

Sabrina Højbjerg

Fra: Torben Hoffeldt
Sendt: 2. maj 2017 17:13
Til: Nicky Valbjørn Trebbien; Sabrina Højbjerg; Bente Skovgaard Kristensen
Cc: Anne Kring
Emne: Fwd: Danish position on "commercial availability" and economic compensation in Marrakesh Treaty negotiations

AppServerName: dep-esdh.kum.dk
DocumentID: 17/01181-20
DocumentIsArchived: -1

Kære alle

Har modtaget nedenstående partsindlæg fra WBU/EBU, som sendes til jeres evt orientering.

Med venlig hilsen



Torben Hoffeldt
Ledende ministersekretær | [41 39 39 59](tel:41393959) | tho@kum.dk
Kulturministeriet | [Nybrogade 2](https://www.kum.dk) | 1203 København K
www.kum.dk

Sendt fra min iPhone

Start på videresendt besked:

Fra: <david@davidhammerstein.org>
Dato: 2. maj 2017 kl. 16.12.29 CEST
Til: <hjodal@um.dk>, <tho@kum.dk>
Cc: AUKEN Margrete <margrete.auken@europarl.europa.eu>, Jesper Svendsen <Jesper.svendsen@ft.dk>, VALBUM Emilia Badstue <emiliabadstue.valbum@europarl.europa.eu>
Emne: Danish position on "commercial availability" and economic compensation in Marrakesh Treaty negotiations

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 “Triologue” 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