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My name is Paul Harpur and I am an academic who is also blind. I have written extensively on my personal experiences as a under-graduate, higher degree student and now academic with a disability. I dream of a day when instructional materials are as easily accessible and usable by students with disabilities as those who do not currently have a disability. Is this possible? Yes!

Most instructional materials are born digitally and can be easily prepared in ways that are accessible for everyone. While individual teachers/academics might find this hard, publishers do not. Education is a billion dollar market and making E-books accessible and other materials is easy and can easily be achieved. It only takes the efforts of the State to mandate this level of access. There are voluntary standards now and many good publishers comply. Some do not. By not mandating access it enables bad actors to profit from their inattention to the almost 20% of the student population with a disability.

I enclose the conclusions from 2 works. The First is co-authored with my colleague from Harvard Law School and the other is sole authored.

**Paul Harpur and Michael Ashley Stein, ‘THE RELEVANCE OF THE CRPD AND MARRAKESH TREATY TO THE GLOBAL SOUTH’ in Michael Ashley Stein & Jonathan Lazar (Eds.), *accessible technology and the developing world* (2020) Oxford University press.**

## CONCLUSION

For most of human history the written word has been inaccessible to the print disabled, or only available to them as an exception to the norm. While hardcopy braille has improved access, it remains expensive to create and difficult to transport (Bhickel, 1988), and thus does not provide anything approaching equality. The advent of E-Books and improvement in scanning technology have created the possibility that the worst excesses of the book famine could be addressed. At the same time, publishing accessible material is becoming more complex due to the growth of web-based self-publishing which can increase the numbers and type of bodies who are publishing material that is of interest to people with print disabilities.

Hence, reversing the book famine will require dramatic political/policy/technological reforms. An expedient solution would be to ensure that all future (and some number of extant) books appear in accessible formats. Such an occurrence currently appears Utopian,<sup>[1]</sup> although we note with approbation the CRPD Committee’s censure of the nearly complete lack of access for individuals with intellectual and developmental disabilities (UN CRPD Committee, 2014). A policy approach would increase awareness regarding the economic efficiency and development synergies related to literacy for the print disabled (Blanck, 2014, 29-31). Equal reading access for the group advances State-based compliance with the CRPD and Marrakesh Treaty, as well as the Sustainable Development Goals, in a manner that has an empirically verified impact on poverty alleviation, health, and social inclusion (United Nations, 2019).

The change in copyright norms which enabled the Marrakesh Treaty to be adopted should open up other discussions on what these changes might mean for information access for the print disabled in the Global South. Creative Commons licenses encourage fairness and promote human development (Suzor, 2014, p. 185). The role that Creative Commons licenses have in enhancing access to information more broadly, and the legislative reforms to support this in the United States and elsewhere, have been analysed (Harpur, 2017, p. 137). Future research should examine how the creative commons movement and open source publishing can be utilized to increase the availability of accessible works generally and in the Global South.

Finally, and far exceeding the scope of this chapter, a technological solution ultimately might employ artificial intelligence tools that improve the mechanisms for converting books.<sup>[2]</sup> Besides more efficient scanning, artificial intelligence can identify paintings and photos in books and appropriately tag them; take text presented in complex and unformatted tables and present it in more usable formats; insert page numbers where they do not correctly align

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<sup>[1]</sup> See Betsy Beaumon’ s chapter.

<sup>[2]</sup> Id.

between E-book and print book; and other related tasks (AbilityNet, 2019). The scope of solutions is only limited by our political will and imagination.

**I concluded in Paul Harpur: Discrimination, Copyright and Equality: Opening the E-Book for the Print Disabled) (2017) Cambridge University Press:**

Conclusion

The interaction between the enforcement of laws which promote persons with print disabilities' access to information and copyright laws which seek to restrict access to information is contributing to the continuation of the book famine. The analysis in this chapter commenced by explaining how the enforcement pyramid is the model which best explains how the legal duties analyzed in this monograph are enforced. Secondly, this chapter analyzed how traditional anti-discrimination laws are enforced. This discussion included an analysis of the pre-litigious and litigious steps involved in suing for discrimination, the risk of victimization, and the impact of resource limitations on enforcement. Thirdly, this chapter analyzed how laws which promote equality are enforced. This included analyzing the enforcement of positive duties in Canada and the United Kingdom, along with the weak enforcement under the *IDEA* and the more effective enforcement under the *CVAA*. Finally, this chapter analyzed the robust enforcement of copyright laws along with the substantial penalties which flow from non-compliance.

Laws and their enforcement both convey messages.<sup>1</sup> Arguably the message conveyed by the enforcement of anti-discrimination, equality and copyright laws on the whole is that substantial changes from the existing status quo is not required. Traditional anti-discrimination laws and the positive duties in Canada and the United Kingdom rely on sporadic and weakly enforced individual enforcement. The probability of being found liable by a court for breaching anti-discrimination and equality duties is reasonably low. This might send the wrong signal to regulated parties, such as employers and educators. Copyright laws, in contrast, are aggressively enforced with significant punishments. Copyright laws send the message that there is a reasonably high risk that a breach of these laws will result in detection and substantial punishment. The interaction between these competing regimes means that regulated parties are more likely to devote more resources to complying with copyright laws, rather than duties under anti-discrimination laws or laws which promote equality. The impact of copyright laws is even more acute when parties may be considering engaging in above compliance activities to promote access to information for persons with print disabilities. While such above compliance activities would further the rights of persons with print disabilities, the enforcement of copyright laws is likely to suppress the formation of interventions which would help combat the book famine.

Arguably, new enforcement options are required that more fairly balance the interests of rightsholders with the human rights of persons with print disabilities. Research demonstrates that many parties fail to comply with their regulatory obligations due to inattention or miscalculation, and not because key actors have actively decided not to comply with the law.<sup>2</sup> Enabling persons with print disabilities to consume E-Books and digital content is a technical process, which harried line managers may devote inadequate resources to in order to ensure compliance. There are, however, situations where parties intentionally deny access. The analysis of the Amazon Kindle reader in chapter 1 is an example of a rational and lawful decision to deny access to persons with print disabilities. In contrast, chapter 1 also identified that a significant number of publishers are actively seeking to reduce the book famine by working with Bookshare to provide books to print disabled readers. There is no doubt

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<sup>1</sup> Sandra Fredman, *Discrimination Law*, 2nd ed (2011) Oxford University Press, 280.

<sup>2</sup> R A Kagan and J Scholz, 'The "Criminology of the Corporation" and Regulatory Enforcement Styles' in K Hawkins and J Thomas (eds), *Enforcing Regulation* (1984) Kluwer Nijhoff Publishing, 67-69; D Spence and T Malloy, 'Regulation, Compliance and the Firm' (2003) 76 *Temple Law Review* 451.

sanctions remain a vital tool in the regulatory framework, however moving forward regulators should continue to seek additional strategies to achieve desired targets.

There is arguably great scope for disability rights scholars to engage further with regulatory theory to craft new vehicles to promote equality. Professors Robert Baldwin, Martin Cave and Martin Lodge have identified the key regulatory models which can be used to craft interventions.<sup>3</sup> These options include:

- To command—where legal authority and the command of law is used to pursue policy objectives.
- To deploy wealth—where contracts, grants, loans, subsidies, or other incentives are used to influence conduct.
- To harness markets—where governments channel competitive forces to particular ends (for example, by using franchise auctions to achieve benefits for consumers).
- To inform—where information is deployed strategically (e.g. so as to empower consumers).
- To act directly—where the state takes physical action itself (e.g. to contain a hazard or nuisance).
- To confer protected rights—where rights and liability rules are structured and allocated so as to create desired incentives and constraints (e.g. rights to clean water are created in order to deter polluters).<sup>4</sup>

The majority of strategies analyzed in this monograph rely on a variant of the command and control model. Enforcement often relies upon a survivor of ableism to carry the burden of enforcing the laws. State support and enforcement will help combat the worst forms of ableism; however commands and sanctions are only one regulatory option. Civil rights laws continue to play a vital role in promoting equality, although more regulatory options need to be explored.

A theme throughout this monograph has been that the parties who attract legal obligations are not always the parties in the best position to remedy the inequality. Rather than imposing anti-discrimination duties on every party in the product life cycle who can impact upon disablement, perhaps incentivizing equality activities may be an option that would be easier to enforce and more politically acceptable. Enforcing incentives is much easier than imposing sanctions, as incentivized parties do all the leg work to demonstrate that they are entitled to the reward. Providing there is a sufficient community benefit to the incentive scheme,<sup>5</sup> the absence of compulsion means there should be less reluctance from the business community about the introduction of the scheme.

There are already incentive schemes surrounding disability employment in the form of tax credits.<sup>6</sup> Tax credits could foreseeably be granted for the research, development and adoption of disability

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<sup>3</sup> Robert Baldwin, Martin Cave and Martin Lodge, *Understanding Regulation: Theory, Strategy, and Practice, Second Edition* (2011) Oxford University Press, 106.

<sup>4</sup> *Ibid.*

<sup>5</sup> Edward L Rubin, 'Images of Organizations and Consequences of Regulation' (2005) 6 *Theoretical Inquiries in Law* 347, 348.

<sup>6</sup> Lennard J Davis, 'Bending Over Backwards: Disability, Narcissism, and the Law' (2000) 21(1) *Berkeley Journal of Employment and Labor Law* 193, 203.

inclusive digital spaces.<sup>7</sup> Where there is a disabling digital environment persons with disabilities currently experience harm in their cultural, educational, economic, employment and general lives. Rather than requiring persons with disabilities to carry the cost of disabling spaces, incentives would shift part of the burden onto the state and encourage equality activities from parties who can make digital spaces disability inclusive.

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<sup>7</sup> Delia Ferri, ‘Does Accessible Technology need an “Entrepreneurial State”?: The Creation of an EU Market of Universally Designed and Assistive Technology through State Aid’ (2015) 29(2-3) *International Review of Law Computers and Technology* 137.