



ASSOCIATION OF  
RESEARCH LIBRARIES



December 4, 2012

The Honorable Richard Hormats  
Under Secretary of State for Economic Growth,  
Energy and the Environment  
United States Department of State  
2201 C Street NW, Room 7256  
Washington, DC 20520

The Honorable Susan Hildreth  
Director  
Institute of Museum and Library Services  
1800 M Street NW, 9<sup>th</sup> Floor  
Washington, DC 20036-5802

Re: WIPO Instrument on Limitations and Exceptions for Visually Impaired Persons

Dear Under Secretary Hormats and Director Hildreth:

The Library Copyright Alliance (LCA) consists of three major library associations—the American Library Association, the Association of College and Research Libraries, and the Association of Research Libraries—that collectively represent over 100,000 libraries in the United States employing over 350,000 librarians and other personnel.

LCA appreciates the leadership shown by the United States throughout the discussions at the World Intellectual Property Organization (WIPO) concerning an international instrument on limitations and exceptions for visually impaired persons. A properly drafted treaty has the potential to significantly increase the access of print disabled individuals around the world to books and other materials, thereby improving their educational, cultural, and economic opportunities. The U.S. delegation in Geneva should support the Extraordinary General Assembly at its meeting on December 17–18, 2012, authorizing an international diplomatic conference in 2013 to adopt a treaty. Further, the U.S. delegation should be given the formal authority to negotiate a treaty text at the diplomatic conference.

Although LCA is pleased with the progress made this year with the text of the treaty, we remain concerned with the burdens it might place on “authorized entities” and the impact it may have on the Chafee Amendment, 17 U.S.C. § 121. Authorized entities play a central role in the treaty. Indeed, the entire point of the treaty is to require countries to adopt exceptions that allow authorized entities first to make copies of works in formats accessible to the print disabled, and then to distribute those accessible format copies to the print disabled—referred to in the treaty as “beneficiary persons.” If the definition of authorized entity is too narrow, and the administrative requirements placed on authorized

entities are too burdensome, beneficiary persons will not receive accessible format copies and the treaty will fail to meet its objective.

More specifically, we are troubled by the record-keeping requirements in the definition of authorized entity in Article A, as well as the reference to the collection and distribution of anonymous and aggregated data in Article J. These provisions invite the adoption in national legislation of burdensome and intrusive record-keeping obligations, which could discourage or prevent entities that serve the print disabled from qualifying as authorized entities and thereby benefiting from the exceptions the treaty envisions. There is no evidence that authorized entities in jurisdictions where exceptions exist have abused those exceptions. Thus, there is no justification for imposing this additional administrative burden on entities that serve the print disabled. Moreover, these provisions establish an unfortunate precedent that a person using an exception must maintain documentation of the use.

This issue is of particular concern to U.S. libraries, many of which meet the definition of “authorized entity” under the Chafee Amendment and all of which must comply with the Americans With Disabilities Act. It would be a cruel irony if a treaty intended to benefit the print disabled would have the effect of encouraging a legislative debate which could lead to a reduction of services for the print disabled in the United States.

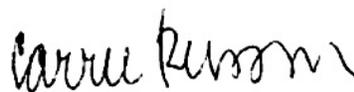
We also are concerned by the knowledge standard imposed by Alternative B of Article D.3. on authorized entities before they can engage in a cross-border transaction. This language would prohibit the cross-border distribution of accessible format copies when the exporting authorized entity “should have known” that accessible format copies could have been obtained in the importing country through customary distribution channels at reasonable prices. This constructive knowledge standard as a practical matter would require exporting authorized entities to determine the commercial availability of an accessible format copy in the importing country. The clearance process would be so costly in the aggregate that many authorized entities would elect not to engage in cross-border distributions, to the detriment of the print disabled.

We look forward to working with the U.S. delegation to address these concerns.

Sincerely,



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On behalf of the Library Copyright Alliance