Comments on access to literary works by people with print disabilities

The following is my submission to the Library of Congress's [2]Notice of Inquiry and Request for Comments on the Topic of Facilitating Access to Copyrighted Works for the Blind or Other Persons With Disabilities.

Background

I am a journalist and author in Toronto. I've written two books and about 400 articles for newspapers and magazines. I've been online since 1991. I have been interested in, and have worked in, the field of accessibility for people with disabilities over a period of about 30 years. I have good copyright knowledge for a layperson.

Location of this submission

This submission, dated 2009.04.21, is permanently filed online at <http://joeclark.org/access/loc2009/>.

Definitions

For the purposes of this submission, I use the following definitions:

audiobook
: Recording of a human reading of a printed work, sold commercially in common formats like CD with an intended audience of nondisabled people

talking book
: Recording of a human reading of a printed work, recorded in a specialized format and distributed largely or exclusively to people with disabilities

Centralization of production robs people with disabilities of market choice

The Chafee amendment provides, as do laws in other countries, that only certain authorized organizations may make alternate-format copies of works. Usually, these organizations are nonprofits or charities.

If an authorized producer works too slowly or just ignores a request, the print-disabled reader has to wait unconscionably longer than a nondisabled person to read a work - or never gets that work in an accessible format at all.

Such centralization discriminates against people with disabilities solely on the basis of their disability. Nondisabled rightsholders may use any vendor they wish to duplicate their works. People with certain disabilities, who also hold rights (though a different set), are legally prevented from exercising their own market choice. Those readers may solely rely on what amounts to a government-approved whitelist of acceptable organizations. (The actual language in the Chafee amendment is "authorized organizations," which has the same practical effect as a pre-approval process.)

If we view the producers of alternate-format works as operators of printing presses, then, as far as print-disabled people are concerned,

the government regulates their printing presses. The same regulations do not apply to nondisabled people.

While discrimination of this sort seems illegal on its face and is ethically untenable in any event, the solution is straightforward: Remove the constraints on who exactly may create an alternate format. Don't even mention any kind of constraint; nondisabled people are never faced with the same kind of checklist. In this way, vendors can compete for business (and can compete on the values of accuracy and completeness of conversion) and print-disabled people can exercise their free-market rights to engage whatever vendor or provider they wish - including nonprofits.

Centralization of production limits the number of available works

When only a few organizations are legally entitled to produce an alternate format, I see only four outcomes:

1. Organizations produce an alternate-format work speedily and without incident.
2. Organizations say they'll produce an alternate format but don't.
3. Organizations refuse a request, often for specious reasons.
4. Organizations become so backlogged that the alternate format may arrive too late to be useful.

(A fifth outcome mixes and matches from the above list: Organizations produce alternate formats after the printed work is released but with only enough of a delay to be annoying rather than fatal. This could account for the plurality of cases. Certainly it is rare to find an alternate format and a print book released on the same day on equivalent terms.)

My own experience speaks to this problem. My first book, Building Accessible Websites (New Riders), on the topic of Web accessibility, came out in print in 2002. I am the copyright holder and retained alternate-format rights. (I now own all rights.)

A CD-ROM bound into the book contained full text, but no images, in standards-compliant XHTML. The book's [4]companion Web site provided the same full-text XHTML, with added images for one chapter. Nonetheless, I wanted an alternate format produced for readers who preferred a narrated or Braille version.

Recordings for the Blind & Dyslexic barely answered E-mails and phone calls, frittered away weeks doing nothing, and, in an ultimate indignity, actually sent an E-mail near the end of the process asking me to recap the whole project from scratch. (Paraphrase: "Remind me what this is about again?") My direct experience shows RFB&D to be scattered and unable to handle my business.

A distant second choice was the Canadian National Institute of the Blind. CNIB likes to present itself as not merely an expert but the definitive and even sole expert on every aspect of blindness and visual impairment in Canada. CNIB wishes to completely dominate the market for goods and services aimed at blind people.

I had no interest in engaging CNIB, but, because of a Chafee amendment-like provision in Canada's Copyright Act, my hands were

effectively tied. Over a period of about two years (an eternity in computer-book publishing):

* Three separate managers handled my case, each of them promising that my book would indeed be recorded and distributed.
* One manager admitted mine was the best-marked-up copy they'd ever received. (Indeed, valid, semantic HTML or XHTML can be converted to DAISY format in minutes. That's what I provided.)
* One manager tried to prevent me from obtaining a copy of my own alternate-format work.

Ultimately, CNIB could not get its act together to narrate one book into audio format and convert a couple of dozen files to DAISY. CNIB never managed to produce my alternate-format book.

The real-world effect is small. Few blind or otherwise print-disabled people are Web developers. Fewer still would be unable to read the XHTML version. The audiobook version was to be provided for completeness. But because my hands were legally tied and I had no practical choice but to work with a known-incompetent organization I disliked anyway, I had to entrust my work to CNIB, which failed completely in the exercise of its government-granted near-monopoly.

Since I was initially willing to use a vendor in the United States, one that couldn't even get started on the project, I have reason to believe that my experience translates well to the U.S. context.

Format restrictions limit the number of available works

Print publishers have never actually intended to provide alternate-format works. The sole profitable market segment there, large-print works, has been reserved for publishers' exclusive use. (That market segment is made up largely of seniors who don't consider themselves disabled - let alone print-disabled, a term they've never heard. The market includes few people with a lifelong disability or people who otherwise self-identify as blind or disabled.)

Nonetheless, publishers disingenuously acted as though alternate formats were viable market substitutes for print works. They acted like alternate formats were a vector for what they would now call "piracy." They acted like they were about to lose sales of books that print-disabled people, by definition, could not read. Publishers acted as though alternate formats were attractive product choices for nondisabled people and represented lost sales of print books.

By any standard, this is a scam, but it was made much worse by copyright law, which required that alternate formats other than large print be sequestered to a disability ghetto.

Publishers pretended to jealously guard their copyrights even though such copyrights actually belong to authors in many cases, not publishers. They guarded such copyrights as though they were ever going to provide alternate formats themselves. The accepted fact of the matter is that almost no publishers produce alternate formats. Publishers hoarded a right they never, at any time, intended to exercise en masse.

As such, legislatures in many countries, including Congress, were

complicit in perpetuating the falsehoods that alternate formats are a form of theft, or displaced sales, of "real" books and that disabled people were somehow so dangerous and contagious that their books had to be walled off in formats normal people couldn't read. While the contradictions are many, the scandal is the fact that these contradictions were enshrined law.

Technology has now given lie not only to publishers' attitudes but to the law itself. It's true that specialized talking books for the blind, including DAISY, are better than commercial CD and downloadable audio books for sighted people. Talking books have chapter and page stops, they audio-describe charts, photos, and graphs, and they are set up for high-speed listening. They're clearly better. But they aren't so much better that real-world blind people insist on using only those.

Just as MP3s tend to sound worse than CDs (which sound worse than some LPs), people embraced CD- and MP3-quality audio as good enough. Online video of the YouTube variety is often atrocious compared to analogue broadcast television and isn't even in the same ballpark as HD, DVD, and Blu-ray, but - again - people accepted online video as good enough.

In the same way, blind and other disabled people who want to listen to books instead of reading them have accepted audiobooks as good enough. But it's illegal to create an audiobook as a claimed alternate format. That's got to change.

In the 21st century, format restrictions have been superseded by events and were never a good idea in the first place. A rationally developed copyright régime, as distinct from one that takes orders from the publishing industry, would accept that it is up to the reader to choose an alternate format. Among other things, this means that publishers' monopoly on creation of large print has to be abolished, too. These changes would aid in "promoting market-based solutions."

To accommodate publishers' and creators' rights to control duplication, it would still be useful to allow them to produce or commercially release their own alternate formats first. If, after a reasonable time explicitly specified in law, publishers do not provide the alternate format themselves, other parties may do so. Such a provision corrects for market failure: If publishers and creators don't produce an alternate format themselves, other parties will fill the gap.

Standardized - and other - formats

The Notice asks for comments on "existing standardized formats." In broad terms, people with reading disabilities should be able to determine which formats they will use, but, as the Notice implies, standardized formats are usually better, because they have predictable structures and work on many platforms.

* Large numbers of blind computer users consider Microsoft Office files de facto standards. That isn't necessarily because Office files meet their needs better; the actual explanation is something of a historical accident and deals with the fact that only in recent years have personal computers that don't use Microsoft

Windows become reasonably accessible to blind people. Mac OS X computers ship with a full-function screen reader for free; open-source operating systems like Linux can use free products like NVDA.

Hence, blind people's preference for Microsoft Office files represents a kind of Stockholm syndrome rather than any trend that should be enshrined in policy. Microsoft Office files should be a permitted method of providing alternate formats, but one that isn't officially sanctioned or recommended.

* Electronic text or E-text has many definitions, but the easiest way to spot an E-text is to ask these questions:
    + Do you have to use a specific application to open the file?
    + Does the file contain structural markup?

  If the answer to both question is no, and if the file contains encoded characters, then the file is an E-text. Unicode or ASCII plain-text files are E-texts. Microsoft Word documents, Web pages, and PDFs are not.

  Many blind people ask for "E-text" version of books they wish to read. The term is open to interpretation and may not give them what they really want. E-texts, with their lack of structure, work well for short works, so in some cases genuine E-text is a good alternate format. (For example, a short letter usually works well as plain text.) But for most other documents, structure is an absolute necessity for comprehension. Even if the only structures in a document are headings and paragraphs, it is crucial to be able to distinguish between the two.

Hence, any copyright law should favour and endorse open, standardized formats with structure, while permitting any and all other formats.

Here I would point out that PDF can be a viable alternate format if the PDF is created well. Usually this means tagged or structured PDF, which some applications, including Microsoft Word for Windows, can export automatically. (As elsewhere, authors still have to write alternate texts for images.) The upcoming PDF/Universal Access specification, which I worked on for over two years, will have significant failings when it comes to language, text encoding, and text direction, but will probably be broadly useful as a standard for PDFs that are accessible to people with disabilities.

At a minimum, I would expect tagged PDF to always be listed as a viable alternate format. (The converse is also true: I would never expect to see PDF rejected as an alternate format.) When the PDF/UA specification is done and ratified (under the ISO 32000 process), even with its failings, it could be added to a list of recommended or endorsed formats.

Confusion about desktop-publishing formats

I would note that many blind people are under the impression that print books are automatically inaccessible to them except in rare cases (like large print for low-vision readers), while electronic files are automatically accessible to them except in rare cases (where someone makes an honest mistake). This misconception has been carried to extremes, such as claims that publishers always already have electronic files and could just hand those over to blind people for immediate use.

The confusion is understandable, as blind people (per se) cannot operate desktop-publishing programs even when they have adaptive technology at their disposal. They lack experience with desktop publishing.

DTP formats, like Xpress or InDesign files, are proprietary formats. While the may contain structure, they rarely, if ever, contain alternate text for images, and in any event there are no blind people who can natively and happily read an Xpress or InDesign file as though it were some kind of electronic book.

DTP files must always be transformed to another format before they can be used by a print-disabled person, whether it be a large-print hardcopy document, tagged PDF, ePub, or another structured format. (For short documents, true E-text is easily exported.) Quark Xpress is almost useless in the production of structured documents. In scientific and technical publishing, FrameMaker is still in use and can export quite clean structured files when used expertly. InDesign has by far the best combination of user-friendliness and raw power; you can export a tagged PDF by ticking a single box, and it is no problem to produce multicolumn documents that pass accessibility standards on the first try.

Thus, if the Library receives comments that publishers are lagging in their duties to provide alternate formats because they "already have" books available as "electronic files," please be sure to understand that not all files are created equal and that DTP files are of no use to print-disabled people.

Sign-language translations

Canada's Copyright Act allows for the translation into sign language of literary works. (Cinematographic works cannot be transformed that way.) There has been some discussion of adding a similar provision to U.S. law and regulations. I'm not against it, but we should acknowledge that sign-language translation is qualitatively different from transliteration into another written form and from reading out loud. It is actually a translation into another language, and creators ordinarily hold complete power to approve or reject translations.

Such a provision removes that power in one limited instance. That may be justifiable to accommodate people with print or reading disabilities, but we need to be honest about the abridgement of another right that it represents.

-- 30 --