

Landmark judgment a win for SA's blind community

By [Ian Jacobsberg](#)

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In a landmark judgment and welcome news for Blind SA, the Constitutional Court has confirmed an order by the High Court that the Copyright Act, in particular sections 6 and 7, read with section 23 of the Copyright Act 98 of 1978, is invalid as it limits the access to books in comprehensible formats, meaning braille, for blind people.



Image source: Thirdman from [Pexels](#)

Justice Jody Kollapen delivered a judgment written by Acting Justice David Unterhalter which stated that there is “a scarcity of access to literary works” for the visually impaired.

On 7 December 2021, the High Court delivered a judgment in which it declared the Copyright Act to be unconstitutional to the extent that it fails to make provision for exceptions that would enable, through the conversion of works, access to such works by persons with visual and print disabilities. The application was unopposed.

The High Court held that despite the alternative formats available for blind persons and those with visual and print disabilities, the Copyright Act was restrictive of the free conversion of works under copyright into alternative formats. This meant that the consent of copyright owners was required to convert works under copyright into formats that enabled persons with print and visual disabilities to have equal access to information. The High Court found the statutory prohibition of the free conversion of works to be discriminatory and inconsistent with section 9 of the Constitution.



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The Court also found that the delay in rectifying this was “unreasonable and contrary to section 36(1) of the Constitution as it unjustifiably perpetuates the violation of the rights of visually and print disabled persons”.

Following the Court's judgment yesterday, 21 September, Parliament has two years to cure the defects in the Act. Pending the amendment of the Act, the Court held that the Act would be deemed to include provisions allowing entities serving the interests of blind, visually impaired or disabled persons to convert literary works to a format that is accessible to those persons.

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