

WIPO Study on Copyright Limitations and Exceptions for the Visually Impaired

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The challenge for visually impaired people

- Ordinary printed text is inaccessible
- Commercial large print and audio books help some but titles are limited
- Electronic publications in principle could be accessible but often are not

Is there just one solution to give access?

No. The way in which visually impaired people can access the printed word is very diverse.

Visually impaired people need to read for reasons **just as diverse** as for sighted people.

- Eg reading:
- when studying
 - for leisure
 - at work
 - to participate in hobbies

The challenge for me!

- Identifying relevant international conventions and treaties
- Identifying exceptions in national laws
- Identifying law relevant to import and export of accessible copies

Why limit the Study to visually impaired people?

- WIPO chose the scope
- WBU lobbying on copyright
- No real reason to exclude others
- But needs and so solutions may differ

What else the Study doesn't do?

The Study doesn't address things that also apply to sighted people

For example, where:

- a book is in the wrong language
- a book has not been published in a particular country

And the Study doesn't address non-copyright issues

For example:

- rehabilitation for late onset visual impairment – learning Braille etc
- lack of resources to buy readily available accessible copies

But it's not that simple

- Issues of cost of accessible copies do arise in some national exceptions
- Perhaps it's not fair to leave out consideration of visually impaired people's income levels completely

What's in the Study - 1

- An attempt to draw together earlier conclusions about exceptions permitted by international IP treaties and conventions
- Really difficult for exceptions for visually impaired people given the range of rights and protected works that might be covered

What's in the study - 2

- Analysis of national exceptions found – analysed against the same criteria to find similarities and differences
- Really difficult to ensure up-to-date law examined and interpretation accurate

What's in the Study - 3

- Analysis of distribution and importation rights to try and decide what cross border movement of accessible copies might be possible
- Really difficult for all the reasons above and more!

What's in the Study - 4

- A number of case studies showing problems and successes with giving visually impaired people access to the written word
- Really inspiring regarding the successes given the difficulties

What's in the Study - 5

- Analysis of the 'copyright' problems and possible solutions in the light of the legal frameworks and case studies explored
- Hopefully the part that is of most use to WIPO Member States

Analysis of the problems and solutions - introduction

- Tries to raise some important points to inform future discussions and action
- Don't believe need total accuracy in the earlier analysis of national laws to be a valid starting point

The international framework

- IP treaties and conventions do not require exceptions in this area
- Conditions applying to exceptions benefiting visually impaired people may be complicated

Solutions to deliver exceptions for visually impaired people

- Rely on accepted need for balance with each country making own decisions
- Explore obligations from UDHR/related initiatives, and relationship with copyright
- A new IP convention requiring exceptions, or even rights

Are exceptions necessary?

- Maybe not if material is published in accessible formats
- Maybe not if converting to accessible formats is readily licensed

But are these likely to be comprehensive solutions in the foreseeable future?

But can exceptions ever be the only answer?

- Probably not - resources for activity under exceptions likely to be limited
- So built in accessibility as material is published may be the ideal
- And so may be better if exceptions are designed to encourage this

Other exceptions

- Not covered by this Study
- Could be helpful but unlikely to be comprehensive
- But clarification of self-help copying by or for individual visually impaired person helpful – what is legal needs to be clear

National exceptions for the benefit of visually impaired people

- Found in fewer than half of WIPO member States
- Wide variations in scope
- Seem to be less common in developing countries

Possible conditions in exceptions

1. Defining the end beneficiary

- Satisfies the 3-step test requirement that the exception is a 'special case'?
- May be better than, say, a limitation to 'special' accessible formats
- Functional rather than medical definition seems to work better

2. Defining what works can be used

Possible options:

- the type of copyright work
- whether the work has been published
- whether the exception **only** applies when the work is **not** available in an accessible format

Relationship with commercially published accessible formats

- When, if at all, is activity under an exception in competition with what is commercially available acceptable?
- Must recognise diverse needs of visually impaired people, eg commercial large print should not rule out other formats needed

3. Profit/non-profit making activity

Non-commercial test might apply to:

- the body acting under the exception
- charges for accessible copies made
- use of accessible formats by visually impaired people

4. Permitted/restricted acts

- Many current exceptions seem limited to making copies, ie not infringing the reproduction right
- Reasonable activity to supply accessible copies to visually impaired people could involve other restricted acts

5. Defining who may act

- Implied by definition of activity permitted
- Limited to named/registered/designated bodies
- Defined by narrow category such as disability organisations
- Defined by broad category

6. Defining accessible formats

- National laws vary - Braille only to no limitation
- More sensitivity for formats which are not 'special' – eg the same as commercially available large print and audio books
- DAISY digital book very flexible but is it a 'special' format?

Given diversity of needs may be better to not rule out any type of accessible format and use a **functional definition** for permitted formats, eg one that gives access equivalent to that enjoyed by a sighted person

7. Compulsory licence/exception

- Majority of countries have pure exceptions but need to look at scope of exception too
- Remuneration to right holders could be for some types of activity only
- Half-way house where non-remunerated exception could be overridden by licensing

The 3-step test

- Quite common as an extra limitation in national exceptions
- But how does this limit activity to help visually impaired people in practice?
- Could debate what is the most helpful way to define exceptions in national laws

Relationship with contracts

- Should users enjoy just exceptions to rights or should they have rights too?
- Does the digital environment make this a more important issue?

Other differences

- Quite a few – some restrictive some helpful to users
- But are differences between countries really justified?
 - case studies suggest diverse needs of visually impaired people everywhere

Accessible formats: export and import

- Would increase access for visually impaired people – may be easy to agree this much
- What can currently be done and what might be fair may be much harder to agree

What is this about?

- Sending accessible copies direct to visually impaired people in another country?
- Sending to intermediaries first?
- Sending master copies to intermediaries?
- Online dissemination of accessible formats when nothing physical is 'sent'?

More questions

Does it matter if:

- What is 'sent' has not been published in the receiving country?
- Where a different version was published?
- Where exceptions in the sending and receiving countries are different?

'Export' and 'import' involves the laws of two countries – and to stay legal it may be necessary for the exporting country to know what will happen in the importing country and the importing country to know what happened in the exporting country

'Export' and 'import': solutions

- National legislation
- Licensing agreements:
 - at national level
 - at international level
- International agreement on legislation:
 - guidance/draft laws
 - treaty/convention

Publishers' e-files

- Of great value to those making accessible copies but greatly damaging to publishers in the wrong hands
- Not strictly a copyright issue, but could legislate to give access
- Building in trust may be essential

Digital rights management

- Very important issue in the digital world
- Not looked at in detail in this Study
- DRMs can help enable as well as prevent and restrict access so can they deliver exceptions for visually impaired people?

Exceptions as the only solution?

The World Blind Union campaigns for visually impaired people to have access to **the same book, on the same day and at the same price** as sighted people – exceptions do not deliver that.

Other solutions

- Technology can both prevent and provide access
- Encourage understanding, information sharing and collaboration to increase secure built-in access to the written word for visually impaired people

Technology provides more and more opportunities to deliver built in accessibility.

Exceptions to copyright can help where this does not happen.

Conclusion

- Visually impaired people deserve a **right to read** equivalent to that enjoyed by people without an impairment
- Hope that the Study is useful to help take the debate forward

Thank you for listening

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