



AFRICAN UNION OF THE BLIND UNION AFRICAINE DES AVEUGLES

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FOUNDED IN 1987 BY ORGANISATIONS OF AND FOR THE BLIND WITH AU MEMBER STATES

AFUB's Response to Copyright Amendments 15 September 2015

1. AFUB Background

The African Union of the Blind (AFUB) represents one of the six regional blocks of the World Blind Union (WBU). It is a continent-wide umbrella NGO of national organisations/associations of/for blind and partially sighted persons in Africa, established in October 1987 in Tunis/Tunisia under the auspices of the then Organisation of African Unity (OAU) - now African Union (AU). AFUB enjoys observer status in the African Union under Resolution CM/Res.944 (XL); as well as in the African Commission on Human and People's Rights (ACHPR) (Number 447). The Union also holds semi-consular status in the Republic of Kenya. Currently, AFUB's numerical strength stands at 60 national member organisations in 53 states.

AFUB Vision

"A continent where blind and partially sighted persons enjoy equal rights, social inclusion and full participation in development".

AFUB Mission

"To strengthen member organisations and create unity of purpose among them, through capacity building and advocacy, in partnership with governments, international agencies and other stakeholders".

Organisational objectives

In order to realise the above mission, AFUB pursues the following constitutional objectives:

- (a) Influencing public policies and practices governing the education, health, welfare, social security, rehabilitation, employment, sports and recreation of blind and partially sighted people;
- (b) Working for increased access by blind and partially sighted people to basic human rights through advocacy for the elimination of discriminatory laws and practices affecting blind and partially sighted people;
- (c) Establishing, strengthening and developing national associations of the blind and partially sighted persons;
- (d) Mobilising resources at the local, national and international levels to support human resource development, and economic empowerment services for blind and partially sighted people; and,
- (e) Encouraging exchange of information and experience among AFUB members and other organisations.

1.2. South Africa

In South Africa it is estimated that approximately 880 000 persons are blind or visually impaired. According to recent studies by the World Blind Union (WBU), in 2012 only 7 per cent of books published were made available in a format accessible to those who are visually impaired in developed (or rather, richer) countries, while less than 1 per cent of books published that year were made available in developing, poorer countries. The situation is even worse in South Africa, where only 0.5 per cent of books have been published in or converted to an accessible format for people with visual impairments. These figures underline the necessity and urgency to adopt adequate measures to facilitate adequate access

to published works for blind, visually impaired or otherwise print disabled persons. Currently, the severe shortage of knowledge materials in accessible formats aggravates the social and economic constraints faced by blind, visually impaired and otherwise print disabled persons in developing countries. This is in obvious conflict with the principles of non-discrimination, equal opportunity, accessibility and full and effective participation and inclusion in society, proclaimed in the United Nations Convention on the Rights of Persons with Disabilities, CRPD.

1.3. Marrakesh Treaty

Restrictions imposed by copyright law on the rights to reproduce and create adaptations of copyright protected works were identified by the international community as a key factor that hampered access to published materials for blind and visually impaired persons. In particular, the sets of existing copyright limitations and exceptions, such as ‘fair dealing’, were considered inadequate to safeguard sufficient access opportunities.

In June 2013, therefore, the “Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled” (the Treaty) was adopted by a Diplomatic Conference of the World Intellectual Property Organisation (WIPO) and subsequently signed by 79 Contracting Parties. With its focus on formulating minimum standards for national copyright exceptions and limitations, the treaty’s overarching objective is to drastically increase blind and visually impaired persons’ access to books and other printed materials, and combat what is commonly referred to as book famine. Under the Treaty, there is considerable flexibility provided to Contracting Parties in terms of how they wish to implement the treaty (see Article 10: “General Principles of Implementation”); however, existing treaty obligations such as the three-step Test need to be observed (Article 11).

For the treaty to enter into force, ratification is required from 20 states. As of August 2015, nine countries had ratified the treaty, including Mali as the first country in Africa. South Africa has been a long-standing supporter of the treaty. In its Closing Statement at the Diplomatic Conference in Marrakesh the South African delegation stated:

“This treaty will have a meaningful impact on the lives of millions of blind and visually impaired persons both in the developed and developing world. The treaty will unlock access to education, news, cultural materials and entertainment. [...] South Africa is embarking on the process of reviewing its copyright legislation and will accede to the Treaty when all internal processes are concluded.”

The main purpose is to enable the South African lawmaker to swiftly move forward with the ratification process in the country, in line with South Africa’s aforementioned expression of support for the treaty.

2.0. General comments.

2.1. Preamble

Include:-

Acknowledging that South Africa ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2007;

Acknowledging that the Marrakesh Treaty to provide access to published works for the blind, visually impaired and otherwise print disabled people was adopted by WIPO on 27 June 2013, in Marrakesh, Morocco, Africa;

2.2. Definition

Accessible format means:-

In such a format as may be required to address the needs created by the specific disability of a person with a disability in order to access and use a work to substantially the same degree as a person without a disability.

Authorised entity means:-

- a) an entity that is authorised or recognised by the government, or receives financial support from the government, to provide education, instructional training, adaptive reading or information access to the blind and visually impaired persons on a non-profit basis; or
- b) a government institution or non-profit organisation that provides the same services to blind and visually impaired persons as one of its primary activities or institutional obligations.

2.3. Other Comments

Include:-

Audio description for blind, visually impaired, Deaf blind and persons with dyslexia;

Universal Access Principles to be considered at the outset when drafting the amendments to the Copyright Act;

2.4. Specific comments

Propose adding a subsection under section 12 in which to address the obligations arising from the Marrakesh Treaty. Section 12 grants exceptions from the protection of literary and musical works and is therefore the most appropriate subheading under which to place these new exceptions and limitations.

The recommended wording for the new subsection (s 12(14)) is as follows:

Section 12 General exceptions from protection of literary and musical works

(14) Exceptions and Limitations

(1) “Works” for the purpose of this subsection means literary and artistic works in the form of text, notation and/or related illustrations, including such works in audio form.

(2) Copyright in literary works shall not be infringed where:

(a) Such action is necessary in order to facilitate the availability of the work in an accessible format to a beneficiary person, and

(b) Such action is undertaken by a beneficiary person, someone acting on his or her behalf, or an authorised entity

Regardless of whether or not such a work is available commercially and on reasonable terms to such beneficiary persons.

(3) Subsection 2 does not extend to any alteration of the original work which would amount to an adaptation thereof.

(4) Any persons or entities that may be authorised in terms of subsection 2(b) shall additionally be permitted to import an accessible format copy of a work for the benefit of beneficiary persons, without the authorisation of the copyright holder.

(5) Any authorised entity shall be permitted, without the authorisation of the copyright holder:

(a) To distribute or make available for the exclusive use of beneficiary persons, accessible format copies of the work to an authorised entity in another country; and

(b) To distribute or make available accessible format copies to a beneficiary person in another country provided that prior to the distribution or making available the originating authorised entity did not know or have reasonable grounds to know that the accessible format copy would be used for other than beneficiary persons.

Section 15 General exceptions from protection of artistic works.

(4) The provisions of section 12 (1), (2), (4), (5), (9), (10), (12), (13) **and (14)** shall *mutatis mutandis*, in so far as they can be applied, apply with reference to artistic works.

Section 19D (5) of the Bill broadly authorises accessible copies of any “work” (not just printed material) and defines disability broadly as “a person that requires an accessible format in order to access and use a work to substantially the same degree as a person without a disability”.

Section 19 generally incorporates the main provisions from the Marrakesh Treaty on exceptions and limitations for blind, visually impaired and otherwise print disable persons.

The Marrakesh Treaty can be seen in its implications for national limitations and exceptions pertaining to copyright access for the blind, visually impaired and otherwise print disable persons. This is primarily encompassed in articles 4, 5 and 6.

Article 4 prescribes how a country shall amend their national laws so as to create a limitation or exception regarding the accessing of copyright protected materials. Articles 5 and 6 looks at the prescribed laws pertaining to cross-border exchange and importation of accessible format copies between Contracting Parties to the treaty. All three articles require amendments to the current copyright legislation, and all effect the position of blind, visually impaired and otherwise print disabled persons in South Africa.

Currently, the Electronic Communications and Transactions Act 25 of 2002 (ECT) does not contain any exceptions to the prohibition on circumventing technological protection measures. Thus, in order for South Africa to comply with Article 7 of the Marrakesh Treaty, it is recommended that the ECT Act be amended to include an exception that permits blind, visually Impaired and otherwise print disable persons, persons acting on their behalf and authorised entities to circumvent technological measures; *to overcome security measures designed to protect data or access thereto for the purpose of exercising the exceptions and limitations provided in Section 12(14) and (15) of the Copyright Act No. 98 of 1978.*

The protection of personal information and privacy has recently received a great deal of attention in South Africa; as evidenced, for instance, by the country’s new Protection of Personal Information Act, 2013 and according to Article 8 of the Marrakesh Treaty, Contracting Parties must, when implementing limitations and exceptions provided for in the Treaty, protect the privacy of blind and visually impaired persons. The main motivation for this requirement is that authorised entities or persons acting on behalf of blind, and visually impaired persons usually obtain information pertaining to the disability and reading habits of these individuals. Article 8 strives to set limits to the sharing of such information with third parties.

3. 0. Marrakesh Treaty

AFUB recommends that South Africa ratifies the Marrakesh Treaty with immediate effect not withstanding any delays that may be encountered with the amendment of the copyright Act. The CRPD was ratified by South Africa in 2007 before amendment of National Law or the domestication of the CRPD and only in 2015 is South Africa adopting the White Paper on the Rights of Persons with Disabilities, WPRPD.

4.0. Copyright amendments

AFUB recommends that it is included in the team appointed to consider the proposed amendments should the Government decide to send the Copyright Act for redrafting.

In addition, AFUB recommends that South Africa consults with the stakeholders in the country to set up the policies, procedures and guidelines for setting up the Authorised Entity in preparation for the implementation of the Marrakesh Treaty and the Accessible Book consortium Programme developed by WIPO. South Africa is fortunate in having two experts participating in the Accessible Book consortium.

Jace Nair

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