Copyright & Access Issues: Why Ratification of Marrakesh Treaty is Crucial

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Normal Reading Experience

Endless Choice of Reading material

Bombarded with visual information everywhere
Few Choices for Blind Persons

Access - compromised or denied!

- Darkness
- Little or no information-sharing. No cross-border sharing allowed!
- Book famine in accessible formats

Out of 125 countries’ copyright laws surveyed:

- Only 70 countries had some limitations & exceptions for blind or disabled persons.
- Only 4 of the African countries surveyed had some copyright provisions for persons with sensory disabilities, i.e. Cameroon, Nigeria, Rwanda & Uganda.
- Of the remaining 51 countries, none of them had any specific limitations & exceptions for persons with sensory disabilities.
- There were no standard copyright limitations & exceptions addressing persons with sensory disabilities. Cross-border sharing not permitted.
- Fair use/fair dealing provisions compromised
- Doubt situation has changed much since doing this research.
Provisions in national laws should extend to **ALL** citizens, including persons with disabilities.

Tensions between copyright and human rights – pull in opposite directions.

All too often, persons with disabilities are treated differently or are excluded from legislation, hence the WBU’s campaign for an international Treaty for Blind and Visually Impaired Persons and Other Reading Handicapped Persons.
Copyright Lobby in SA - Brief History

- Draft Regulations 1998 published by Dept. of Trade & Industry
- Proposals to amend Copyright Act 2000
- Two Task Teams mandated by SAUVCA/CTP
- Pro bono assistance by IP firm, John & Kernick
- Both sets of proposals withdrawn by DTI
- Meetings between SAUVCA/CTP & PASA - unsuccessful
- Legislative impasse for many years
Copyright Amendment Bill 2015

- Announcement by DTI in 2015 to amend Copyright law
- Meeting with DTI to discuss issues for persons with disabilities, education, research & libraries
- Copyright Amendment Bill published for comment on 27 July 2016

Positive aspects

- Introduction of “Fair Use” - more flexible
- Some of the provisions in eIFL Model Copyright Law
- Provisions for blind persons (text from Marrakesh Treaty)
- Provisions for libraries, archives & education - (need to be expanded)
- Attempts to address orphan works (but controversial)
- Clause to avoid contracts overriding copyright exceptions
- Addresses some issues re: commissioned works for artists, musicians, filmmakers, scriptwriters, etc.
- Collecting societies – regulation and accountability
Some Concerns

- Definitions – some limited; some not addressed
- Fair Use provisions – positive (but not clear if they apply to all work)
- Provisions for blind & visually impaired but vague about other disabilities
- Orphan works – State ownership and perpetual copyright
- Resale of art works – impractical
- New category added – Craft works, including knitting, pottery, recipes, etc. – should be moved to TK legislation
Other Concerns

- Inclusion of issues re: performing rights, broadcasting and trade marks – should be in other relevant laws
- Contradictions – e.g. 13B(1). It applies fair use but requires permission to be obtained!
- 19C(b), (d) and (d) allow copying and backups, presumably through format shifting as well, to address obsolescence. Yet in 19C(2)(a), format shifting requires permission.
- ILL – librarians have to destroy copy each time sent to a user – impractical and expensive
Other Concerns (Cont’d)

- Technological protection systems (TPMS) – new in our copyright law and too restrictive
- Criminal offences – very draconian
- Translations – onerous provisions & limited languages – should extend to all official & other languages spoken in SA.
- Draft problems, contradictions, spelling & grammatical errors
Joint Academic Submission on SA Copyright Bill

Submitted to DTI on 16 September 2015.
Officially endorsed by:-

- IFLA & eIFL
- LIASA and some individual academic libraries
- Australian Digital Alliance & Australian Libraries Copyright Commission
- Universities South Africa (formerly HESA)
- The US Library Copyright Alliance
- German Coalition for Action “Copyright for Education & Research”
- African Union for the Blind
Some Stakeholders’ Comments

See:
http://libguides.wits.ac.za/Copyright_and_Related_Issues/SA_Draft_Copyright_Amendment_Bill_2015
Passage of Revised Bill - 2016/7

- DTI received more than 120 submissions
- Revised Bill approved by Cabinet 8 June 2016
- Bill will go to Parliament in mid-August 2016.
- Parliamentary Portfolio Committee public hearings
- Final Bill to be signed by President
- Enactment likely to be in 2017.
Marrakesh Treaty – Benefits (1)

- Provides L & E’s for inclusion in national laws.
- Provides for free flow of accessible copies for use by persons with visual disabilities locally, regionally and/or internationally.
- Allows a work to be printed in Braille without permission
- Allows TPMs or digital locks on e-books to be opened, without permission from rights-holders.
- Allows audio-books to be made by authorised entities
Marrakesh Treaty – Benefits (2)

- Can convert documents & reading material for study purposes
- Enables them to exercise their fair dealing/fair use rights.
- Can access documents & training manuals for employment, self-development, etc.
- Cross-border sharing of accessible formats & in different languages
- Has various proviso’s to protect rights-owners’ interests.
- Will restore dignity & equity to blind & visually impaired persons & empower them.
Directive 6.1.1.4: Provide access to print mediums for persons with print disabilities.

All steps must be taken to ensure access to print for persons with print disabilities. One of the steps must be ratification of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled.
This miracle happened on our African soil!

The Africa Group strongly support this Treaty, so why is MALI the only African country to have ratified it so far?

South Africa is currently considering ratification – Is your country?

African countries must celebrate, embrace, ratify and promote this Treaty to ensure it positively empowers and changes lives.

The Treaty also underscores the urgent need for a UN tracking system for all international treaties affecting persons with disabilities.
Conclusion

- New SA Copyright Bill has provisions for persons with disabilities.
- National copyright laws are territorial.
- Cross-border sharing of accessible formats is only possible if and when the Treaty is ratified.
- In line with International Conventions, its Constitution and other legal commitments, South Africa is obliged to ratify this Treaty as a matter of urgency.
- Lobby your Governments to ratify the Treaty without delay!
- New era in international copyright law
Thanks for your attention!

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My LibGuides (incl. Resources for Various Disabilities)
http://libguides.wits.ac.za/prf.php?account_id=25548

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