



The voice of blind and partially sighted people in Europe

## **WIPO treaty on limitations and exceptions for the print disability community**

### **1. The problem we are trying to solve**

Even in 2011, blind people and others living with a print disability such as those with dyslexia still have very limited access to books and other published works. Only some 5% of published books are ever made accessible in richer countries, and less than 1% in poorer ones. We call this a “book famine”.

Increasingly, affordable and rapidly developing technology such as e-books is becoming accessible to print disabled people. This digital revolution ought to help end the book famine by allowing us to share accessible books worldwide.

However, copyright law has not changed in line with the technology. Often copyright law prevents both the making of accessible books at national level and the sharing of them across national borders.

### **2. What is the WBU WIPO Treaty? (“The treaty”)**

The World Intellectual Property Organisation (WIPO) makes treaties and other international laws on intellectual property rights such as copyright and patents.

The World Blind Union, assisted by copyright experts, drafted the treaty proposal. The governments of Brazil, Ecuador and Paraguay then tabled it at WIPO in 2009.

The treaty proposal would:

- Make it legal for print disabled individuals and specialist organisations to make accessible copies of published works in all countries which sign the treaty
- Make it legal for accessible books to be sent internationally without permission for publishers
- Prevent contracts with publishers from undermining copyright exceptions for print disabled people (currently they sometimes do)
- Still respect copyright law: it is not an attack on publishers!

The WIPO Standing Committee on Copyright and Related Rights (SCCR), which meets twice a year, is considering the WBU treaty proposal. Its June 2011 session will have an extra three days to specifically consider the WBU proposal and three others that have since been tabled to deal with the issue of print disability.

### 3. Why we need a treaty

There are several reasons, but here are the main two:

1. Only one third of the world's countries have a national exception to copyright law to allow the making and distribution of accessible format books. All countries need such an exception, because publishers often fail to help by making their books accessible or authorising specialist organisations to do so. The treaty would create such exceptions.
2. The national nature of copyright law prevents the import and export of accessible books. The treaty would remove this legal barrier to sharing resources across borders. That would allow many hundreds of thousands of books to circulate between blind people's organisations in different countries.

### 4. But aren't the "EU Stakeholder Dialogue" and the WIPO "Stakeholder Platform" better / speedier / more effective solutions?

No. These are at best partial solutions. They will never provide the same level of coverage that a binding international treaty could do.

Furthermore, our goodwill in taking part in these platforms is constantly being unfairly used politically by rights holders such as IFRRO to suggest that thanks to these platforms no binding law, such as our treaty, is needed. (See this on the IFRRO site, for example:

<http://www.ifrro.org/content/stakeholder-dialogues-mark-success-difficult-year-ifrro-ceos-end-year-message> ).

The fact is, after two years of the WIPO Stakeholder Dialogue we have not yet exchanged a single book, and the same goes for the 14 months since the EU Stakeholder Dialogue.

Whilst we want to work with publishers on appropriate licenses, those they are proposing for these dialogues are far too complicated and are a step back from many licensing agreements we have now with publishers.

In any case, these agreements are by their nature more subject to change than a hard law. They also are at best only appropriate for developed country organisations with big resources. Even a big developed country organisation,

ONCE, has now refused to continue with the Stakeholder Platform process and others are reconsidering their position at the time of writing.

## 5. Why not accept one of the alternatives to the treaty being proposed at WIPO?

The African group, the European Union and the USA have all made their own proposals at the WIPO SCCR within the last year to “solve” the copyright barriers print disabled people face.

The African group proposal is a near copy of the WBU proposal, but it adds in a range of other issues such as libraries and education. As a result it is not politically acceptable to a significant number of WIPO Member States. This is because many are prepared to make a law on access for print disabled people but are less ready to do so on the other issues Africa has inserted into its proposal. So whilst we understand the wider aspirations of the African group, it is not likely the proposal will advance as it stands.

The EU proposal is frankly too weak and complicated. The EU proposes only a WIPO “Joint Recommendation”, which means that unlike the WBU treaty, the EU proposal would not produce a legally binding law.

The EU proposal also requires blind people’s organisations to ask for a license from rights holders to export accessible works. We can do that now and are slowly pursuing this where possible with publishers! This EU licensing requirement makes no sense, since a law allowing export is needed most especially for cases where it has **not** been possible to obtain a license from a publisher!

The EU proposal also makes much of a system of accredited “Trusted Intermediaries”. To be brief, such a system would allow publishers a veto over which blind people’s organisations can use the “Joint Recommendation”. This is a regression from the usual practice in copyright law and would make the provision of accessible books harder rather than easier.

The USA proposal for a so-called “Draft Consensus Instrument” is similar to the EU’s effort. It would also be non-binding, and also insists on a system of Trusted Intermediaries which carries therefore the danger of a publisher “veto” mentioned above.