, just as a book in Braille is not accessible to someone with a reading disability.

Additionally, as noted in the Federal Register Notice: "Respect for technical standards would improve the interoperability of file formats and improve accessibility to hardware, including for refreshable Braille and Text-to-Speech capabilities." Clarification of both US and international laws would benefit persons with print disabilities.

Finally, Article 18 of the treaty proposes "Optional Protocols" that could be added to the treaty at a future date, to address measures such as the elaboration of harmonized obligations or offers to promote standards, interoperability requirements, or regulatory measures to enhance access to works and communications.

Overall, it is the belief of the American Council of the Blind and the American Foundation for the Blind, that the treaty would be consistent with US policies regarding access to knowledge, information and education for print-disabled persons. It would further improve access by allowing entities the right to import and export works and create a commercial mechanism for increasing access. It would greatly improve the shortage to printed information that faces the print-disabled communities every day.

Question 2: How would the treaty proposal interact with the international obligations of the United States? Please comment on whether, and how, the treaty proposal would affect the existing multilateral and bilateral agreements of the United States. Please reference with as much specificity as possible the provisions of any treaties, conventions, agreements or other instruments that should be considered, as well as any conclusions or analyses that might be instructive.

The Treaty proposal will provide for minimum limitations and exceptions, and these are consistent with the Berne Convention, the WTO TRIPS Agreement, and the UN Convention on the Rights of Persons with Disabilities.

Under Article 20: Special Agreements among Countries of the Union

“The Governments of the countries of the Union reserve the right to enter into special agreements among themselves, in so far as such agreements grant to authors more extensive rights than those granted by the Convention, or contain other provisions not contrary to this Convention.” The provisions of existing agreements satisfying these conditions would remain applicable. Implementation of the agreement should be consistent with WIPO WCP and WPPT, the Rome Convention, the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions and the Convention on the Rights of Persons with Disabilities.

There are at least 3 articles, namely 9, 30 and 32 specifically related to the WIPO proposal in the Convention on the Rights of Persons with Disabilities. Article 9 addresses a broad range of accessibility issues, Article 30 focuses on access to culture and Article 32 covers international cooperation.

We believe the following to be the most relevant excerpts:

Article 9 - Accessibility

“1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.”

“b) Information, communications and other services, including electronic services and emergency services. States Parties shall also take appropriate measures:

- f) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
- g) To promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
- h) To promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.”

Article 30 - Participation in cultural life, recreation, leisure and sport

“1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

- a) Enjoy access to cultural materials in accessible formats;
- b) Enjoy access to television programs, films, theatre and other cultural activities, in accessible formats;

2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.

3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.”

Article 32 - International cooperation

“1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include:

- a) Ensuring that international cooperation, including international development programs, is inclusive of and accessible to persons with disabilities;
- b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programs and best practices;
- c) Facilitating cooperation in research and access to scientific and technical knowledge;
- d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

ACB and AFB view all of these provisions as extremely positive steps forward in the global unification of copyright laws and exceptions and limitations in providing accessible format materials across country lines and promoting full participation by people with disabilities in all aspects of culture.

Question 3: What benefits or concerns would the treaty proposal create? Please comment generally on the objectives of the treaty proposal, and how such objectives could facilitate access for the blind and visually impaired. Is the treaty proposal likely to meet its objectives? Would there be any legal or practical impediments to implementing the treaty proposal in the United States?

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 collections⁶. Of particular value would be the ability of US entities to be able to import foreign language accessible works. There are many US residents who read another language other than English⁷. 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.

⁶ See data here: <http://www.keionline.org/blogs/2009/04/28/accessible-spanish>

⁷ See data here: <http://www.keionline.org/blogs/2009/04/22/access2foreign-works>

Question 4: Other possible courses of action that would facilitate access by “blind, visually impaired, and other reading disabled persons.” Please comment on any additional, possible methods of improving accessibility about which the Copyright Office and the USPTO should be aware, including possible roles for WIPO, the U.S. government, and the commercial and noncommercial private sectors.

There is no question that the World Intellectual Property Organization should play an important role in the promotion of available accessible format materials. Internationally, an entity should be identified that would make available an online international database of accessible works. Such a database is essential for facilitating the sharing of works in accessible formats. Having such an authorized database would also provide a strong mechanism to protect the rights of publishers who make works available in accessible formats. The database could also facilitate and make it less costly for third parties to obtain licenses or access to works. Of utmost importance is that the infrastructure to support a global platform not be burdensome and impose costly and time consuming obligations on entities.

The American Council of the Blind and the American Foundation for the Blind would urge the U.S. government and the Library of Congress to continue to be a leader in facilitating access to knowledge, information and education to people with print disabilities. As stated in the UNESCO report of 1985, it is essential that the US, the biggest producers of accessible format leads the progress to finding adequate solutions to the artificial and unnecessary scarcity of available works in accessible formats for persons with print disabilities.

We believe it is important that the roles of commercial and noncommercial private sectors be expanded. As publishers make their digital files available, they have legitimate concerns about persons not entitled to benefit from the exceptions. Trusted intermediaries such as libraries or Bookshare have not been a threat in this area, and there is no evidence of any kind of theft or misuse of files by such organizations’ members. People with disabilities and the organizations that provide services to them are not the guilty party in this unfortunate situation. ACB and AFB support provisions to restrict unauthorized use of such materials, but do not want people with disabilities to be the victims of overly restrictive requirements to restrict access to unauthorized users. Trusted intermediaries have demonstrated that they are truly a safe and fair way to make more works available in a variety of accessible formats for people with print disabilities. In most cases copyright exceptions will only be useful when publishers do not make their files available in accessible formats. If commercial publishers are motivated and have a financial incentive to do so they will do it. However, if there is no financial benefit to producers, the small market of print disabled persons will be the ultimate losers.

The non commercial sectors will continue being the primary producer and distributor of accessible formats, but will greatly benefit for the new economy of scale created by the treaty.

Expanded copyright exceptions and limitations and a global opportunity to share resources will truly benefit the population of people in the United States with print disabilities. The American Council of the Blind and American Foundation for the Blind fully support all steps that can be taken to advance access to printed materials and urges adoption of the treaty and expansion of U.S. laws and regulations to support greater accessibility to the printed word.