

Accessible Copies of Copyright Work for Visually Impaired Persons in India

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This article deals with copyright law in India and its impact on the education of millions of visually impaired persons in India. Due to lack of amendment in the copyright law print disabled in India was unable to access the published copyrighted works. The organization dealing with visually impaired can provide accessible materials to visually impaired persons without seeking copyright permission from the owners. This landmark decision of Indian government will benefit all educational institutions who are dealing with visually impaired students.

Keywords: Visually Impaired; Copyright; Print Disabled

Introduction

In recent years the importance of copyright exception to the visually handicapped and limitations to copyright to provide an equal balance between the owners of the published work and users of that protected work has received considerable importance.

Copyright protection has for a long time been accepted by many people as something that is essential to promote the public interest. Copyright protection provides incentive for creativity and, by enabling the creators to gain a return on their investment; the rights granted by copyright encourage and motivate more creativity for the benefit of everyone.

Most print disabled in all over the world are there for challenged by the copyright law in search of information.

Rights are created by laws and these same laws must carefully define and limit those rights to provide an essential balance between the interests of right holder and users of protected material as this balance is as much in the public interest as the rights themselves.

Government of India in a meeting on 13th June 2008 has recommended, "All educational institutions should be made barrier free within a reasonable time frame of, say, two years for universities and three years for colleges and schools. They should also have facilities to provide Braille books and talking books. Sign language interpreter should also be provided in institutions having hearing impaired students (UGC, 2008)."

WIPO has itself published a Study on Automated Rights Management Systems and Copyright Limitations and Exceptions (Garnett, 2006), which studied exceptions for the benefit of visually impaired people and exceptions applying to distance education in particular. Sullivan, Consultant, copyright and Government affairs in 2006 studied about provision of copyright issues in the International conventions and treaties along with the need of exceptions of Copyright in the national laws (Sullivan, 2006). Exceptions for the benefit of visually impaired people were also covered in a joint WIPO and UNESCO Working Group on Access by the Visually and Auditory Handicapped to Material Reproducing Works Protected by Copyright

WIPO held an information meeting on Digital Content for the Visually Impaired in 2003 at which the International Publishers Association as well as the World Blind Union and other disability interests and national representatives gave presentations on copyright issues (WIPO, 2003).

A figure commonly quoted as the percentage of books published that are currently available in alternative formats useable by print disabled people is no more than about 5%. Publishers and authors in general want visually impaired people to be able to read what they publish and visually impaired people want the barriers that prevent them reading this material removed. However, it is also widely accepted that there is no simple or single solution and that copyright is not the only relevant issue.

Libraries for the blind developed as charities in India started its service by producing books and magazines on Braille. Their seeking of copyright licenses to permit them to produce such Braille books did not pose any particular risk to copyright holders and publishers. But as they started taking their places as libraries or learning centres for print disabled that rendered library services and as technological developments enabled them to make and circulate accessible books in various formats to readers with print disabilities, it became difficult for them to seek and obtain such licenses for a variety of reasons. Many governments in other parts of the countries like USA, UK and Australia therefore enacted statutory exceptions to their copyright laws to assist them. Such type of law or an amendment of existing copyright Act 1957 was not enacted in India for the educational benefit to print disabled till 2012.

According to Census 2001, the total population of India is 1,028,610,328. The total disabled population is 21,906,769, i.e. 2.1%. Out of this, visually disabled population is 10,634,881 i.e. 1.0% are visually challenged persons (Government of India, 2001).

Persons with disabilities (equal opportunities, protection of rights and full participation) act 1995 (PWD Act) (PWD ACT, 1996) in India is giving stress on equal rights for all. Unlike other Law of Disability (DDA, in UK and ADA in USA) Indian Law is not a mandatory Law and it is not specifying what all

the educational institutions to follow. India is lacking National Library policy. National Library Policy for disabled will help the policy makers to open the doors of libraries to all the visually challenged in India. There are mandates in Constitution to provide education to all. The National Policy of Education, 1986; Right to Education Bill 2005, Right to Information Act 2005 also just mention about disabled as part of general public. There is a need to have proper amendment of these Laws as far as inclusive education is concerned. As all of us know, library is a part of education as far as the access to information is concerned.

In India various special schools were established for the visually challenged and Braille text books were made available to these institutions free of cost by the government. The blind receive the education free till they reach 12th standard. For obtaining higher education in India, visually impaired persons face the problem of availability of accessible reference books related to their curriculum. The libraries of higher education are not disabled friendly. The visually impaired students in India feel neglected and isolated once they reach to higher education. Some of the Indian Universities like Delhi University, Jawaharlal Nehru University, Hyderabad University, University of Pune, Tata Institute of Social Science, recognized the plight of disabled and started special library services for the visually challenged. A few colleges like St. Xavier's in Mumbai, Loyola College in Chennai were also been in forefront in developing special learning centres for VIPs. Many NGO in India are doing excellent work in disseminating Information from 1960's (NAB, NFB, BPO) for the education of visually impaired.

The major problem these libraries face in providing information in an accessible format was the COPY RIGHT LAW in India.

As Roos, J. W. (2007) mentioned rightly:

"In order to make an accessible copy of a work, a library for the blind or any other producer of that accessible copy must obtain a license from the copyright holder that permits it to do so. Otherwise, however laudable the purpose of making an accessible copy, the accessible copy is an infringing copy, that is to say a copy that infringes on the copyright of the right holder."

Copy Right Law in India

India has an estimated 70 million persons who cannot read printed matter (for reasons of blindness and otherwise). These persons have limited or no access to information which is available to the public. Perversely, even material in the "public domain"—such as that created by government—is often not available in accessible formats.

Technology has made possible to convert the print into Braille, or audio CDS. But there is a lack of awareness among all the stake holders as far as the material to be made accessible to visually challenged in India. Very few colleges and universities in India are equipped with latest technologies in the disability centre or in the academic libraries for the service of visually challenged. These technologies themselves don't help the disabled in accessing information. For that purpose we need to amend the copyright act. The publisher should allow the librarian to use the electronic version of the document to freely access for educational use. The proposed amendments to the Indian Copyright Act are yet to be tabled in Parliament.

Challenges in India

1) Indian Copy right Act 1957 does not contain any rules regarding converting any print, audio, to an accessible format for the visually impaired.

2) Ordinary printed text is non-accessible: The blind can't access print. Many can access other formats like Braille. Today, in this digital age, proper training in computer and assistive technologies, help a blind to access the e- document just like any normal sighted person.

3) Commercial Braille books and large print books are very limited in India.

4) CDs and talking books in Daisy format are also less in India.

5) Electronic books in principle can be accessible with screen readers. But many publishers are not providing access rights to visually challenged.

6) To find out the relevant copyright exception of each country (Copyright exemptions for the visually impaired or libraries for the blind vary from country to country).

7) Lack of awareness is a major problem in India.

8) Lack of infrastructural, human resources and financial crunches leads to no availability of assistive technology in the academic libraries which will lead to non-productive human beings as far as the life of visually impaired is concerned.

To solve this problem many NGOs voiced their concern to Indian Government and pressed the need of amending Indian copyright as per the UN convention of Copyright law. Blind associations across India launched the campaign of "RIGHT to READ" and try to awaken the awareness all the stakeholders like publishers, librarians, visually challenged people, etc.

The National Institute for the Visually Handicapped (NIVH), which is the apex level national organization in the field of visual disability engaged in human resource development, administered by the Ministry of Social Justice and Empowerment, has taken full leadership on this front and is working together with the Daisy Forum of India (DFI) and other non profit organizations serving the blind across the country to set up a system for delivery of books in accessible formats to print impaired persons.

Copy Right Exception for Visually Impaired in India: Until, recently in India any alternate format creation would have been an infringement unless it was backed up by prior written permission from the rights holder (Government of India, 2001). Copyright, like other kinds of intellectual property rights, is basically limited in time, scope as well as exercise. From earliest times in copyright history, it has been recognized that copyright does not continue indefinitely, does not apply to certain categories of material and, in certain cases, is limited in its exercise (Lung, 2004). Hence there is a need to have copyright amendments in the exiting laws as and when required. Prior to the inclusive of Section 52(1)(zb) that the owner of copyright in a work had the exclusive right to adapt, make copies, communicate to the public etc. the work. Therefore, any conversion of a book into accessible formats such as Braille, Daisy, audio books, etc., for the benefit of persons with print disabilities could be undertaken only by the owner of copyright or with the permission of the owner of copyright. More often than not, owners of copyright are unwilling or disinterested to either undertake the conversion and sale of such accessible format copies or permit such conversion, for reasons varying from lack of profitability to limited target audience. Now these permis-

sions are not needed for non-profit conversion and distribution. The Copyright Amendment Bill 2012 has introduced certain provisions for the benefit of persons with disabilities and it has been passed by both houses of parliament (by the Rajya Sabha on 17th May 2012 and the Lok Sabha on 22nd May 2012). The Amendment to Indian copyright Law (52(1)(zb) which creates a new copyright exception for the benefit of persons with print disabilities, including persons with visual impairment and dyslexia.) was passed in favour of visually impaired after a long legal battle by the organizations in India who works for the right of visually impaired. Persons with disabilities who cannot access a work in their normal format and organizations can suitably modify a work so as to make it accessible to meet the specific needs of the person with disability. This means that a standard printed book, for example may be converted to an alternate format (not necessarily a special format) including Braille, large font, text readable by screen reader, audio (be it synthetic audio or human voice recording) without seeking the permission of the rights holder.

The Copyright Amendment Bill, 2012 does away with the necessity to seek the consent of the publishers for converting their books into accessible formats. To this extent, the Bill provides that it would not be an infringement of copyright for any person or any organization working for the benefit of the persons with disabilities and on a non-profit basis to create accessible format copies or distribute them to persons with disabilities who cannot enjoy the work in their normal formats. This provision is very wide and inclusive in its scope and has some protection built in against unauthorized use by non-beneficiaries of the exception. For instance, the books so provided in accessible formats shall be for private or personal use, for education or research only. Moreover, the persons or organizations providing such services have the obligation to ensure that such converted formats do not enter the mainstream business channels. While the new exception permits the recovery of the expenses incurred in converting the books, they do not permit the making of any profit under the exception. However, under a

new Section 31B, any person working for the benefit of the persons with disabilities on a profit basis or for business can undertake conversion and distribution after obtaining a license from the Copyright Board in accordance with the procedure laid down in that section.

Conclusion

Every person has the right to education. Disability is not inability. As a librarian from an education institution, I hope this landmark amendment in Indian Copyright law will definitely help millions of visually impaired in India.

REFERENCES

- Government of India (2001). Census of India. URL (last checked 9 August 2002).
http://censusindia.gov.in/Census_And_You/disabled_population.aspx
- Garnett, N. (2006). Automated rights management systems and copyright limitations and exceptions.
http://www.wipo.int/edocs/mdocs/copyright/en/sccr_14/sccr_14_5.pdf
- Lung, G. (2004). Copyright exceptions for the visually impaired—International perspective. *70th IFLA General Conference and Council*, Buenos Aires: World Intellectual Property Organization (WIPO).
- PWD ACT (1995). Persons with disabilities (equal opportunities, protection of rights and full participation) act 1995. URL (last checked 7 February 2012).
http://www.unipune.ac.in/dept/Education_Extension/www/PWD.htm
- Roos, J. W. (2007). Libraries for the blind as accessible content publishers: Copyright and related issues. *Library Trends*, 55, 879-916.
[doi:10.1353/lib.2007.0041](https://doi.org/10.1353/lib.2007.0041)
- Sullivan, J. (2006). Study on copyright limitations and exceptions for the visually impaired. URL (last checked 12 July 2012).
http://www.wipo.int/edocs/mdocs/copyright/en/sccr_15/sccr_15_7.doc
- WIPO (2003). WIPO information meeting on digital content for the visually impaired.
www.wipo.int/edocs/mdocs/.../digvi_im_03_peter_schonning.pdf
- UGC (2008). Notice. D.O.No.F.6-1/2006 (CPP II).