

Marrakesh briefing Note 1

(For context and other notes: <http://keionline.org/r2r/marrakesh>)

This note looks at the evolution of the beneficiaries in the treaty text. The decisions to exclude deaf persons played out between 2010 and 2011, in response to lobbying the MPAA.

2008

The original WBU 2008 proposal disabilities covered as follows:

http://www.keionline.org/misc-docs/tvi/tvi_en.html

Article 15. Disabilities Covered

(a) For the purposes of this Treaty, a 'visually impaired' person is:

1. a person who is blind; or
2. a person who has a visual impairment which cannot be improved by the use of corrective lenses to give visual function substantially equivalent to that of a person who has no visual impairment and so is unable to access any copyright work to substantially the same degree as a person without a disability.

(b) Contracting Parties shall extend the provisions of this Treaty to persons with any other disability who, due to that disability, need an accessible format of a type that could be made under Article 4 in order to access a copyright work to substantially the same degree as a person without a disability.

May 2009

This was formally introduced in WIPO as SCCR/18/5, dated May 25, 2009, as:

http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=122732

Proposal by Brazil, Ecuador and Paraguay, Relating to Limitations and Exceptions: Treaty Proposed by the World Blind Union (WBU)

Also in 2009, the MPAA mounted a spirited attack on the treaty, and claimed that accessibility to motion pictures had nothing to do with copyright.

<http://www.copyright.gov/docs/sccr/comments/2009/attaway.pdf>

June 2010

In June 2010, there were three new proposals to deal with disabilities, one each of the African Group, the

European Union and the United States. The African Group proposal included other issues, such as education or libraries. The US and EU proposals were designed as non-treaty instruments.

The USA proposal was titled: "Draft Consensus Instrument" (SCCR/20/10), and defined disabilities covered as follows:

http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=133815

Article 1 Definitions

"person with print disabilities"

For the purposes of this [consensus instrument], a 'person with print disabilities' is:

1. a person who is blind; or
2. a person who has a visual impairment or a perceptual or reading disability which cannot be improved by the use of corrective lenses to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read substantially the same degree as a person without an impairment or disability;
3. a person who has an orthopedic- or neuromuscular-based physical disability that prohibits manipulation and use of standard print materials.

The EU proposal was titled: Draft Joint Recommendation Concerning the Improved Access to Works Protected by Copyright for Persons with a Print Disability (SCCR/20/12), and defined disabilities as follows:

http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=134412

A beneficiary person is a person who

- (a) is blind;
- (b) has a visual impairment or a perceptual or reading disability or any other print disability, which cannot be improved by the use of corrective lenses to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or
- (c) is unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading.

The African Group proposal was titled: Draft WIPO Treaty on Exceptions and Limitations for the Disabled, Educational and Research Institutions, Libraries (SCCR/20/11), and it defined disabilities as follows:

http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=134392

Article 21: Disabilities covered by this Treaty

(a) For the purposes of this Treaty, a disabled person means any person suffering from visual impairment or a physical, mental, sensory or cognitive incapacity.

(b) Contracting Parties shall extend the provisions of this Treaty to persons with any other disability who, due to that disability, need an accessible format of a type that could be made under Article 4 in order to access a copyright work to substantially the same degree as a person without a disability.

At this point, the African Group and the group lead by Brazil both wanted the disabilities covered to be inclusive of persons who are deaf, as well as “any other disability, who due to that disability, need an accessible format . . . to access a copyright work to substantially the same degree as a person without a disability.” The USA and the EU both wanted the disabilities covered to be narrowed, to exclude deaf persons, but audiovisual works for visually impaired persons were still included.

November 2010

In November 2010, the SCCR agree a separation of the work on “print disabilities and other reading disabilities” and work on exceptions for “persons with other disabilities.”

SCCR/21/Conclusions

http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=147798

Recognizing the need to advance the more mature areas, the Committee will undertake text-based work with the objective of reaching agreement on appropriate exceptions and limitations for persons with print disabilities and other reading disabilities. In a similar manner, the Committee will undertake text-based work on appropriate exceptions and limitations for libraries, archives, educational, teaching and research institutions, and persons with other disabilities.

2011

There were a number of revisions to the various EU, US and Africa Group proposals June 2011, and a new joint proposal by the US, the EU, Brazil and several other countries. (SCCR/22/12, SCCR/22/15 and SCCR/22/15 Rev.1) Based upon negotiations, the Chair of the SCCR tabled a new negotiating text (SCCR/22/16), which used the US proposal for disabilities covered.

http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=188547

ARTICLE B BENEFICIARY PERSONS

A beneficiary person is a person who

(a) is blind;

(b) has a visual impairment or a perceptual or reading disability or any other print disability, which cannot be improved by the use of corrective lenses to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read

printed works to substantially the same degree as a person without an impairment or disability;
or

(c) is unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading.

2013

The April negotiating text (VIP/DC/3 REV.) had the following definition of beneficiaries covered, which was based upon the 2011 proposal by the Chair, with some technical modifications.

http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=237442

A beneficiary person is a person who

- (a) is blind;
- (b) has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or⁵ is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading, regardless of any other disabilities.

5 [Interpretative Understanding: Nothing in this language implies that “cannot be improved” requires the use of all possible medical diagnostic procedures and treatments.]