

# CIS-TWN Analysis of WIPO Treaty for the Print Disabled (SCCR/22/15)

*Centre for Internet and Society* | 2011-10-04

Pranesh Prakash

*CIS and the Third World Network (TWN) conducted a quick analysis of the “Consensus document on an international instrument on limitations and exceptions for persons with print disabilities presented by Argentina, Australia, Brazil, Chile, Ecuador, Mexico, Paraguay, and the United States of America” presented as WIPO document numbered SCCR/22/15.*

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Standing Committee on Copyright and Related Rights

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Consensus document on an international instrument on limitations and exceptions for persons with print disabilities *presented by Argentina, Australia, Brazil, Chile, Ecuador, Mexico, Paraguay, and the United States of America*

## **PREAMBLE**

Recalling the principles of non-discrimination, equal opportunity and access, proclaimed in the United Nations Convention on the Rights of Persons with Disabilities,

Mindful of the obstacles that are prejudicial to human development and the fulfillment of disabled persons with regard to education, research, access to information and communication,

Emphasizing the importance of copyright protection as an incentive for literary and artistic creation and enhancing opportunities for everyone to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits,

Recognizing the importance of both accessibility to the achievement of equal opportunities in all spheres of society and of the protection of the rights of authors in their literary and artistic works in a manner as effective and uniform as possible,

Aware of the many barriers to access to information and communication experienced by persons who are blind or have limited vision, or have other disabilities regarding access to published works,

Aware that the majority of visually impaired persons/persons with a print disability live in countries of low or moderate incomes,

Desiring to provide full and equal access to information, culture and communication for the visually impaired persons/persons with a print disability and, towards that end, considering the need both to expand the number of works in accessible formats and to improve access to those works,

Recognizing the opportunities and challenges for the visually impaired/persons with a print disability presented by the development of new information and communication technologies, including technological publishing and communication platforms that are transnational in nature,

Recognizing the need to seek, receive and impart information and ideas through any media and regardless of frontiers,

Aware that national copyright legislation is territorial in nature, and where activity is undertaken across jurisdictions, uncertainty regarding the legality of activity undermines the development and use of new technologies and services that can potentially improve the lives of the visually impaired/persons with print disabilities,

Recognizing the large number of Members who, to that end, have established exceptions and limitations in their national copyright laws for visually impaired persons/persons with a print disability, yet the continuing shortage of works in special accessible formats for such persons,

Recognizing that the preference is for works to be made accessible by rightholders to people with disabilities at publication and that, to the extent that the market is unable to provide appropriate access to works for visually impaired persons/persons with a print disability, it is recognized that alternative measures are needed to improve such access,

Recognizing the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information, and that such a balance must facilitate effective and timely access to works for the benefit of visually impaired persons/persons with a print disability,

Emphasizing the importance and flexibility of the three-step test for limitations and exceptions established in Article 9(2) of the Berne Convention and other international instruments,

Considering the discussions within the WIPO Standing Committee on Copyright and Related Rights on the issue of exceptions and limitations for the

benefit of visually impaired persons/persons with a print disability and the various proposals tabled by Member States,

Prompted by a desire to contribute to the implementation of the relevant recommendations of the Development Agenda of the World Intellectual Property Organization,

Taking into account the importance of an international legal instrument/joint recommendation/treaty both to increase the number and range of accessible format works available to visually impaired persons/persons with a print disability in the world and to provide the necessary minimum flexibilities in copyright laws that are needed to ensure full and equal access to information and communication for persons who are visually impaired/have a print disability 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, for their own benefit and for the enrichment of society,

Have agreed as follows:

## ARTICLE A

### DEFINITIONS

For purposes of these provisions

"work" means a work in which copyright subsists, whether published or otherwise made publicly available in any media.

"accessible format copy" means a copy of a work in an alternative manner or form which gives a beneficiary person access to the work, including to permit the person to have access as feasibly and comfortably as a person without a print disability. The accessible format copy must respect the integrity of the original work and be used exclusively by beneficiary persons ~~persons with print disabilities~~.<sup>1</sup>

[Possible enumeration of different formats.]<sup>2</sup>

"authorized entity" means a governmental agency, a non-profit entity or ~~non-profit~~ organization<sup>3</sup> that has as one of its ~~primary missions~~ activities to assist

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<sup>1</sup>This change must be replicated everywhere where appropriate.

<sup>2</sup>

Formats should not be enumerated, since even the disabilities are not enumerated.

<sup>3</sup>

Non-profit organizations alone cannot cope with the needs of visually impaired people in the developing world. Thus, while it may sound like the ideal, it is impractical given the realities of the situation in the developing world.

persons with print disabilities by providing them with services relating to education, training, adaptive reading, or information access.

An authorized entity maintains policies and procedures to establish the bona fide nature of persons with print disabilities that they serve.

~~An authorized entity has the trust of both persons with print disabilities and copyright rights holders. It is understood that to obtain the trust of rightholders and beneficiary persons, it is not necessary to require the prior permission of said rightholders or beneficiary persons.<sup>4</sup>~~

~~If an authorized entity is a nation-wide network of organizations, then all organizations, institutions, and entities that participate in the network must adhere to these characteristics:~~

"reasonable price for developed countries" means that the accessible format copy of the work is available at a similar or lower price than the price of the work available to persons without print disabilities in that market.

"reasonable price for developing countries" means that the accessible format copy of the work is available at prices that are affordable in that market, taking into account the humanitarian needs of persons with print disabilities.

References to 'copyright' include copyright and any relevant rights related to copyright that are provided by a Contracting Party in compliance with ~~the Rome Convention, the TRIPS Agreement, the WPPT or otherwise~~ any applicable international treaties or otherwise.<sup>5</sup>

## ARTICLE B

### BENEFICIARY PERSONS

A beneficiary person is a person who

- a. is blind;
- b. has a visual impairment or a perceptual or reading disability, such as dyslexia, which cannot be improved by the use of corrective lenses to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or

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A \"trust\" system would make it impossible for developing countries to actualize these provisions. If despite this, copyright infringement happens, then national remedies exist for such infringement.

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To clarify: what is the purpose of these and not mentioning WCT, Berne, etc.?

- c. is unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading.

## ARTICLE C

### NATIONAL LAW EXCEPTIONS ON ACCESSIBLE FORMAT COPIES

1. Member State/Contracting Party should/shall provide in their national copyright law for an exception or limitation to the right of reproduction, the right of distribution and the right of making available to the public, as defined in article 8 of the WCT, for beneficiary persons as defined herein.
2. A Member State/Contracting Party may fulfill Article C (1) by providing an exception or limitation in its national copyright law such that
  - A. Authorized entities shall be permitted without the authorization of the owner of copyright to make an accessible format copy of a work, supply that accessible format copy or an accessible format copy obtained from another authorized entity to a beneficiary person by any means, including by non-commercial lending or by electronic communication by wire or wireless means, and undertake any intermediate steps to achieve these objectives, when all of the following conditions are met:
    - A. the authorized entity wishing to undertake said activity has lawful access to that work or a copy of that work;
    - B. the work is converted to an accessible format copy, 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 the beneficiary person;
    - C. copies of the work in the accessible format are supplied exclusively to be used by beneficiary persons; and
    - D. ~~4. the activity is undertaken on a non-profit basis.~~<sup>6</sup>
    - E. A beneficiary person or someone acting on his or her behalf may make an accessible format copy of a work for the personal use of the beneficiary person where the beneficiary person has lawful access to that work or a copy of that work.
  - B. A Member State/Contracting Party may fulfill Article C (1) by providing any other exception or limitation in its national copyright law that is

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<sup>6</sup>

To be deleted for the same reasons as above. Non-profit basis, if insisted upon, can be retained in Article D(2)(A), but not here.

limited to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

- C. The Member State/Contracting Party may limit said exceptions or limitations to published works which, in the applicable ~~special~~ accessible format, cannot be otherwise obtained within a reasonable time and at a reasonable price.
- D. It shall be a matter for national law to determine whether exceptions or limitations referred to in this Article are subject to remuneration.

## ARTICLE D

### CROSS-BORDER EXCHANGE OF ACCESSIBLE FORMAT COPIES

1. Member States/Contracting Parties should/shall provide that if an accessible format copy of a work is made under an exception or limitation or export license in their national law, that accessible format copy may be distributed or made available to a beneficiary person in another Member State/Contracting Party by an authorized entity ~~where that other Member State/Contracting Party would permit that beneficiary person to make or import that accessible copy.~~<sup>7</sup>
2. A Member State/Contracting Party may fulfill Article D(1) by providing an exception or limitation in its national copyright law such that:
  - A. Authorized entities shall be permitted without the authorization of the owner of copyright to distribute or make available accessible format copies to authorized entities in other Member States/Contracting Parties for the exclusive use of persons with print disabilities, where such activity is undertaken on a non-profit basis.<sup>8</sup>
  - B. Authorized entities shall be permitted without the authorization of the owner of copyright to distribute or make available accessible format copies to persons with print disabilities in other Member States/Contracting Parties where the authorized entity has verified the individual is properly entitled to receive such accessible format copies under that other Member State/Contracting Party's national law.<sup>9</sup>

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Import law provisions are already there in Article E, and should remain there. In Art. E, it states, "shall permit" import, and here, "would permit".

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This instance of \"non-profit basis\" may be retained if necessary.

The Member State/Contracting Party may limit said distribution or making available to published works which, in the applicable special~~special~~ accessible format, cannot be otherwise obtained within a reasonable time and at a reasonable price, in the country of importation.

1. Without prejudice to other exceptions to the exclusive rights of authors that are otherwise permitted by the Berne Convention or the TRIPS Agreement, a Member State/Contracting Party may fulfill Article D(1) by providing any other exception or limitation in its national copyright law that is limited to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

## **ARTICLE E**

### **IMPORTATION OF ACCESSIBLE FORMAT COPIES**

To the extent that national law would permit a beneficiary person or an authorized entity acting on the beneficiary person's behalf to make an accessible format copy of a work, the national law should/shall permit a beneficiary person or an authorized entity acting on that person's behalf to import an accessible format copy.<sup>10</sup>

## **ARTICLE F**

### **CIRCUMVENTION OF TECHNOLOGICAL PROTECTION MEASURES**

Member States/Contracting Parties should/shall ensure that beneficiaries of the exception provided by Article C have the means to enjoy the exception where technological protection measures have been applied to a work.

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To clarify: what would such verification require? Would self-certification suffice?

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It should be clarified, possibly through an agreed statement, that nothing in this article shall derogate from the flexibility provided in Art. 6 of the TRIPS Agreement, which allows for countries to provide international exhaustion.

Thus, if the principle of international exhaustion is in place (i.e., parallel importation is allowed), then importation can be carried out by anyone, and not just by a beneficiary person or an authorized entity.

~~In the absence of voluntary measures by rightholders and to the extent that copies of the work in the accessible format are not available commercially at a reasonable price or via authorized entities, Member States/Contracting Parties should/shall take appropriate measures to ensure that beneficiaries of the exception provided by Article C have the means of benefiting from that exception when technical protection measures have been applied to a work, to the extent necessary to benefit from that exception.<sup>11</sup>~~

## ~~ARTICLE G~~

### ~~RELATIONSHIP WITH CONTRACTS~~

~~Nothing herein shall prevent Member States/Contracting Parties from addressing the relationship of contract law and statutory exceptions and limitations for beneficiary persons.~~

## ~~ARTICLE H~~

### ~~RESPECT FOR PRIVACY~~

~~In the implementation of these exceptions and limitations, Member States/Contracting Parties should/shall endeavour to protect the privacy of beneficiary persons on an equal basis with others.~~

~~[End of document]~~

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<sup>11</sup>

This second paragraph weakens the principle established in the first by adding more conditions. They are almost phrased as alternatives, and the first alternative (paragraph) is the better one.