

The Marrakesh Treaty: Rights Holders' Perspective

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Good Morning:

I'd like to add my voice to Scott's in thanking the Government of Jamaica for staging this meeting. In particular, the Ministry of Industry, Investment and Commerce through the Jamaica Intellectual Property Organization (JIPO) on whose board I have the pleasure of serving. I'm thrilled that JIPO is once again working so closely with the World Intellectual Property Organization (WIPO) on staging important discussions on copyright in Jamaica and I thank them for their ongoing support.

I'm here this morning not just as a JIPO board member, but also as the Publishing Director of the Book Industry Association of Jamaica (the BIAJ) and the Vice Chair of the National Library of Jamaica. I have the interesting position of being a Director and former Vice Chair of the association that represents publisher's interests and the current Vice Chair of the National Library, one of the entities

that will serve as an authorized body under the Marrakesh Treaty. That might seem like a conflict, but in the Jamaican context I think it is actually an advantage and I'll touch on that later.

The BIAJ is the oldest and largest trade group in publishing in the Caribbean and has worked for almost thirty years to promote literacy and the development of the local publishing and bookselling industries. The BIAJ, through its new Chairman, Latoya West Blackwood, sends its greetings. The association is always pleased to partner with government and international partners in addressing issues of critical importance to the industry and we are particularly attentive to the multiple challenges and considerations involved in bringing locally relevant content to the widest cross-section of Jamaicans at home and abroad. That is a priority we share with the National Library of Jamaica, which makes my serving on both boards considerably easier. The National Library of Jamaica is Jamaica's premier library for fostering and promoting the nation's knowledge of its history, heritage and information sources. Its mission is to collect, preserve, document and facilitate access to the nation's cultural heritage, through the promotion, coordination and development of a network of technologically enhanced libraries and services. It has done so for 36 years.

Lastly, as you heard from the introduction, I also serve on the board of the Early Childhood Commission – the entity tasked with the monitoring, regulation and development of the early childhood sector, including the nearly 3,000 schools serving the nation's youngest children. The provisions of the Marrakesh Treaty

have important implications for the education of visually impaired students. So, with all my many hats, I'm happy to be part of this conversation.

But first let me answer as myself – a children's book writer and a consultant who works on media, communication and development campaigns that target children. We're currently celebrating Youth Month in Jamaica and just last week celebrated Universal Children's Day, a day on which we are intended to recognize and recommit to honouring the rights we have pledged to uphold for children in the United Nations Convention on the Rights of the Child. I've spent much of the last month working with Crayons Count -- an initiative which works to raise awareness on the importance of early childhood education and to provide resources to early childhood institutions – creating content to raise awareness on children's rights. So forgive me if that's where my head is. For me, the Marrakesh Treaty is an important step in honouring those rights.

Scott's underscoring of the importance of access to information in the development of the individual is enshrined in the UN Convention of the Rights of the Child. Article 13 specifically protects children's right to information – yes, all children as outlined in Article 1. All children regardless of their abilities, as outlined in Article 2. Article 17 requires content producers to provide reliable information for children. Yes, all children. Article 23 calls for special care and support for children with disabilities and Article 29 calls for education that develops each child's abilities, personalities and talents. Article 30 protects children's rights to use their language, culture and customs. Within the context of these rights, it is clear that there is much to be done to better serve the needs of

Jamaica's visually impaired children. A quick sample of Jamaican publishers, specifically those who concentrate on materials for children illustrates the need for materials for visually impaired children. Of the nearly 80 children's books in commercial circulation that the BIAJ has been able to identify, only one has a full audio-book component. There are many reasons for this, and I'm ashamed to say that my own children's books are included in that long list of inaccessible titles. I'll come to those reasons later. But it's important to me to start with the recognition that we – the creators of content for children – recognize that the core of the Marrakesh Treaty is a necessary protection of children's rights and a key step in ensuring that the educational and information needs of all children are met.

I'm going to resist the urge to talk about all the ways we are failing sighted children, specifically in making available culturally relevant materials. That is a conversation for another time. But I wanted to start there to make the point that the provision of materials for children with visual impairments falls within the context of a broader book famine for children in general.

In a broader sense, the guiding spirit of the Marrakesh Treaty are core to the BIAJ -- the principles of non-discrimination, equal opportunity, accessibility, participation and inclusion are all important to us. Writers and publishers live and thrive on the expression of a diversity of ideas. Plus to be frank, publishing is a numbers business. In a country as small as Jamaica, we need everybody to be a customer.

As Scott has pointed out, the exclusive focus of the treaty on exceptions and limitations to copyright law has caused some concerns for local rights holders. What has been said of the international rights holders is true in Jamaica as well – the concern is not about market erosion as there is currently miniscule creation of commercial content for the visually impaired community. The concerns largely centre on putting the Davids (local publishers) in an even more vulnerable position against the Goliaths (the dominant US and UK publishers who also operate in our markets.)

It's important for us to not discount the concerns of rights holders and content creators as turf wars. The ideas that Scott argues so passionately argues for having access to have to be created in the first place for anyone – sighted or visually impaired to have access. Content creation takes resources: intellectual and financial. The ability of content creators to monetize their content is critical for the ongoing content development.

The reality of the Jamaican situation isn't the turf war Scott describes. I suppose, to participate in a turf war, you have to first have turf. Jamaican authors and publishers generate a tiny fraction of the revenue spent on books in this country. It's important to understand how the industry works. First of all, we're a textbook country. More than 90% of all books sold here are textbooks. Second, we're dominated by foreign publishers. Our publishers do not have lobbyists. What we have is a trade association that tries to work closely with the government to explain the trickle down effects of global treaties like this. Jamaica is too small for an us vs them mindset. What works for us is meaningful partnerships that work to mutual benefit.

It's a matter of balancing perspectives.

In canvassing my publisher colleagues for their take on Marrakesh, I found three interesting perspectives:

First, support for the treaty is strong, as it meets important social needs without violating international copyright law.

Second, there were some who felt it was unnecessary because of the existing work of the National Library of Jamaica. The National Library currently operates The National Digital Library Service for the Blind which provides both audio versions of Jamaican books and access to alternative formats of books from other countries through the TIGAR project – Trusted Intermediary Global Accessible Resources service hosted at WIPO. In some ways, this may have fostered a bit of complacency, allowing publishers to believe that there is enough being done to provide materials for the visually impaired. The numbers do not bear that out. The National Library's local audio book collection has fewer than 60 titles. On average, Jamaican authors and publishers release approximately 150 titles annually.

Additionally, Jamaica's recent amendment to its Copyright Act inserted specific provisions for persons with disabilities under sections 65A and 65B. It is heartening that the Jamaican amendments require the authorized body to make reasonable efforts to obtain a copy of the work in an accessible format at a reasonable price; that the authorized body distribute the work only to persons with a print disability; and that the authorized body take reasonable steps to notify the owner of the copyright of the making of the adaptation. The Jamaican amendment further states that the authorized body may charge the person with a

print disability a sum that is no higher than the cost of the production of the copy and a reasonable contribution to the general expenses of the authorized body with no expectation of profit. It is unclear from the language of the amendment, but one would hope that the authorized body and the rights holder would come to a reasonable agreement on compensation due to the latter.

Further in keeping with the Marrakesh Treaty, the Jamaican amendment allows authorized bodies to copy the work contained in an electronic medium and to circumvent technological prevention measures in the work without infringement of copyright.

Third, and most important, are the concerns about the implementation of the treaty and what it will take for its objectives to become reality.

Local publishers are concerned about the quality of the materials that will be produced, and in particular, their faithfulness to the original content. We are in an era where digital security and piracy concerns are great and real. There are concerns about the challenge in guaranteeing that materials will only be used by the intended beneficiaries and that alternative formats will not be used for commercial purposes. These risks are multiplied across borders. The notion of geographic jurisdiction in the electronic age is rapidly becoming obsolete. Borders are, pardon the pun, increasingly virtual. At a time when local publishers are looking to develop and monetize transmedia versions of their content, having that development undertaken by third parties with varying degrees of production competence is also a concern.

All this points to the caution required in the implementation – an assessment of the capabilities of the authorized entities; the provision of resources to them where necessary; ongoing monitoring, oversight and strengthening of the local bodies. It's essential that WIPO not just serve as an information access point between authorized entities but that it actively work to monitor and strengthen them.

Most important, it is critical—and I say this from all of my multiple perspectives -- that partnerships between local publishers, authorized entities and agencies representing the needs of the visually impaired be developed and strengthened. What ties local publishers, disability advocates and authorized bodies together is not just an interest in advancing social good. We face the same challenges in financial and human resources. Partnerships are essential to ensuring that the rights and interests of all parties are honoured and that we produce materials in the most widely accessible formats in the most cost-effective and secure process.

Here is the issue: treaties don't generate products. They create the context. As a children's book writer, Scott's comments about regaining the joy of falling asleep with a book in his hands once he was introduced to Braille – after feeling that the world of literature had been stolen from him. – hits me hard. I want that for Jamaican children. I want that for the stories I write for Jamaican children. But a treat alone cannot make that happen for the thousands of blind children in Jamaica.

In this regard, the experience of the National Library of Jamaica is instructive. The NLJ has been doing this work for years but has not had the resources to implement it on as a broad a scales as it would like.

What is critical is that the dots be joined. That funding be provided. That product development be prioritized. That appropriate oversight mechanisms be put in place.

Partnerships can also allow us to unlock the many benefits of the Marrakesh Treaty. At its most basic level, Marrakesh increases the possibility of Jamaican content being reformatted for distribution to visually impaired communities in other countries, increasing its discoverability. More important, Marrakesh is a signal to the local publishing community of the value of these markets and the potential to make content directly available. Yes, we can better serve the local visually impaired communities. Serving small sub-markets within a small market is inherently challenging, particularly in publishing, which is by and large a business of economies of scale. However, the possibility of providing content for the visually impaired market outside of Jamaica is potentially attractive.

It's also important that we engage the visually impaired community as content creators – so that their experiences and ideas can be shared not just within their community but across the country.

The treaty recognizes the special needs of persons with visual impairments and print disabilities within developing and least-developed countries. It's important to note as well that rights holders in these countries also face peculiar challenges.

In addition to the book famine, we face an imbalance of ideas. Jamaica is a net importer of content. It's concerning that we will repeat this and extend this within the visually impaired community if we don't take the steps to ensure that we can create local content that is accessible to the visually impaired community.

What is critical is ongoing engagement with the private sector to understand the long term and far reaching implications of access to information, particularly of culturally relevant information. We need ongoing collaboration between the Jamaica Council of Persons with Disabilities, the National Library of Jamaica, JIPO and the Jamaican Writers Society and the Book Industry Association of Jamaica.

In this vein, I point to the work of the Accessible Books Consortium and the Charter for Accessible Publishing, which engages publishers to express and honour their commitment to making materials available in accessible formats simultaneously. The Charter is supported by WIPO, the International Publishers Association, the World Blind Union, the International Federation of Reproduction Rights Organisation, the DAISY Consortium, the International Authors Forum and the International Federation of Library Associations and Institutions.

I want to believe, like Scott, that the Marrakesh Treaty will change the lives of blind people in Jamaica. A lot has to happen for that to be reality. In that regard,

the many recommendations of the International Publisher's Association for how governments and the private sector can partner with local publishers to develop the publishing sector to mutual benefit are instructive; particularly in the broad promotion of a reading and book culture; an emphasis on early literacy and early reading; the promotion of entrepreneurship in publishing and the provision of incentives and programmes that stimulate local publishing. The BIAJ has long been engaged with the government in developing public-private partnerships. We hope that this conversation today will accelerate the pace of those discussions. To paraphrase Scott, the Jamaican book famine still exists. Our hearts and minds are starved from the information we need. I'd like to see this famine end for all Jamaicans, particularly Jamaican children.

Thank you so much, Scott for sharing your perspective. Thanks to all of you for participating in this conversation. In closing, let me echo the words of Jens Bammel of the International Publishers' Association in the Closing Statement by the International Publishers Association 27 June 2013: Jamaica's writers and publishers will continue to work with all stakeholders to improve access for persons with print disability and to achieve our common goal and the objective of this treaty: Equal access for all.