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BREAD FOR THE BLIND: ENDING THE INTERNATIONAL BOOK FAMINE THROUGH NEGOTIATION OF AN INTERNATIONAL INSTRUMENT ON ACCESS TO COPYRIGHT WORKS FOR PERSONS WITH BLINDNESS OR VISUAL IMPAIRMENT

Erika Lambert

INTRODUCTION: INFORMATION STARVATION IN THE INFORMATION AGE

According to the World Health Organization, there are approximately 314 million people with blindness or visual impairment (PBVIs)¹ living in the world today.² Most PBVIs live in developing countries.³ The majority of PBVIs experience some form of discrimination, whether institutional, environmental, attitudinal or a combination of all three. This has caused PBVIs to experience almost universal marginalization, exclusion and socio-economic disadvantage. In comparison to fully sighted persons, PBVIs are less likely to enter, remain and succeed in school and are more likely to experience ill health, injury, violence, exploitation, unemployment, poverty and premature death.⁴

Worldwide development toward an information-based society and its economic counterpart, a knowledge economy, has compounded and exacerbated the marginalization and exclusion of PBVIs from mainstream society. In today's information society, the creation, distribution, use and manipulation of information is the most significant economic, political and cultural activity. Indeed, the ease with which fully sighted persons in developed countries can access large volumes of knowledge is unprecedented in human history. In the knowledge economy, the ownership of knowledge and information, as determined by the allocation of intellectual property (IP) rights, is the primary source of wealth creation.⁵ Current copyright regimes generally have the effect of excluding the socio-economically disadvantaged from accessing the proliferation of knowledge and information on a national and international level, resulting in what has been termed 'the digital divide.'⁶ Similarly, current copyright regimes

¹ This terminology is consistent with the Preamble of the *Convention on the Rights of Persons with Disabilities* [CRPD] which recognizes that disability is not located in the person but results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.

² World Health Organization [WHO], *Visual Impairment and Blindness*, online: WHO <<http://www.who.int/mediacentre/factsheets/fs282/en/index.html>> which estimates that 87 percent of the world's PBVIs live in developing countries.

³ *Ibid.*

⁴ Kate Gooding, *Poverty and Blindness: A Survey of Literature*, online: Sightsavers <http://www.sightsavers.org/in_depth/policy_and_research/social_inclusion/default.html>; Adaptive Eyecare Ltd., *Research into the extent and impact of uncorrected vision*, online: Research for Development <www.dfid.gov.uk/r4d/PDF/Outputs/Disability/d1.pdf>; H. Buch, "Fourteen-year incidence of age-related maculopathy and cause-specific prevalence of visual impairment and blindness in a Caucasian population: the Copenhagen City Eye Study" (2005) 83 *Acta Ophthalmologica Scandinavica* 5; R.R. Buhrmann, *Visual Impairment and Adult Mortality in Rural Tanzania* (DCL Thesis), John Hopkins University, (2001) [unpublished]; T.G. Evans, *Socioeconomic consequences of blinding onchocerciasis in Guinea*, online: World Health Organization <[www.who.int/ncd/vision2020_actionplan/documents/73\(4\)_495-506.pdf](http://www.who.int/ncd/vision2020_actionplan/documents/73(4)_495-506.pdf)>; K. Frick, E. Babilion, C. Hanson & A. Colchero, "Estimating the burden and economic impact of trachomatous visual loss" (2003) 10 *Ophthalmic Epidemiology* 121; K. Frick, C. Hanson & G. Jacobson, "Global Burden of Trachoma and Economics of the Disease" (2003) 69 *American Journal of Tropical Medicine and Hygiene* 1; K. Frick & A. Foster, "The magnitude and cost of global blindness: an increasing problem that can be alleviated" (2003) 135 *American Journal of Ophthalmology* 471; J. Javitt, "Cataract" in D.T. Jameson, ed, *Disease control priorities in developing countries* (New York: Oxford University Press, 1993) at 635; R. Legood, P. Scuffham & C. Cryer, "Are we blind to injuries in the visually impaired? A review of the literature" (2002) 8 *Injury Prevention* 155; H. Kuper, "Does Cataract Surgery Alleviate Poverty? Evidence from a Multi-Centre Intervention Study Conducted in Kenya, the Philippines and Bangladesh" (2010) 5 *PLoS Medicine* 11; A. Prost & J. Vaugelade, "Excess mortality among blind persons in the West African savannah zone" (1981) 59(5) *Bull World Health Organ* 773; H.R. Taylor, S. Katala & B. Munoz, "Increase in mortality associated with blindness in rural Africa" (1991) 69(3) *Bull World Health Organ* 335.

⁵ Chidi Oguamanam, "Regime Tension in the Intellectual Property Rights Arena: Farmers' Rights and Post-TRIPS Counter Regime Trends" (2006) 29 *Dalhousie L.J.* 413.

⁶ See for example Margaret Chon, "Intellectual Property and The Development Divide" (2006) 27 *Cardozo L. Rev.* 2821; Peter K. Yu, "The Trust and Distrust of Intellectual Property Rights" (2005) 18 *R.Q.D.I.* 107.

generally have the effect of excluding PBVIs from the concentration of knowledge and information in societies in general, creating what may be called ‘the disability divide’. Of course, because most PBVIs live in developing countries and/or experience socio-economic disadvantage, they experience a ‘double divide’.⁷

This ‘double divide’ is characterized by an extreme and widespread scarcity of accessible copyright works which is international in nature; in other words, an international book famine. Today, only a very small percentage of commercially published copyright works are made available in accessible formats. For example, in the United Kingdom (UK), it is estimated that only 5% of published titles ever become available in accessible formats (this includes those published directly by publishers and those created by intermediary organizations).⁸ Further, it is likely that the percentage of accessible published materials available in developing countries is much lower as a result of the combination of (1) smaller commercial markets for such materials and (2) fewer resources of intermediary organizations and PBVIs themselves to make and distribute accessible formats.⁹ This pervasive scarcity of accessible copyright materials forces PBVIs around the world to access only those copyright works which are available in accessible formats, works which may not be pertinent to their reading interests or informational needs.

Acknowledging that this book famine is a product of complex social, economic, technological and legal factors, this paper will focus solely on the contributing legal factors; specifically on the role of national and international copyright regimes. This paper will also argue that the negotiation of an international instrument on access to copyright works for PBVIs is an important and necessary step in providing a comprehensive solution to this problem. Finally, this paper will assert that, as a United Nations (UN) organization with a mandate to develop a balanced and *accessible* international IP system, the World Intellectual Property Organization (WIPO) is well-positioned to lead the global community in the negotiation of such an instrument.

THE ISSUE: COPYRIGHT & THE RIGHT TO ACCESS KNOWLEDGE

(a) PBVIs Have a Right to Access Knowledge

It is widely acknowledged that PBVIs, like any social group, need information to “reduce uncertainty, define and solve problems, and ultimately to grow and survive”.¹⁰ Indeed, several provisions of the UN *Convention on the Rights of Persons with Disabilities* (CRPD) recognize that access to information and communications, including information and communication technologies and systems, is essential to enabling persons with disabilities¹¹ to live independently and participate fully in all aspects of life.¹² For example, Article 21 states that providing information to persons with disabilities in accessible formats of their choice is necessary to ensure that they can exercise their rights to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others.¹³ Similarly, Article 24 declares that providing accessible learning materials is a fundamental part of realizing the right of persons with disabilities to education.¹⁴ Finally, Article 30 establishes that providing cultural materials to persons with disabilities in accessible formats is essential to ensuring that they can take part on an equal basis with others in cultural life.¹⁵ Equally important is the

⁷ *Supra* note 2.

⁸ Standing Committee on Copyright and Related Rights [SCCR], *Automated Rights Management Systems and Copyright Limitations and Exceptions*, online: World Intellectual Property Organization [WIPO] <http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=59952>.

⁹ SCCR, *Study on Copyright Limitations and Exceptions for the Visually Impaired*, online: WIPO <http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=75696>.

¹⁰ Niran Adetoro, “Towards Building Capacity for Sustainable Library and Information Services for the Visually Challenged in Nigeria” (2005) 3 *Journal of Association of Libraries for the Visually Impaired* 54. See also note 4.

¹¹ Article 1 of the CRPD, UN, 2006, Doc A/61/611: PBVIs are considered persons with disabilities by virtue of Article 1 which defines persons with disabilities as “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.

¹² *Ibid* at Article 9.

¹³ *Ibid* at Article 21.

¹⁴ *Ibid* at Article 24.

¹⁵ *Ibid* at Article 30.

recognition that PBVIs make existing contributions to the overall well-being and diversity of their communities. Facilitating their access to information will advance human social and economic development.¹⁶

(b) The Right to Access Knowledge is Heavily Circumscribed by Copyright

In today's information society, the right of PBVIs to access knowledge and information is heavily circumscribed by copyright. Works protected by copyright range from textbooks and computer programs to photographs and technical drawings to musical compositions and films, among other forms of human expression. While the set of rights granted by copyright vary slightly between jurisdictions, the following rights are generally included: rights to reproduce, adapt, perform, broadcast, communicate and distribute a protected work, as well as the right to authorize all such protected acts.¹⁷ In theory, exceptions and limitations to these rights exist to promote the public interest in the widespread access to, use and dissemination of knowledge.

The current balance between the rights of copyright owners on the one hand, and exceptions and limitations to those rights on the other, as enshrined in international and national copyright regimes, favours the proprietary interests of copyright owners at the expense of copyright users and other parties.¹⁸ Building on the strength and substance of these concerns, this section highlights the nature and scope of the obstacles that international and national copyright regimes present for PBVIs seeking to access copyright works. This section is limited to a consideration of the issues specific to PBVIs, and does not consider issues affecting those seeking to rely on exceptions and limitations more generally (in order to access copyright works).¹⁹

THE GEOPOLITICAL LEGAL FRAMEWORK

(a) International IP regimes

A number of international IP treaties and conventions are relevant to PBVI access to copyright works. These include: the *Berne Convention for the Protection of Literary and Artistic Works* (the Berne Convention); the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations*; the *Agreement on Trade-Related Aspects of Intellectual Property*; the *WIPO Copyright Treaty* (the WCT) and the *WIPO Performances and Phonograms Treaty*. Much has been written by others about how the provisions in these instruments relate generally to exceptions and limitations and specifically to the needs of PBVIs. Such rigorous analyses will not be reproduced here.²⁰ The collection of international treaties and conventions which make up the international copyright framework seem to permit exceptions for the benefit of PBVIs "with respect to a wide range of acts restricted by copyright that might be undertaken by those making and supplying accessible copies to [PBVIs]".²¹ Nonetheless, the international copyright framework is presently insufficient to meet the needs of PBVIs in accessing copyright works for three reasons. First, the framework does not provide for exceptions to copyright for the benefit of PBVIs or for persons with disabilities generally.²² Second, it does not require that the possibility of such a provision be considered in international or national

¹⁶ *Ibid* at section (m) of the Preamble.

¹⁷ *Supra* note 9.

¹⁸ See for example Carys J. Craig, "Locke, Labour and Limiting the Author's Right: A Warning against a Lockean Approach to Copyright Law" (2002) 28 *Queen's Law Journal* 1; Madhavi Sunder, "IP3" (2006) 59 *Stanford Law Review* 257; Brigitte Binkert, "Why the Global Intellectual Property Framework Under TRIPS is not Working" (2006) 10 *Intellectual Property Law Bulletin* 143; Peter Drahos and John Braithwaite, "Hegemony Based on Knowledge: The Role of Intellectual Property" (2004) 21 *Law in Context* 204.

¹⁹ See for example SCCR, *Study on Limitations and Exceptions of Copyright and Related Rights in the Digital Environment*, online: WIPO <http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=16805>.

²⁰ *Supra* note 9. See also Executive Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) and the Intergovernmental Committee of the Universal Copyright Convention, *Copyright Problems Raised by the Access by Handicapped Persons to Protected Works*, online: Knowledge Ecology International [KEI] <<http://keionline.org/node/644>>.

²¹ *Supra* note 9 at 9.

²² *Ibid* at 9.

copyright instruments in the future.²³ Third, conditions applicable to instances where several different treaties and conventions in the framework need to be considered are extremely complicated and/or unclear.²⁴

To date, efforts to expand the international copyright framework have concentrated primarily on defining rights to protect copyright. Comparatively little effort has been dedicated to defining exceptions and limitations to these rights.²⁵ Consequently, the work of defining the nature and scope of exceptions and limitations has largely been left to national policy-makers. PBVIs are thus dependent on national copyright regimes to address the issues they face in accessing copyright works.

(b) National IP regimes

In 2006, a study commissioned by WIPO's Standing Committee on Copyright and Related Rights (SCCR) examined the national IP legislation of most of WIPO's 184 member states and found that only 57 of those states had national IP legislation which included any specific provisions that addressed the needs of PBVIs or other persons with disabilities in accessing copyright material.²⁶ Further, this study explained that although the range of provisions in national laws varied considerably between states, these variations did not seem to have any relationship with the needs of PBVIs in any particular state.²⁷ Two conclusions arise from these findings. First, the majority of states in the world are either unaware of the obstacles faced by PBVIs in accessing copyright works or are cognizant of these obstacles but have explicitly chosen not to address them through provisions in national IP laws. Second, states that have included provisions related to the obstacles faced by PBVIs in accessing copyright works have not always written these provisions with the special needs and interests of PBVIs in mind (e.g. by ensuring that the exception extends to any type of accessible format required by a PBVI to access a given copyright work).

It is true that some activities relating to overcoming the obstacles faced by PBVIs in accessing copyright works might fall under the scope of other copyright exceptions provided under national laws, such as exceptions for education or private copying. However, it is highly unlikely that exceptions not specifically providing for the needs of PBVIs would provide a comprehensive solution to the obstacles they face. For example, an education exception would not encompass situations where PBVIs wish to access knowledge outside a formal education process. Furthermore, it is unlikely a private copying exception would apply to intermediary organizations creating and distributing accessible materials to PBVIs. This paper will briefly canvas a few of the issues arising under national IP laws that do contain provisions for the benefit of PBVIs.

(i) Types of copyright works that can be used under the exception

Ideally, an exception for the benefit of PBVIs would enable them to access all types of works which are publicly available and in which copyright could subsist. However, it is quite common for exceptions to prevent PBVIs from using a work if it has already been published in any type of special format for PBVIs, even if the type of format in which it has been published is not one which a PBVI could access.²⁸ For example, in Moldova, a PBVI cannot use a work if it has already been published in Braille, even if that individual PBVI cannot read Braille.²⁹ In about half the states with exceptions, the exceptions seem to apply to all types of copyright works.³⁰ However, there are some noteworthy exclusions from what falls within the scope of the works that can be used: Australia and Bulgaria do not apply their exceptions to computer programs³¹; the UK excludes databases³²; Canada excludes cinematographic works³³ and the United States (US) excludes dramatic works.³⁴ Any exception for the benefit of

²³ *Ibid* at 9.

²⁴ *Ibid* at 9.

²⁵ *Ibid* at 9.

²⁶ *Ibid* at 9.

²⁷ *Ibid* at 9.

²⁸ *Ibid* at 31.

²⁹ *The Law of the Republic of Moldova on Copyright and Neighbouring Rights, s.22.*

³⁰ *Supra* note 9 at 32.

³¹ *Copyright Act 1968* (Cth). s.10(3)(h); *Copyright and Neighbouring Rights Act No. 56/29.06, s.24(2).*

³² *Copyright Designs and Patents Act 1988* (UK), s.31A(2)(f).

³³ *Copyright Act, R.S. C1985, c. C-42, s.32(1)(a).*

³⁴ *Copyrights* USC tit 17 sections 110, 121 and 1201.

PBVI must recognize that they need and desire access to the same types of copyright works as fully sighted persons.³⁵

(ii) Types of accessible formats that can be made under the exception

Ideally, an exception for the benefit of PBVIs would cover all accessible formats. This would permit PBVIs to use copyright works as flexibly and comfortably as fully sighted persons.³⁶ However, exceptions often limit the works available to PBVIs to one particular type of accessible format - such as Braille.³⁷ The needs of PBVIs vary enormously, depending on factors including the degree of their disability and the age at which they were no longer able to access copyright works in the same manner as a fully sighted person. Therefore, exceptions for the benefit of PBVIs should allow the written word to be adapted into a variety of accessible formats which might include a tactile code or an audio format such as hard copy Braille, large print, tape or CD, or a temporary output from computer peripherals such as synthetic speech or enlarged screen display.³⁸

(iii) Permitted/restricted acts covered by the exception

PBVI can only access the written word if the presentation of that material is adapted in some way. Accordingly, providing access to copyright content, whether in traditional formats or with advanced access technologies, implicates acts controlled by the copyright owner, including rights of reproduction, adaptation, broadcasting, and communication. Further, because the work of adapting traditional print materials into accessible formats is largely done by intermediary organizations that must then distribute the accessible materials to PBVIs, providing PBVIs with accessible copyright content often implicates rights of distribution. The application of exceptions to PBVIs seeking to access copyright works is consequently multi-dimensional, involving a combination of exceptions and cutting across a number of different exclusive rights.

Nonetheless, nearly half of the existing exceptions in national laws merely permit the reproduction of a work to benefit PBVIs.³⁹ The exceptions in Austria, the Czech Republic, Estonia, Germany, Hungary, Latvia, Slovenia, the Ukraine and the US allow for the reproduction and distribution of accessible copies while the exceptions in Australia and Italy allow for reproduction, distribution and communication to the public.⁴⁰ Finally, under the exceptions in the Dominican Republic, El Salvador and Panama, the only way a PBVI can access copyright materials is through attending a public performance of such material!⁴¹ Any exception for the benefit of PBVIs must be carefully tailored to allow PBVIs, or persons and organizations acting on their behalf, to perform any activities necessary to allow PBVIs to access copyright works in a way that is equitable with the access of fully sighted persons.

(iv) Restrictions on who may undertake permitted activities

About half of the states with exceptions have no limitations on who may undertake the permitted activity under the exceptions.⁴² For other states, any person or organization may undertake the permitted activity, but the activity is restricted to a specific type of accessible format. For example, in Japan, Korea and Nigeria, anyone can engage in

³⁵ *Supra* note 10.

³⁶ SCCR, *Proposal by Brazil, Ecuador and Paraguay, Relating to Limitations and Exceptions: Treaty Proposed by the World Blind Union (WBU)*, online: WIPO <http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=122732>.

³⁷ *Supra* note 9 at 37 and 38.

³⁸ *Supra* note 8 at 27.

³⁹ *Supra* note 9 at 33.

⁴⁰ *Federal Law on Copyright and Related Rights* as amended in 2003 (Austria); *Law No. 121/2000 Coll. of 7 April 2000 on Copyright, Rights Related to Copyright and on the Amendment of Certain Laws* as amended to 21 January 2005, ss. 29, 30, 37(2)(c) and 43-45 (Czech Republic); *Copyright Act of November 11 1992 as last amended by the Act of 29 October 2004*, ss. 7, 80 and 81 (Estonia); *Copyright Act* as amended on 10 September 2003, ss. 45(a), 63 and 95(b)(Germany); *Act No. LXXVI of 1999 on Copyright* as amended in 2001, ss. 33 and 41(1) (Hungary); *Copyright Law* as amended on 22 April 2004, ss. 18, 19 and 20 (Latvia); *Copyright and Related Rights Act* as amended on 11 May 2004, ss. 46, 47(a) and 166(c) (Slovenia); *Law on Copyright and Related Rights of 2001*, ss. 15 and 21 (Ukraine); *Copyrights USC* tit 17 sections 110, 121 and 1201 as amended 3 December 2004.

⁴¹ *Law No. 65-00 on Copyright of 21 August 2000*, ss. 30, 31 and 44 (Dominican Republic); *Law on the Promotion and Protection of Intellectual Property* (Decree No. 604 of 15 July 1993), s.44 (El Salvador); *Law No. 15 of 8 August 1994*, s.47 (Panama).

⁴² *Supra* note 9 at 33.

reproduction of a work as long as it is only in order to create a Braille copy of that work.⁴³ Several states limit all activity under the exceptions to bodies that have been officially designated or authorized in some way,⁴⁴ and it seems only a few states allow a wide range of bodies, in addition to PBVIs, to produce material in accordance with the exceptions.⁴⁵ Further, at least two thirds of the exceptions specifically exclude commercial or profit-making organizations from undertaking activity for the benefit of PBVIs under the ambit of the exception.⁴⁶ The US and Japan are the only states with provisions in their exceptions that clearly involve commercial entities undertaking activity.⁴⁷

Under an ideal exception, a wide range of bodies, as well as PBVIs themselves, would be allowed to engage in the permitted activities, as long as those activities were for the specific purpose of enabling and increasing PBVI access to copyright works. At present there are widely diverging opinions as to what types of bodies or ‘trusted intermediaries’ (specifically designated or authorized, non-profit or profit) that should be allowed to undertake the permitted activities in order to maximize access of PBVIs to copyright works.⁴⁸ Suffice it to say that this is an issue which requires careful examination in the negotiation of an international instrument.

(v) Compulsory license or exception

The exceptions of 20 states specifically preclude the payment of remuneration in exchange for access to copyright materials by PBVIs while the exceptions of 18 other states require remuneration for some uses of copyright works by PBVIs.⁴⁹ Three states⁵⁰ include an exception that is effectively a compulsory license with compensation for the rights holders in respect of all of the activity permitted under the exceptions. Seven states⁵¹ provide an exception that is a compulsory license for at least some of the permitted activity, with the split between free exception and compulsory license being made in a variety of ways. Ideally, no remuneration should be required for non-profit

⁴³ *Copyright Law* as amended to 9 June 2004, ss. 33(bis), 37 and 48 (Japan); *Copyright Act No. 3916 of 30 December 1989 as last amended by Act No. 5015 of 6 December 1995*, ss. 30 and 24 (Korea); *Copyright Act* (Consolidation Ch. 68) 1988 (1999) No. 47 (No. 42) (Nigeria).

⁴⁴ *Code de la propriété intellectuelle* art L122-5, L331-5 to L331-21 (France); *Copyright and Related Rights Act 2000*, ss. 104, 106 and 374 (Ireland); *Copyright Act 1994* consolidated up to Amendment 2005 No. 33, ss. 69 and 89 (New Zealand).

⁴⁵ *Supra* note 9 at 35 which explains that Canada, Denmark and the UK appear to positively permit a wide range of actors, including PBVIs themselves, to undertake activity under their exceptions, although in each case this arrangement is not without other conditions.

⁴⁶ *Supra* note 9 at 32.

⁴⁷ *Copyrights* USC tit 17 sections 110, 121 and 1201 (US); *Copyright Law* as amended to 9 June 2004, ss. 33(bis), 37 and 48 (Japan).

⁴⁸ See for example KEI, *Comparison of proposals to address needs of people with disabilities*, online: KEI <<http://keionline.org/node/878>> which outlines the opinions of the US and the European Union on this issue. The US has proposed that the term “trusted intermediary” mean a governmental agency or a non-profit entity with legal personality that has as a primary mission to assist PBVIs by providing them with services relating to education, training, adaptive reading, or information access. Under the US definition, a trusted intermediary maintains policies and procedures to establish the eligibility of persons with print disabilities that it serves. Further, a trusted intermediary is an institution that has the trust PBVIs and copyright rights holders. If the trusted intermediary is a nation-wide network of organizations, then all organizations, institutions and entities that participate in the network must adhere to these characteristics. The EU has proposed that the term “trusted intermediary” mean an approved institution whose activities must have the consent of PBVIs and rights holders. Under the EU definition, trusted intermediaries facilitate the production of works in accessible formats and/or their cross-border transfer in a controlled manner. Further, trusted intermediaries must fulfill the following conditions: (1) operate on a not-for-profit basis, (2) register the PBVIs they serve, (3) provide specialized services relating to training, education or adaptive reading or information access needs of PBVIs, (4) maintain policies and procedures to establish the *bona fide* nature of PBVIs they serve, (5) maintain policies and procedures to ensure full and complete compliance with copyright and data protection laws.

⁴⁹ *Supra* note 9 at 40.

⁵⁰ *Federal Law on Copyright and Related Rights* as amended in 2003 (Austria); *Copyright Act 1912* as amended on 20 January 2006 (Netherlands); *Copyright and Related Rights Act* as amended on 11 May 2004, ss. 46, 47(a) and 166(c) (Slovenia).

⁵¹ *Copyright Act 1968* as amended up to Act No. 9 of 2006, ss. 47A, 112, Part VB, Division 3, 116A and 10 (Australia); *Copyright Act consolidated in Act No. 164 of 12 March 2003*, ss. 11, 17 and 75(c) (Denmark); *Copyright Act* as amended on 10 September 2003, ss. 45(a), 63 and 95(b) (Germany); *Copyright Law* as amended to 9 June 2004, ss. 33(bis), 37 and 48 (Japan); *Act No. 2 of 12 May 1961 relating to Copyright in Literary, Scientific and Artistic Works* as amended up until 17 June 2005, ss. 11, 12, 17, 17(a) and 53(b) (Norway); *Copyright and Related Rights Code* as amended on 24 August 2004, ss. 75, 76, 80 221 and 222 (Portugal); *Act on Copyright in Literary and Artistic Works*, as amended up to 1 July 2005 (Sweden).

and non-commercial use of copyright materials by PBVIs. If for-profit or commercial use is allowed under an exception, some remuneration would likely be required. However, a fair level of remuneration would need to take into consideration the socio-economic disadvantage experienced by most PBVIs.

(vi) Interplay with digital rights management

The use of technology in the protection of copyright content and in the management of copyright rights has profoundly affected the way that copyright functions. Traditionally, the use of copyright works under the ambit of copyright exceptions occurred without the direct authorization of the copyright owner. This was possible because the copyright owner was practically unable to control the use of the work after it had been purchased by the user, due to the format of the copyright work (e.g. a book). In today's digital world, the use of copyright works under the ambit of copyright exceptions is heavily circumscribed by the restraints imposed by digital rights management (DRM) technologies such as technical protection measures (TPMs). The binary nature of the environment in which digital content management occurs renders intolerable all uses of copyright content not authorized by the codified terms of use for content.⁵² At present, DRM technologies cannot write machine readable rules to accommodate the full scope of legal exceptions and limitations.⁵³ Consequently, TPMs' codified terms of use for content deny the legitimate use of content in ways sanctioned by law under copyright exceptions, including those exceptions which exist for the benefit of PBVIs.

A majority of states with exceptions for the benefit of PBVIs have not addressed the concern that TPMs may create additional obstacles for PBVIs in accessing copyright works.⁵⁴ However, in withholding protections for rights holders against devices and services used to circumvent TPMS, a number of these states have left open a legal avenue for PBVIs to use those services or devices to overcome any additional obstacles posed by TPMs.⁵⁵

(vii) Import and export of accessible copies made under exceptions

Although several international instruments govern the framework for national copyright law, copyright legislation essentially remains a responsibility of individual states. Before an accessible copy can be exported out of one state and imported into another, the laws of both jurisdictions will need to be considered and a decision must be made regarding which law should apply to which part of the activity. Such inter-jurisdictional sharing of accessible copies raises complex conflict of law issues. Even if it could be agreed that the law of the exporting state would govern creation of accessible copies, and the law of the importing state would govern distribution of accessible copies, most states do not have specific provisions outlining the law on either exportation or importation of accessible copies.⁵⁶ Additional issues which would need to be addressed include: what types of distribution of accessible copies are within the scope of many of the specific exceptions to copyright for the benefit of PBVIs; who may act under the exception; how to determine whether or not the requirements about the end beneficiary of the exception are met; whether requirements that a work must have been published are met; whether or not only copies made under the exception may be distributed in the state and whether the same type of accessible copies in both importing and exporting states are permitted. Finally, the interaction of provisions relating to the import and export of accessible copies with general provisions relating to the import and/or export of copies made without the authorization of the right holder, or without remuneration to the right holder, makes the legality of exporting and importing accessible copies even more unclear.

The lack of any clarity or harmonization on the issue of importing and exporting accessible copies is a critical impediment to increasing access to copyright works for PBVIs. Although the creation of accessible copies requires considerable expenditures of time, effort and money, most accessible copies are created by intermediary organizations operating on a non-for-profit or charitable basis with access to limited resources.⁵⁷ If copyright exceptions allowed for the free mobility of accessible copies of copyright works between jurisdictions, this would enable intermediary organizations to realize economies of scale where PBVIs in more than one state wished to access the same copyright work. The effort and cost of making a master copy would not have to be repeated in

⁵² *Supra* note 8 at 7.

⁵³ *Ibid* at 78.

⁵⁴ *Supra* note 9 at 45.

⁵⁵ *Ibid*.

⁵⁶ *Ibid* at 55 to 63.

⁵⁷ *Ibid* at 119.

each state where the accessible copy was needed. The number of titles available in accessible formats would increase, as the limited resources that could be devoted to this activity would not be wasted on unnecessary, repetitive work.

(c) International Human Rights Regimes

The issue of PBVI access to copyright works is affected both by IP law and by international human rights law. Strategically, it is most likely that improvements to access will be realized through an international IP instrument drafted within the interpretive context of international human rights law. It is therefore important to determine whether any existing international human rights instruments contain provisions which address this issue.

(i) The *Universal Declaration of Human Rights* (UDHR)

The UDHR is a non-binding declaration which was adopted and proclaimed by the General Assembly of the UN on December 10, 1948.⁵⁸ It contains five provisions that are concerned with access to knowledge and IP. Articles 19 and 27(1) underline the importance of access to information to full participation in society: Article 19 provides that “everyone has the right...to seek, receive and impart information and ideas through any media and regardless of frontiers” while Article 27(1) states that “everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits”.⁵⁹ Articles 17 and 27(2) underline the importance of providing protection to property generally and to IP in particular: Articles 17(1) and (2) state that “everyone has a right to own property” and that “no one shall be arbitrarily deprived of his property”; Article 27(2) provides that “everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he (sic) is the author”.⁶⁰ Read together, these provisions signify the recurring tension in IP law between the right to access knowledge and the right to protect it.⁶¹ However, beyond suggesting a need to balance these rights, the provisions provide no substantive vehicle through which PBVIs might challenge the current exclusionary copyright regimes.

(ii) The *International Covenant on Economic, Social and Cultural Rights* (ICESCR)

The ICESCR is an international covenant which came into force on January 3, 1976, and is binding on all 160 State Parties.⁶² Article 15(1) of the ICESCR provides that State Parties to the covenant recognize the right of everyone (a) to take part in cultural life; (b) to enjoy the benefits of scientific progress and its applications and; (c) to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he (sic) is the author.⁶³ As with the provisions in the UDHR mentioned above, when read as a whole, Article 15 symbolizes the tension between the right to access knowledge and the right to protect it. However, it provides no meaningful tool with which PBVIs could challenge the current exclusionary copyright regimes.

(iii) The *UN Convention on the Rights of Persons With Disabilities* (CRPD)

The CRPD is an international convention which came into force on May 3, 2008, and is binding on 96 State Parties.⁶⁴ The CRPD delivers the clearest statement of the requirement to balance the rights of copyright owners and the rights of PBVIs to access copyright works. Article 30(3) of the CRPD provides that:

State Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.⁶⁵

⁵⁸ *The Universal Declaration of Human Rights*, GA Res 217(III), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810, (1948).

⁵⁹ *Ibid* at Articles 19 and 27(1).

⁶⁰ *Ibid* at Articles 17(1), 17(2) and 27(2).

⁶¹ Peter Drahos, “The Universality of Intellectual Property Rights” WIPO/OHCR, *Intellectual Property and Human Rights*.

⁶² *International Covenant on Economic, Social and Cultural Rights* [ICESCR], UN, 1966, vol. 993, p.3.

⁶³ *Ibid* at Article 15(1).

⁶⁴ United Nations Treaty Collection, *Databases*, online: United Nations Treaty Collection

<http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-3&chapter=4&lang=en>.

⁶⁵ *Supra* note 11 at Article 30(3).

However, this provision provides minimal assistance in overcoming the barriers faced by PBVIs in accessing copyright works for three reasons. First, it does not appear to broaden the scope of permitted exceptions to copyright as it states that any steps must be in accordance with international law. This would include all existing international IP treaties which have proven, to date, to be completely ineffective in improving access to copyright works for PBVIs. Secondly, the qualification that laws protecting IP rights may act as a barrier to access by persons with disabilities as long as they are reasonable leaves it up to each individual state to determine a reasonable level of protection within their political boundaries. Since the majority of states do not have laws protecting such access, it would be relatively easy for any state to justify their inaction as reasonable. Thirdly, the qualification that laws protecting IP rights may act as a barrier to access by persons with disabilities as long as they are not discriminatory is unhelpful as it is not clear whether the word ‘discriminatory’ refers only to direct discrimination or whether it includes indirect discrimination. If it refers only to direct discrimination, this would provide no challenge to the status quo, as no copyright regime directly discriminates against PBVIs; rather, the discrimination is effected indirectly through omissions (i.e. the lack of appropriate exceptions and limitations for the benefit of PBVIs).

(d) Conclusion

The lack of clarity in international legal regimes surrounding the issue of PBVI access to copyright works, accompanied by the checkerboard nature of national provisions, including those pertaining to the importing and exporting of copyright works in accessible formats, has played an important part in creating the present international book famine. Given that access to knowledge has been recognized as a universal right, and PBVIs universally face obstacles to exercising this right, a universal solution is required.

THE WAY FORWARD: BRIDGING THE DOUBLE DIVIDE

(a) The Idea of an International Instrument

In 1981 the governing bodies of WIPO and the United Nations Educational, Scientific and Cultural Organization (UNESCO) agreed to create a working group on Access by the Visually and Auditorily Handicapped to Material Reproducing Works Produced by Copyright. The working group was appointed by the Director Generals of the two organizations and was asked to consider the possibilities of using exceptions under the Berne Convention to expand access to protected works. This working group did not reach any substantive conclusions. However, further analysis on this issue undertaken by the Secretariats of the Executive Committee of the Berne Union and the Intergovernmental Committee of the Universal Copyright Convention in 1985 resulted a report titled *Copyright Problems Raised by the Access by Handicapped Persons to Protected Works*.

This report concluded that the problem of access to and use of copyright works by PBVIs consisted of two elements: (1) the production of accessible materials and services that could be addressed by means of an exception or compulsory access provision in national copyright law; and (2) the distribution of accessible materials and services within and between national borders.⁶⁶ The report recommended that the best way to solve the “dual problem of production and distribution” would be to create “an entirely new international instrument addressing both matters” and further explained that such a convention would:

provide that the Contracting States permit the production of [accessible] materials and services within their borders in accordance with the terms set out and, in addition, permit the free circulation of those materials and services amongst Contracting States.⁶⁷

⁶⁶ Executive Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) and the Intergovernmental Committee of the Universal Copyright Convention, *Copyright Problems Raised by the Access by Handicapped Persons to Protected Works*, online: KEI <<http://keionline.org/node/644>>.

⁶⁷ *Ibid.*

In spite of a definite imperative accompanied by a clear recommendation on *how* to address this issue as far back as 1985, it was given little, if any, attention by those developing the international copyright framework for almost eighteen years.

(b) The Work of WIPO: Past, Present and Future

Beginning in 2003, there was a large effort to reform WIPO and to refocus its work program so it would be more sensitive to the impacts of its policies on development and of IP policies on consumers and innovation. WIPO had been criticized for its narrow focus on the promotion of IP which was seen to be at odds with the objectives of a UN agency that was required to “cooperate in whatever measures [might] be necessary to make co-ordination of the policies and activities of the UN and those of the organs and agencies within the UN system fully effective”.⁶⁸

In the same year, the World Blind Union (WBU) asked WIPO to address the needs of PBVIs during the course of its ongoing work on copyright.⁶⁹ Specifically, the WBU sought to achieve greater harmonization on minimum exceptions and limitations to copyright and to address the need to transfer (export and import) copyright works in accessible formats across international boundaries.⁷⁰ In response to this request, WIPO held an Information Meeting on Digital Content for the Visually Impaired on November 3, 2003, which was given mention in the 10th session of WIPO SCCR.⁷¹

Almost a year later, in October 2004, the permanent mission of Chile in Geneva requested that the subject of “exceptions and limitations to copyright and related rights for the purposes of education, libraries and disabled persons” be included in the agenda for the 12th Session of the SCCR to be held in November 2004.⁷² During this session, the delegation of Chile stated that the SCCR needed to prioritize opening a space to discuss limitations and exceptions specifically for the benefit of PBVIs, with a view to facilitating understanding on that issue and to learn from successful national examples “in order to make progress [toward] achieving consensus on minimum international standards”.⁷³ Importantly, Chile’s proposal was supported by a number of developing countries, and by the representative of UNESCO - who expressed the view that WIPO was the best platform to open a debate on this issue and confirmed UNESCO’s willingness to collaborate with WIPO on any future process which might be pursued.⁷⁴

In October 2007, WIPO’s General Assembly formally established the Development Agenda and adopted a set of 45 recommendations designed to ‘mainstream’ development concerns into the work of WIPO.⁷⁵ Seven months later, and in a complementary fashion, the CRPD came into force with the express purpose of ‘mainstreaming’ disability in the development agenda at the UN and its specialized agencies.⁷⁶ In particular, the CRPD provided new impetus for disability-inclusive development activities at the multilateral level. Several multilateral development agencies, including WIPO, began reviewing their existing disabilities policies or strategies with a view to modifying them.

In 2009, WIPO launched a website called “VISION IP” to operate as a platform for expressions of support, exchange of views and dissemination of information to parties interested in the issue of access to copyright works

⁶⁸ WIPO, *Agreement between the United Nations and the World Intellectual Property Organization*, online: WIPO <<http://www.wipo.int/treaties/en/agreement/>>. See also Christopher May, “The World Intellectual Property Organization” (2006) 11 *New Political Economy* 435.

⁶⁹ KEI, *World Blind Union (WBU) and Knowledge Ecology International (KEI) Meeting on a WIPO Treaty for Blind, Visually Impaired and Other Reading Disabled Persons Report*, online: KEI <<http://keionline.org/content/view/206>>.

⁷⁰ *Ibid.*

⁷¹ SCCR, *Report*, online: WIPO <http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=22005>. This was the first time the issue of access to copyright for PBVIs was raised in an SCCR session.

⁷² SCCR, *Proposal by Chile on the Subject "Exceptions and Limitations to Copyright and Related Rights"*, online: WIPO <http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=34747>.

⁷³ SCCR, *Report*, online: WIPO <http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=43289>.

⁷⁴ *Ibid.*

⁷⁵ WIPO, *Member States Adopt a Development Agenda for WIPO*, online: WIPO <http://www.wipo.int/pressroom/en/articles/2007/article_0071.html>.

⁷⁶ UNESC, E/CN.5/2008/6, *Mainstreaming Disability in the Development Agenda*, 2008, online: UNenable <<http://www.un.org/disabilities/default.asp?id=358>>.

for PBVIs.⁷⁷ In the same year, WIPO and a number of UN specialized agencies in Geneva hosted a meeting in which they agreed on the need for closer inter-agency collaboration in favour of PBVIs.⁷⁸ Specifically, WIPO Director General Francis Gurry stressed the importance of “delivering as one” within the UN system for the effective promotion of equal opportunities for disadvantaged groups and called for the development of common activities to ensure compliance with the provisions of the CRPD and coherence in system-wide activities relating to the needs of the PBVI community.⁷⁹

In June 2010, the 20th Session of the SCCR considered four separate draft proposals on how to address access to copyright works for PBVIs and other persons with print disabilities.⁸⁰ These proposals were prepared by the US, the European Union (EU), the African Group (AG) and a group formed by Brazil, Ecuador, Paraguay, Mexico and the WBU (BEPM/WBU). While the US proposed the negotiation of a draft consensus agreement of the Assembly of the Berne Union, the Assembly of the WCT and the General Assembly of WIPO and the EU proposed negotiation of a joint recommendation of the same group of bodies, the AG and the BEPM/WBU proposed the negotiation of an international treaty binding on all of WIPO’s members.⁸¹ In varying degrees, the four proposals addressed a number of issues discussed in this paper, including minimum domestic exceptions, the export and import of works under copyright exceptions and limitations and the role of trusted intermediaries in facilitating access. Due to a number of conflicts on the drafts, the SCCR had to adjourn its 20th session without reaching consensus. Nonetheless, in its 21st session in November 2010, the SCCR agreed to work toward “an appropriate international legal instrument or instruments (whether model law, joint recommendation, treaty and/or other forms)” on appropriate exceptions and limitations for PBVIs which follows a “global and inclusive approach” and “bears in mind the Development Agenda recommendations”.⁸² The Annex to the Conclusions from the 21st session includes a timetable indicating that the SCCR must dedicate three additional working days to its regular 22nd session and must make a recommendation on this issue to WIPO’s General Assembly by the end of that session.⁸³

At present, it seems that WIPO is committed to the negotiation of an international instrument on access to copyright works for PBVIs that is sensitive to the development-related needs of the majority of the PBVI community. Indeed, as a UN agency with a specialized competence in matters of IP, combined with a mandate and willingness to work with other UN organizations to make the rights promised to disabled persons in the CRPD a reality, WIPO is best positioned to lead the global community on the negotiation of such an instrument.

CONCLUSIONS

This paper has demonstrated that current national and international copyright regimes, as well as international human rights regimes, do not provide the comprehensive solution needed to eliminate the extreme and widespread scarcity of accessible copyright works: the international book famine. Rather, these legal regimes often operate to exacerbate the problem. A better mechanism would be provided through the negotiation of an international instrument regarding access to copyright works for PBVIs, under the auspices of WIPO.

Although there is widespread consensus that such an international instrument is needed, some dissenters remain. In particular, the International Publishers Association (IPA) has asserted that the negotiation of an international legal instrument to address the needs of PBVIs is both “inconceivable” and “impossible” and has pointed to the work of WIPO’s Stakeholders’ Platform as sufficient to meet the ongoing needs of the PBVI community.⁸⁴ More specifically, it has pointed to the Trusted Intermediary Global Accessible Resources Project (TIGAR) as providing

⁷⁷ WIPO, *Facilitating Access to Copyright Works for Visually Impaired Persons*, online: VISION IP <<http://visionip.org/portal/en/>>.

⁷⁸ WIPO, *UN Agencies Agree on Need for Closer Collaboration in Favour of Visually Impaired*, online: WIPO <http://www.wipo.int/pressroom/en/articles/2009/article_0055.html>.

⁷⁹ *Ibid.*

⁸⁰ SCCR, *Draft Report*, online: WIPO <http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=140213>.

⁸¹ *Ibid.* See also SCCR, *Standing Committee on Copyright and Related Rights: Twentieth Session*, online: WIPO <http://www.wipo.int/meetings/en/details.jsp?meeting_id=20200>.

⁸² SCCR, *Conclusions*, online: WIPO <http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=147798>.

⁸³ *Ibid.*

⁸⁴ *Supra* note 73.

a solution to the obstacles faced by PBVIs. This project, launched by WIPO's Stakeholders' Platform on November 1, 2010, promises to "ensure that persons with print disabilities - both in developing or the developed countries - have equal access to published works as persons without print disabilities" by enabling publishers to make their titles easily available to trusted intermediaries.⁸⁵ The goal of TIGAR is to facilitate the flow of copyright works from publishers to trusted intermediaries so that the latter may be able to produce more accessible versions of copyright works and improve the overall availability of such works to PBVIs. Ideally, TIGAR would enable all PBVIs to search for published works in accessible formats across distributed networks.⁸⁶ While TIGAR undoubtedly provides a positive example of collaboration between the private and public sectors and between rights holders and rights users, the project's ability to fulfill the lofty promise of equal access to published works for all is questionable.

First, TIGAR is a pilot project limited to between ten and twelve trusted intermediaries over the first three-year phase.⁸⁷ Any project attempting to achieve equal access to published works for PBVIs worldwide would undoubtedly have to include most, if not all, of the trusted intermediaries currently engaged in the creation and distribution of accessible copyright works. The participation of a few trusted intermediaries located in a select number of countries would not be enough to significantly improve universal accessibility to copyright works.

Second, TIGAR attempts to facilitate the availability of copyright works in accessible formats mainly through the use of commercial licensing schemes. As a result, it cannot address problems of access arising where such schemes may not be effective in providing access to copyright works for PBVIs; for instance, where publishers choose to not produce accessible digital versions of their copyright works.

For these reasons, TIGAR should not be seen as a substitute for the negotiation of an international instrument on access to copyright works for PBVIs. At most, it should be seen as a tool to develop and implement operational and practical arrangements regarding the flow of published copyright works from publishers to trusted intermediaries within the context of such an instrument.⁸⁸ In fact, recent events suggest that the success of TIGAR, and the work of the WIPO Stakeholders' Platform more generally, require that all parties share in the mutual understanding that this work is only complementary to the negotiation of an international instrument on access to copyright works for PBVIs.

On February 26, 2011, WBU President Maryanne Diamond released a statement revealing that the WBU is suspending its participation in the WIPO Stakeholders' Platform and all associated projects (including TIGAR) until an agreement on an international legal framework for access to copyright works for PBVIs is agreed upon at WIPO.⁸⁹ In the statement, Ms. Diamond reports that the TIGAR project is being "erroneously portrayed by some organizations as an alternative to the underpinning legal framework needed to guarantee equal access to information promised under the [CRPD]".⁹⁰ Ms. Diamond notes that the WBU, along with several other trusted intermediaries participating in the WIPO Stakeholders' Platform on behalf of PBVIs,⁹¹ had engaged in two years of resource intensive dialogue with rights holders regarding the proposed terms of the various platform projects.⁹² She explains that the terms proposed by the rights holders for these projects undermined the existing rights of PBVIs and imposed additional costs and liabilities on PBVIs.⁹³ As a result, several trusted intermediaries acting on behalf of PBVIs decided they could no longer participate in the WIPO Stakeholders' Platform or its associated

⁸⁵ WIPO, *Stakeholders' Platform Launches Project to Facilitate Access by VIPs to Published Works*, online: WIPO <http://www.wipo.int/pressroom/en/articles/2010/article_0043.html>.

⁸⁶ *Ibid.*

⁸⁷ SCCR, *Report*, online: WIPO <http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=157779>.

⁸⁸ SCCR, *Report*, online: WIPO <http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=132907>.

⁸⁹ World Blind Union [WBU], *Statement by World Blind Union 26-02-2011*, online: WBU <<http://www.worldblindunion.org/en/news-events/latest-news/Pages/default.aspx>>.

⁹⁰ *Ibid.*

⁹¹ These included the Royal National Institute of the Blind (United Kingdom), Vision Australia (Australia), ONCE (Spain), the Canadian National Institute of the Blind (Canada) and the European Blind Union (European Union), among others.

⁹² *Ibid.*

⁹³ *Ibid.*

projects and needed to concentrate their limited resources on securing a clear legal framework for the international exchange of accessible copies.⁹⁴

On March 1, 2011, the IPA issued a response to the WBU's statement in which it noted that the WBU's suspension of participation in the WIPO Stakeholders' Platform and its associated projects was temporary and asserted its belief that the specific concerns raised by the WBU were resolvable.⁹⁵ This statement confirms that the IPA is confident that "all stakeholders can find an enlightened, balanced and effective solution" to the issues surrounding the WIPO Stakeholders' Platform through an open dialogue.⁹⁶

Contrary to the assertions of the IPA, these recent developments demonstrate that the work of the WIPO Stakeholders' Platform, TIGAR, and other associated projects, offer only partial solutions to the problems faced by PBVIs in accessing copyright works. They confirm the need for an international instrument governing access to copyright works for PBVIs.

Rather than outline the specifics of such an international instrument, this paper has provided an overview of some of the issues which must be addressed in such an instrument. Further, it has emphasized that such an instrument must be sensitive to the particular obstacles faced by PBVIs. Ideally, and in accordance with the rights set out in the CRPD, PBVIs would have access to their choice of copyright works in their choice of accessible format at the same time and at the same price as fully sighted persons. This would recognize the rights of PBVIs to education, to participation in cultural life and to freedom of expression and opinion.⁹⁷ It would also promote their full, effective and equal participation in society.

The negotiation of an international legal instrument on this issue will not achieve this reality alone. Even if such an instrument could remove all existing legal barriers, various social, economic, and technological barriers might continue to prevent this reality from being achieved.

Nonetheless, if the international community is serious about its commitment to recognizing the rights of persons with disabilities, and PBVIs specifically, the negotiation of such an international instrument to remove the legal barriers faced by PBVIs in accessing copyright works is necessary. Without a basic international level of copyright exceptions for the benefit of PBVIs, it will be impossible to systematically make and distribute accessible formats among the PBVI community. Further, a minimal level of international access for PBVIs would not only help those countries which do not have the requisite exception in their national copyright laws, but also those countries with exceptions that are restrictive or lacking in clarity. Finally, the negotiation of an international instrument on this issue would provide an important public acknowledgement of the need to re-balance international copyright regimes to recognize with the needs of disadvantaged populations more generally.

Knowledge is the nutrition of the mind and it is time copyright laws started feeding everyone.

⁹⁴ *Ibid.*

⁹⁵ International Publishers Association, *IPA Continues Work Towards Access for Disabled Readers*, online: <http://www.internationalpublishers.org/images/stories/copyright/pr%20final_01_03_11.pdf>.

⁹⁶ *Ibid.*

⁹⁷ *Supra* notes 13, 14 and 15.

