

Presentation to WIPO Oman 1 April 2015 by Jace Nair

Honourable Madam Chairperson, officials of the WIPO International Bureau, Representatives of State Parties, and officials of the Government of the Sultanate of Oman, and invited guests – I acknowledge your presence here today and all protocols are observed.

I would like to give you a brief introduction to AFUB and express the importance of the Marrakesh Treaty to blind, visually impaired and other print disabled people in Africa.

AFUB was established by Resolution of the Organisation of African Unity now the African Union where we have Official Observer Status in the AU and in several of its Commission. AFUB is registered as an INGO in Kenya where our headquarters are based and we receive semi consular recognition by the Government of Kenya.

AFUB has affiliation from national member organisations in 53 countries in Africa and our vision is a continent where blind and partially sighted persons enjoy equal rights, social inclusion and full participation in development.

AFUB is a member of the World Blind Union (WBU) and the African Disability Alliance (ADA), formerly the Secretariat of the African Decade on Persons with Disability.

Madam Chairperson, “Each year the world publishing industry produces 1 million new titles. Unfortunately less than 10,000 of these, less than 1%, are ever produced in accessible formats which can be independently read by visually impaired and other print disabled readers”, these are the opening statements made by Chris Friend, of the World Blind Union to the ARIPO Administrative Council on 17 November 2014.

The Treaty particularly provides the world's visually impaired community the right to exchange works in accessible formats across national boundaries and this unique provision will immediately provide even greater access to civic, educational and leisure reading.

Honourable Chairperson, with your permission, I invite all the participants in this conference room this morning to close their eyes for a few moments and take their own personal journey down the High Street of their home town to the library that they use regularly, or across the campus of the University to the Faculty Library they use on a regular basis.

I ask you now to think of how you would react on entry to that library when you find that 99% of all the books on the shelves are padlocked and chained against you removing them to read.

This is exactly what all visually impaired and other print disabled readers experience when they try to avail themselves of a needed academic research text or the latest popular novel which everybody in their family and friends are reading and talking about.

I share with you this morning the story of a great friend from Sierra Leone. Noah took six years to complete his Masters, not because he was a slow learner, but because there were no accessible format versions of the books in his Faculty's library for him to use as an independent blind reader. As an unemployed visually impaired person, he had to pay his reader, out of his own pocket. Therefore his studies could only progress at the rate that he could afford to pay to have all the reference books and all the course materials read to him.

according to recent studies by the World Blind Union (WBU), in 2012 only 5% of books published were made available in a format accessible to those who are visually impaired in developed (or rather, richer) countries, while less than 1 per cent of books published that year were made available in developing, poorer countries. The situation is even worse in South Africa, where only 0.5 per cent of books have been published in or converted to an accessible format for people with visual impairments.

It must be noted that the majority of these accessible formats are reproduced by NGO's and charitable organisations utilising much needed development funds.

These figures underline the necessity and urgency to adopt adequate measures to facilitate adequate access to published works for blind, visually impaired or otherwise print-disabled persons (VIPs). Currently, the severe shortage of knowledge materials in accessible formats aggravates the social and economic constraints faced by VIPs in developing countries. This is in obvious conflict with the principles of non-discrimination, equal opportunity, accessibility and full and effective participation and inclusion in society, proclaimed in the Universal Declaration of Human Rights and the United Nations Convention on the Rights of Persons with Disabilities.

Restrictions imposed by copyright law on the rights to make reproductions and create adaptations of copyright protected works were identified by the international community as a key factor for VIP's hampered access to published materials. In particular, the sets of existing copyright limitations and exceptions, such as 'fair dealing', were considered inadequate to safeguard sufficient access opportunities. With its focus on formulating minimum standards for national copyright exceptions and limitations, the treaty's over arching objective is to drastically increase VIP's access to books and other printed materials, and combat what is commonly referred to as book famine.

Under the Marrakesh Treaty, there is considerable flexibility provided to Contracting Parties in terms of how they wish to implement the treaty.

Article 10: General Principles of Implementation.

Article 11 the treaty to enter into force, ratification is required from 20 states.

Article 4 prescribes how a country shall amend their national laws so as to create a limitation or exception for visually impaired individuals regarding the accessing of copyright protected materials.

Articles 5 and 6 looks at the prescribed laws pertaining to cross-border exchange and importation of accessible format copies between Contracting Parties to the treaty.

It is important to note, however, that the limitations and exceptions in the Marrakesh Treaty do not extend to substantive modifications that would amount to adaptations, an exclusive right still reserved for the copyright owner. Therefore, all that is permitted is the transformation of the traditional formatted work into an accessible format, not the adaptation or alteration of the content of the original work itself. The integrity of the original work is to be respected at all times, and therefore issues of potential infringement on the moral integrity of the author ought not to arise.

Article 4(4) embodies what has become known as the 'commercial availability requirement' of the Marrakesh Treaty. Therefore, the addition of a commercial availability requirement will have a negative effect not only on the creation of accessible format copies locally, but on the cross-border exchange of accessible format copies.

we advise governments not to adopt a commercial availability clause. There are several reasons why not to introduce a commercial availability clause into legislation. Such a clause puts the burden on institutions providing reading materials to the visually impaired to ascertain whether the text is already available commercially and, if so, puts the additional burden on them to determine whether or not it is available under 'reasonable terms', a phrase not defined in the Treaty. For institutions that are not made up of trained legal experts and which have limited resources (both human and financial), these demands are near impossible to satisfy, rendering the institutions practically paralysed to assist the visually impaired for fear of facing legal action.

I briefly highlight what AFUB is doing to encourage the ratification by African Governments. Firstly, we have made the Marrakesh Treaty available in an accessible format and available in English, French, Portuguese and Arabic.

Further, we created a tool kit as well as a fact sheet available in an accessible format and in the official languages, english, french and portuguese.

we trained the AFUB staff and Regional representatives in setting up right to read coalitions in

national countries.

we participated in the ARIPO general council.

Together with WIPO and Brazil will undertake a capacity building workshop with Portuguese speaking countries IP office and the national blindness organisation.

OAPI the french version of ARIPO is to meet in july this year and we will be there to advocate for the ratification by the french speaking countries.

we would like to encourage the Arab speaking countries to also arrange a similar workshop with your IP office and national blind organisations.

In this brief opening statement, I would highlight the need for your Member State to ratify/accession and domesticate the Marrakesh Treaty in your national legislation.

The majority of our constituents are affected by poverty, are unemployed, vulnerable and are marginalised mainly due to lack of access to information that leads to limited knowledge and educational opportunities.

By having access to works in accessible formats, at an affordable price and at the same time will help change the paradigm so that we too may have social, economic, civic and political participation and be contributors to our economy.

WIPO International Bureau hosting of this Workshop for your members is applauded and the WBU and AFUB will support your initiatives and create the linkages at a national level with blind, visually impaired and other print disabled peoples organisations in your country.

WE look forward to forging the development partnership with your IP country Office.

This is precisely why WE ask you to develop an early ratification process by your Government so that the Marrakech Treaty can come into force and benefit the visually impaired and print disabled community in each of your countries.

You as leaders of Intellectual Property in your Governments have the responsibility of progressing the ratification of the Marrakech Treaty by your country.

May I congratulate the UAE and the other six States that have already ratified the Marrakesh Treaty.

I thank you

Jace Nair

President: African Union of the Blind

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