



World Blind Union
Union Mondiale Des Aveugles
Unión Mundial de Ciegos

Dear Ambassador before the EU:

I am writing to you on behalf of the World Blind Union to ask for your support for effective EU legislative procedures working towards covering the needs of every blind and partially sighted person within the EU and around the world.

In this regard, we have been told by our colleagues from the European Blind Union (EBU) that next Wednesday the 22nd of March, the COREPER is considering a regulatory issue that would be a step of utmost importance for increasing access to culture and education, as well as helping social integration of every person with visual disabilities in Europe: the Directive and Regulation for the implementation of the Marrakesh Treaty (Com(2016) 596).

Unfortunately, the latest draft proposal of the Presidency of the Council introduces important changes in the original proposal of the European Commission, primarily weakening and changing "recital 11". Essentially, the presidency proposes to permit an economic compensation for every book made accessible for blind or partially sighted people, as well as allowing commercial availability clauses. These modifications proposed by the Council, if passed, would seriously weaken, if not override the main accessibility objectives of the Treaty; to end the "book famine" that deprives blind and partially sighted people of the vast majority of published works. **The Council's proposed draft would create legal uncertainty for cross-border exchange, greater administrative burdens, greater costs and a chaotic regulatory situation between different EU country legislations concerning the access to culture and education by blind and other print-disabled persons.**

We are happy to see that the European Parliament has generally supported the European Commission's original proposal, aiming at an effective and harmonized implementation of the Marrakesh Treaty which does not allow added barriers to access. Therefore, we trust the Council and every Member State within it will eventually approach this advanced position and work towards the needs of blind and partially sighted people. **In this regard, we strongly ask you to withdraw the draft proposal and accept the**

original European Commission text as it stands. Our main concern is that the Marrakesh Treaty works in a proper manner, facilitating access not only to culture but to education and employment in favour of the full integration of its beneficiaries.

We certainly do appreciate your commitment to more than 30 million blind and partially sighted citizens in Europe and over 285 million people around the world and we thank you in advance for reconsidering the Council's position.

With warm regards,



Dr. Fredric K. Schroeder
President
World Blind Union
president@wbu.ngo

Dear Ambassador before the European Union:

We are writing to express our great concern and dismay over the Presidency compromise proposals to Com(2016) 596¹ that will be considered next week in the COREPER. If these proposals prospered, especially with regards to the proposed changes to “Recital 11” of the Directive as tabled by the European Commission, the human rights objectives of the Marrakesh Treaty would be severely jeopardized. Representatives of millions of visually-impaired persons in Europe and around the world are requesting that you withdraw these proposals that could have fatal consequences on ending the “book famine” and the cross-border sharing of texts in accessible formats which are the motivations behind the Marrakesh Treaty and the UN Convention on the Rights of Persons with Disabilities (Article 21).

The introduction by EU Member States of rightsholders compensation laws and/or commercial availability as proposed by the abovementioned Council compromise proposals would create legal uncertainty for cross-border exchange, greater administrative burdens, greater costs and a chaotic regulatory situation between EU country legislations concerning the access to culture and education by blind and other print-disabled persons. On the contrary, successful implementation of the Marrakesh Treaty needs simple and user-friendly EU harmonization of the application of this exception to copyright.

In contrast, we would like to express our total support for the proposal of the European Commission (Recital 11) that is also supported by the majority of the European Parliament **“that Member States should not be allowed to impose additional requirements for the application of the exception such as compensation schemes or the prior verification of commercial availability of accessible format copies.”**

We consider this a “make or break” issue to achieve positive EU legislation for visually-impaired persons.

The Marrakesh Treaty will only be successful in ending the “book famine” of the visually impaired persons if it is implemented in the EU without additional barriers or burdens. We are confident that you understand the objectives of the Treaty and will act accordingly to make this EU legislation simple, efficient and fair.

We are at your disposal to meet in Brussels or in national capitals to discuss these issues at the earliest possible date.

Thank you very much,

1. “DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on certain permitted uses of works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society.”

Breve fra European Blind Union og World Blind Union vedr. forslag til DIREKTIV om ophavsret og beslægtede rettigheder til gavn for blinde og svagsynede

Dear Representatives responsible for social protection and disability issues:

On behalf of the European Blind Union and the World Blind Union we are writing you to ask for your positive support on EU legislation for millions citizens blind and partially sighted persons in the EU and around the world. Next Wednesday the 22nd of March the COREPER will consider an issue that is of great importance to insure wide access to culture and education as well as helping social integration of persons with visual disabilities in Europe: **the Directive and Regulation for the implementation of the Marrakesh Treaty**. Unfortunately, **the latest draft proposal of the Council proposes important changes in the European Commission proposal (primarily weaken and change recital 11) that could have a devastating dimpact on the access objectives of the Treaty which aims at ending the “book famine” that deprives blind and partially sighted persons of the vast majority of published works.** The European Parliament has generally supported the European Commission proposal that aims at an effective and harmonized implementation of the Marrakesh Treaty.

We have attached the letter we have sent to all EU member state permanent representations. We hope you can take measures to assure your country expresses a positive position on this issue at next Wednesday’s meeting.

Thank you very much,

Barbara Martín, European Blind Union

David Hammerstein, World Blind Union

Dear Honourable Torben Hoffeld and Hjørdis Dalsgaard:

We are addressing the Danish Government with regards to the Danish position in the present trialogue discussions concerning *EU legislation for the implementation of the Marrakesh Treaty, concretely [the Regulation on cross-border exchange of accessible format copies](#), and [Directive on permitted uses of work for visually impaired people](#).*

There seems to be a misunderstanding in the interpretation made by the Danish representatives. While we note that Denmark does not have 'commercial availability' clauses in their law copyright laws, we are quite surprised that Denmark wants this possibility to be enshrined in EU legislation in contrast with the opinion of the European Commission and the European Parliament. We would like to point out that the agreements in place in Denmark between publishers and visually-impaired persons organizations are voluntary, contractual arrangements that would not be affected by the proposed EU legislation. Moreover, legal "commercial availability" restrictions would be

fundamentally inconsistent with the objectives of ensuring that visually-impaired persons have an equal opportunity to enjoy published works on the same terms as sighted persons. It would be clearly discriminatory because a sighted person can get a book out from a public library without any restriction. As well, the total lack of clarity about what constitutes “commercial availability” (formats, affordability, place available, national or international...?) would create substantial legal uncertainty for authorized entities that would deter them from the effective exercise of their human rights under the Treaty and under international human rights law.

Even more important to keep in mind is that this Directive is much more about human rights than about copyright. Hence, the issue of rightholders' compensation in general should not and cannot be resolved in the context of the Marrakesh Directive. In this regard we would like to quote a book that has just been published by top academic international copyright and human rights experts **Laurence Helfer, Molly Land, Ruth Okediji and Jerome Reichman** under the title **“The World Blind Union Guide to the Marrakesh Treaty”**, Oxford University Press, 2017. p. 50:

“A widely adopted remuneration requirement would impede the creation and exchange of accessible format works in at least two aspects. First, it would introduce unnecessary complexity that could deter beneficiaries and authorized entities from exercising their rights under the Marrakesh Treaty. Second, remuneration creates a financial burden that may make works effectively unavailable for many print-disabled individuals.

“A broad remuneration requirement also creates a risk of discrimination between print-disabled and non-print-disabled individuals. The exercise of rights under national exceptions and limitations to copyright is not typically conditioned on the payment of compensation, and if required, remuneration generally applies only to specific and narrow statutory licenses. imposing remuneration for the exercise of Marrakesh Treaty rights would therefore place a burden on print-disabled individuals that does not generally apply to non-print disabled individuals. This would not only be inconsistent with the Marrakesh Treaty objectives, but could also conflict with a state’s obligation to avoid discrimination on the basis of disability as mandated by the Convention on the Rights of Persons with Disabilities and other international human rights treaties”.

For these reasons we ask that Denmark does not support the remuneration right nor commercial availability in the ongoing “Trialogue” discussions between the Council, the European Parliament and the Commission.

We would very much like to read your written response to clarify the Danish position. Previous communication has not had any response from you.

Thank you very much for your interest,

David Hammerstein, World Blind Union and European Blind Union