

Berne Union

Working Group on Access by the Visually and Auditory Handicapped to Material Reproducing Works Protected by Copyright

(Paris, October 25 to 27, 1982)

Report

Introduction

1. The Working Group on Access by the Visually and Auditory Handicapped to Material Reproducing Works Protected by Copyright met at Unesco House, Paris, from October 25 to 27, 1982.

2. The said Working Group (hereinafter referred to as "the Working Group") was convened jointly by the Director-General of Unesco and the Director General of WIPO in pursuance of the decision taken by the respective Governing Bodies of Unesco and WIPO and the recommendation made by the Executive Committee of the Berne Union and the Intergovernmental Committee of the Universal Copyright Convention at their November-December 1981 sessions.

3. The purpose of the Working Group was to consider the possibility of using the exceptions provided in the international copyright conventions and prepare a sample model legislation containing special provisions governing the access by handicapped persons to the works protected by copyright.

4. Of the six experts who were invited in their personal capacity, four experts attended the meeting of the Working Group. Representatives of the International Publishers Association (IPA) and the World Council for the Welfare of the Blind (WCWB) also attended the meeting in an advisory capacity. Eight international non-governmental organizations were represented by observers. The list of participants appears as Annex II to this Report.

5. The working paper available to the Working Group was a study prepared, at the request of the Secretariat of Unesco and the International Bureau of WIPO, by Mrs. Wanda M. Noel (Canada) (document Unesco/WIPO/WGH/I/2).

Opening of the Meeting

6. The meeting was opened by Miss M.-C. Dock, Director, Copyright Division of Unesco, who welcomed the participants on behalf of the Director-General of Unesco and the Director General of WIPO.

Election of Chairman

7. As proposed by Mr. Y. Oyama and seconded by Mr. P. Salinas, Mr. M. Ficsor was unanimously elected as Chairman of the Working Group.

Consideration of the Study

8. Several participants expressed their appreciation for the study prepared by Mrs. W.M. Noel on the subject.

9. It was generally understood that the model provisions to be elaborated should reflect a proper balance between the needs of handicapped persons and the legitimate interests of copyright owners. In this connection, it was emphasized that the problem under consideration was of a social nature and that the authors and copyright owners should not be the only ones to bear the burden of its solution.

10. It was also generally agreed that the opinion according to which copyright as such is considered an obstacle for the handicapped was not the right approach to the problem, and that only some unnecessary obstacles such as those of procedural nature should be removed.

11. The attention of the Working Group was drawn to the particular situation in developing countries, where the funds needed for assistance to handicapped persons might be insufficient, and where the time needed for obtaining the necessary permission from copyright owners might be longer than elsewhere.

12. Some representatives of international non-governmental organizations expressed their concern about possible consequences of the adoption of a special system of legal licenses which would undermine the basic principle of the exclusive right of authors. They were in favor of a solution which would include the possibility of negotiation, either on an individual or on a collective basis.

13. Many participants expressed the fear that the copies of works intended for use by handicapped persons might also be used by the general public. In view of that, the Working Group took the position that appropriate guarantees should be provided in order to prevent such unauthorized use.

14. Another difficulty mentioned was the possibility of private copying, particularly in the case of audiovisual works, the market of which was being increasingly characterized by rental practices instead of sale. In this connection, reference was also made to technical devices making the copies intended for the handicapped not accessible to other persons.

15. Lastly, the Working Group took into consideration the important fact that the number of handicapped persons in each country was relatively small and therefore the market for materials intended for them limited. This fact seemed to the experts to fully justify the exceptions which are explained in the following paragraphs.

Elaboration of Model Provisions

16. Taking into account the views expressed by the participants, the Working Group decided to redraft the draft Model Provisions proposed in the study so as to deal separately with reproduction of published works in braille and with the reproduction in large print or by sound recording or the broadcasting by means of a radio-reading service for the needs of visually-handicapped persons. The redrafted model provisions are reproduced in Annex I to this Report.

17. As it was suggested in the study and agreed upon by the experts, Alternative A as redrafted provides for certain cases of free use of published works for the needs of visually-handicapped persons but the legislation on the matter is subject to the obligations of a given State under international copyright conventions. If such use is provided for under national legislation, two solutions may be previewed with regard to the persons or organizations rendering a work accessible to visually-handicapped persons: it may be either any person or organization or only those determined in corresponding regulations. It is expressly specified that the activity of such persons or organizations must not be gainful. The free reproduction in large print, sound recordings and broadcast by means of a

radio-reading service is conditional also upon the decision of the competent authority, which should be determined in the regulations and upon appropriate guarantees that the work will be used only for the needs of visually-handicapped persons. These guarantees may include undertaking of practical or technical measures to exclude accessibility to the general public of the work thus used.

18. Although the experts were generally in favor of recommending Alternative A to be used by national legislation, they decided to provide also for Alternative B which relates to the same uses as mentioned in the preceding paragraph, but against payment of remuneration. The conditions under which such uses may be effected are virtually the same as in the above paragraph except that payment of remuneration must be in accordance with the procedure set out in the regulations. Such a procedure may be compulsory licensing where the amount of remuneration may be negotiated by the interested parties before a decision by a competent authority is taken in this respect, or legal licensing where the amount of remuneration is established in the regulations or otherwise prescribed.

19. It is not excluded that some States might prefer to combine the two Alternatives in order, for example, to provide for free reproduction of works in braille and for non-voluntary licenses in respect of other uses.

20. As regards the making of captions for auditory handicapped in the case of films and other audiovisual works, the Working Group agreed with the statement made in the study referred to above that the making of such captions involved the right of adaptation. It therefore was of the opinion that it would be incompatible with both the national legislation of the majority of countries and the international copyright conventions to provide for any kind of exceptions or non-voluntary licensing in respect of such use.

21. The representative of one of the international non-governmental organizations raised the question whether the Model Provisions contained in Alternatives A and B should also be extended to the categories of otherwise physically handicapped persons who are unable to have access to protected works in the usual way. In the opinion of the Working Group this question was not covered by its terms of reference, although it recognized that such a problem did exist and therefore should be further considered.

Adoption of the Report and Closing of the Meeting

22. The Working Group unanimously adopted this Report.

23. After the usual thanks, the Chairman declared the meeting closed.

ANNEX I

**Model Provisions Concerning the Access by Handicapped Persons
to the Works Protected by Copyright**

Alternative A

Article . . . (1) It shall be permitted, subject to the obligations under the international conventions, for any person or organization [as determined in the regulations], without the consent of the author and without payment of remuneration, to reproduce in braille any published work or authorized translation thereof for the purpose of rendering the work accessible to visually-handicapped persons, provided there is no motive of commercial gain.

(2) The competent authority [as determined in the regulations] may permit any person or organization [as determined in the regulations], without the consent of the author and without payment of remuneration, to reproduce in large print or by sound recording or to broadcast by means of a radio-reading service any published work or authorized translation thereof for the purpose and subject to the conditions determined in paragraph (1), if there are appropriate guarantees that the work will be used only for the needs of visually-handicapped persons.

Alternative B

Article . . . (1) It shall be permitted, subject to the obligations under the international conventions, for any person or organization [as determined in the regulations], against payment of remuneration [in accordance with the procedure set out in the regulations], to reproduce in braille any published work or authorized translation thereof for the purpose of rendering the work accessible to visually-handicapped persons, provided there is no motive of commercial gain.

(2) The competent authority [as determined in the regulations] may permit any person or organization [as determined in the regulations], against payment of remuneration [in accordance with the procedure set out in the regulations], to reproduce in large print or by sound recording or to broadcast by means of a radio-reading service any published work or authorized translation thereof for the purpose and subject to the conditions determined in paragraph (1), if there are appropriate guarantees that the work will be used only for the needs of visually-handicapped persons.

ANNEX II

List of Participants

I. Invited Experts

- M. Claude Colombet
Professeur à la Faculté de droit de Paris-Sud (France)
- M. Mihály Ficsor
Directeur général
Bureau hongrois pour la protection des droits d'auteur (ARTISJUS)
- M. Imaïla Konaté (absent)
Président
Association malienne pour la promotion sociale des aveugles
- Mr. Yukifusa Oyama
Copyright Adviser
Agency for Cultural Affairs (Japan)
- M. Mohammed Rajhi (absent)
Président
Union nationale des aveugles de Tunisie
- Mr. Pedro Antonio Salinas Jaramillo
National Supervisor of Special Education
Instituto Panameño de Habilitación Especial

II. International Non-Governmental Organizations

(a) Attending the meeting in an advisory capacity

International Publishers Association (IPA): J.A. Koutchoumow. **World Council for the Welfare of the Blind (WCWB):** D. de Gouvêa Nowill; L. Vecera.

(b) Observers

European Broadcasting Union (EBU): R. Laurent. **International Confederation of Societies of Authors and Composers (CISAC):** M. Pickering. **International Copyright Society (INTERGU):** G. Halla. **International Federation of Journalists (IFJ):** S.O. Grønsund. **International Federation of Library Associations and Institutions (IFLA):** M. Wijnstroom; F. Hébert. **International Federation of Phonogram and Videogram Producers (IFPI):** E. Thompson. **International Literary and Artistic Association (ALAI):** D. Gaudel. **International Music Council (IMC):** N.L. Wallin.

III. Secretariat

United Nations Educational, Scientific and Cultural Organization (UNESCO)

M.-C. Dock (*Director, Copyright Division*); E. Guerassimov (*Lawyer, Copyright Division*).

World Intellectual Property Organization (WIPO)

M. Stojanović (*Head, Copyright Legislation and Periodicals Section, Public Information and Copyright Department*).