

World Intellectual Property Organisation (WIPO)

Standing Committee on Copyright and Related Rights

Information Day, 3 November, 2003

Presentation by the World Blind Union (WBU)

Introduction

The World Blind Union (WBU) is extremely grateful to the Standing Committee and to the staff of WIPO for today's opportunity to present to you the issues relating to copyright which affect the lives and opportunities of blind and partially sighted people.

WBU has affiliate members in 158 countries throughout the World. National delegations are made up of organisations representing or working with blind and partially sighted people. We are recognised by the United Nations as a major non-government organisation, and we have enjoyed observer status with WIPO for some ten years.

Our President, Ms Kicki Nordstrom, sends her greetings and regrets that, due to prior commitments, she is unable to be here today. However, the President of the European region within WBU, Sir John Wall, CBE, is here. Sir John, Mr Stephen King and I will be happy to discuss matters further with distinguished delegates and observers following this morning's meeting.

In this presentation, I intend to highlight the balance that should be struck between copyright and rights of access to information and learning. I will explain briefly how blind and partially sighted people read and the barriers they face in doing so. I shall indicate ways in which we feel WIPO and its member states can help dismantle some of these barriers.

Afterwards, my colleagues from The Daisy Consortium and the Libraries for the Blind Section of the International Federation of Library Associations (IFLA) will build on this basic outline and provide greater insight into the problems, but above all the solutions that beckon.

Background

It is estimated that there are some 180 million blind and partially sighted people in the World. Epidemiology varies significantly from one part of the World to another. Altogether, however, we are talking both about children and young people yearning for education and employment, and older people whose sight has declined as they age, but whose rights to a full and enriching life should not diminish as a result.

Article 19 of the United Nations Universal Declaration on Human Rights recognises the right to “seek, receive and impart information.” Article 27 recognises the right to participate fully in “the cultural life of the community.” Paragraph 5.6 of the United Nations Standard Rules on the Equalisation of Opportunity for Disabled People also asserts the rights of disabled people to access information.

The term “information” is used here in its broadest sense, encompassing material for life-long learning, culture and entertainment.

One essential channel through which information is made available is the written word. It follows that access to the written word is indispensable if the rights of access described above are to be realised.

Kofi Annan, Secretary-General of the United Nations, speaking at the inauguration of the UN Decade on Literacy earlier this year, described literacy as a human right.

Blind and partially sighted people can only access the written word, whether originally displayed on paper or on computer screen, if the presentation of that material is adapted in some way. Adaptations include enlarging, altering features such as colour or font, transferring into a tactile code or into an audio format. The result may be hard copy braille, large print, tape or CD, or it may take the form of temporary output from computer peripherals such as synthetic speech or enlarged screen display. In no case is modification to content suggested, only to forms of presentation.

WBU recognises that there are people with other disabilities that impair reading in conventional ways. We are mandated to represent only those with a visual impairment, but in no way wish to stand in the way of others, and believe that comprehensive solutions are desirable. Our reference throughout this presentation to “blind and partially sighted people” does not imply any rejection of the case made by others.

If we accept that access to information is a right, then it follows that any impediment to access to information is a denial of that right. Barriers can be economic; they can be technological, and they can be legal.

Exceptions and Limitations to Copyright

Let me stress that WBU fully accepts that copyright is in itself a legitimate form of moral and economic protection for creators of content and for those who add value to creative work.

This right should, however, be balanced against the right of blind and partially sighted people to read the same material as their fellow citizens, at the same time and at no additional cost to the individual.

The Berne Convention, the Trade Related Intellectual Property Rights (TRIPS) Treaty and the WIPO Copyright Treaty allow states to include in their intellectual property laws exceptions or limitations to copyright which do not conflict with the legitimate interests of rights holders. A growing number of states have enacted such legislation, although this takes a number of different forms.

There is in some countries a commercial market for a limited range of “accessible” material, but large print books and unabridged audio books almost always cost more than the “standard” version.

Most accessible material is today still created by specialist agencies operating on charitable funds or social subventions. This means in practice that only a small proportion of the material published currently becomes available in accessible formats. In the UK, for example, it is estimated that only around 5% of published titles ever become available in accessible formats, and it is rare indeed for the accessible version to come out until months or years after the original.

If no exceptions or limitations exist in national legislation for the benefit of blind and partially sighted people, then those producing accessible formats need to seek explicit permission for every title and every format. This causes delay and is sometimes met with refusal, denying people vital access to a text they urgently require. It also places a huge administrative burden on organisations producing accessible material.

WBU believes that every state in the World should have exceptions or limitations in its national law, for the benefit of blind and partially

sighted people. We would urge distinguished delegates from those countries who do not yet have these to consider how they can introduce them as a matter of urgency.

We believe those exceptions should have the following features:

- a) They should achieve general acceptance and recognition of the principle that creation of alternative format versions from lawfully acquired originals on a non-profit basis with controlled distribution, does not constitute an infringement of copyright and therefore requires no permission.
- b) They should enshrine rights rather than merely improving procedures for permission.
- c) They should avoid restriction to particular formats or technologies.

Role for WIPO - 1

An important part of WIPO's work is to offer advice on intellectual property law to developing countries and to countries in transition. WBU has been discussing with WIPO staff how that advice might be broadened to include advice on the scope for exceptions and limitations for the benefit of blind and partially sighted people, and indeed their desirability. We hope that progress can be made on this front in the very near future.

The International Dimension

However, national arrangements are not, in our view, enough on their own. A blind person in, say, Canada can benefit from that country's copyright exceptions. Another blind person, even one sharing the Canadian's language, in for example France or the UK, wanting to read material made accessible in Canada, still may have no right to do so, even if their own country also has exceptions in its copyright legislation. No jurisdiction can legislate for another.

Because of the acute shortage of accessible materials, blind and partially sighted people should also have straightforward access to the world stock of accessible materials without geographical or territorial limitations caused by legislative divergence. Again, this would be on a non-profit basis with controlled distribution.

Thus, WBU also calls for the creation of international agreements which would allow the unhindered transfer of accessible material created in one country to blind and partially sighted people in another country. Bi-lateral or multi-lateral agreements may be the first step. The dream is an international accord backed by WIPO and all its members.

Role for WIPO - 2

WIPO staff advised us earlier this year that they hope to commission a survey of national copyright legislation around the world in respect of exceptions or limitations for blind and partially sighted people. Most significantly for us, this survey would also enquire into any importation rights associated with such exceptions. This will be a valuable first step. We shall be able to see where there is already good practice. Rights holders and legislators will be able to see where there is similarity between different jurisdictions, and may thus feel more confident about entering into undertakings for the transfer of material to those other jurisdictions.

Technological Barriers

The advent of digital rights management and technological protection measures has often created new technological barriers. The systems used are often incompatible with current access technology. Copyright legislation should therefore create mechanisms to ensure that anyone benefiting from an exception to copyright law is not then prevented from enjoying that exception because of an inadvertent technical block, and is afforded access by another legal means.

Role for WIPO - 3

We very much hope that WIPO investigations into the role of digital rights management and technological protection measures will take full account of this.

Building the Future

WBU also recognises that the removal of copyright barriers, while an invaluable foundation for future action, will not alone give instant access to all published material. It is also important to establish close working

relationships between rights holders (especially publishers) and agencies serving blind and partially sighted people.

At the World level, we are now initiating discussions with the International Publishers Association, alongside our colleagues in the other bodies addressing you today. Parallel contacts exist in several countries or regions.

WBU supports any valid initiative to improve this collaboration, including:

- adoption by the mainstream publishing industry of standards and specifications which facilitate the creation of accessible copies. The Daisy Standard is the prime example of this.
- schemes for compulsory or voluntary deposit of master copies to which bona fide individuals or agencies would have access;
- licensing agreements between publishers and agencies serving blind and partially sighted people;
- other forms of collaboration between rights holders and agencies, in which the latter are seen as “trusted intermediaries ” to whom electronic material may be passed securely in order to facilitate the timely availability of accessible copies of published material.

Conclusion

In conclusion, let me stress that WBU is not opposed to the legitimate application of copyright. Nor do we wish to deny rights holders a fair return for their endeavours. Where the market can provide accessible material at the same time and at the same price as the “standard” version, there is no need for intervention. However, in so many cases this is not so, and blind and partially sighted people, along with those serving them, should be assisted by legislators to realise their right to share in the rich culture and wealth of knowledge open to society as a whole. We urge WIPO to play its part in realising for blind and partially sighted people throughout the World their Right to Read.

Thank you.

David Mann, 3rd November, 2003

References

Universal Declaration of Human Rights

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 27

Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Kofi Annan, New York Public Library , 13th February, 2003-10-21

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