

UNCRPD Article 30(3): Implications for Copyright

Abstract

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The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), Article 30 is the first treaty that specifically mentions that intellectual property regimes may act to create barriers to access to cultural materials. It says in part:

States 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....

This obligation has been used to justify the recently created Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled (the Marrakesh Treaty). While this treaty is an important first step, books for the blind and certain specific other print disabled persons, is by no means a complete range of access for persons with disabilities.

International and domestic intellectual property regimes, copyright particularly, can create substantial barriers to access to cultural materials. Access to images, access to artistic creations and access to audio-visual works are all areas where copyright owners/holders can exclude persons with disabilities. Technology has advanced sufficiently to create greater access by allowing images and artistic works to have meta-data that includes tags for image description, or 3D printing. Audio-Visual works can have video description, or captions. Digital technology has the potential to open many cultural vistas for persons with disabilities that have never before been accessible.

The law must go farther than ensuring books for the blind and specific classes of print disabled persons, if the human right of equal access to cultural materials is to be fully realized. This may require creating a broader exception to copyright to enable this access, or incorporating more species of works into the current exception. The content industries may argue that the sky is falling, but the experience of the publishing industry since the Chafee Amendment lends itself to support the idea that access for persons with disabilities is not the end of the world.