

Making works accessible for the visually impaired: Is there a need for global minimum copyright exceptions?

Publishers' Association of South Africa

15 May 2009

Summary

There is no exception for visually impaired persons in the current South African Copyright Act. The Publishers' Association of South Africa (PASA) has developed jointly with the National Library for the Blind two model agreements, one for the transfer of electronic files from publishers to the library, the second a standard licence for the library to use the electronically transferred files and/or to digitise other works and legacy content. This effort builds on a long-standing co-operation between publishers and the National Library for the Blind.

Some publishers entrust the management of the standard licence to the local collective licensing society as a trusted agent.

Through this mechanism, accessible versions can be produced for visually impaired persons as library patrons. Where a publisher has to create an XML file from another source file, a fee may be payable by the National Library for the Blind. Other than that, the system does not incur cost for the library and is designed to ensure smooth co-operation between the stakeholders.

1. What organisation(s) provide access for visually impaired persons in your country? Are there few or many?

The most prominent organisations are the South African Library for the Blind in Grahamstown, a statutory organisation which supplies mainly titles for recreational reading to the broad community of visually impaired persons (see ANNEXURE A), and 21 schools for the blind and otherwise visually impaired persons, e.g. Pioneer School in Worcester with extended facilities for Braille versioning (see <http://www.sanclub.org.za/memberOrg.asp>).

Other organisations include the South African Council for the Blind (<http://www.sanclub.org.za/>), which comprises 95 affiliated member organisations.

There are certainly not enough organisations. Despite some developed areas in South Africa, it is mostly a developing country. Relatively large numbers of especially the poverty-stricken sections of the population suffer from eye diseases, poor pre- and post-natal care leading to visual impairments, and limited access to information and medical care. It is estimated that approximately 90% of visually impaired persons in South Africa come from previously disadvantaged groups

2. Please describe the relationship between rightsholders and the relevant charities that provide access to books for visually impaired persons.

There generally is a healthy and constructive relationship. Typical agreements between publishers and authors would contain a section like the following:

The PUBLISHER has the right to grant permission to the South African Library for the Blind and/or the School for the Blind or any such organisation to transcribe the WORK or part of the WORK into braille or to record it on magnetic tape for exclusive use by such organisations provided that these transcriptions or recordings are not distributed to the general public. No remuneration shall be payable to the AUTHOR in respect hereof.

The Publishers' Association of South Africa (PASA) recently facilitated the adoption by its members of standard agreements for publishers and the SA Blindlib. This process was introduced by a discussion document (Annexure A), which was followed by a joint statement (Annexure B). The two standard agreements covering the supply of open files and copyright arrangements and adopted in 2007 are attached as Annexures C and D.

Please note that the institutions we refer to here are not necessarily "charities" but statutory bodies that operate with a full understanding of and in accordance with copyright law.

3. In practice, what role does copyright (through an exception, licensing or other arrangements) play in the provision of content for visually impaired persons?

The South African Copyright Act does not specifically allow for exceptions for visually handicapped persons. Exceptions allowed for in the Act and Regulations would *ipso facto* apply to such persons as well. There is therefore no specific legal copyright allowance for visually impaired persons.

However, in the South African context of a social democratic constitution with its equality and equity directives and overt attention to marginalised and handicapped persons, the general trend has been to acknowledge the special needs and requirements of visually impaired persons. This allowance is mostly provided for by means of licensing and the kinds of contractual arrangements explained above.

Publishers have up to now not had a request from the community of visually impaired persons to extend current exceptions. In fact, these institutions and bodies have been at pains to regulate their affairs within the South African Copyright Act.

It should also be noted that the SA Blindlib functions within the government Department of Arts and Culture and resorts under the National Library of South Africa. With publishers and the National Library in constant contact regarding the debate about exceptions for libraries, the Director of the SA Blindlib is also fully aware of and informed about issues regarding exceptions.

PASA's approach is therefore to support equal and equitable access to print material, where practically possible, to visually impaired persons as fundamental human rights (e.g. the right not to be unfairly discriminated against; the right to education). PASA therefore encourages its members to give such persons every assistance possible.

These arrangements can be made within the current Copyright Act and its Regulations and do not require to be dealt with as additional exceptions.

4. Are there any recent initiatives or projects that demonstrate the kind of cooperation that can improve access? Please give a short summary.

See 2 above for recent developments.

Discussions have also started to provide for the transnational provisioning of publishers' files.

The following e-mail was recently sent by the mother of a visually impaired learner who had requested digital files of a school textbook from a publisher in order for the learner to be able to read it in enlarged text on her computer:

From: Laubscher [mailto:mmmlaubscher@mweb.co.za]
Sent: 09 March 2009 09:46 AM
To: Sara Cowan
Subject: Business Studies Textbook in digital format THANK YOU

9 March 2009

To: Ms Sara Cowan

The CD of the Business Studies Book arrived on Friday. THANK YOU VERY MUCH!
This is going to make life so much easier for Karen. Please, forward our appreciation to Mr Faasen and everybody who made this possible.

Kind regards

Mariette Laubscher

5. Confidentially: what are the current problems and issues in the publisher/visually impaired persons relationship?

We believe that most members of PASA have recently developed both a better understanding of copyright, and of visually impaired persons' rights to equal access to printed reading, study and information material. We are not aware of a single publisher who has complained about abuse of its intellectual property by an institution for visually impaired persons.

There is a close, trusting and open relationship between PASA and e.g. Blindlib and schools for the blind within which problems can be addressed. Blindlib is a full member of PASA and its Director is a member of the PASA Legal Affairs Committee.

However, Blindlib is only one such an institution and there might be problems that publishers have not been made aware of. Generally speaking, it may be said that PASA members are aware of the needs of visually impaired persons and should be willing and able to assist individuals.

ANNEXURES

**ANNEXURE A: PASA February 2006 Meeting: Copyright Committee
Discussion Documents 5: SOUTH AFRICAN LIBRARY FOR THE BLIND
DISCUSSION PAPER ON COLLABORATION WITH PUBLISHERS**

**ANNEXURE B: JOINT STATEMENT ON THE PROMOTION OF ACCESSIBLE
READING MATERIALS FOR THE BLIND IN A TRUSTED ENVIRONMENT**

**ANNEXURE C: COPYRIGHT LICENCE FOR THE BLIND AND PRINT-
HANDICAPPED**

**ANNEXURE D: CONTRACT FOR THE SUPPLY OF ELECTRONIC MASTER
FILES**

ANNEXURE A

PASA February 2006 Meeting: Copyright Committee

Discussion Documents 5

SOUTH AFRICAN LIBRARY FOR THE BLIND

DISCUSSION PAPER ON COLLABORATION WITH PUBLISHERS

(Third Revision, January 2006)

SUMMARY

This paper seeks to explain to publishers the need of the South African Library for the Blind to gain access to electronic files used in the publishing and printing industry for the production of books. The paper lays the basis for the further discussion of ways to facilitate the secure provisioning of publishers' electronic files to the South African Library for the Blind.

- It first provides some background to the South African Library for the Blind.
- It refers to the broader political context within which people with disabilities see themselves as people whose interests require serious commercial and not merely charitable consideration.
- Access to publishers' files will very particularly facilitate the Braille production process. The paper explains why publishers in fact have an interest already, in negotiating the terms on which their materials are safeguarded in electronic form by a Braille producer.

- The paper then seeks to provide reasons why publishers should consider entering into arrangements providing such access.
- It sets out, finally, what is in fact achievable if truly collaborative relationships can be forged.

THE STATUTORY AND INTERNATIONAL CONTEXT

The South African Library for the Blind ("Blindlib") is a statutory organisation. Its affairs are regulated by the South African Library for the Blind Act, 91 of 1998 and its financial administration is subject to the provisions of the Public Finance Management Act, 1 of 1999. It is an institution associated with the national Department of Arts and Culture. It is required by law to report to Parliament within six months of the end of each financial year. It is therefore a public body which is publicly accountable.

Its primary statutory mandate is to provide a national library and information service to blind and print-handicapped readers; that is to say not only to readers who are blind, but to all readers with print-disabilities, whether partial sight, dyslexia or other, such as physical disabilities that make it difficult for them to handle ordinary books. References to blind people are therefore to be understood as references to all people with print-disabilities who can benefit from Blindlib's service.

In order to qualify for this service, persons who meet the eligibility criteria, apply for membership. Blindlib makes a good faith effort to ensure that those criteria are met, by requiring certification by a person with relevant expertise in, for example, librarianship, ophthalmology, social work or optometry. There is no legal definition

of blindness; nor of print-disability. Illegibility must therefore depend on factual considerations and the certificate must contain reasons why the applicant is considered to have a reading disability.

In addition to the provision of a national library and information service, Blindlib is also tasked with the production of documents in alternative formats that are accessible to its readers. This is because there is as yet no commercial market in alternative format materials other than audio books.

There are, besides Blindlib, a variety of other institutions producing alternative format materials in South Africa. The focus of this paper on Blindlib is not to be construed as meaning to exclude them from the benefits that might arise out of it, but it should nevertheless be noted that Blindlib's activities provide a useful starting point, since Blindlib is the only institution that derives its existence from the provisions of an Act of Parliament.

Blindlib -- as indeed all alternative format producers -- distributes materials to its readers by way of free post, by arrangement with the South African Post Office. Blindlib is also able to distribute materials internationally by way of free post, due to an international arrangement with the Universal Postal Union (UPU). All libraries for the blind and all literature for the blind benefit from this international arrangement. The World Blind Union -- the international mouthpiece of blind people world-wide -- attends meetings of the UPU to promote the interests of blind readers at the international level, because these arrangements are taken extremely seriously by the organised blind community.

The international arrangement enables Blindlib to provide, in addition to a national library and information service, a quality interlending service by sourcing materials from its sister organisations abroad. The principal beneficiaries of the interlending service are university students for whom study materials that are not available locally, are sourced from abroad. As is the case with all interlending arrangements, libraries for the blind lend books directly to Blindlib. Blindlib secures their entry into the Republic, ensures that they are returned to source and, if necessary, takes responsibility for the resolution of copyright problems that may, but usually do not arise. This general rule does not exclude the possibility of blind South Africans joining overseas institutions directly, if the rules of such institutions permit them to do so.

ALTERNATIVE FORMATS

Since it was founded in 1918, Blindlib has provided its readers with Braille. Audio books are also nowadays provided. Audio books have migrated to a variety of formats, because technological developments dictate the most suitable audio format at any given time. By suitability is meant both the ease with which these books are produced and the relative accessibility of the chosen medium. Digital sound recordings are currently internationally regarded as the most suitable audio book type, because digital recordings permit random, rather than mere linear access, which has always been the biggest shortcoming of audio books.

It is however no longer accurate to assume that Braille and audio are the only alternative media that enable access to reading materials. In addition to Braille and

audio, digital text files in a large variety of formats are nowadays also accessible to people with reading disabilities who use computers. They are able to access digital text by way of dedicated screen-readers which permit either synthetic voice output or Braille output. Access is therefore determined by technology only and good access is dependent on good technology and the intelligent deployment of good technology.

THE SIGNIFICANCE TO BLIND PEOPLE OF ACCESS TO DIGITAL TEXT

The ability of blind people to interact directly with digital text has revolutionised the way in which they do their work and the way in which they read. At the most basic level, blind people are able to prepare documents and spreadsheets for printing, but they can also read such documents prepared by others directly from their computers without the need to print them, e.g. by way of synthetic voice output or Braille displays. However, those documents can also be printed in Braille by making use of Braille translation software. It is important to stress that this has resulted in better workplace integration, because of the ease with which blind people can nowadays be provided with accessible workplace documentation in the form of e-mails, policy memoranda, contracts, discussion papers, research and other reports, financial information, manuals, etc.

NATIONAL POLICY IMPERATIVES

At the same time, and based on the equality directive in the South African Constitution, national policy has begun to require that government and employers should avail themselves of the integration potential provided by new technology, in

order to ensure that people with disabilities are not needlessly excluded from amenities and activities to which they might otherwise have a reasonable measure of access. The equality jurisprudence has not as yet been developed extensively. But we do know that internationally, the idea that the accessibility of services should be promoted if technology permits, is becoming common-place in the European Union and the United States of America.

SIGNIFICANCE TO PUBLISHERS OF BLIND PEOPLE'S ACCESS TO DIGITAL TEXT

Publishers are potentially able to provide blind people with books which they can read themselves, without the intervention of intermediaries to convert them into accessible books. As long as the book is delivered as digital text, it can be read by a blind person. Certain formats are more accessible than others, but inaccessible formats can often be converted to more accessible ones, even though conversions seldom yield perfect results.

Still, blind people seldom obtain books from publishers in digital formats. This is due in part to poor management of their digital assets by publishers, but it is also due to publishers' fear of those digital assets being distributed as perfect copies of the original. To publishers, the delivery of a digital book would require the establishment of a mechanism or mechanisms to safeguard them against the unauthorised use of such digital books. Publishers are in any event generally also not in the business of distributing their books -- in whatever form -- to the general public. They therefore lack the administrative infrastructure to enable them to do so. Blind individuals

therefore hardly ever meet with success when they try to buy their books directly from publishers.

Publishers are not providing alternative format readers with access to their products, notwithstanding that technology nowadays enables them to do so. There may be a case for suggesting that a publisher who refuses to enable a blind person to read, might be discriminating against such a reader. That is not the argument Blindlib seeks to advance here.

Blindlib is interested in closer collaboration with publishers to broaden access to reading materials for blind people. It proposes to do so without radically altering either the formats in which it produces books, or its service delivery model. In short, Blindlib believes that if it could be granted access to publishers' production files, it could enhance Blindlib's productivity, enable Blindlib to make more books available on demand, broaden access to books for blind people and safeguard publishers' files by making books available in much the same manner as always.

Closer collaboration with the publishing industry is in our view imperative right now, because the White Paper on Inclusive Education requires that a greater effort must be made to include children with disabilities in mainstream education. If this is to be done with any measure of success regarding blind children, their books will have to be provided to them with maximum efficiency. Only through closer collaboration with the publishing industry would this be possible.

BLINDLIB'S BRAILLE PRODUCTION PROCESS

For the most part, access to publishers' files is likely to benefit the Braille production process considerably. Recent developments however suggest that synthetic voice recordings of text files can also be used to generate audio books (especially for educational purposes) within the space of a few hours.

Braille translation is done by having digital text converted to Braille code, ready to be embossed onto Braille paper. In the ordinary course, therefore, text must be captured in electronic form before it can be embossed. This is typically done by Braille transcribers or data typists, or by having the printed pages scanned and converted to text by optical character recognition software, whereafter errors that resulted from the scanning process are removed. Both the retyping of materials and their scanning and subsequent correction are time-consuming and therefore expensive processes.

Typically, the Braille translation software currently in use interacts best with Microsoft Word files or with XML. In both instances, documents must be properly encoded, since the Braille translation software responds to the embedded formatting codes in electronic documents. Although Blindlib would prefer to have access to XML, we understand that in South Africa XML has not yet become the industry standard for data exchange, despite the advantages of XML to the publishing industry (of simultaneous paper, e-book and and web publishing capability). Blindlib therefore accepts that it might have to take steps to reformat and re-encode digital text itself. Still, it seems a relatively small price to pay if this is compared with having to capture the entire book from the print copy, whether by means of a scanner, OCR and / or by way of data typing.

The fact that Braille translation is a computer-based process means that, with or without the cooperation of publishers, their materials have to be digitised before they are made available in Braille. Collaboration with publishers does not, therefore, raise the spectre of those materials becoming available to Braille production houses in digital form; they have been thus available for many years. Blindlib, as well as other Braille production facilities, have therefore been the de facto custodians of publishers' materials in electronic form for a considerable period of time.

It should be stressed that Blindlib's interest in access to publishers' files is not aimed at making those files available to its clients directly. The idea is for Blindlib to use those files to enable it to produce what it has always produced, namely Braille.

Books in indigenous languages, for example, require capturing by staff who are proficient in those languages and proofreading by other staff who are also proficient in those languages. (E.g. it is difficult to find the right staff in Grahamstown, which is not a very cosmopolitan area. This explains why Blindlib's IsiXhosa collection is notably better than, say, in the Sotho languages.) If the capturing processes can be eliminated by Blindlib having access to the files used for the production of those books, the only proofreading that would still be required, would be proofreading to ensure correct Braille translation. (The reasons why Braille translation must still be checked by human-beings are interesting, but not relevant for present purposes).

In time, Blindlib might wish to pursue the prospect of making available digital text in especially academic and / or professional contexts. But even in those cases, the idea

would be that Blindlib should add value to the digital materials concerned by marking it up to render it properly navigable. Access to unstructured text is inadequate for purposes other than leisure reading, and Blindlib has no plans to make available linear digital text for leisure reading purposes.

If indeed Blindlib were able to add value to digital text before making it available to students or professionals, Blindlib might be able to act as intermediary between the person requiring those materials and the publisher who hold the copyright in respect thereof. The advantage in such an arrangement would be that the publisher would have to make a standing arrangement with Blindlib only, while Blindlib would act as a trusted intermediary to safeguard the publisher against unauthorised copying and distribution of the materials concerned.

WHY COLLABORATE WITH BLINDLIB?

The advantages to Blindlib of closer collaboration with publishers are obvious.

Publishers, however, could derive the following advantages from closer collaboration with Blindlib:

1. The delivery of digital materials to Blindlib would of necessity have to be regulated contractually. Such contracts would determine the delivery method and the file format. But publishers would for the first time be in a position to stipulate how their digital assets are safeguarded against unauthorised access. Blindlib is interested in providing a trusted environment for publishers' files and no doubt the industry would be able to contribute to the development of such an environment by laying down terms, but also by providing know-how to Blindlib's production staff.

2. Blind students -- even universities and schools on their behalf -- will increasingly make demands of publishers for the provision of study materials at school and tertiary level in electronic formats. Blindlib could act as a clearing agent, enabling those persons to approach publishers and enabling publishers to deal with a trusted intermediary, rather than to negotiate arrangements on an individual basis with many different individuals and institutions.

3. Especially students and professionals with high levels of computer literacy prefer access to properly encoded digital text over access to Braille or audio read by a human voice. This is because of the speed with which electronic materials can be read and navigated. Blindlib has adopted the DAISY standard for the preparation of both audio books and digital text. This is an internationally accepted standard by libraries for the blind. (See <http://www.daisy.org/>). If digital text is made available to students, this can be done in a unified file format which is readily associated with Blindlib. If necessary, watermarking technology could be employed in order to identify persons who infringe publishers' copyright in a given case. This would protect publishers' interests and absolve them from having to engage in disputes regarding what formats are preferable from an accessibility perspective.

4. It follows that, whatever digital rights management technology is employed, publishers would be able to make recommendations; possibly even to lay down specifications, provided that accessibility is not compromised.

5. Blindlib is routinely trusted with the production of sensitive materials, such as, for example, matric examination papers, in Braille and audio formats (as are other Braille production facilities in South Africa). It is a trustworthy institution.
6. It needs hardly be stressed that the public relations potential for the publishing industry would come at a good time.

FUTURE DEVELOPMENTS

Collaborative arrangements could make it possible to deliver ready-made newspapers and magazines to blind people as they are made available in print. High quality synthetic voices make it possible to generate very "readable" synthetic voice recordings of masses of reference materials in a matter of hours. By using synchronised multimedia integration language and marked-up text, those recordings can be properly indexed and structured so as to reflect completely, the printed equivalent. By using a "DAISY" hardware playback device or playback software, a reader is able to navigate such a magazine or newspaper in the same way as a sighted person. Since most of this work is computer-based, it can be automated and done practically over-night. The time is fast approaching where, with the necessary goodwill from the publishing industry, it would be more trouble to deliver materials than to generate them. As bandwidth is still a problem in South Africa and particularly for many blind readers, we do not foresee that we would be able to deliver reading materials in a manner other than by way of the postal service. Publishers' interests are therefore also safeguarded by the fact that web-based delivery is not being contemplated yet.

As with most ventures with future potential, however, Blindlib is interested in starting with manageable goals. Blindlib produces books and is therefore at this stage primarily interested in book publishers. Blindlib readers need leisure books in quantity, in all eleven constitutionally recognised languages. But Blindlib would also be very interested in better assisting students and professionals.

We would therefore be interested in two types of arrangements: One which would enable us to access a steady source of leisure reading matter in all the South African languages more cheaply than we have been able to do until now; the other an agreement in principle which would enable a student to approach us to procure books for him or her speedily and reliably. There is no need anymore why a student should have to fail a course for want of the ability to read a printed book directly.

Johan Roos

Director: South African Library for the Blind

ANNEXURE B

THE PUBLISHERS' ASSOCIATION OF SOUTH AFRICA

THE SOUTH AFRICAN LIBRARY FOR THE BLIND

JOINT STATEMENT ON THE PROMOTION OF ACCESSIBLE READING MATERIALS FOR THE BLIND IN A TRUSTED ENVIRONMENT

The South African Library for the Blind (**Blindlib**) is associated with the national Department of Arts and Culture and is dedicated to blind and print-handicapped readers.

The Publishers' Association of South Africa (**PASA**) is the national trade association representing the publishing industry. Its members include a wide range of publishers active in education, trade (fiction and non-fiction), as well as academic publishing.

In line with **PASA's** aims and objectives to promote creativity, literacy, "a culture of reading" and the free flow of ideas, information and opinion; and

In line with **Blindlib's** objectives to provide a national library and information service to blind and print-handicapped readers and to produce accessible documents to that end,

BLINDLIB and **PASA** make the following joint statement:

The publishers represented by PASA and Blindlib share a common goal in that the publishers want blind and visually impaired readers to be part of their readership.

PASA and Blindlib recognise that technology has opened up new opportunities to achieve this, but that some of the legal issues and potential pitfalls are complex.

To maximize the benefits of the new opportunities and minimize pitfalls, PASA and Blindlib are committed to building trust, confidence and common ground among the publishing and blind communities in South Africa.

PASA and Blindlib invite representatives from both communities to partake in a joint effort under the auspices of the PASA Copyright Committee to devise a set of best practice rules, guidelines and/or a model agreement in order to facilitate the greater availability of accessible reading materials for the blind in a trusted and secure environment.

ANNEXURE C

COPYRIGHT LICENCE FOR THE BLIND AND PRINT-HANDICAPPED

by and between

(THE “PUBLISHER”)

and

THE SOUTH AFRICAN LIBRARY FOR THE BLIND (“BLINDLIB”)

WHEREAS:

- A. The Publisher is the publisher of and/or holds the copyright and/or exclusive publication, reproduction and distribution rights, as well as the exclusive translation, conversion and adaptation rights in respect of the following Title(s) listed in Schedule A for the territory of South Africa (the “Territory”).
- B. Blindlib has either purchased the Title(s) in the language version(s) as specified, or has received, or will in due course receive electronic file(s) (the “Master File(s)”) in a print format or print formats and also where applicable electronic formats, including electronic download, disk, CD, or any other digital format known.
- C. The Publisher and Blindlib have entered into an agreement entitled “Contract for the Supply of Electronic Master Files” in terms of which the Publisher has supplied a list of title(s) as per Schedule A or a Replacement Schedule of the said agreement.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

- 1. Grant of Rights
 - 1.1 Conversion and Adaptation: The Publisher hereby authorises Blindlib to make and produce an “Alternate Format Copy” of the Titles. “Alternate Format Copy”, for purposes of this Agreement shall mean “a reproduction onto paper of all or part of a work by means of a Reprographic Process designed to render the work visually or otherwise perceivable by a blind person, a person suffering from severe impairment of his or her sight, a person unable to hold or manipulate books or to focus or move his or her eyes, or a person suffering from a perceptual impediment. Alternate Format Copy may also include electronic files that are designed to achieve the making of a plain paper copy, or the production of an audio-book or an electronic file according to the Digital Accessible Information System “DAISY” (www.daisy.org) standard.

- 1.2 **Reproduction of Multiple Copies:** Blindlib is hereby granted the right to make multiple copies by any means, including by print, photocopying or electronic means. Whenever Blindlib makes more than a single copy in isolation, it shall include the number of copies and ISBN in a report annually to be submitted to the Publisher or its representative. The report shall state how many copies have been made, in what format and how these have been distributed or transmitted.
- 1.3 **Distribution of Copies and Online Distribution:** Blindlib may distribute Alternate Format Copies by any means to BLINDLIB members using appropriate digital rights management technologies on digital audio books to trace where the items was sent to.

For avoidance of doubt, the rights hereby granted shall not extend beyond the Territory and shall be non-exclusive. The rights do not allow the translation from one language into another of the original published work.

2. Limitations:

- 2.1 Blindlib shall not make any alteration to the text of any published work and faithfully reproduce the original Title purchased or received as a Master File, except where reasonably required in order to make the copy perceivable to the intended readership, or navigable electronically. Omissions and deletions from the published work must be indicated in the copy.
- 2.2 Where a sound recording, Braille version, large print version, photographic or electronic version of a work has been separately published, Blindlib may not rely on this licence unless Blindlib is satisfied, after reasonable investigation, that no new copy of the version of the work can be obtained within a reasonable time at an ordinary commercial price.
- 2.3 Blindlib shall include on all copies made pursuant to this Agreement the international © symbol, a credit to the publisher and the author(s) of the published work and shall display the following notice prominently:

“This material has been copied under licence and is not for resale.”

In the case of an audio recording the following notice will be displayed prominently:

“This book is read by ... and has been produced for blind and print-handicapped readers by the South African Library for the Blind, with the permission of the publisher under licence and is not meant for resale or copying.”

- 2.4 Blindlib shall take reasonable steps to ensure that neither itself nor any of its users to whom Alternate Format Copies are distributed or transmitted engages in unauthorised use of licensed copies. Unauthorised use includes:
 - 2.4.1 selling or supplying copies for a financial profit;
 - 2.4.2 use for purposes other than for assistance to a person with a print disability, directly or indirectly; and

2.4.3 making or distributing multiple copies without a record of the copying being made; or

2.4.4 the copies are not marked as required.

3. Payment

The Publisher and rightsholder represented by the Publisher, does not currently charge a fee for reproductions or distributions made or to be made under this Agreement. In case of breach of this Agreement, the Publisher reserves the right to claim damages and the Parties hereby agree that the damage that may be claimed by the Publisher shall be equivalent to the recommended retail sales price of a copy of the published work in question per instance of breach and/or copyright infringement.

4. Warranties

4.1 Both parties represent and warrant that they are entitled to enter into this Agreement.

4.2 The Publisher warrants that it controls the required rights that it grants under this Agreement with the exception of rights in illustrations and artwork.

4.3 The Publisher's financial liability to Blindlib under this Agreement shall be limited to any amount received in cash from Blindlib, if any.

5. Term and Termination

This Agreement shall come into force on signature by both parties and shall remain in force until either party gives six months written notice to the other party. In case of breach by one of the parties the other party shall give a written notice and request that the breaching party state in writing how it has remedied or addressed the breach within 20 days. If the party complaining of a breach is not satisfied, in its sole and absolute discretion with the way in which the breach is remedied or addressed, it shall be entitled to give a ten days' notice in writing terminating the agreement.

5. Governing Law and Jurisdiction

The parties submit to the non-exclusive jurisdiction of the competent court at the place of business of both Blindlib and the Publisher. This Agreement shall be governed by and construed under the laws of the Republic of South Africa.

As agreed upon and signed on _____ 2007 by

**FOR AND ON BEHALF OF
THE PUBLISHER**

**FOR AND ON BEHALF OF
BLINDLIB**

SCHEDULE A TO THE AGREEMENT

This schedule contains the specific details of the Title(s) to be reprinted by Blindlib.

1. Blindlib requests permission to print the following number of Title(s):

Title	Author	ISBN	Language	No. of copies

ANNEXURE D

CONTRACT FOR THE SUPPLY OF ELECTORNIC MASTER FILES ("Agreement")

entered into by and between

The South African Library for the Blind ("Blindlib")

Represented herein by _____,
who warrants by his / her signature that he / she is fully authorised so to represent the
South African Library for the Blind

And

_____ (the "Publisher")

Represented herein by _____,
who warrants by his / her signature that he / she is fully authorised so to represent the
South African Library for the Blind

RECITALS

A. The South African Library for the Blind ("Blindlib"), a juristic person that derives its existence from the provisions of the South African Library for the Blind Act 91 of 1998, provides a non-profit national library and information service to serve blind readers and readers with print-disabilities in South Africa. B. To that end, Blindlib must, among others,

- (I) build up a balanced and appropriate collection of South African and other documents for the use of blind and print-handicapped readers; and
- (II) produce documents in special mediums such as Braille and audio in the formats required by those readers.

B. The Publisher is the publisher of and/or holds the copyright and/or exclusive publication, reproduction and distribution rights, as well as the exclusive translation, conversion and adaptation rights in respect of certain titles more closely described in Schedule A to this Agreement and/or in any Replacement Schedule thereof for the territory of South Africa (the "Territory"). In respect of these titles Blindlib and the Publisher intend to enter into a copyright licence.

C. As at the date of entering into this Agreement, Blindlib has purchased certain title(s) in the language version(s) as specified in Schedule B to this Agreement and secured a non-exclusive copyright licence to reproduce and supply these title(s) in a print format or print formats accessible to its registered community of readers with print-disabilities. Nothing contained in this Agreement shall detract from the rights licensed by the Publisher to Blindlib under such pre-existing non-exclusive copyright licence.

D. Blindlib requires access to the electronic file(s) used by the Publisher to produce and publish the title(s) listed in Schedule A and Schedule B, in order to facilitate Blindlib's reproduction of the said title(s) in an accessible format or formats, subject to the terms and conditions of the copyright licence mentioned above.

E. The Publisher has access to or can facilitate access to such electronic file(s).

NOW THEREFORE the parties agree as follows:

1. This Agreement is subject to the terms and conditions of the above-mentioned non-exclusive copyright licence that has been granted to Blindlib in respect of the reproduction, conversion or adaptation of the title(s) listed in Schedule B to this Agreement. Moreover, this Agreement shall become subject to the copyright licence to be entered into between Blindlib and the Publisher in respect of the title(s) listed in Schedule A to this Agreement or any Replacement Schedule thereof. Should the same title(s) be listed in Schedule A and B hereof, the copyright licence to be entered into shall apply in respect of any and all such title(s) to the extent that the said copyright licence will confer more rights to Blindlib than any pre-existing copyright licence.
2. The Publisher agrees to transfer to Blindlib a copy of the electronic file(s) used for the production of the final print run of the title(s) listed in Schedule A to this Agreement. The electronic file(s) contain(s) the content of the print publication of each title ("the Master File(s)").
3. The Publisher agrees to update Schedule A by issuing replacement schedules ("Replacement Schedules") to Schedule A from time to time as specified in Schedule A. Each Replacement Schedule shall list all title(s) initially contained in Schedule A, and any other title(s) published or to be produced and published by the Publisher since the drawing up of Schedule A and in respect of which this Agreement shall become applicable. The Publisher agrees to transfer the Master File(s) of any additional title(s) listed in any Replacement Schedule as soon as practicable to Blindlib.
4. Unless otherwise agreed in writing, the Master File(s) shall be transferred to Blindlib in the same electronic format employed by the Publisher or the printer for the production of the final print run.
5. The transfer of Master File(s) shall, as a rule, be free of charge. However, where Blindlib requests the Master File(s) in formats for conversion into Braille or into computer activated voice services, where the Publisher agrees to such request and where, either due to the urgency or otherwise, the Master File(s) are procured from the Publisher's suppliers for a fee (eg for location in archives, duplication and/or conversion, Publisher shall be entitled to pass this cost fully onto Blindlib.
6. The method of transfer shall be via file transfer protocol from an FTP-address nominated by the Publisher, hypertext transfer protocol from an HTTP-address nominated by the Publisher, or by means of electronic mail,

or by means of removable media such as compact discs, flash cards, or USB-drives. In any such case, The Publisher shall supply the person designated by Blindlib to receive the Master File(s), with the credentials that may be required to access the Master File(s), or to procure the download of such Master File(s), as the case may be.

7. Blindlib undertakes to store the Master File(s), once received, in a manner which is designed to prevent unauthorised access to the Master File(s) by persons other than those who require access to the Master File(s) for the purpose of book production or for purposes associated with book production or in connection with the preservation of Blindlib's digital assets or the digital assets under Blindlib's lawful control. For avoidance of doubt, as between Blindlib and the publisher, Blindlib does not claim any intellectual property rights in those digital or other assets and Publisher is free to make use of copies of any Master File(s) in the event that, at the Publisher's discretion, these Master File(s) are re-transferred back to Publisher for any purpose whatsoever.
8. If more than one Master File was so utilised, The Publisher shall provide Blindlib with each of those Master Files, together with a written document to enable Blindlib to utilise those Master Files in their correct sequence.
9. Subject to the Publisher's own rights and obligations towards third parties, the Publisher warrants and promises to employ best efforts to ensure that the electronic contents of the Master File(s) transferred to Blindlib represent exactly, the contents of the print publication of each of the title(s). This warranty does not extend any further than the contents of the Master File(s) itself / themselves. The Publisher does not accept any liability for the output which is rendered by any conversion process which Blindlib might apply to the Master File(s).
10. If The Publisher transfers to Blindlib a Master File or Master Files which the Publisher has converted to an electronic format more appropriate to Blindlib's production needs, then the Publisher warrants and promises to have employed best efforts to ensure that the integrity of the contents of the Master File(s) so transferred is maintained.
11. Blindlib warrants and promises not to disclose or provide access to the Master Files or any copy in whatever format thereof to third parties other than registered members of the community of readers with visual disabilities.
12. Blindlib warrants and promises to apply the utmost care to convert the Master File(s) into a print format or formats in a manner that is faithful and a true and correct representation of the original text contained in the Master File(s) received from the Publisher. Blindlib will hold Publisher harmless in case of any claims of whatever nature threatened or levelled against the Publisher as a result of or by reason of any inaccuracies in the converted versions of the Master File(s).
13. As between the parties, Blindlib does not claim any intellectual property rights in the converted text formats and resultant electronic or print files

other than those assigned to or to be assigned to the Publisher under the terms and conditions of the copyright licence to be entered into between them.

14. If the Master File(s) to be transferred to Blindlib is / are protected by any electronic copy-protection technology, The Publisher undertakes to remove or to procure the removal of any such technology. If this is not done, Blindlib shall request that the Publisher procure the removal of any such technology, unless the Publisher agrees that such removal shall neither be an infringement of the copyright in the title(s); nor constitute a breach of this Agreement nor conflict with the provisions of the Electronic Communications Act.
15. If the Master File(s) is / are in copy-protected electronic form, and if Blindlib is licensed to produce an accessible electronic copy of such Master File(s), Blindlib shall, insofar as it is practicable to do so, incorporate the same or equally effective copy protection, unless the Publisher agrees otherwise.
16. Blindlib undertakes to destroy all copies of the Master File(s), once it has produced both the archive and distribution copies of the book which the copyright licence entitles it to produce, publish and supply.
17. In the event that Blindlib does not comply with any or all of the terms of this agreement, The Publisher shall be entitled to cancel this agreement and to require it to re-transfer the Master File(s) and destroy any copies immediately and the Publisher shall be entitled to inspect Blindlib's premises in order to satisfy itself that this has been done.
18. If Blindlib becomes aware that any unauthorised person has gained access to the Master File(s), Blindlib shall immediately advise the Publisher thereof. In that event the Publisher undertakes not to treat such unauthorised access as grounds for the termination of this Agreement, but to collaborate with Blindlib so as to enable it to investigate the matter fully and to implement such additional security precautions as may be indicated by the results of the investigation. The Publisher shall not be prevented from instituting legal proceedings to recover any loss that resulted from such unauthorised access.
19. The termination by either party of this Agreement on the grounds of breach thereof shall not *ipso facto* lead to a termination of the copyright licence of Blindlib to produce the title(s) for the benefit of blind or print-handicapped readers.
20. Nothing in this Agreement shall preclude either party in the event of a breach thereof, from exercising any entitlements, relief or remedies available to it at common-law.

THUS ENTERED INTO ON THIS ____ DAY OF _____

For and on behalf of Blindlib

For and on behalf of the Publisher

[designation]

[designation]

AS WITNESS

AS WITNESS

AS WITNESS

AS WITNESS

SCHEDULE A [INITIAL LIST OF TITLES TO BE SUPPLIED BY PUBLISHER]

NOTE: THE PUBLISHER HEREBY AGREES TO **UPDATE THIS SCHEDULE A** BY SUPPLYING A **REPLACEMENT SCHEDULE** NOT LESS FREQUENTLY THAN ON THE 28TH DAY OF EVERY *THIRD*, *SIXTH*, *NINTH* MONTH FOLLOWING SIGNATURE OF THIS AGREEMENT.

[Delete the text between *stars* as required].

Title [Title of Book, year and edition]	Author(s)	ISBN	Language	Comments

SCHEDULE B

[LIST OF TITLES TO WHICH A PRE-EXISTING COPYRIGHT LICENCE APPLIES IF MORE FAVOURABLE THAN A COPYRIGHT LICENCE TO BE ENTERED INTO]

Title [Title of Book, year and edition]	Author(s)	ISBN	Language	Comments