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May 31, 2013

Dear Ms Rowe and Mr. Filipovich;

Re: Diplomatic Conference to conclude a Treaty to facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities, June 17 to 28, 2013, Marrakesh, Morocco.

The Canadian Urban Library Council/Conseil des Bibliothèques Urbaines du Canada (CULC/CBUC) is writing in response to your call for reactions to the draft WIPO treaty for the print disabled to be considered at the June 2013 diplomatic conference in Morocco.

CULC/CBUC strives to strengthen our vibrant urban communities through building the capacity of Canada's urban libraries. Our 42 member public libraries (<http://www.culc.ca/about/librarymembers/>) collectively provide public library service to more than 55% of Canada's population from 522 physical locations and extensive websites. In 2012, member libraries were used by Canadians more than 325,000,000 times. Our members employ over 12,000 Canadians.

Our member libraries have served print disabled Canadians for decades by making alternate format materials available and, in some instances, creating or commissioning the creation of alternate formats.

For the past year, CULC/CBUC has been working with the CNIB to envision a new national organization, removed from CNIB, whose focus is the creation, collection, distribution, and preservation of alternative format works for Canadians living with print disabilities. The collections and services of the new organization will be available to Canadians through their local public libraries. This service vision builds on the extensive publicly supported infrastructure created by the CNIB and the service expertise and community strength of local public libraries. This service will ensure that all Canadians living with print disabilities have access to alternative format works more effectively and efficiently than has been the case in the past.

CULC/CBUC believes that it is crucial that a WIPO treaty for the print disabled enable – not impede – the flow of alternate format content to Canadians and allow authorized Canadian agencies to play a role in addressing the dire shortage of alternate format content in many parts of the world.

We are aware of the concerns which are being widely voiced over the latest iteration of the draft treaty text following the April WIPO meeting and the increasing lobbying from corporate trade associations not involved in book publishing concerned about potential future treaty implications in other arenas unrelated to print disabled issues. It is a sad comment that the World Blind Union is now characterizing the emerging text as a treaty to protect rights holders from the blind rather than a meaningful attempt to deliver a treaty which will guide the development of national legislation to get alternate formats into the hands of the print disabled worldwide.

CULC/CBUC understands that many (although unfortunately not all) aspects of Canadian copyright law set a laudable example for other countries. Of particular note are the rights accorded institutions and individuals to make an alternate format for print disabled persons in the absence of a commercially available copy and the right to bypass a technological protection measure to do so. More problematic, especially so in the context of an international treaty, are the requirements set out in the Copyright Act limiting what titles can be supplied across borders based on the author's citizenship and commercial availability in the country to which the alternate format is being sent.

CULC/CBUC urges that Canadian representatives involved in the concluding stages of the WIPO negotiations argue for the following positions in treaty for the print disabled:

- That authorized agencies have the right to bypass a technological protection measure to make alternate format available to another authorized agency or qualified individual worldwide.
- That the treaty not include a “commercially available” restriction on the cross border supply of alternate formats. This would have the effect of placing cumbersome, if not unworkable, requirements authorized entities and severely impede the availability of content to all, especially in underdeveloped and developing countries. For example, the success of the proposed public library/CNIB entity is in dependent in part on easy access to foreign alternate collections, such as Bookshare, and a “commercially available” requirement in a treaty would be a barrier. In this context, it should also be noted in the words of influential publishing consultant Brian O’Leary that “publishers have walked away from an opportunity to serve blind populations”¹ and the commercial availability of alternate formats largely does not exist.
- That cumbersome and unnecessary treaty language referencing other legislative (US fair use) or treaty (Berne’s 3 step test) regimes is unnecessary.

CULC/CBUC and its member public libraries is committed to enhancing access to alternate formats for Canadians with print disabilities, and an enabling WIPO treaty for the print disabled will support this goal. It is understood that the Canadian Government made a first step in acknowledging the need for cross border movement of alternate formats in last year’s changes to the Copyright Act. CULC/CBUC

¹ O’Leary, Brian. Slippery Slopes: Serving Blind people Does Not Threaten Business Models. Magellan Media Consulting Partners. http://www.magellanmediapartners.com/index.php/mmcp/article/slippy_slopes/ (Retrieved May 27, 2013)

trusts that if and when a WIPO treaty is approved, that it will be ratified by Canada and that Canada's legislation will be amended to conform to treaty requirements where they are less restrictive than current Canadian law relating to cross border supply.

It is an issue of human rights, as well as reasonable international copyright regime, that people living with print disabilities are provided reasonable access to the world's written culture. CULC/CBUC urges Canadian Government representatives to work vigorously to ensure that a meaningful treaty for the print disabled results from the June 2013 diplomatic conference.

Yours sincerely,



Catherine Biss
Chair CULC/CBUC
CEO, Markham Public Library



Sandra Singh
Chair, Alternative Formats Working Group, CULC/CBUC
Chief Librarian, Vancouver Public Library

cc: The Honourable Christian Paradis, Minister of Industry and Minister of State (Agriculture)
The Honourable James Moore, Minister of Canadian Heritage and Official Languages
Pilar Martinez, President, Canadian Library Association
CEOs/Chief Librarians, CULC/CBUC Member Libraries