

3 December 2009

Ms Helen Daniels
Assistant Secretary
Copyright and Classification Policy Branch
Attorney General's Department
3-5 National Circuit
BARTON ACT 2600

By email: helen.daniels@ag.gov.au

Dear Ms Daniels

**IMPROVING ACCESS TO PROTECTED MATERIALS
FOR VISUALLY IMPAIRED PEOPLE**

I refer to your 13 November 2009 invitation to comment on the draft treaty proposed the World Blind Union, ahead of the next session of the World Intellectual Property Organisation Standing Committee on Copyright and Related Rights.

The Australian Digital Alliance and Australian Libraries Copyright Committee thank you for the opportunity to participate in this process.

The merits of the proposed treaty

We consider that there are substantial merits in increasing the information in accessible formats that is available to visually impaired people. Visually impaired people have poor access to information. This hampers their fundamental right to read, learn, participate in society, and experience enriched lives. The needs of these people require particular attention. Accessible formats are practically impossible to obtain for the world's 160 million visually impaired people, because:

- only 5% of published works are available in accessible formats
- these works are in turn held by only a few specialist organisations in a few countries
- these organisations have scarce resources and cannot afford ambitious transformation projects.

An exception is required to facilitate the access of all visually impaired people to the small global stockpile of accessible format material. A library should be permitted to convert material into an accessible format to give persons access to vital information. To aid organisations specialising in providing access, cross-border transfer of accessible works should be permitted to reduce costly duplication. This will enable

the use of new technologies and services to make the limited amount of information in accessible formats available to visually impaired people world wide. Enabling the use of information by such people will help to restore balance to copyright and substantially enrich their lives.

The most significant benefit will come from permitting cross-border transfers. This will create a global platform that will enable organisations in different countries to have full access to the global stockpile of accessible works. This will increase the access of visually impaired people in developing countries, where the majority of such persons reside and where the organisations supporting them have the least funding. For example, the United States has the largest collection in the world. Cross-border transfers would enable the United States to export its collection to countries that have limited collections, greatly increasing the access of the citizens of those countries. Cross-border transfers eliminate the prohibitive reproduction costs for developing countries. Cross-border transfers also give countries with non-native language speakers access to a variety languages.

The proposed treaty is the most effective mechanism

The treaty is the most effective mechanism to achieve the cross-border transfer of accessible works, which is require to facilitate increased access to information. The existing regimes of the Berne Convention, the TRIPS Agreement and the WIPO Internet treaties create a three step test for exceptions and limitations to copyright protection. These regimes give individual countries sufficient flexibility to introduce domestic exceptions to facilitate access to accessible formats. For example, in Australia, a published literary or dramatic work may be reproduced in an accessible format if it is for the use of a person with a print disability.¹ The regimes and the domestic exceptions created under them, are not an international exception and do not facilitate cross-border transfers.

Because of their failure to facilitate cross-border transfers, the current regimes do not have a meaningful impact on the access to information for visually impaired people. This is particularly felt by visually impaired people in developing countries, who could benefit from the reduced duplication costs by accessing the collections of developed countries. We also note in this respect, that Australian visually impaired people would benefit from being able to access the world's largest collection of accessible material in the United States. The main benefit of the treaty will be to provide a global platform for exceptions like the Australian one, to set global norms for access to information for visually impaired people.

A voluntary solution between publishers, content owners, authors and the visually impaired is not realistic. While a solution that involved voluntary collaboration and cooperation to facilitate cross-border transfers would be ideal, it is apparent that rights holders are unable or unwilling to make accessible formats available. This is demonstrated by the recent Amazon/Authors Guild dispute where authors demanded that Amazon remove a read-aloud function from its digital book product, Kindle. If rights holders are unwilling to make accessible formats available for sale, it is hard to see how they would agree to the free cross-border transfer of materials between libraries.

¹ *Copyright Act 1968*, section 135ZQ.

There are sufficient safeguards for rights holders

The proposed treaty concerns the creation of an exception to enable libraries and other institutions to rectify the market failure by rights holders, who have failed to provide works in accessible formats. There is market failure because rights holders are unwilling to provide published works in accessible formats, with only 5% of published works available. These works are primarily from libraries reproduced under copyright exceptions, not produced by publishers. The proposed treaty will not undermine the economic incentive for the creation and distribution of books. It is about creating access for an already disadvantaged group of people, not about exploiting an existing or potential market.

Should you have any questions regarding the submission, please contact Matt Dawes, Copyright Adviser, by telephone on (02) 6262 1273, or by email at mdawes@nla.gov.au.

Kind regards

Professor Tom Cochrane
Chairman
Australian Libraries Copyright Committee

Derek Whitehead OAM
Chairman
Australian Digital Alliance