



World Library and Information Congress: 70th IFLA General Conference and Council

22-27 August 2004
Buenos Aires, Argentina

Programme: <http://www.ifla.org/IV/ifla70/prog04.htm>

Code Number: 173-E
Meeting: 129. Libraries for the Blind with Libraries Serving Disadvantaged Persons
Simultaneous Interpretation: Yes

1. Session #129
 - 1.1 "Balance of Copyright and Licensing: Access to information for print handicapped people"
 2. Title

Copyright: How can barriers to access be removed? An action plan for the removal of some copyright barriers that prevent equitable access to information by people with print disabilities
 3. Authors

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RNIB UK: International copyright development for WBU supported by IFLA LBS and DAISY Consortium.
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4. Abstract

- 4.1 *This paper sets out an action plan for the removal of some copyright barriers that prevent people with print disabilities getting access to information, and in particular to the world library of accessible format materials. It updates on progress since the last report at IFLA Boston 2001. It reports on a proposed draft for country legislation developed by WIPO in response to our requests. It proposes a world wide action plan to have legislation based on this model implemented in all countries in the next four years. This requires co-ordinated action by IFLA and WBU*

members in all countries and will form the basis of a proposed World Blind Union action plan.

5. Original Language

5.1 English.

6. Institution Acronyms

6.1 RNIB: Royal National Institute of the Blind, UK. Institutional member of IFLA. NGO working for change for the UK's blind and partially sighted people and providing specialist services. Member of EBU, WBU and DAISY Consortium.

6.2 DAISY Consortium: Digital Accessible Information Systems: "A better way to read": A standards body promoting world standards for the design, production and exchange of digital accessible information. Founded by IFLA LSB members.

6.3 IFLA LBS: Libraries for the blind section of IFLA

6.4 WBU: World Blind Union: The UN recognised NGO representing the interests of blind and partially sighted people throughout the world.

6.5 EBU: European Blind Union: The European region of WBU.

6.6 WIPO: World Intellectual Property Organisation: A UN agency on intellectual property which develops international treaties and offers advice and services.

6.7 IPA: International Publishers Association: Body which represents national publishers associations in the international arena.

7. Biographical Information:

7.1 Stephen King is the Director of RNIB responsible for development of library, information and technology services. He served for 8 years on the IFLA LBS standing committee. Through this he was one of the founders, and now a board member, of the DAISY Consortium along with other IFLA members. He chaired the EBU work group on user requirements for digital talking books. This set out the need for a better way to read and the vision of people having access to a world library of accessible format materials. He has worked with colleagues to deliver this, promoting the WBU copyright project, the work of the DAISY Consortium on technical standards and practical resource sharing, and IFLA LBS on library standards and developments.

7.2 David Mann leads on copyright policy matters for RNIB and chairs the EBU and WBU copyright work groups. He led the successful project to

influence the EU copyright directive to include exceptions for disabled people and measures to prevent technological protection measures creating new barriers.

- 7.2.1 He also leads on these issues for the World Blind Union in a project supported by IFLA LBS and DAISY Consortium to reduce world copyright barriers and enable peoples' access to a world library of accessible format materials. He has authored two surveys of international copyright legislation related to special format materials.

8. Introduction

- 8.1 Thank you for the invitation to speak.
- 8.2 We are very grateful for this opportunity to discuss with IFLA colleagues some of the progress and issues coming out of our work to find an ideal solution to problems associated with copyright. And also to be here in South America where we understand there are innovative developments with publishers, which we can learn from.
- 8.3 We report here an interesting new development to improve the international availability of special format materials resulting out of discussions at WIPO, the World Intellectual Property Organisation, and IPA, the International Publishers Association. We will propose an action plan to build on an expected initiative by WIPO, which we believe will be a crucially important development.
- 8.4 Put simply, we believe there is now a way forward to clear the copyright barriers that prevent a blind person here in Argentina studying English literature, accessing the substantial number of literary publications available in the USA or UK in special formats such as audio, custom print or Braille. We believe that the copyright barrier to this can be resolved in 4-5 years by co-ordinated enactment of legislation in each country in accordance with a draft proposed by WIPO. This would also give us a time frame to resolve the other barriers touched on at the end of this paper.
- 8.5 We do hope that the discussion of this paper and the other papers in this session will inspire all of us to work together to make further real progress. A lot of progress has been made in the last few years and more can be done.
- 8.6 We hope that we can improve and agree the draft action plan for the resolution of one of the copyright barriers to the free flow of special format materials across borders and legal jurisdictions. The plan does not seek to solve all copyright problems. But we believe it will help us take an important step towards our shared vision of people with print disabilities enjoying access to the world collection of special format materials.

9. A bit of background about our work

9.1 Starting from user needs

- 9.1.1 Our work arose out of a 1994 European Blind Union project, chaired by Stephen King, which asked print disabled people across Europe what they wanted from the next generation of talking books. The results were published in *“Reaching forward to 21st Century: User requirements for the next generation Talking Books”*: EBU Paris 1997.
- 9.1.2 It was not a surprise to learn that people wanted to read the same things, at the same time as everyone else, with similar ease and utility as print readers. Perhaps more surprising was the strong desire to be able to read publications from all over the world. This partly reflected an increased multi-cultural mix in our societies, and partly increased globalisation of our education, employment and entertainment industries. It also reflects the relative scarcity of special format materials in most countries due to their high cost, and people wanting to read something, irrespective of where it was produced.
- 9.1.3 This led to the development of two responses within EBU and IFLA LBS. How can we enable people to get direct access to the original publications and information via inclusive design and technological approaches? The “Design for all” and e-library work. And secondly how could we use digital technology to improve services that provide people with different ways to read the output of the worlds prolific publishing industry. Principally books re-presented in audio, modified print and in Braille. The result was the DAISY Consortium.
- 9.1.4 We will concentrate on this second aspect; copyright related to people accessing re-designed and presented publications in audio, Braille and modified print. It is however important to note that it is vital that technical and legal arrangements of both strands; direct access and specially re-designed publishing, are co-ordinated.

9.2 International project

- 9.2.1 The DAISY Consortium was founded in 1996, as it was clear that many countries and institutions shared the goal of improving special format services, and responding to the user requirements set out in the EBU report. To date the DAISY Consortium has focused on developing technical standards and promoting the development of producer and consumer technologies needed to deliver the better way to read demanded in the EBU report. However it soon became apparent that if we were to provide people with the ability to read the full range of the worlds publishing output, at the same time and utility as print readers, then we needed to put in place much better arrangements. Agreements were needed between national organisations, with publishers, and new

copyright arrangements were needed to facilitate this. Work on this issue was started with WBU and IFLA/LBS.

- 9.2.2 In 1996/7 David Mann undertook a survey of the copyright arrangements for the re-publishing of titles in special formats in the European Union and in the major English-speaking countries. This was presented at the IFLA LBS pre-conference in Copenhagen in 1997. This identified and compared a number of successful country models, which provided exceptions to copyright for the production of Braille, audio and modified print titles on a non-commercial basis for print handicapped people.

9.3 Improving National legislation

- 9.3.1 In the following few years a number of countries took action to improve their copyright arrangements. These usually involved a model, which clarified the right of individuals to create an alternate format of a publication for their own use. They also created an exception within copyright which enables institutions to create and circulate to people with print disabilities alternate format copies on a not for profit basis without seeking special permission of the rights holder.
- 9.3.2 David Mann led the EBU work group which helped to ensure appropriate clauses in the EU copyright directive enacted in May 2001, which is now being implemented in all member states. This type of legislation is now in place in North America, Australia and New Zealand, and much of Europe. Part of the discussion with WIPO is how this type of exception can be promoted in other countries.

9.4 Barrier to flow of titles between legal jurisdictions

- 9.4.1 It soon became apparent that although these country-based solutions were a significant step forward, they created a new barrier. This was to restrict the cross border flow of titles envisaged by the DAISY Consortium and IFLA/LBS as our response to enabling people to read titles produced anywhere in the world. In short, a title produced under an exception to copyright under, say US or Australian law, could only be made available where US or Australian law prevailed. If someone, say in Argentina, wanted access to a copy of a US book, then special permission from the rights holder was still required, as the US exception under which a copy was made had no force in Argentinean law.
- 9.4.2 Previous arrangements to make titles available outside the legal jurisdictions in which they had been created started to break down.
- 9.4.3 Resolution of this problem clearly needed an International agreement.

9.5 The International project

- 9.5.1 In November 2000 at its assembly in Melbourne, WBU passed a resolution that looked for dialogue with WIPO and UNESCO for the resolution of copyright barriers to better access to information. Since that time David Mann has been leading a WBU project, actively supported by the DAISY Consortium and IFLA LBS members to seek an international framework for copyright solutions and arrangements with publishers for blind and partially sighted people.
- 9.5.2 In August 2001, David Mann presented a paper at IFLA Boston. This updated on progress and got mandate from IFLA/LBS to work with WBU to seek resolution of some of these problems.
- 9.5.3 Since then contacts have been made with WIPO, UNESCO and the International Publishers Association (IPA), with ongoing meetings and positive developments with WIPO and support for our efforts from IPA.
- 9.5.4 David Mann made contact with WIPO staff. Briefings were undertaken by many IFLA and WBU organisations from across the world to their national WIPO representatives. This enabled us to get our issues onto the WIPO agenda. This active support was very helpful and we would like to say thank you to everyone who worked so hard on this. It shows that by working together we can get things done.
- 9.5.5 Jukka Liedes the Finnish chair of the WIPO standing committee on copyright and related matters was very helpful in guiding how we might proceed. WIPO staff Jorgen Blomqvist (Head of Copyright law section) and Geidy Lung (who is here with us in Buenos Aries today) worked hard to find ways to help. WIPO action must be an agreed priority by its 180 national member states, and where there are many other competing priorities. One of the things we learned from these discussions is that there would be almost no prospect of getting a revision to the international copyright treaties, and we had to find another way.
- 9.5.6 WIPO faces many competing priorities on the copyright front. The support of its 180 member states, as well as the secretariat, is essential to our progress. However, we have learned that there would be almost no prospect of getting a revision to the relevant international copyright treaties (the Berne Convention and the WIPO Copyright Treaty), and we have had to find another way.

9.6. The WIPO proposals

- 9.6.1 David Mann (WBU), Stephen King (WBU/DAISY), Henri Chauchat, (IFLA/LBS) and Jarka Looks (IFLA Copyright and legal matters) met with Rita Hayes (WIPO Deputy Director General) and her staff in June 2004.

9.6.2 WIPO reported that although they have no powers to propose legislation to national members, they do have a programme to help developing countries develop intellectual property law. Through this they have developed draft copyright laws which can be adopted by countries. Within this they propose to include two key paragraphs. The first of these provides for a regime not unlike that already enacted in many countries, enabling special format copies for controlled not for profit circulation. The second deals with the cross border problem in a simple and elegant manner by creating an importation right for copies made under similar regimes. The draft wording is as follows:

1. *Notwithstanding the provisions of Section 6(1)(a) and (d), it shall be permitted without the authorisation of the author or other owner of copyright to reproduce a published work for visually impaired persons in an alternative manner or form which enables their perception of the work, and to distribute the copies exclusively to those persons, provided that the work is not reasonably available in an identical or largely equivalent form enabling its perception by the visually impaired; and the reproduction and distribution are made on a non-profit basis.*
2. *The distribution is also permitted in case the copies have been made abroad and the conditions mentioned above have been fulfilled.*

9.6.3 At our meeting we welcomed this draft as an excellent basis to take forward. They explained that the draft was currently being consulted on, and they hoped that it could be formalised in the autumn. Although designed for developing countries, the draft clearly has application for all jurisdictions.

9.7 Importation right solves a barrier to access to the world library of alternate format materials

9.7.1 It is clear that if all countries enacted legislation which followed this model, then there would no longer be a copyright barrier to people in one country getting access to titles produced in another. To make it happen still needs co-operation and standards between national institutions, and these are touched on at the end of the paper. So our simple proposal is that we work together for the next four years to get legislation based on this model enacted in as many countries as possible to bring practical benefit to as many people as possible as soon as possible.

9.8 Scope limited to Visual Impairment

- 9.8.1 Clearly this proposal only covers publications created for people with a visual impairment, which is WBU's mandate. It does not cover all the many copyright issues that IFLA has. However we believe we should grasp this step forward to bring benefit now. We should see this as a step that can build confidence in the right holder community. A positive experience would build confidence for agreeing a wider scope.
- 9.8.2 It is our belief that it would be very difficult to get international agreement at this stage to any wider scope. We believe that these proposals will have the support of IPA and other rights holders. The proposal builds on the many examples of existing national legislation in developed countries, which by and large are working, and provides a simple extension to resolve the problem of international availability.
- 9.8.3 The proposal does not preclude national solutions that have wider scope, and groups of countries building on their wider scope models to promote free flow between them. If these work, then the International draft can be re-visited in the future. This situation would be not unlike the international "Articles for the Blind freepost" arrangements, where there is a basic international agreement on what is covered, but national arrangements can and do go further.

9.9 Way forward for Developing Countries with no copyright legislation

- 9.9.1 This draft legislation is aimed at developing countries. It is to be welcomed that the WIPO programme of developing intellectual property law in developing countries will provide for these important exceptions to ensure that blind and partially sighted peoples needs are recognised. As the legal frameworks in developing countries are created, this provides a framework for their citizens to access the world library of alternate format materials, whilst providing protection to rights holders. It also provides scope for titles produced in developing countries to be shared and imported, thus opening up the opportunities of access to lower cost production and flows of funds that might help sustain national alternate format infrastructures in these countries. We should therefore be encouraging developing countries to use the WIPO draft clauses in any intellectual property legislation they enact.

9.10 Way forward for countries that have copyright exception legislation

- 9.10.1 Although aimed at developing countries, it is clear that this formulation has wider application. WIPO has no powers to recommend legislation to its members, out-with its developing countries programme and a parallel programme for so-called "countries in transition". However WBU, IFLA/LBS and DAISY could promote legislative change in their member states and point to the WIPO draft as a model with

international authority and benefits and a measure of agreement and support within the international community.

- 9.10.2 At our meeting with WIPO we agreed that it was the job of WBU supported by IFLA and DAISY to undertake the promotion of this way forward in the developed world.

9.11 Shared Objectives

- 9.11.1 We believe that we should set a 4 year objective of enacting legislation in every country affiliated with WBU which accords with (or goes further than) this WIPO draft. We will be making this proposal to the World Blind Union general assembly in December, the political voice of blind and partially sighted people across the world. We will propose that national delegations commit to promoting national legislation, and report back at the next general assembly in 2008.
- 9.11.2 It would be good to report to WBU that IFLA and DAISY will co-operate and support such proposals, and crucially will also work to a similar time-scale for clearing the other barriers to people getting access to materials from across the world.
- 9.11.3 Thus by WBU in 2008 we would look to being able to report that blind and partially sighted people in over 25 countries are actually enjoying access to publications from across the world.

9.12 The other barriers to international access

- 9.12.1 We need commercial and interlending protocols between institutions, and for these to be working in practice. IFLA have developed interlending, but is it fit for this purpose without exposing institutions to financial risks which stop them participating? DAISY members have developed bi-lateral cost sharing agreements for certain titles. But can they be generalised and linked to an on-demand and interlending model?
- 9.12.2 We need to maintain technical and presentational standards that enable a title produced in one country to be read in another. Braille authorities have reasonable standards although they could improve the situation with maths. DAISY, ISO, W3C have developed standards for audio and e-presentation which are widely adopted. There is more work to do, but many of the technical barriers are now resolved. There may be further work on presentation issues.
- 9.12.3 We need people to be able to access and search International catalogues to find the titles that are available, wherever they have been produced. IFLA have done excellent work on this, but we need commitment from IFLA members to implement these in ways that make world search easy for users, and linked to ordering systems.

10. Action Plan

- 10.1. August 2004: IFLA comment on WIPO draft and action plan to improve, and commit to developing timetable for clearing other barriers.
- 10.2. Autumn 2004: WIPO publish their draft legislation for developing countries.
- 10.3. December 2004: WBU members resolve to promote national legislation by 2008. WBU copyright group issues guidance paper. (Draft already exists based on previous papers from David Mann).
- 10.4. October 2004: DAISY Consortium Board comment on action plan and review timetable for clearing other barriers.
- 10.5. 2004/5 WIPO conducts world wide survey to establish range and nature of existing exceptions, including import/export rights.
- 10.6. 2005-2008: WBU/IFLA/DAISY copyright group support and co-ordinate national activity, getting feedback on successes and problems.
- 10.7. 2005-2008: IFLA/LBS and DAISY Consortium members' work to clear other barriers and pilot and develop international access models.
- 10.8. 2007-2008: A further survey of national legislation undertaken ideally as repeat of earlier WIPO survey, to measure progress and studies of how the legislation works in practice.
- 10.9. 2008: Report back to WBU general assembly and IFLA LBS.

August 10, 2004