

Primer on the Treaty for the Visually Impaired

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In this primer, Pranesh Prakash and Puneeth Nagaraj explain what effects a WIPO Treaty for the Visually Impaired can have and who's opposing it.

A Primer on the provisions of the TVI and ongoing negotiations

The Treaty on Limitations and Exceptions for Visually Impaired Persons/ Persons with Print Disabilities (“TVI” for short) is a landmark international instrument in recognizing the crucial link between copyright limitation and greater access to visually impaired persons / persons with print disabilities (“VIPs” for short). Below is a summary of the provisions of the Treaty and the benefit it will bring to VIPs, and the kinds of speed-bumps that rich countries are trying to place to make this treaty ineffective for the blind, the majority of whom live in poor countries.

1. Exceptions in Domestic Copyright Law

Currently, in most countries, only the owner of copyright to a particular book has the right to convert it into an “accessible format” (e.g. Braille, audio book, DAISY book, etc.). This treaty aims to create an exception to this rule by allowing print disabled persons, their representatives and non-profit ‘authorized entities’ the ability to convert books for the benefit of VIPs without seeking permission. The treaty would leave it up to each country whether their law will require such conversions to be paid or not since there is no uniformity on this question among countries that have national exceptions.

Opposition: The United States, European Union, France, Australia, Canada, and the publishing lobby have asked for multiple conditions for creation of accessible formats. They wish to confine this exception to non-profits, prevent translations, and ensure that books that are “commercially available” can be excluded, and require that countries who wish to use this exception have to comply with an onerous test called the “three step test”. Internationally, rights holders have zero formalities for gaining copyright (which, by international treaty, does not even have to be registered). But the rights holders want to ensure as many bureaucratic hurdles are put to exceptions as possible.

2. Cross-border Transfer of Accessible Works

One of the main purpose main purpose of the TVI is to increase the cross-boundary exchange of copyrighted works in accessible formats. According to the World Health Organisation, 87% of the visually impaired live in underdeveloped countries. Bangladesh and Swaziland, for instance, spend very little money on converting books, while in the USA, millions of dollars are spent both by the government and by charities. If this treaty is passed the way the World Blind Union and other pro-disability NGOs are asking, a blind girl from Bangladesh would be able register with a US-based site like Bookshare.org, after proving she's blind, and just download the book she needs in a format that is accessible to her.

Opposition: The European Union and United States want make this non-mandatory. They also wish to restrict the ability of the Bangladeshi blind girl from accessing these books by allowing trade only between non-profit 'authorized entities'. Unfortunately, many developing world countries (like Swaziland) don't have any authorized entities to speak of, leaving blind people there stranded. For a treaty to be effective, individuals must be granted the right to import books as well. The European Union also wishes for a 'commercial availability' clause, meaning that if a book is 'commercially available' in the receiving country, then the authorized entity can't export. In Europe itself there are almost no countries (with the UK being an exception) that have such a requirement when it comes to domestic conversions, but the EU still wants to ensure that as a requirement for poor countries. It is very difficult for an authorized entity located in the USA to determine in each and every case whether an accessible format of the book is 'commercially available' in the hundreds of countries they will receive requests from. Importantly, even a book priced exorbitantly or available only for those with expensive iPads may be considered 'commercially available', even if it is practically out of reach of the blind in the receiving country. This clause must go if the treaty is to be meaningful.

3. Digital locks

If digital locks (often called "Digital Rights/Restrictions Management" or DRMs) are used, then technologically, the blind can be restricted from enjoying a work which they have a legal right to access. For instance, Amazon has limited — at the behest of the Authors' Guild of America — the ability of blind people to get their Kindle e-book readers to read aloud a book, and did so using digital locks. The TVI proposes that countries be required to ensure that the blind have effective access to books, even if they have digital locks.

Opposition: The United States and the publishing lobby is the biggest opponent of this provision. They have a system under which the blind are not required to automatically be granted the right to 'circumvent' the digital lock to make a book accessible even if they have bought an e-book, but have to granted

permission to do so every three years by the government. The most recent three-yearly review found that the blind groups did not make out a strong enough case to justify granting them an exception, but thankfully this determination was overruled by the US Librarian of Congress. Thus the TVI must ensure that publishers cannot technologically impose restrictions on a book for the blind that they can't do legally.

4. Translation

Another hot-button issue is the right to translation. Given that the biggest exporters of books, due to their colonial legacy, are USA, UK, France, and Spain, it is imperative that the blind in developing countries have access to these books in languages that they can understand. Very unfortunately, most of these languages are not profitable-enough markets for publishers to publish accessible translated books. Given this, it is necessary for charities to be able to make translations of accessible works specifically for the blind.

Opposition: The European Union and the publishing lobby is strongly opposing this, claiming that this will result in the blind having better access than the sighted. This is a false claim. A sighted student might have access to a translated book (made without an exception), but the blind student might not. For this has no merit as it ignores the social consequences of disability. This provision will merely bring the visually impaired to the same level as the rest of the population and not give them some illusory advantage.