

To the Department of Commerce's Internet Policy Task Force:

My name is John Edwin Miller. I am a US Library of Congress Certified Braille Transcriber and the Founder of the (very) small 501c3 non-profit 121Authent.org, Inc. structured to provide Braille renditions of copyrighted material under Section 121(d)(1) of The US Copyright Act aka "Chafee Amendment" as an Authorized Entity.

On page 26 of The Internet Policy Task Force 'Green Paper' regarding the recently adopted WIPO Marrakesh Treaty for the Blind it states:

"The treaty is intended to promote the international availability of accessible e-books and other digital formats as well as traditional formats such as Braille."

The United Nations publication entitled *UN intellectual property agency urges better access to markets for developing-countries* 23 SEP 2013 ends with the sentence:

"The (Marrakesh) treaty also ensures authors and publishers that the system will not expose their published works to misuse or distribution to anyone other than the intended beneficiaries."

<http://www.un.org/apps/news/story.asp?NewsID=45940>

However, within the text of the treaty itself, the only reference that might 'ensure' the above is in Article 2(c) regarding definition of an 'Authorized Entity' where it states:

An authorized entity establishes and follows its own practices:

(i) to establish that the persons it serves are beneficiary persons;

Further definitions for an Authorized Entity require establishing its own practices to 'limit' and 'discourage' any unauthorized reproduction and distribution.

Contrast this with the requirement in the Chafee Amendment at Section 121(d)(2) as implemented in the 'Proof of Disability' requirements for Membership for Bookshare.org. Also contrast this with the requirements as established for Disability Services when taking an exam from the Educational Testing Service (ETS) of Princeton, NJ, which "... develops, administers and scores more than 50 million tests annually ... in more than 180 countries, at more than 9,000 locations worldwide" according to their ets.org website.

https://www.bookshare.org/assets/docs/Individual_Proof_of_Disability.doc

http://www.ets.org/s/gre/pdf/bulletin_supplement_test_takers_with_disabilities_health_needs.pdf

This may include persons with learning or cognitive disabilities such as dyslexia for which diagnosis requires extensive testing and professional evaluation. Qualifying persons with such disabilities may be in greater numbers worldwide than those with vision related disabilities.

It was suggested by the outside Counsel to the American Library Association (ALA) that, if those in the US publishing industry or in the US Senate responsible for ratification of the Marrakesh Treaty wanted the other 185 WIPO Member States to enact such proof of disability requirements as in the US Chafee Amendment, then they should send a USTR trade delegation around the world to lobby in those countries for such measures that might exceed or be less "generous" than the minimum standards as contained in the current WIPO Treaty text.

<http://infojustice.org/archives/30401#comment-10315>

However, in his 'Comments to the WIPO Marrakesh Treaty, Dr. Mihály J. Ficsor noted regarding 'Authorized Entities' items 6. and 10.

6. Under item (i), an "authorized entity" is an entity that makes it sure that the persons it serves are truly with visual impairment. Item (ii) closely relates to this since it indicates the reason for which the entity must identify the scope of beneficiaries; namely, to fulfill its obligation to guarantee that the persons to

which it distributes or otherwise makes available accessible format copies correspond to the definition of beneficiaries.

10. To sum up, under the definition in point (b), no entity qualifies – and allowed to be authorized/recognized – as “authorized entity” that do not establish and apply practices that completely fulfill all the definitional criteria under points (i) to (iv).

http://www.copyrightseesaw.net/archive/?sw_10_item=50

Mr. Richard Mollett, Chief Executive of the UK Publishers Association made these comments in a BBC Radio interview 02 JUL 2013 regarding the (then) recently adopted WIPO Marrakesh Treaty:

The concerns were that where you take an edifice like copyright law, with all its complexities and all its layers, and you start unpicking it for the very good purpose and the absolutely right purpose of the visually impaired one has to be careful that you don't make changes which people who do have I'm afraid nefarious motives would try and exploit. It's what the Motion Pictures Association of America called this not being a vehicle for extraneous agendas, by which they meant you can create an exception to allow copying of accessible formats but what if people might use that loophole to do other things, not the intended beneficiaries of this treaty but for other purposes.

<http://downloads.bbc.co.uk/radio4/transcripts/TX020713-Book-Availability.rtf> - page 7

Ms. Maryanne Diamond, outgoing President of The World Blind Union (WBU), said in her opening remarks at the Marrakesh Diplomatic Conference JUN 2013:

I urge you to play your part in making a difference in the lives of these millions of people, by agreeing a treaty that is simple, usable and meaningful. We cannot accept a treaty which has no substance, nor, can we accept a treaty full of bureaucratic and cumbersome requirements. We cannot accept a trophy treaty that will not work in practice.

<http://www.worldblindunion.org/English/news/Pages/WIPO-Opening-Remarks-by-Maryanne-Diamond.aspx>

So in eliminating any ‘cumbersome requirements’, in order to receive what could be hundreds of millions of dollars worth of copyrighted material distributed worldwide and across borders annually without the permission of or compensation to the rights holders, will those responsible for ratification and implementation of the Treaty in the US and other countries that are among the few WIPO Member States that would be the likely net-exporters of copyrighted material in accessible format consider that having one actually document and prove one is an eligible person with a qualifying disability prior to receiving such material – instead of maybe a ‘practice’ by an Authorized Entity that says we’ll take your word for it -- be considered an unreasonable burden on the potential recipient or the distributing Authorized Entity?

Thank you.