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World Intellectual Property Organization
Standing Committee on Copyright and Related Rights (SCCR)
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United States of America

Statement on Copyright Exceptions and Limitations for
Persons with Print Disabilities

As Delivered

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Geneva, Switzerland

Thank you, Mr. Chairman.

The United States is proud to have a series of specific exceptions and limitations in our copyright law, including for education, libraries, and persons with print disabilities.

The law of the United States has these exceptions because we believe access to information, cultural expression, and ideas is essential and we know that governments have a role to play in facilitating that access and reducing barriers to information, education and full participation in a democratic society. So while the United States believes profoundly, in the words of our Supreme Court, that copyright law is “the engine of free expression,”¹ we are also committed to policies that ensure everyone has a chance to get the information and education they need and to live independently as full citizens in their communities.

Because education and civic engagement can be severely limited when information is not available in accessible formats, under US copyright law qualified non-profit organizations and government agencies are free to reproduce and distribute published literary works under copyright in specialized formats for use by blind persons

¹ Harper & Row, Publishers. v. Nation Enterprises., 471 U.S. 539, 558 (1985) (“it should not be forgotten that the Framers intended copyright itself to be the engine of free expression.”)

or persons with other print disabilities. We acknowledge that more is needed, but we are proud of what this copyright exception has achieved. One of the main providers of materials under this exception, the National Library Service, distributes two (2) million Braille and audiobook copies of works to nearly 800,000 users each year. And we have had this provision in our law since 1996.

Of course, the United States is not alone in serving those with print disabilities through carefully crafted limitations and exceptions in copyright law. As we all know, over 50 countries have specific statutory exceptions addressed to the needs of the visually-impaired and persons with print disabilities. Other countries like India are in the midst of thoughtful deliberations on their own national exceptions.

So the United States is pleased that WIPO is addressing this issue. We believe that WIPO can move forward on this issue meaningfully and seriously.

In that respect, the United States wants to first acknowledge the WIPO Study on Copyright Limitations and Exceptions for the Visually Impaired, prepared by Ms. Judith Sullivan, and presented to the Standing Committee in 2006.² This Study represents the kind of thorough comparative work we must always do as a foundation for the development of new norms in international copyright law. We also recognizes the on-going work of the WIPO Stakeholders' Platform, which continues to explore in detail how the needs of persons with print disabilities can be better addressed through trusted intermediaries, new technologies, better formats, and improved "best practices" in the publishing industry.

The United States also wants to acknowledge and express our appreciation for the draft treaty language prepared by the World Blind Union and submitted as a formal proposal at the last session of the Standing Committee by our colleagues from Brazil, Ecuador, and Paraguay.³ We want to recognize the tremendous work on that draft that was done by the World Blind Union, the International Federation of Library Associations, the DAISY Consortium, and several other groups and individuals. The WBU treaty proposal will help the Standing Committee focus on this problem and find the right means of addressing access to materials for people with print disabilities through

² http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=75696

³ http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=122732

well-crafted exceptions to copyright protection that can become an integral part of the international copyright system.

As we explained in the last meeting of the Standing Committee, the United States has been engaged in a process of understanding the problems that confront persons with print disabilities in our own country. This has been a joint effort of the U.S. Patent and Trademark Office and the U.S. Copyright Office with leadership from the White House. This process included a Notice of Inquiry in March 2009 that generated numerous public responses; a public roundtable in May with many stakeholder representatives presenting different perspectives on making copyrighted works accessible to persons with print disabilities; a further public comment period in October and December that included specific questions on the WBU treaty proposal; and, just last week, an informal White House meeting of representatives from our country's leading organizations for the blind and visually-impaired, our library community, and our copyright industries.

Those of us working on this issue in the U.S. Government believe that we are genuinely *students* of this problem; we are still in the process of learning. But we are committed to doing our homework and doing it well.

Having said that we are still learning and studying, the United States comes to this meeting with greater clarity and conviction in our views on how the international copyright community should proceed in addressing the needs of those with print disabilities.

*Our commitment to reaching an international consensus
on copyright exceptions for persons with print disabilities*

First, the United States believes that the time has come for WIPO Members to work toward some form of international consensus on basic, necessary limitations and exceptions in copyright law for persons with print disabilities. This international consensus could take multiple forms, including a model law endorsed by the SCCR, a detailed Joint Recommendation to be adopted by the WIPO General Assemblies, and/or a multilateral treaty. The United States is open to discussing and exploring all these options.

The United States believes that the initial most productive course of action may be a work program that begins with a series of serious, focused consultations aimed at producing a carefully-crafted Joint Recommendation of the Berne Assembly and the WIPO General Assembly. We further believe this initial Joint Recommendation could be a step toward the development of a treaty establishing basic copyright limitations and exceptions for persons with print disabilities.

The first goal of international consensus in this area

In our consultations and review it has become clear to us that the most pressing problem – the one identified repeatedly by experts – is the cross-border distribution of special format materials made for persons with print disabilities, whether these special format materials are made under copyright exceptions in national law or special licensing arrangements. Therefore, the United States believes that our first goal should be to reach international consensus on the free exportation and importation of special format materials for persons with print disabilities in all countries.

We are confident that this body, the Berne Assembly, and the WIPO General Assembly have the expertise, wisdom, and resolve to find a suitable solution to this problem. We are prepared to work with other countries to explore creative solutions to this problem, including, but not limited to, [a] the establishment of a properly-limited international rule of exhaustion in relation to special format copies made under existing national law exceptions for persons with print disabilities and/or [b] an international legal norm that trusted intermediaries and non-profit organizations working for persons with print disabilities must be able to exchange special format copies without fear that copyright law bars such activities.

We believe that a solution to the problem of cross-border distribution of special format materials, properly delineated to prevent abuses, would solve the foremost problems identified by the print disability and visually-impaired communities.

Further international consensus on basic exceptions for print disabilities

The United States is also prepared to participate in a WIPO work program to establish further international consensus on specific exceptions and limitations for persons with print disabilities that should be part of national copyright laws.

As a practical matter, we believe that this project will take longer than finding common ground on the cross-border distribution of special format copies made under existing national exceptions. First, any such consensus should acknowledge the diversity of established national laws in this area and the diversity of successful experiences with copyright exceptions for persons with print disabilities that WIPO Members have had. Second, any such consensus should ensure that WIPO Members retain the flexibility to craft copyright exceptions and limitations to meet changing social, economic, and technological conditions that affect the print disability community. Third, the specific exceptions and limitations that emerge from such a process should acknowledge – as many in the visually impaired and print disability communities have told us -- that market practices can often help to solve problems of access to materials and that mandatory exceptions are most needed to address market failures. Finally, consensus on basic copyright exceptions for the print disability communities can and should be reached within the framework of the Berne *acquis*; Berne Article 9(2); and the corresponding provisions of TRIPS, the WCT, and the WPPT.

A balanced system of international copyright law

We recognize that some in the international copyright community believe that any international consensus on substantive limitations and exceptions to copyright law would weaken international copyright law. The United States does not share that point of view. The United States is committed to both better exceptions *in* copyright law and better enforcement *of* copyright law. Indeed, as we work with countries to establish consensus on proper, basic exceptions within copyright law, we will ask countries to work with us to improve the enforcement of copyright. This is part and parcel of a balanced international system of intellectual property.

Thank you.

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