



**STATEMENT OF THE ELECTRONIC FRONTIER FOUNDATION TO 18<sup>th</sup> SESSION OF WIPO  
STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS  
May 25-29, 2009**

Mr. Chair, congratulations on your election.

I speak on behalf of the Electronic Frontier Foundation and its 13,000 members worldwide. We strongly support the Treaty for Exceptions and Limitations for the Visually Impaired proposed by Brazil, Ecuador, and Paraguay as the first part of the work plan on copyright exceptions and limitations discussed at the 16<sup>th</sup> session of this Committee.

As this body recognized in its last session, the reading disabled have special needs, which are in urgent need of assistance. Although we are heartened by the goal of increasing the works accessible to visually impaired users in the Stakeholder Platform discussions, a cross-border licensing regime with trusted intermediaries and a focus on improving technology standards developed by a few experts in a closed session can provide only a partial solution and is no replacement for the norm-setting work of this body to address the pressing needs of the world's 161 million visually impaired persons. While we support the development of interoperable technical standards, a treaty for minimum copyright exceptions and limitations and international agreement on imports and exports of accessible format works is required to empower reading disabled users to obtain access to information in the formats best suited to their particular needs, and for the development of innovative new assistive technologies.

Access regimes based on licensing frequently fail to address market failure in smaller economies, and to date have not enabled the import and export of accessible material. The international copyright regime should remain faithful to the mandate of Article 9 of the United Nations Convention on the Rights of Persons with Disabilities and empower reading disabled users to develop their own presentation formats and assistive technologies that meet their needs, such as in-text searching, as described in Case Study 8 in chapter 4 of document SCCR/15/7.

Mandatory minimum exceptions and limitations are also essential to the future of cross-border and digital education and internationally accessible digital libraries, which are currently constrained by the divergence of exceptions and limitations in different countries and the unclear application of private international law to the Internet. Students and teachers who want to use digital copyrighted information obtained from outside of their country cannot be sure that they can do so legally. Educators, libraries, and other knowledge providers face uncertainty about what information they can digitize, and make available without fear of legal liability. These problems are only likely to become more acute in the future because copyright law is territorial, but the Internet is global and facilitates flows of information services across borders.

While the copyright regime allows countries some flexibility in creating exceptions in national law, it has proven to be insufficient. Providing greater certainty to students, educators, information service providers and technology developers seeking to address educational and development imperatives requires an international treaty for mandatory minimum exceptions for education, libraries and archives, and the reading disabled and for the import and export of accessible format material.

EFF commends WIPO for commissioning studies on exceptions and limitations for educational purposes and the draft questionnaire. However, we are concerned that the framing of several of the questions seems to be based on the premise that copyright owners' rights are paramount and exceptions should be framed as narrowly as possible, rather than seeking information about the rationale for existing exceptions in balancing private and public rights in national laws. We believe the questions should illuminate the impact of current copyright and anti-circumvention laws on educators'

ability to provide quality education to help Member States understand the particular needs of educators and students that are not currently being met. We are also concerned that question 2 perpetuates the confusion that the three-step test, a guide for countries' compliance with the Berne Convention and TRIPs agreement, can serve as a substitute for the implementation of actual exceptions and limitations.

Exceptions and limitations are essential to maintaining the legitimacy of the international copyright regime in the digital age. For this reason, we ask this Committee to begin work on guiding the construction of exceptions and limitations that would revive balance in the international copyright regime and make it more effective for the 21<sup>st</sup> century.

Thank you for your consideration.

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