



**STATEMENT OF THE ELECTRONIC FRONTIER FOUNDATION TO 19<sup>th</sup> SESSION OF WIPO  
STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS  
December 14-18, 2009**

Mr. Chair, thank you for the opportunity to share the views of the Electronic Frontier Foundation and our 13000 members. We support negotiations on the proposed Treaty for Exceptions for the Visually Impaired as the first part of the work plan on copyright exceptions and limitations discussed at the 16<sup>th</sup> session of this Committee.

There is a chronic lack of material in formats accessible to the world's visually impaired and print disabled citizens. In the U.S. only 5% of published works are available in accessible formats. In India, it is estimated to be only 0.5%. A multilateral treaty is required to address the international policy and market failures that have led to this situation. Experts agree that national exceptions can be framed to comply with the Three Step Test. WIPO's model copyright law has included provisions for the blind since 1983. Despite that, only 57 of WIPO's 184 member states have created national exceptions for the visually impaired. And as the Sullivan report documents, there is considerable uncertainty about the legality of importing and exporting accessible material across borders, restricting access to knowledge and requiring unnecessary duplication. A treaty with mandatory minimum exceptions and international agreement on the cross-border transfer of accessible works is needed to provide guidance to member states and change the status quo. National exceptions alone cannot do so.

We support all efforts to increase the quantity of accessible material for the visually impaired. However, voluntary licensing agreements and improvements in technology standards can provide at best a partial solution. It is no replacement for binding norm-setting by WIPO. Publishers can, but frequently have not, made available accessible copies of works because they do not perceive the visually impaired to be an economically viable market. These are global problems requiring an international solution. As the 1985 Joint report of the Berne Union and the Universal Copyright Convention IGC recommended, a new international instrument is needed to address the obstacles to the production and dissemination of accessible material and ensure that the scarce resources of the global visually impaired community are used most efficiently.

Finally, we commend WIPO for commissioning studies on national exceptions and limitations for educational purposes. We believe an empirical survey of educators should also be undertaken to gather data on the impact of copyright laws on their ability to provide digital and cross-border education. Mandatory minimum exceptions and limitations are essential to the future of cross-border education and internationally accessible digital libraries, which are currently constrained by divergent national laws. Students and educators cannot be sure they can legally use copyrighted information from outside of their country. Libraries and knowledge providers face uncertainty about what information they can digitize and make available online without legal liability. Permitting minimum standards of educational activities in national laws would provide much-needed legal certainty.

These are real humanitarian problems that must be addressed to ensure the ongoing legitimacy of the international copyright regime. We urge this Committee to work together and take the opportunity before it to address the pressing needs of the world's 314 million visually impaired citizens.

Thank you for your consideration.

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