

# CIS's Closing Statement at Marrakesh on the Treaty for the Blind

*Centre for Internet and Society* | 2013-06-28

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*Pranesh Prakash read out an abridged version of this statement as his closing remarks in Marrakesh, where the WIPO Treaty for the Blind (the "Marrakesh Treaty") has been successfully concluded. The Marrakesh Treaty aims to facilitate access to published works by blind persons, persons with visual impairment, and other print disabled persons, by requiring mandatory exceptions in copyright law to enable conversions of books into accessible formats, and by enabling cross-border transfer of accessib*

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Thank you, Mr. President.

I am truly humbled to be here today representing the Centre for Internet and Society, an Indian civil society organization. If I may assume the privilege of speaking on behalf of my blind colleagues at CIS who led much of our work on this treaty, and the many blindness organizations we have been working with over the past five years who haven't the means of being here today, I would like to thank you and all the delegates here for this important achievement. And especially, I would like to thank the World Blind Union and Knowledge Ecology International who renewed focus on this issue more than 2 decades after WIPO and UNESCO first called attention to this problem and created a "Working Group on Access by the Visually and Auditory Handicapped to Material Reproducing Works Produced by Copyright".

While doing so, I would like to remember my friend Rahul Cherian — a young, physically impaired lawyer from India — who co-founded Inclusive Planet, was a fellow with the Centre for Internet and Society, and was a legal adviser to the World Blind Union. He worked hard on this treaty for many years, but very unfortunately did not live long enough to see it becoming a reality. His presence here is missed, but I would like to think that by concluding this treaty, all the distinguished delegations here managed to honour his memory and work.

I am grateful to all the distinguished delegations here for successfully concluding a reasonably workable treaty, but especially those — such as Brazil, India, Ecuador, Nigeria, Uruguay, Egypt, South Africa, Switzerland, and numerous others — who realized they were negotiating with blind people's lives, and regarded this treaty as a means of ensuring basic human rights and dignity of the visually impaired and the print disabled, instead of regarding it merely

as "copyright flexibility" to be first denied and then grudgingly conceded. The current imbalance in terms of global royalty flows and in terms of the bargaining strength of richer countries within WIPO — many of who strongly opposed the access this treaty seeks to facilitate right till the very end — is for me a stark reminder of colonialism, and I see the conclusion of this treaty as a tiny victory against it.

It is historic that today WIPO and its members have collectively recognized in a treaty that copyright isn't just an "engine of free expression" but can pose a significant barrier to access to knowledge. Today we recognize that blind writers are currently curtailed more by copyright law than protected by it. Today we recognize that copyright not only *may* be curtailed in some circumstances, but that it *must* be curtailed in some circumstances, even beyond the few that have been listed in the Berne Convention. One of the original framers of the Berne Convention, Swiss jurist and president, Numa Droz, recognized this in 1884 when he emphasized that "limits to absolute protection are rightly set by the public interest". And as Debabrata Saha, India's delegate to WIPO during the adoption of the WIPO Development Agenda noted, "intellectual property rights have to be viewed not as a self contained and distinct domain, but rather as an effective policy instrument for wide ranging socio-economic and technological development. The primary objective of this instrument is to maximize public welfare."

When copyright doesn't serve public welfare, states must intervene, and the law must change to promote human rights, the freedom of expression and to receive and impart information, and to protect authors and consumers. Importantly, markets alone cannot be relied upon to achieve a just allocation of informational resources, as we have seen clearly from the book famine that the blind are experiencing. Marrakesh was the city in which, as Debabrata Saha noted, "the damage [of] TRIPS [was] wrought on developing countries". Now it has redeemed itself through this treaty.

This treaty is an important step in recognizing that exceptions and limitations are as important a part of the international copyright acquis as the granting of rights to copyright holders. This is an important step towards fulfilling the WIPO Development Agenda. This is an important step towards fulfilling the UN Convention on the Rights of Persons with Disabilities. This is an important step towards fulfilling Article 27 of the Universal Declaration of Human Rights, Article 15 of the International Covenant on Economic Social and Cultural Rights and Article 30 of the UN Convention on Persons with Disabilities, all of which affirm the right of everyone — including the differently-abled — to take part in cultural life of the community.

While this treaty is an important part of overcoming the book famine that the blind have faced, the fact remains that there is far more that needs to be done to bridge the access gap faced by persons with disabilities, including the print disabled.

We need to ensure that globally we tackle societal and economic discrimination against the print disabled, as does the important issue of their education. This treaty is a small but important cog in a much larger wheel through which we hope to achieve justice and equity. And finally, blind people can stop being forced to wear an eye-patch and being pirates to get access to the right to read.

I also thank the WIPO Secretariat, Director General Francis Gurry, Ambassador Trevor Clark, Michelle Woods, and the WIPO staff for pushing transparency and inclusiveness of civil society organizations in these deliberations, in stark contrast to the way many bilateral and plurilateral treaties such as Anti-Counterfeiting Trade Agreement, the India-EU Free Trade Agreement, and the Trans-Pacific Partnership Agreement have been, and are being, conducted. I hope we see even more transparency, and especially non-governmental participation in this area in the future.

I call upon all countries, and especially book-exporting countries like the USA, UK, France, Portugal, and Spain to ratify this treaty immediately, and would encourage various rightholders organizations, and the MPAA who have in the past campaigned against this treaty and now welcome this treaty, to show their support for it by publicly working to get all countries to ratify this treaty and letting us all know about it.

I congratulate you all for the "Miracle of Marrakesh", which shows, as my late colleague Rahul Cherian said, "when people are demanding their basic rights, no power in the world is strong enough to stop them getting what they want".