

I would like to bring to your attention certain ground realities about the status of access to knowledge and cultural materials in accessible formats for persons with disabilities in India and other developing countries. I trust that this will put you in a better position to appreciate why there is such a dire need for a globally binding instrument governing copyright exceptions for the disabled.

I shall outline the situation in India with respect to

1. Disabled population,
2. Availability of accessible material - technological and economic considerations
3. Legal position with regard to creating and circulating accessible content,
4. Education and library services,
5. Organisations undertaking conversion,
6. Circulation and appropriate safeguards

Disabled population

The number of people living below the poverty line in India is estimated to be approximately 37.2 per cent according to national figures and 41.6 per cent if one were to apply World Bank's broad method of calculating poverty, based on an international poverty line of \$1.25 of purchasing power per day. This could translate to around 300-500 million or about one third of the world's total. The WBU estimates that 87 per cent of the world's disabled live in developing countries. While we have no accurate national statistics on the total number of disabled persons, we believe that there are anywhere between 70 to 100 million persons with physical, sensory and cognitive impairments who cannot access printed materials and a majority of them are below the poverty line.

Availability of accessible material

The publishing industry estimates that approximately 100,000 books are published in India annually. Out of these, barely 600-800 i.e., a mere 0.5 per cent are available to 70 million people of different linguistic and cultural backgrounds. Publishers do not make books commercially available in accessible formats, and any accessible versions of books of foreign authors which may be available in the market, are far beyond the economic means of any average Indian, let alone an Indian with a disability. Though education is high on the national priority, creating accessible study materials for the print challenged is still a task which is on the plate of not for profit disability organisations and is not supported by the government in any manner.

The unavailability of accessible material is also compounded by technological challenges – both in terms of technology penetration as well as availability of affordable assistive technologies like screen readers. Though Internet penetration has been growing rapidly in India, reaching 71 million (around 6 per cent) in 2009, (according to an IMRB and Internet and Mobile Association of India survey), the number of users who possess an Internet connection remains strikingly low at about 14.6 million. Also, the Internet penetration is very low compared to EU countries, USA, China and Japan. (China has over 360 million Internet users followed by US at 227 million and Japan at 95 million). Thus, the vast majority of Indians do not have regular access to the Internet, and even if they do have access, further progress is impeded by the lack of affordable accessible software. Indian organisations have to cater to a huge variety of linguistic, economic and geographical groups and have to necessarily produce books in formats which suit the needs of all these groups. India has 18 official languages and many more regional variants. Hence, for any technology to reach the masses, it has to be available in many different languages. This is especially true of rural India, where out of the estimated 368 million literate people only 63 million are conversant with English. We do not have text to speech software for all languages- these are still being developed along with an Indian screen reader. Commercial English language screen readers like JAWS are not affordable for the vast majority of Indians. Thus, our energy is being deployed in various activities from developing basic technological infrastructure which is still not in place to trying to bridge the gap between required and available software, pushing conversion activities to the back burner. This is likely to be the situation in other developing countries as well, whose governments are trying to meet basic human needs and infrastructure for the entire population, which tend to take priority over the conversion of material to accessible formats for the disabled sub-section of the population.

Legal hurdles to creating and circulating accessible content - The struggle for Copyright Reform

The Indian Copyright Act, 1957 until now did not contain any provision for the disabled. In India, due to the lack of legal permission, disabled persons cannot convert materials for their own use and disability organisations undertaking conversion activities have to obtain permission from the right holders for each and every book which they want to convert. Consequently, we have been unable to borrow from international library resources like Bookshare, which has 60,000 titles. Bookshare in India offers us only 9000 books, most of which are out of copyright or have been permitted by Indian authors. Hence, we spend a lot of time and scarce resources on duplicating efforts undertaken in other countries.

Civil society organisations have been lobbying for years to get a new fair dealing provision in the Copyright Act for the benefit of persons with print disabilities. Consequently, in its proposed amendments to the Act, the Government of India, in April 2010, introduced a provision for the benefit of persons with disabilities. Unfortunately, this well meaning intention of the Government has not reflected quite so desirably in the provision, since it introduces some complicated and problematic procedure relating to licensing, specialised formats and imposes conditions on the kinds of organisations which can undertake conversion activities. This Bill has been presented in the Parliament and the disability sector is actively campaigning against this amendment, meeting political parties and the media for support and getting ready to make a deposition in the parliament. However, until such time that a decision is made on this front, disabled persons will continue to be estranged from access to knowledge and content. In fact, if the Indian copyright amendment is passed in its present form, the lot of disabled people will worsen, rather than improve, as additional effort will need to be spent on licensing and obtaining permissions, driving the current conversion rate of 0.5 per cent even lower. Many developing countries like Nepal, Bangladesh and Bhutan do not have copyright exceptions and are likely to be facing similar issues as India.

Education and Library Services

Another major issue is the lack of social and educational infrastructure. The Government does not provide any social security. Mainstream schools still often refuse admission to disabled children just because they don't have the resources to teach them. Parents are often at a loss to understand how to make their children study and become self-supporting. Even if a print disabled child successfully completes schooling, there are further difficulties in higher education. Most of the energy of a student is spent in trying to get volunteers to read out reference books for them on an audio tape, because these are not readily available. The library infrastructure is very poor, with few if any books in accessible formats and hence, there is no support from that quarter either. The unavailability of accessible books is a problem not only for students, but continues to impede the progress of disabled people throughout their lives, as they cannot access books that will help them keep up to date with their knowledge or learn new things to help them professionally. Reading as a leisure activity is not even on the radar at this stage!

The situation is even more serious in the case of rural areas, which lag behind urban areas in all aspects – technical, social and educational infrastructure.

Organisations undertaking conversion

In India, providing accessible materials to the print impaired is currently the province of non profit organisations. There is no government support and the organisations have very limited financial, infrastructural and human resources to carry out this work. The cost of converting a 200 page English book into a DAISY book with human audio and BRF file is about 340 Euros. Since this is a huge amount for

Indian organisations, they are only able to convert a limited number of books. They try to raise funding externally for their activities and rely on CSR initiatives of corporates and volunteers to carry out their services. They do not have any bandwidth to chase copyright owners individually for permissions to create accessible materials. Some organisations like the Daisy Forum of India are approaching publishers for permissions and signing contracts with them, but the list of books needed is endless and they are unable to devote a separate team for this job. In addition, since copyright law doesn't allow conversion, any formal infrastructure and effort gets hampered. People fear sharing the collection they already have and thus every small organisation ends up re-creating material that others have already converted.

Again, as these organisations are typically understaffed, most of the recording, scanning, etc. run on volunteer energy and they are able to convert only the bare minimum of study materials such as school textbooks for children. There are hardly any books for general reading or leisure. E-books are created based on demand and it could take several months to a year for a person to get an accessible copy of a book as the demand is so great that organisations are unable to cope with it. This is the case not just in developing countries, but in developed countries as well. The impact on education is that print impaired children often lose out on academic years waiting for their books to come. Consequently, disabled students opt not to pursue higher education, as books are not available for example, the University of Delhi reserves 1500 seats for disabled persons but the total number of disabled applicants was only 260 in 2008 and 350 in 2009!

Circulation of accessible copies - Safeguards

The main fear around creating accessible copies of books is the misuse of accessible copies by non-disabled persons. However, organisations in India do take care to ensure that accessible versions only go to disabled persons. At the moment, accessible versions are mostly only used by the blind. Books are converted in non profit organisations and given only to their members, who are persons with disabilities and have to this end, submitted a proof of disability with the organisation. These organisations may charge a nominal library membership fee or recover the cost of the CD on which the book is conveyed which is around Rs 15 or 0.25 Euros (25 euro cents).

Conclusion

At present, persons with disabilities are unable to participate as creative and productive members of society and are excluded from important activities of life such as education and employment. In the few cases where they are employed, the average income of a person with disability in India would not exceed 35-60 Euros per month. Hence, they are hardly in any position to meet their basic requirements, let alone buying accessible books at the market rate in other countries.

The situation is the same in developing countries around the world, whether it be Asia, Africa or the Middle East, although the degree of severity may vary. At least in India the struggle for securing a copyright amendment which is conducive to the needs of persons with disabilities is well underway, but in many countries it is still at a very nascent stage and it might be years before disability organisations and disabled persons can persuade their governments that the right to read is as basic a right as any other and to attract some attention to it.

By creating an enabling international legal framework for cross border sharing of accessible works, Developing countries like India will be able to leverage already existing resources and concentrate their efforts on creating new and indigenous content, which will be beneficial to print impaired persons around the world. Developed countries would also greatly benefit since they would not only get access to literature from developing countries but will also be able to provide their expatriates in developing countries with content. For example, Europeans living in India would have access to resources in their homeland.

Additionally, cross border sharing of huge resources of accessible books would increase education and employment uniformly around the world. If developing countries are able to provide education to all, as is contemplated by the millennium development goals, they will have more skilled manpower and consequently become more self sufficient. Hence, the dependence upon foreign aid from developed countries would also gradually reduce.

A Treaty as is currently being proposed at the WIPO will oblige countries to give operational effect to the provisions under the UNCPRD, the UN Declaration of Human Rights and other policies and directives such as the EU Digital Copyright Directive. Fundamental rights such as the right to read cannot be the subject matter of contractual arrangements - they are guaranteed by the state. Hence, putting forward an argument that organisations can enter into licenses with publishers if required, would be akin to saying that one should enter into contracts separately if one wants to avail of one's right to life. Such a proposition is quite absurd and unacceptable. Licenses and contractual arrangements are certainly useful and desirable, but only when they seek to create a right over and above what is guaranteed by law. Print disabled persons have for many years now been victims of copyright legislations and been starved of knowledge. While organisations supporting their cause are persistent in seeking reform, any progress which they are making is very slow and painful and often only a piecemeal solution is achieved, as illustrated by the case of India. In the face of this, the only solution which could conclusively settle the problems of the print disabled community would be a binding international instrument which would serve as a reference point and an imperative for countries to act within a definite time frame and in a manner which is consistent with international best practices for enabling the right to read for persons with print disabilities. Enough time and effort has been spent in trying to reason with governments around the world and it is for nations to realise, as in the case of the

UNCRPD, that this problem will only be seriously looked at and addressed if they are bound by an international norm.

The time has come to have a Treaty for the Blind, Visually Impaired and other reading disabled and to help create a truly inclusive and just world for persons with disabilities.