

# RIGHT TO READ: TIME TO RECOGNIZE RIGHTS OF PRINT DISABLED UNDER INDIAN COPYRIGHT LAW

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## ABSTRACT

The Copyright (Amendment) Bill 2010, approved by the Union Cabinet on December 24, 2009, and introduced in the Rajya Sabha on April 19, 2010 is still pending. The Bill, among other major changes, seeks to promote greater access to knowledge and information to the physically challenged. Individuals with physical or perceptual disability are capable of perceiving or understanding works in certain accessible formats only. However, the present Indian copyright regime does not allow reproduction or communication of copyrighted works in accessible formats for access by the print disabled as the same has not been given legal recognition under the fair use doctrine. As a result, these individuals are denied their basic right of access to information. Also, the present adverse situation is coupled with not only inadequate Government participation but also reluctance of the publishers and proprietors in producing works in specialized or accessible formats, primarily owing to rampant cyber copyright piracy. This article aims to discuss the proposed changes introduced by the said Amendment Bill in the light of the endeavour made by the international community in striking a balance between proprietary interests as against public interest. The article also throws some light on certain technological aids for the benefit of the print disabled and the need for the Indian Government to put to work, both legal and technical tools for ameliorating the lamentable condition of the print disabled.

## I. INTRODUCTION

*The copyright bargain: A balance between protection for the artist and rights for the consumer.*

*Robin D. Gross<sup>1</sup>*

An efficient and well-balanced system for protection of copyright and related rights is necessary for preservation of national culture and identity.<sup>2</sup>

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1 Robin D. Gross is founder and Executive Director of IP Justice, an international civil liberties organization that promotes balanced intellectual property rights and protects freedom of expression. In May 2006 UN Secretary General appointed Ms. Gross as a Member of the Advisory Group to the United Nations Internet Governance Forum (IGF). See <http://ipjustice.org/wp/about/people/robin-d-gross/>.

2 See WIPO National Seminar on Copyright, Related Rights, and Collective Management, WIPO/CR/KRT/05/1, Khartoum, Feb 28 to Mar 2, 2005.

However, in India, the present copyright regime does not seem to possess the delicate balance between proprietary interest and public interest. It is found to tilt a little towards proprietary interest thus leaving the aspect of social interest neglected and sometimes abandoned.<sup>3</sup> One such unattended issue concerning right to access copyrighted works by the specially abled individuals, is the main focus of this paper. Although the Copyright Amendment Bill, still pending before the Parliament, has incorporated certain changes to allow greater access to knowledge by the physically challenged, the overall response to this issue from the government agency has been too little too late, so far.

Physical disability or functional disability is a state or condition, where the capacity to exercise all faculties of the human body is compromised or taken away on account of dysfunctional or absent body part. A print disability is a learning disability, a visual impairment or a physical disability due to which individuals with such disability cannot access print in the standard way.<sup>4</sup> These individuals may either be visually challenged making them unable to read print, or be unable to physically hold and read a book due to some functional incapacity of body parts. Thus, while a work is perceived by either visual or auditory (or both) senses, the print disabled find themselves at an absolute disadvantage with protected works perceivable only through print format. The only accessible format for them are works expressed either in the Braille language/code or such works which can be received by auditory sense by way of listening to recorded or unrecorded sound through digital talking books, screen readers, audio books, etc. Thus, it is only through reproduction of a literary or dramatic work into any accessible format that the print disabled can access such work.<sup>5</sup> Such reproduction without authorization from the right holder is not allowed as per the provisions of the Copyright Act of 1957 and the present, the Indian copyright regime lacks any special provision allowing people with print disability to access copyrighted works in suitable formats and the current Bill is our attempt towards guaranteeing this right.

It remains to be seen in light of the current Bill whether the changes that are proposed to be made to guarantee the 'Right to Read' to the lesser privileged sections of our population are adequate or not. This paper shall examine this controversial issue through an analysis of the provisions of the Copyright

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3 AKHIL PRASAD & ADITI AGARWALA, *COPYRIGHT LAW DESK BOOK* 220 (2d ed. 2009).

4 What is Print Disability, <http://www.learningthroughlistening.org/About-RFB-D/Understanding-RFB-D/The-Population-RFB-D-Serves/What-is-a-Print-Disability/63/> (last visited Feb. 10, 2012).

5 Helen Dakin & Shehana Wijesena, *Access to Copyright Material by People with a Print Disability*, 22 *COPYRIGHT REPORTER* 104, 104-135 (2005).

Amendment Bill and evaluating the same taking reference from other copyright legislations which already contain specific provisions for the print disabled. The main purpose of this paper is to understand the rights and needs of the print disabled and document the existing copyright law of the country with a comparative.

## **II. RECOGNITION OF RIGHTS OF THE PRINT DISABLED: INTERNATIONAL CONSENSUS AND COPYRIGHT LEGISLATIONS**

National legislation needs to take a cue from international consensus as often domestic legislations have their roots entrenched in international regime. In fact it is the international platform which has provided efficient tools for discussion and deliberation of many significant issues, starting from basic human rights and world peace to anything which is significant in any activity related to mankind. The right to access of information by the print disabled too has come to be recognized in most of the countries through development and recognition of such right in several international conventions and agreements.

### **Berne Convention**

The 1967 Stockholm Conference was first to resolve the issue pertaining to reproduction of copyrighted works, which had earlier not been dealt with or even mentioned in the Berne Convention of 1886. Article 9(2) was incorporated which brought about the scope for providing exceptions or the limitations to the exclusive right of reproduction in the domestic copyright legislations.<sup>6</sup> Although the said exception was not put forward in a manner specifically mentioning the aspect of the print disabled, it was understood that the interests of the visually impaired was given due importance during the building blocks of the Convention. Upon its revision in the year 1967, a specific provision on the blind appeared in the preparatory draft of the Convention.

### **Efforts of WIPO**

The World Intellectual Property Organization (WIPO) has further acted towards the balancing of interests of the right holders and social interest. WIPO advocates that when a high level of protection is proposed, there is sufficient reason to balance such protection against other important values in society such as education, scientific research, the need of the general public for information to be available in the libraries and the interests of persons with a handicap that prevents them from using the ordinary sources of information.<sup>7</sup>

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6 See Berne Convention for the Protection of Literary and Artistic Works, Art. 9(2), July 24, 1971.

7 See Draft WIPO Treaty on Exceptions and Limitations for the Disabled, Educational and Research Institutions, Libraries and Archive Centers, SCCR/20/11 of June 15, 2010.

The WIPO has placed the right of access to knowledge of the print disabled on the same platform with that of the general populace to access knowledge.

One of the ways WIPO has ensured international cooperation in the field of protection and promotion of intellectual property rights is through effective enforcement of international treaties and agreements.<sup>8</sup> The WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), together called the WIPO Internet Treaties,<sup>9</sup> recognize the need to maintain a balance between the rights of authors and larger public interest, particularly pertaining to education, research and access to information.<sup>10</sup> Article 10 of the WCT and Article 16 of the WPPT contain similar provisions with respect to reasonable limitations and exceptions. These provisions permit the state parties to provide for limitations or exceptions to the rights granted to authors of literary and artistic works, in their domestic legislations, in certain special cases that do not conflict with normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.

### **TRIPs Agreement**

The TRIPs agreement incorporates the principle provisions of the Berne Convention by express reference and incorporates the limitations on the right of copyright holder, under Article 13 which is not only limited to the right of reproduction but any or all of the exclusive rights.<sup>11</sup>

This implies that the countries have been given complete liberty to include any sort of exception to copyright, which is intended in public interest, is just, fair, reasonable and not essentially prejudicial to the enjoyment of the exclusive rights of the right holders.

### **Universal Copyright Convention**

This particular Convention does not exactly provide for any limitation or exception with regard to copyright in the interest of the print disabled, directly or indirectly. However, the meaning or definition of the term, 'publication' given

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8 Twenty four treaties are administered by WIPO including the WIPO Convention *See* <http://www.wipo.int/treaties/en/>.

9 These Treaties ought to be considered as updates and supplements of the protection granted by the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention). *See* [http://www.wipo.int/copyright/en/activities/wct\\_wppt/wct\\_wppt.html](http://www.wipo.int/copyright/en/activities/wct_wppt/wct_wppt.html).

10 *See* Preamble, WIPO Copyright Treaty and WIPO Performance and Phonograms Treaty.

11 *See* Trade Related Aspects of Intellectual Property Rights, Article 13 (Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder).

in Article VI of the Convention<sup>12</sup> may be considered as relevant to our context. According to the definition, ‘publication’ means the reproduction in tangible form and the general distribution to the public of copies of a work from which it can be read or otherwise visually perceived. Strictly speaking, this Convention does not contribute materially for the benefit of the people with print disability.

### **In the Pipeline**

The WIPO Treaty for Improved Access for Blind, Visually Impaired and other Reading Disabled Persons is proposed by the World Blind Union (WBU),<sup>13</sup> which presents possible ways and means of facilitating and enhancing access to protected works for the blind, visually impaired, and other reading disabled persons. The contents of the Treaty have been discussed in Document by the Standing Committee on Copyright and Related Rights (SCCR) dated May 25, 2009.<sup>14</sup>

Through this proposed initiative, the World Intellectual Property Organization (WIPO) endeavours to act in accordance with the efforts undertaken by the United Nations to address the need for enhancing access to knowledge for one of the most vulnerable sections of the population. The purpose of this treaty is to provide the necessary minimum flexibilities in copyright laws that are needed to ensure full and equal access to information and communication for persons who are visually impaired or otherwise disabled in terms of reading copyrighted works. The proposal primarily focuses in particular on measures that are needed to publish and distribute works in formats that are accessible for persons who are blind, or have low vision, or have other disabilities in reading text. This has been proposed in order to support their full and effective participation in society on an equal basis with others. This treaty is still in the stage of a draft proposal, and is yet to be adopted and administered by the WIPO.<sup>15</sup>

Further, a ‘Draft Joint Recommendation’ concerning improved access to works protected by copyright for persons with a print disability has recently been proposed by the European Union.<sup>16</sup> It is aimed at addressing the issue of

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<sup>12</sup> See Universal Copyright Convention, Art. VI, Sept. 6, 1952.

<sup>13</sup> The World Blind Union (WBU) is a non-political, non-religious, non-governmental and non-profit-making organisation, representing over 160 million blind and partially sighted persons in 177 member countries. It is the internationally recognized organisation speaking on behalf of blind and partially sighted persons at the international level.

<sup>14</sup> See WIPO Document SCCR/18/5 Standing Committee on Copyright and Related Rights, Eighteenth Session, Geneva, May 25 to 29, 2009.

<sup>15</sup> *Id.*

<sup>16</sup> See Draft Joint Recommendation Concerning the Improved Access to Works Protected by Copyright for Persons with a Print Disability, SCCR/20/12 of June 17, 2010.

right to access to information for people with reading disability. The recommendation is to be accepted by the International Union for the Protection of Literary and Artistic Works (Berne Union) Assembly, the WIPO Copyright Treaty (WCT) Assembly, and the General Assembly of WIPO.

The aim of the Joint Recommendation is to increase the number and range of accessible formats available to the print disabled. The provisions are framed on the basis that every Member State introduces in their national copyright law, an exception under to the right of reproduction, the right of distribution and the right of making the work available to the public. The exception is intended to cover uses that are directly related to those by the print disabled.<sup>17</sup>

### **Special Provisions for the Print Disabled: Copyright Legislations in Australia, U.K., U.S.A and Canada**

The Commonwealth Copyright Act of 1968<sup>18</sup> deals with the copyright law in Australia. The Act contains specific provisions dealing with the definition and the rights and limitations with regard to reproduction of copyrighted works in accessible formats of the ‘print disabled’.<sup>19</sup> Under this Act, individuals and institutions, including educational institutions, are allowed to assist people with print disability by providing material in accessible formats under a statutory licence. However, there are certain limitations as to what may be copied or communicated by individuals or institutions. Thus, works can be legally reproduced in accessible formats under the ‘fair dealing’ exception.<sup>20</sup> The rules set out under the Act are different for individuals and institutions. The statutory licence covers literary and dramatic works only and permits reproduction or communication of literary or dramatic works in any of five specified formats, namely, sound recordings, Braille versions, large print versions, photographic versions and electronic versions.<sup>21</sup>

In the United Kingdom, the Copyright (Visually Impaired Persons) Act, 2002 was enacted to permit the reproduction of copyrighted works in accessible formats for the visually impaired persons. This statute led to the inclusion of six special provisions with respect to the visually impaired in the existing copyright legislation, the Copyright, Designs and Patents Act, 1988.<sup>22</sup> Under the said provisions, if a visually impaired person has lawful possession or lawful use of

17 See Preface, Draft Joint Recommendation Concerning the Improved Access to Works Protected by Copyright for Persons with a Print Disability, SCCR/20/12 of June 17, 2010.

18 See Copyright Act, Div. 3 & 4 (1968).

19 Copyright Act, § 10 (1968).

20 See Commonwealth Copyright Act, §§ 135ZN-135ZT (1968).

21 See [http://www.hreoc.gov.au/disability\\_rights/education/copyfaq.htm](http://www.hreoc.gov.au/disability_rights/education/copyfaq.htm).

22 See Copyright, Designs and Patents Act, §§ 31A-31F (1988).

a copy of a literary, dramatic, musical or artistic work, which is not accessible to him because of the impairment, he can reproduce an accessible copy of the master copy for his personal use; such an act will not amount infringement of copyright in the work.<sup>23</sup> Some other conditions are also applicable to accessible copies, such as, the copies must acknowledge the author, title and publisher of the work; the copies must bear a statement indicating whether the accessible copy has been made under statutory exceptions or under the terms of the CLA (Copyright Licensing Agency) Licence<sup>24</sup> and that further copying or distribution is prohibited.<sup>25</sup>

In USA, the Chafee Amendment of 1996 added Section 121 to Chapter 1 of Title 17 of the United States Code providing for a limitation to the exclusive rights in copyrighted works. With this amendment in place, authorized entities can reproduce or distribute copies or phonorecords of previously published non-dramatic literary works in specialized formats exclusively for use by blind or other persons with disabilities. Non-profit organizations or governmental agencies can render specialized services relating to training, education, adaptive reading and information access needs of the print disabled by providing accessible copies of works.<sup>26</sup>

Apart from the Chafee Amendment, there has been another attempt at making works available in compatible formats. The Instructional Materials Accessibility Act 2002 was introduced in the 108<sup>th</sup> Congress of the U.S. with the intention of significantly improving access to instructional materials used in elementary and secondary schools. Key elements of this proposed Act have been incorporated in the Individuals with Disabilities Education Act, 2004, with President Bush affirming the same on December 3, 2004.<sup>27</sup>

The Canadian Copyright Act, 1985 is one of the most comprehensive set of laws for people with perceptual disability. Major changes relating to special provisions for such people were introduced in the Act by amendments made in 1997. Section 32 of the Act deals with reproduction of copyrighted material in alternative format and provides that it is not an infringement of copyright for persons with a perceptual disability or a non-profit organization acting for their benefit, to make a copy or sound recording of a literary, musical, artistic or

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23 Copyright (Visually Impaired Persons) Act, § 1 (2002).

24 Copyright, Designs and Patents Act, § 31A (1988).

25 Additionally, the Copyright Licensing Agency Higher Education Trial Photocopying and Scanning Licence (CLA Licence) contains terms which allow visually impaired persons and some specific learning disabilities such as dyslexia, to make or receive multiple accessible copies of copyright material for educational purposes.

26 17 U.S.C. § 121 (1996).

27 Richard N. Apling & Nancy Lee Jones, *Individuals with Disabilities Education Act (IDEA): Analysis of Changes Made by P.L. 108-446*, THE LIBRARY OF CONGRESS, 2 (2005).

dramatic work; translate, adapt or reproduce in sign language a literary or dramatic work; or perform in public a literary or dramatic work (other than cinematographic work), in sign language, either live or otherwise, in a format specially designed for perceptually disabled.<sup>28</sup> However, the provisions do not allow the making of large print versions or communication of accessible copies.<sup>29</sup>

### III. THE INDIAN COPYRIGHT REGIME

Article 14 of the Constitution of India enshrines the norm of equality before the law and equal protection of the laws to all. Such a provision further intends to ensure equality among equals and eradicate all possible forms of social disparity. Apart from this, the Preamble as well as Part IV of the Constitution seek to render social justice and eliminate discrimination against the weaker sections of the society. Further, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 has been enacted with the purpose of rehabilitation of the physically challenged in the society and to ensure that the disabled persons are provided equal opportunities, protection of their rights as human being and their full participation.

The print disabled have the same need of access to information as that of a person with fully functioning physical faculties. The right to produce accessible copies of lawfully acquired copyrighted works by the physically challenged does not exist in the Indian copyright legislation. The current Indian copyright regime lacks any special provision allowing people with print disability to access copyrighted works in suitable formats and the current Bill is our attempt towards guaranteeing this right. The existing Indian legal set up does not allow for a wide interpretation of the terms 'reproduction' or 'fair use' to include a) the right of reproduction and b) the use of the 'fair use' defence by the print disabled for lawfully reproducing copyrighted works in formats accessible by them. Therefore, needless to say, there is a pressing need for an amendment in the present law to provide for an exception clause that legitimizes reproduction of work into accessible formats for personal use by the physically challenged.

In consonance with the 'fair use' clause incorporated in the Berne Convention, the TRIPs Agreement, Section 52 of the Indian Copyright Act, 1957 provides specific uses of copyrighted works that do not amount to infringement of copyright. In other words, Section 52 imposes reasonable limitations and exceptions on the rights of copyright owners with respect to certain bona fide uses. These specific uses do not include any provision as to

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28 Copyright Act of Canada, § 32 (1997).

29 See <http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-42/latest/rsc-1985-c-c-42.html>.

free access of printed information in formats accessible by the print disabled. Thus, reproducing or converting a printed material into an accessible format by the print disabled for their personal use amounts to an act of infringement under the Act.

Further as per Section 14(a)(i) of the Copyright Act, 1957 right to reproduce a copyrighted work in any material form including storing of the same in any medium by any electronic means is an exclusive right of the copyright holder. Therefore unauthorized reproduction or the conversion of any work into a format which is accessible to people with print disability would amount to infringement of copyright under the Act.<sup>30</sup> Section 51 (a)(i) expressly provides that copyright in a work shall be deemed to be infringed if any person without requisite authorization does anything, the exclusive right to do which is by the Act is confined upon the owner of the copyright only. Thus the print disabled are prevented from converting lawfully acquired copyrighted works in accessible formats without obtaining licence from the right holder and are thus denied access to knowledge.

### **Copyright Amendment Bill of 2010**

The Copyright Amendment Bill of 2010<sup>31</sup> has proposed certain major changes including special provisions for the people with print, aural or other disability for incorporation in the current Copyright Act. The Amendment Bill seeks to allow the adaptation, reproduction, and communication of copyrighted material in special formats by the addition of Section 52 (1)(zb). As per the proposed provision, the adaptation, reproduction, issue of copies or communication to the public of any work in a format, including sign language, specially designed only for the use of persons suffering from a visual, aural or other disability that prevents their enjoyment of such works in their normal format will not constitute an infringement of copyright. Apart from this, a new section 31B has been proposed for providing for compulsory licence for the disabled. According to this Section, an organization, fitting certain requirements<sup>32</sup> and working primarily for the benefit of persons with disability, may apply to the Copyright Board, in the prescribed form, for compulsory licence to publish any work in which copyright subsists for the benefit of such persons. These

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30 B.L. WADHERA, LAW RELATING TO INTELLECTUAL PROPERTY 298-299 (4th ed. 2007).

31 Copyright Amendment Bill of 2010, Bill No. XXIV of 2010 was introduced in the Rajya Sabha on April 19, 2010.

32 Organization must be registered under section 12A of the Income Tax Act, 1961 (43 of 1961) and recognised under Chapter X of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996)

provisions are similar to those present legislation for the visually impaired in the United Kingdom.<sup>33</sup>

While the amendment of the Act is underway, lawmakers still have room for deliberation as to what would be ideal for meeting the special requirements for providing better access to copyrighted works to the disabled and ensuring minimum risks of infringement. The following are few points which could be considered while incorporating the proposed changes to the Copyright Act:

- Defining or precisely identifying which section of the people constitutes the ‘print disabled’ or ‘perceptually disabled’ and what nature of disability constitutes print disability - an amendment of the definition clause or addition of an Explanation clause may be considered in this regard;
- Allowing adaptation, reproduction, and communication of copyrighted work into accessible formats without the liability for causing infringement (which has already been proposed in the Amendment Bill);
- Defining what is meant by ‘accessible formats’, specifically mentioning the types of accessible formats permitted under the Act to prevent misuse of the exception available for the print challenged;
- Ensuring only personal use of such accessible copies by the print disabled, totally prohibiting commercial use of the same;
- Avoiding conflict with normal exploitation of one’s exclusive economic rights over one’s work, not unreasonably prejudicing the legitimate interests of the author or copyright owner;
- Allowing only statutorily qualified individuals and other licensed assisting institutions to exercise the right of reproduction of works in the specified accessible formats;
- Formulating a comprehensive licensing policy ruling out all possibilities of misuse or abuse of the exception by the licensed entities;
- Providing for parallel technological and legal copy controls for preventing infringement of such reproduced work;
- Further regulation by mandating the attaching of copyright notice (that work is copyrighted and solely made for the personal use of the print disabled); certificate in any digital form or otherwise, acknowledging the author and the publisher; attachment of ‘statutory warning’ against infringement in any form, mentioning there with, the corresponding liability.

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33 The amendments proposed in the Copyright Amendment Bill comprise similar provisions as those incorporated in the Copyright (Visually Impaired Persons) Act, 2002 of UK.

If compared with the copyright legislations of the countries as discussed briefly above, the provisions for the print disabled in the Bill are not comprehensive and also not sufficient to safeguard from unscrupulous copying or misuse of the protected works. The legislations should consider including provisions dealing with stricter copy controls, explicit definition clauses defining the terms ‘disability’ and/or ‘print disability’ and ‘format’ and/or ‘accessible formats’, provisions dealing with digital rights and their protection and the cost effectiveness of Digital Right Management.

#### **IV. CURRENT PLIGHT OF THE PRINT DISABLED IN INDIA: USE OF ASSISTIVE TECHNOLOGY FOR BETTER ACCESS TO KNOWLEDGE**

As already mentioned, the people with print disability can access literary and dramatic works in certain formats only which are accessible by them, such format depending on the nature of their disability. These formats are commonly known as accessible formats and printed material when reproduced or converted in such formats can be easily accessed by the specially abled individuals.

At present there are quite a few assistive technologies which help in the print disabled in accessing works. However in India, owing to the legal lacuna as being discussed in this paper, such assistive technology does not do much good to the print disabled. This segment focuses on the kinds of assistive technology available in the market and current status of the use of such technology in India. Given only the right to reproduce works into accessible formats on being authorized by the copyright holder, works available in accessible formats are very few in number.

The print disabled form a considerable percentage of Indian population and it is a fact that only a very small fraction of the total works is available in accessible formats. As per Daisy Forum India, there are over 10 million visually impaired persons in India and many more other print disabled persons in the country who cannot access hard copy books and material.<sup>34</sup> Further, according to the official count of books, published by the National Library of India,<sup>35</sup> there are approximately 24,65,352 books in India<sup>36</sup> and the persons with vision loss are able to get no more than 0.5% of all books coming out of the country’s publishing houses.<sup>37</sup> Such works are available, only through efforts made by

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34 Cambridge Donates Content to the Visually Impaired in India, CAMBRIDGE UNIVERSITY PRESS ANNOUNCEMENT, <http://www.daisy.org/news-detail/667?NewsId=667> (last visited Dec. 14, 2009).

35 The National Library of India, under the Delivery of Books and Newspapers (Public Libraries) Act, 1954, is entitled to receive a copy of every publication brought out by anyone, anywhere in the country. *See* Delivery of Books and Newspapers (Public Libraries) Act, §3(1) (1954).

36 *See* [http://www.nationallibrary.gov.in/nat\\_lib\\_stat/useful\\_info.html](http://www.nationallibrary.gov.in/nat_lib_stat/useful_info.html) (last updated July, 2010).

37 Blind People’s Association, [www.bpaindia.org/NL-Eng-JA'10.pdf](http://www.bpaindia.org/NL-Eng-JA'10.pdf) (last visited on Feb. 2, 2012).

few Government agencies, non-governmental organizations and philanthropists.<sup>38</sup> Even the National Library does not have any collection of Braille or audio books. It is argued that the number of such special books is too less to create full-fledged sections.<sup>39</sup>

In addition to this, the visually impaired do not even have access to books converted to the Braille code on time. Such books, required for pursuing their regular course of instruction, arrive late and not when the academic session commences. Furthermore, the lack of awareness and sensitivity for the needs of the print disabled in the publishing industry has added to the already existing sorry plight. Even in developed countries like the United States of America, fewer than 7,000 of the 70,000 or more books published every year are ever made available in any accessible format.<sup>40</sup>

Further, owing to the growing threat of cyber piracy the publishers are often granted limited if any at all, digital rights. While the present technology can easily convert works from print form to accessible formats,<sup>41</sup> it is seen that there is a general reluctance on the part of the publishers, even having such digital rights, from reproducing work in such formats. Digital Rights Management (DRM) is especially problematic for users with disabilities. Publishers of e-content often apply DRM that makes it incompatible with assistive technology like screen readers. Adobe and Microsoft build DRM technology into their e-book software that allows publishers to disable text-to-speech capability, making the content useless to visually disabled readers. In early 2009, publisher Random House and the Author's Guild convinced Amazon to activate a feature of the DRM in its popular Kindle e-book reader, disabling the text-to-speech function on selected titles. Further, Amazon disabled the feature on the disputed titles, remotely and retroactively downgrading the functionality of the Kindle device.<sup>42</sup> Online piracy is a major problem today and is rampant irrespective of the several attempts made at mitigation. Conversion of information into digital form has enabled unscrupulous duplication

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38 Less than 5% of all printed material is accessible to the blind and print-disabled. Major publishers attempt to provide accessible copies of their books to disabled individuals, but many do not have the time and resources to maintain an accessible collection and keep up with user requests. See [www.bookshare.org](http://www.bookshare.org) and [www.oreilly.com](http://www.oreilly.com).

39 Arpit Basu, *Copyright Obstacle for Braille, Audio Books*, TIMES OF INDIA (Nov. 7, 2009), <http://timesofindia.indiatimes.com/city/kolkata-/Copyright-obstacle-for-Braille-audiobooks/articleshow/5204947.cms>

40 PRASAD, *supra* note 3, at 233.

41 Kathleen Asjes, *Reading for All: Technology Makes Inclusion of Print Disabled People in India Possible*, DUTCH COALITION ON DISABILITY AND DEVELOPMENT (Jan. 14, 2010), <http://www.dced.nl/default.asp?action=article&id=4171>.

42 Puckett, Jason, *Digital Rights Management as Information Access Barrier*, LIBRARY FACULTY PUBLICATIONS, 18, 11-24 (2010).

or reproduction of copyrighted material with much ease.<sup>43</sup> Thus, even though electronic copies (digital/electronic audio books) will substantially help the print disabled, the publishers don't take the risk of producing e-copies of the work, for fear of losing their business profits into the hands of the cyber pirates. Even if works are made available in digital format, a high degree of technological control/protection needs to be ensured to prevent piracy. Installing such technological filtration tools not only takes research and time but is also quite an expensive affair.<sup>44</sup> This leads to an increase in costs for the proprietor and further encourages his unwillingness to produce accessible digital copies. The costs are associated with copyright enforcement. Further, the catch with tools like DRM is that it is expensive to implement and thus generally, people can't make enough returns from the investment made in setting up of DRM.<sup>45</sup> Also, with the advent of communication and information technology, the exclusivity of the right of reproduction is under constant threat of being misused by the cyber pirates. Thus among other rights, the right holders especially want to ensure that the right to reproduce their work is safeguarded.<sup>46</sup>

Scanning the work or getting it transcribed into Braille code or audio recording or duplication in any format, attracts copyrights such as digital rights, audio rights and reproduction rights, which are prohibited from unauthorized use.<sup>47</sup> In India, as already mentioned, reproduction of a work into accessible format for the print disabled is not yet permitted under the doctrine of fair use. Thus, a lawfully purchased copy of a work available in print format is of no value to an individual with print disability as converting the same into any accessible format falls under the domain of unauthorized duplication, prohibited by law.<sup>48</sup>

### **Assistive Technological Aids**

Certain technological aids exist which are suitable for meeting the special requirements of the print disabled. It is good to note that man has progressed beyond the six dotted Braille code to better assistive technology. However,

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43 PETER K. YU, DIGITAL PIRACY AND THE COPYRIGHT RESPONSE, 340 (Indrajit Banerjee ed., AMIC 2007). See [www.peteryu.com/piracy.pdf](http://www.peteryu.com/piracy.pdf).

44 Snehal Rebello, *Audio Markers that Read Out to Visually Impaired*, HINDUSTAN TIMES (Dec. 12, 2010), <http://www.hindustantimes.com/Audio-markers-that-read-out-to-visually-impaired/Article1-637375.aspx>.

45 Olivier Bomsel And Heritiana Ranaivoson, *Decreasing Copyright Enforcement Costs: The Scope of a Graduated Response*, 6(2) REVIEW OF ECONOMIC RESEARCH ON COPYRIGHT ISSUES, 13-29 (2009).

46 Nicolas Suzor, Paul Harpur & Dilan Thampapillai, *Digital Copyright and Disability Discrimination: From Braille Books to Bookshare*, 13 MEDIA AND LAW REVIEW, 1 (2008).

47 See Australian Copyright Council, Information Sheet G60 People With a Disability: Copyright Issues,pg1. See [http://www.copyright.org.au/admin/cms-acc1/\\_images/8910548904c8dbfec7f845.pdf](http://www.copyright.org.au/admin/cms-acc1/_images/8910548904c8dbfec7f845.pdf).

48 Daisy Forum, India, Right to Read, [http://www.daisyindia.org/right\\_to\\_read.htm](http://www.daisyindia.org/right_to_read.htm) (last visited Feb. 2, 2012).

such technologies cannot operate suitably without adequate technological copy controls. Efforts are continuously being made in countries all over the world to provide the print challenged with technological support together with ensuring infringement checks.<sup>49</sup> Few significant forms of assistive technology include screen reader software, digital talking books and electronic Braille books.

### *Screen Reader Software*

Screen reader software overcomes the difficulties of traditional ways of learning and communication. Screen reading software and electronic speech synthesizers allow reading aloud of the text available in digital print format. Such technology when installed in the computer can make the computer serve as a mechanical record reader via electronically generated voice.<sup>50</sup> Thus, in this way the visually impaired are helped with access to literary works by means of conversion of the same into audible format. A text-to-speech software also serves the same purpose of creating audible recording of works available in the electronic format. Significant providers in this regard are Adobe<sup>51</sup> and Microsoft<sup>52</sup>. JAWS (Job Access and Speech)<sup>53</sup> is another such software which serves the function of a text-to-speech simulator. Both these companies create readers or software displaying readable text on the screen, along with an inbuilt mechanism of simulating electronically read words from the text displayed in the screen. Needless to mention, this function appears to be appropriate or near perfect for reading an electronic work by the visually challenged.<sup>54</sup>

Apart from this, there are also audio books which are usually distributed on CDs, cassette tapes, digital formats or e-books which are essentially the electronic equivalent of the conventional printed book. Also, Optical Recognition Software can scan the image of a book into any electronic accessible format.

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49 DAISY (Digitally Accessible Information System) and Bookshare.org are international non-profit organizations who are involved in production of books and reading materials in accessible formats for persons who cannot read normal print. It produces and maintain library of Digital Talking Books, Braille Books or e-text books. See <http://www.daisyindia.org/>; See also, [http://www.bookshare.org/\\_/gettingStarted/overview](http://www.bookshare.org/_/gettingStarted/overview).

50 Kavita Kukday, *With Help From Tech, You Can Make It Big Anywhere*, TIMES OF INDIA, Oct. 21, 2007.

51 Adobe Reader supports assistive software and devices, like screen readers and screen magnifiers that enable visually impaired users to interact with computer applications. See [http://help.adobe.com/en\\_US/Reader/8.0/help.html?content=WS58a04a822e3e50102bd615109794195ff-7d16.html](http://help.adobe.com/en_US/Reader/8.0/help.html?content=WS58a04a822e3e50102bd615109794195ff-7d16.html).

52 Narrator is a light-duty *screen reader* utility included in *Microsoft Windows*.

53 Joanna Rebello Fernandes, *Web Sight: A New Window to the World*, TIMES OF INDIA (Nov. 1, 2009), <http://timesofindia.indiatimes.com/city/mumbai/Web-sight-A-new-window-to-the-world/articleshow/5184773.cms>.

54 Kukday, *supra* note 47.

However, such technology is not used frequently due to snags such as time, technical errors, etc.<sup>55</sup>

### ***Digital Talking Books***

Digital talking books are digital textbooks or a combination of synchronized audio recordings with audio recordings of human speech. It goes beyond traditional talking books, particularly with respect to the features of accessibility and point-to-point navigation within the book. This had previously not been possible with a human voice production of a printed book. It is a perfect aid for someone who is visually impaired, as navigation is possible simply by moving among headings, chapters and pages. Depending upon how the book is used, images with descriptions may be included with even more detailed navigation. Reading devices for these materials enable users to even place book marks for later reference.<sup>56</sup>

### ***Electronic or Digital Braille***

Electronic or digital Braille is a few steps ahead of the existing Braille. This technology is used to produce hard copy embossed in Braille, read with refreshable Braille display. A refreshable Braille display is an electro-mechanical device for displaying the Braille characters, usually by means of raising dots through holes in a flat surface. This information can therefore be stored in the form of a digital audio file, tape, computer disk or over the internet with software to read to them.<sup>57</sup> This technology has thus found several takers among the print disabled. The International Braille Research Centre, a non-profit charitable organization, founded in 1994 started the International Electronic Braille Book Library. This particular online library claims to have the largest collection of electronic Braille books (e-Braille) books in the world, which can be read online using paperless Braille Display device.<sup>58</sup>

## **V. TIME FOR A PHILANTHROPIC APPROACH**

Over 50 countries have amended their copyright laws to incorporate appropriate changes for facilitating reproduction of protected works in accessible formats. The Persons with Disability Act, 1995 and National Policy for Persons

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55 See <http://www.referenceforbusiness.com/encyclopedia/Oli-Per/Optical-Character-Recognition-Devices-OCR.html>.

56 A traditional talking book is an analog representation of a print publication. A Digital Talking Book (DTB) is a multimedia representation of a print publication. See <http://www.daisy.org/daisy-technology>.

57 Aaditi Jathar, *Digital Braille Libraries Unfold a New World for These Students*, INDIAN EXPRESS (Apr. 2, 2009), <http://www.indianexpress.com/news/digital-braille-libraries-unfold-a-new-world/442049/>.

58 See [http://www.braille.org/braille\\_books/](http://www.braille.org/braille_books/).

with Disability, 2006 also ensure certain rights, such as right to knowledge and the right to read, which is also in accordance with the fundamental rights guaranteed in the Constitution of India.<sup>59</sup> While the campaign for access to knowledge is being carried out by several non-profit organizations and philanthropic persons, there is very little response from the state agency in this regard.<sup>60</sup> Participants in such campaign include non-governmental organizations such as Bookshare Organization (India), DAISY Forum of India, etc. Recently, DFI and Bookshare.org have collaborated to form the DFI-Bookshare.org Publisher Contact Program, which involves publishers from all over the world including Oxford University Press, SAGE Publications, Himalayan Publishing House, Sahitya Academy, etc.<sup>61</sup>

Apart from this, a representation on behalf of the print disabled community under the banner of Publication Access Coordination Committee (PACC) is already pending with the Copyright Office since April 2006. The Committee in their representation has also relied on Article 9(2) of the Berne Convention stating that reproduction in accessible format is simply a different format of the existing work for the print challenged and can be justified as ‘fair dealing’, and not exploitation of for illegal reproduction and distribution.<sup>62</sup>

India has ratified the United Nations Convention on Rights of Persons with Disabilities<sup>63</sup> on October 1, 2007. Article 30(3) of this Convention says, “State parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.” Indian courts have held that international conventions that India has ratified can be read into Indian law even without express legislation.<sup>64</sup> But what must be noted is that though international conventions

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59 See Persons with Disability Act, §§ 26 to 31 (1995); National Policy for Persons with Disability, ¶¶ 20-27 (2006).

60 There appears to be only a negligible amount of effort from the state agency towards helping the cause of the print disabled, given the fact that there is only 0.5% of the total print material in India is available in accessible formats. Even the national library does not have a separate section containing books or material in accessible formats, for the use of the print disabled.

61 See Sam Taraporevala, *Print Access: The Indian Story* (Feb. 2, 2012,) [www.cis-india.org/advocacy/EDICT\\_2010\\_presentation.ppt](http://www.cis-india.org/advocacy/EDICT_2010_presentation.ppt).

62 *Id.*

63 There are 147 signatories and 98 parties to the Convention. See [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en).

64 See *Vishakha & Ors. v. State of Rajasthan & Ors.*, (1997) 6 SCC 241; *Kesavananda Bharathi v. State of Kerala*, (1973) Supp. SCR 1; *Jolly George Varghese and Another v. The Bank of Cochin*, (1980) 2 SSC 360.

are capable in filling the void in absence of domestic laws, it is indispensable for India to have a comprehensive legal framework for addressing the information needs of the print disabled.

Studying the copyright regime, one can easily point out that the population with perceptual disability is in a total fix. The law for allowing reproduction of protected works for personal use by the print disabled is yet to be settled, the Government does not participate adequately in the interest of such people, the publishers and proprietors are not interested in even targeting this section as their audience or readers and the prospect of rampant piracy in the cyber space has killed all considerations of conversion of printed work into electronic format. It is time India picks up pace in effecting the desired change in the present copyright law so as to ameliorate the condition of the print disabled and allow them to exercise their basic right of access to information, one which is guaranteed by the *grundnorm* of our nation.