

Mr Jo Johnson MP, Minister of State for Universities, Science, Research and Innovation jo.johnson.mp@parliament.uk

cc: **Ms Penny Mordaunt MP**, Minister of State for Disabled People, Health and Work
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Please reply to: Yvonne Morris, Secretary, Libraries and Archives Copyright Alliance
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20 April 2017

Dear Mr Johnson

Marrakesh Treaty draft Directive Recital 11

Thank you for your reply of 29 March to our previous letter, in which you clarified the UK Government's strong support for the Marrakesh Treaty. We welcome the Government's commitment to ensuring that the Treaty's implementation by the EU promotes the availability of accessible format copies, including across borders. We also welcome the Government's desire not to see an agreement at EU level that would require Member States to introduce compensation for rightholders or registration of organisations making accessible copies and your statement that you "agree that any market safeguards introduced by Member States should not undermine the benefits that the Treaty is seeking to provide or place unreasonable burdens on organisations which provide accessible format copies."

However, to realise a good implementation that tackles the market failures that brought the Treaty about, we strongly urge the Government to modify its stance concerning commercial availability. We are aware that the UK's existing exception for copying for disabled people includes requirements for commercial availability checks for use within the UK¹. However, many countries do not have the necessary infrastructures for such market information, so such a requirement would *not* work for cross-border sharing of accessible copies under the Treaty since it would prevent participation by creating excessive uncertainty and fear of lawsuits. For instance, Jim Fruchterman, the Founder of the US portal [Bookshare](#), a major non-profit supplier of English language books in accessible formats, has said that Bookshare could not, because of these risks, make its full repertoire available under Marrakesh to countries that implement prior commercial availability checks. Bookshare could, if it did not face these risks, make 225,000 more titles available to the UK, on top of the 318,400 currently available to UK members with publisher permission.

Print-disabled people want, and are entitled to, equality of access to education, research, culture and opportunity that is available through reading - by access to the same publications in the formats they need, at the same time and at the same price as everyone else. The Treaty needs to be implemented in such a manner so that Member

¹ CDPA ss.31A(2)(c), 31B(2) and 31B(4)

States cannot introduce requirements for commercial availability checks, at least not where cross-border sharing of accessible format copies is concerned.

In the trilogue discussions, the Council of Ministers is proposing to amend the Commission's text for Recital 11 by introducing the option for Member States to oblige authorised entities to pay remuneration to rightholders or to make commercial availability checks. Worse, we understand that the Council may make a compromise proposal to delete Recital 11 altogether. Recital 11 was introduced by the Commission for the precise purpose of addressing the flexibilities that the Treaty offers in order to ensure a level playing field for a cross-border context. These proposals put the Council at loggerheads with the Commission and the [European Parliament](#). Permitting Member States to introduce such options will place financial and time burdens on charities, libraries and educational establishments that will discourage their participation as authorised entities. Likewise, different rules across Europe will add unnecessary complexity and introduce risks of prosecution for infringement that will seriously undermine the Treaty's cross-border provisions within Europe and, since Europe would be a prime exporter of accessible format copies in its major languages, also further afield once the EU ratifies and joins WIPO's Marrakesh Treaty Assembly.

The UK's position appears to be predicated on not undermining the commercial market in accessible format copies. We would be very interested to see and understand what evidence the Government has as to such a commercial market's existence and viability. For example, figures received from two typical UK university libraries indicate that in the 2015-16 academic year one could only satisfy 1.7%, and the other only 15%, of user requests for accessible formats by means of commercially available (i.e. accessible e-book) formats. Publishing is a global, not a national, business and if indeed there were such a market, there would not have been a need for the Treaty in the first place. Visually impaired people would not still be suffering the book famine caused by publishers' general failure to provide commercially available accessible format copies at reasonable prices, presumably caused because publishers view such a potential market as commercially unviable. In current conditions print-disabled people have access to only around 7% or less of publications. Where is the commercial market to protect?

Yours sincerely

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