

# **Limitations of the Licensing System to create Accessible Copies**

## **For the Print Impaired: A Policy Paper**

**– Dr. Sam Taraporevala**

Should the proposed licensing provision be part of the amendments made to the Copyright Act, 1957 to regulate the production of accessible material for the print impaired?

An informed response can be made after duly considering the needs, hopes, problems, and apprehensions of the major stake holders' concerns.

The major stakeholders in this case would be the print impaired themselves, and their informal support groups (families/ friends), organizations working for the print impaired and copyright holders themselves. This document will explore the current provision in terms of licensing as introduced in Parliament, and evaluate its potential impact on these various groups. It shall also examine and respond to the concerns of the copyright holders.

### **The Pitfalls of Licensing:**

#### **1. Limiting to Special Formats:**

The clauses as spelled out by the proposed amendment would provide very limited room for the creation of accessible copies. This is on account of clause 52 (1) (zb), effectively permitting only special formats and placing all other formats under the licensing provision. What the proposed amendment does not reckon with is that even for the creation of special formats there is a major reliance on what may be described as mainstream applications by way of intermediary processes. Braille production today for instance relies on "Braille Translation Softwares" which can easily be imported from mainstream word/ text documents and with a few clicks of the mouse have a Braille soft copy ready for printing for an embosser. Provisions in the proposed amendment are such that Braille publishing too would therefore be hard hit.

#### **2. Would exclude genuine accessible copy producers:**

For conversion to non-specialized formats as mentioned above, the amendment proposes a licensing system which will permit only organizations working primarily for the benefit of the disabled to apply for a specific license to undertake conversion and distribution (see S. 31 B). This will prevent educational institutions, self help groups, other NGOs and print disabled individuals themselves from undertaking conversion and distribution. Given the fact that there is a major scarcity of accessible content, such a provision instead of facilitating and stimulating the creation of such work for the print impaired would only serve to further impede the production process and add to "the book drought". Such a provision promotes segregation, and ironically runs counter to the governments' own policies of building inclusive systems such as e-libraries in schools, colleges, and universities.

### **3. The Bureaucratic Licensing Process:**

The said clause requires eligible organizations to file an application for a license. This application is required to be title specific. Consequently there would be a lot of paper work and organizations who are already weighed down by resource constraints would experience the bureaucratic hurdles of the Copyright board.

### **4. The Cost Element:**

The provisions indicate the possibility of a fee being charged for the license. Accessible content creation does not come cheap. Subject to the nature of the original work individual/ organizations typically spent thousands of rupees to develop the first master copy. Given the fact that such activities are undertaken by “not for profit organizations” and are funded through donations/ grants, no real revenues are generated. What is more, although ideally a work should be available in the market in all possible formats through the publisher giving the end-user the choice of the version, the reality is that the accessible content creation not being a profitable activity is worked on by “not- for profit organizations”. Given this reality, why then the issue of charging a potential fee?

### **5. Unacceptable delays:**

The waiting period for obtaining permissions and subsequent conversion will result in students losing academic years and will amount to a clear violation of their Right to Education.

### **6. Violation of fundamental rights:**

The proposed amendment violates the Constitutional guarantee of equality under Article 14 since it discriminates between those blind persons who know Braille and those print disabled persons who do not. Even otherwise, by failing to institute a meaningful copyright exception that would enable access to many educational materials by the print disabled, the State has failed in its duty to guarantee a meaningful right to life guaranteed under Article 21 of the Constitution of India.

## **Concerns of Rights Holders and a Response:**

The print impaired community in India would undoubtedly welcome an enlightened clause being inserted in the Copyright Act. As a consequence, our society and India as a nation, would, we believe, be able to harness a segment of its human resources which previously had its potential wasted. The publishing community would naturally have apprehensions. These need to be analyzed carefully.

### **1. Risk of Piracy:**

In the current business environment, copyright holders are naturally very concerned about piracy. We do not condone piracy, but feel that removing the licensing provision and having a format-neutral, end user specific ‘fair use clause would not in any significant manner add to the risk environment in which publishers work today. We can substantiate this contention through the following:

- a. Those elements who wish to pirate a book can do so very easily. Advances in technology and ease of software availability, in terms of both supply and cost, have seen the mushrooming of desktop publishing firms (DTP) all over the world servicing the burgeoning publishing/printing needs. At the negative end, this has resulted in its misuse and piracy. This piracy, however, is not a function of the possibility of electronic copies being made available to the print disabled. The trade is carried on regardless of this community's access issues.
- b. Those who seek to misuse work which is protected by copyright would find it very cumbersome and difficult to shelter under the umbrella of them serving the print impaired. Those creating, distributing and selling pirated books would not have any defense given the fact that they would be part of business activity no matter illegal.

Moreover, they would not need to source the e-copy from a genuine party (say an organization) working on accessible content creation. As highlighted in the previous point the mainstream technologies can do the job of pirated copy creation in minutes. Why should such persons / business want to waste their time, money and energy tying up with responsible organizations for which the end beneficiary is the print impaired person?

- c. Even if for a moment we argue that an e-copy is surreptitiously taken away by some unscrupulous elements, it would be of little use to them in that format. They would rather prefer using their own technologies and processes to quickly create and duplicate books which are sold cheaply on the street.
- d. Publishers themselves acknowledge the menace of piracy and that mass reproduction technique with a capacity to almost replicate the original is so prevalent that they do not know what to do. Given this situation, why should some unscrupulous elements need the help from the legitimate accessible copy creators to further swell their bank balance?
- e. In India, it costs far less to photocopy a book from a hard copy than reproduce the same in printed format from an e-Copy e.g. Photocopying a page would cost approximately Re. 0.25 in bulk, while printing a page would cost Re. 1 or more. This is based on the presumption that the individual(s) in question would have regular access to a computer and printer to print/pirate entire books. Once again, this form of print/photocopy violation is carried on and will carry on regardless of electronic access given to the print disabled
- f. Very few sighted persons would prefer to read an e-book on a computer monitor and would definitely opt for the actual book. An e-book would therefore serve as a special format meeting the real needs of print disabled persons.

## **2. Number of copies:**

Hardcopy books are being constantly photocopied and being shared among friends, as also being lent out by libraries where they also get photocopied. Consequently the single book may be read by dozens of persons. Why then the need to stipulate within the licensing provisions, the number of copies and the time period for the validity of the license?

## **3. Loss of Revenue:**

The publishers fear that if not regulated, they could lose valuable revenues once a book is made accessible. This would be on account of the number of print impaired persons using the work. This fear is not well founded, given the fact that although the print impaired persons constitute an important section of the marginalized segment in real terms they would not add substantially to the bottom line of publishing houses as the total number still is too small. The best proof of this lies in the fact that if they actually constituted a significant market segment, publishers being in business would have already started producing accessible copies. They haven't, and this task has fallen on Support groups and Organizations that, as pointed out earlier, depend on donations and grants and are themselves not-for-profit.

## **4. Fear of the loss of copyright:**

Some publishers could apprehend that the creation of an accessible copy may imply the loss of their copyright over the work. This misgiving we believe is ill-founded. The copyright would naturally continue to belong to the original copyright holders mentioned in that work and the accessible copy would not imply any loss of copyright. In fact the open clause as proposed by the National Access Alliance (NAA) (See NAA Proposed Clauses) does speak of reasonable precaution which would include:-

- a. Making sure that the person accessing the copy is print impaired.
- b. A statement could be introduced next to the copyright notice stating that this accessible copy has to be used only by print impaired persons.

## **Concluding Words:**

Just because a book can be wrongly duplicated is no reason for not making it available in an accessible format (as explained earlier, it is very easy to photocopy a book). So also, just because there may be a few potential leakages from such material is no reason to block its availability to those who rightfully deserve it.

Moreover, the Indian situation is unique. We have socio-economic and cultural complexities that need to be borne in mind while legislating. A licensing provision given these intricacies would only serve to exclude rather than to include. A format-neutral, end user focused clause without the additional burdens of licensing is the way forward. Any real infringement needs to be appropriately dealt with. The Copyright Act has the necessary provisions for detecting and proceeding against such infringement. Publishers do have concerns and end users needs. These require to be balanced.

The amendment by the NAA would not subject the publishers to any significant increase in risk while continuing to help the print impaired to fulfill their educational, professional, and general reading needs. The current clauses as proposed by the HRD ministry would continue to harm the interest of the print impaired and would only create a false sense of security for the copyright holders. Given these arguments we strongly advocate the adoption of a clause which is:

- a. Format Neutral
- b. Does not discriminate between disability groups and persons with disabilities with varying skills
- c. Is end user focused and
- d. Does not impose a cumbersome licensing system for fair use making the remedy worse than the disease.

## **Annexure- 1**

### ***The Proposed clause as Tabled in Parliament (April, 2010):***

Section 52 (1) (zb): The adaptation, reproduction, issue of copies or communication to the public of any work in a format, including sign language, specially designed only for the use of persons suffering from a visual, aural or other disability that prevents their enjoyment of such work in their normal format..

Section 31B (1): An organization, registered under section 12A of the income tax act, 1961 and working primarily for the benefit of persons with disability, and recognized under chapter X of the persons with disabilities (equal opportunities, protection of rights and full participation) act, 1995, may apply to the Copyright Board, in such form and manner and accompanied by such fee as may be prescribed, for a compulsory license to publish any work in which copyright subsists for the benefit of such persons, in a case to which clause (zb) of subsection (1) of section 52 does not apply, and the Copyright Board shall dispose of such application as expeditiously as possible and endeavor shall be made to dispose off such application within a period of two months from the date of receipt of the application..

(2) The Copyright Board may, upon receiving an application under subsection (1) inquire, or direct such inquiry as it considers necessary, to establish the credentials of the applicant and satisfy itself that the application has been made in good faith.

(3) If the Copyright Board is satisfied, after giving to the owners of rights in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, that a compulsory license needs to be issued to make the work available to the disabled, it may direct the Registrar of Copyrights to grant to the applicant such a license to publish the work.

(4) Every compulsory license issued under this section shall specify the means and format of publication, the period during which the compulsory license may be exercised and, in the case of issue of copies, the number of copies that may be issued. Provided that where the Board has issued such a compulsory license, it may on further application and after giving reasonable opportunity to the owner of the rights, extend the period of such compulsory license and allow the issue of more copies as it may deem fit.

(5) The Copyright Board may specify the number of copies that may be published without payment of royalty and the fix the rate of royalty for the remaining copies.

## **Annexure-2**

### ***Amendment proposed by the National Access Alliance***

The National Access Alliance proposes the following wording:

Section 52 (1) (zb) (i): The making of an accessible version of a copyrighted work or the doing of any other act including reproducing, adapting and making available the copyrighted work or accessible version thereof, on a not for profit basis, with the primary objective of enabling persons with visual, aural or other disabilities to access copyrighted works as flexibly and comfortably as persons without such disabilities; provided that a person doing any of the acts under this section shall take reasonable measures to ensure that the end beneficiary is a person with a disability.

Section 52 (1) (zb) (ii): For the purpose of Section 52 (1) (zb) (i)"accessible version" means any version or form which gives a disabled person access to the work as flexibly and comfortably as a person without a disability, and shall include, but not be limited to, audio recordings, audiovisual works with audio and or text description, Braille, digital copies compatible with assistive technology or refreshable Braille, large print, with different typefaces and sizes and sign language all being permitted according to need.

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This Document has been created by Xavier's Resource Centre for Visually Challenged (XRCVC), for the National Access Alliance (NAA).

**For Further Details, Please Contact:**

**Dr Sam Taraporevala**

**Director, XRCVC**

**St. Xavier's College,**

**Mumbai**

[sam@xrcvc.org](mailto:sam@xrcvc.org)

+91 22 22623298 (D)

+91 22 22620661-5 (B); extn: 366

+91 22 24112478 (R)

+91 22 24228769 (R)

+91 9967028769 (M)

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