Notice of Inquiry and Request for Comments on the Topic of Facilitating Access to Copyrighted Works for the Blind or Persons With Other Disabilities

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Introduction

Thank you for the opportunity to address this important topic. To begin, I would like to outline what I have found to be a useful framework when thinking about the issue of making print-based materials accessible to people with disabilities. This framework divides modes of accessibility in to three categories:

> First, there is *Personal Accessibility*, meaning tools and methods used by individuals with disabilities to convert and process materials independently. For example, scan-and-read devices and magnifiers are essential for reading mail and other personal tasks. These tools are purchased as needed by the individual, and are sometimes subsidized for people with a disability and financial need, as certain types of products can be expensive.

> Next is *Institutional Accessibility*. This refers to specialized organizations such as the National Library Service for the Blind & Physically Handicapped, Recording for the Blind & Dyslexic, and others. These institutions are the main producers of accessible versions of books and other print materials in the United States, and their publishing activities are exempt from copyright, as per Section 121, (the 'Chafee Amendment'). To access these institutional services usually requires verifiable proof of disability.

> Finally, there is *Mainstream Accessibility*, which includes products sold on the open market but that incorporate one or more accessible features. Mainstream products by definition are available to anyone who can afford them and do not require the buyer to disclose or prove that they have a disability. Some mainstream accessible products are so common it is easy to overlook their crucial role as accommodations – eyeglasses, hearing aids, large-print books. Curb cuts for wheelchairs could also fit in this category.

Using this framework as a reference, it is my opinion that <u>government policy over the years has favored Institutional Accessibility at the expense of Mainstream Accessibility</u>, which is a problem, because people with disabilities most desire Mainstream Accessibility to be the norm. I believe this is because accessibility is generally seen as a social issue, rather than an economic one. While discrimination against people with disabilities is very real, it is economic discrimination at heart, rather than prejudice against the individual.

In terms of print-based materials, this means <u>more emphasis has been given to non-profit and government produced materials rather than creating the right economic incentives for books to be issued in accessible formats by the original publisher</u>. I believe that there are useful and progressive ways in which government policy and resources can positively effect a change of emphasis from Institutional to Mainstream Accessibility without harming existing services, but without that change, we will never achieve real equality for people with print-disabilities.

Possible Actions

I would like to focus my comments and recommendations on the five possible actions listed in the notice of inquiry.

1) *Develop Standards*. There is definitely a useful role the government can play in defining and promoting standards of accessibility, but it is important to first define what kinds of standards are needed. Technical standards, describing how something is done, are less successful for ensuring accessibility than functional standards, describing how something is used.

For example, Section 508 is a good effort at defining how an accessible web page behaves. While it could be improved in some significant ways, it is a good example of a functional standard that is flexible enough to adapt to changing technology. With more and more materials being composed and distributed in digital form, it is essential to have a consistent standard for describing how those documents must be able to be located, perceived, and navigated by people with different sensory and cognitive abilities.

On the other hand, the National Instructional Materials Accessibility Standard (NIMAS) is a technical standard that faces significant challenges in meeting the diverse needs of grade school students with disabilities. A publisher can create a NIMAS-compliant file, but there is no guarantee that this will result in a student receiving the material in a format they can actually learn from. One problem is that the NIMAS does not specify results. It is like a list of ingredients with no assurance that the proper recipe will be followed.

So, it is my recommendation that government-sponsored standards should focus on describing specifically how a diverse population can locate, perceive, and navigate information resources, whether those resources were 'born digital' or transcribed from another source. This will benefit Mainstream as well as Institutional Accessibility efforts.

2) *Establish Trusted Intermediaries*. I am not certain why the word trusted was thought to be necessary, since no copyright holder will knowingly let a distrusted intermediary handle their intellectual property, and they will also ensure that the 'honest stay honest' through elaborate contractual protections. Having said that, there is an important unfilled role for a government-sponsored intermediary that would empower the Mainstream without harming Institutions: A National Registry for Accessible Materials.

As it stands now, organizations producing materials under Section 121 have no obligation to inform the publisher or anyone else of the books or other materials they are creating and distributing. The reason such a Registry is needed and important to encourage Mainstream access is that Institutional producers must integrate their production with that of the publisher of the original work.

A nice voluntary example of this is when a textbook publisher includes in the print edition of a textbook the 'Shelf Number' of the book as produced by RFB&D in audio format. With a National Registry and mandatory registration of Institutionally produced titles, publishers can begin to promote accessible versions of their books through the Registry, even if they themselves are not yet ready to publish in accessible formats. With the sophistication of online

bibliographic systems, registering the production of a work would be the matter of entering an ISBN and then a few clicks.

3) *Providing Technical Assistance*. I do not view this as a fundamentally important activity for government, other than how such assistance can support the other Actions, especially Standards Development. If government policy and resources are directed towards Mainstream Accessibility, the majority of technical assistance will be provided by vendors as part of general customer support.

4) *Promoting Market-based Solutions*. First, a quick recap of publishing: To state the obvious, publishing is the act of an author communicating a message to an audience. The format chosen to distribute the message depends on the nature of the message and the size and makeup of the audience. The marvelous adaptability and ubiquity of print on paper has made it the ideal format for publishing for hundreds of years, and there is no question that paper-based formats will endure for many more years. But publishing on paper is visual and tactile, so the only accessible formats supported by print are large-print and embossed braille. It is the growing market for electronic publishing that holds the most potential for market-based solutions.

So, how can government policy support market-based solutions, or as I call it, accessible publishing? Some ideas:

- Develop an improved Section 508 functional accessibility standard, and actively enforce it for the governments own communications. This will stimulate the availability of tools for accessible authoring, along with services such as compliance checking and remediation.
- Create a National Registry for Accessible Materials, possibly as part of the Copyright Office. This will heighten awareness of accessible editions of published works and bring publishers further in to the process.
- Develop financial incentives for materials to be published in accessible formats. For example, a tax-credit for publishers who issue works in a format that meets the accessibility standard described above. This is especially crucial in educational publishing, where the need is intense but the resources are scattered.
- Update Section 121 of the Copyright code to reflect the shift in priorities towards Mainstream Accessibility. This is a sensitive subject that will undoubtedly cause consternation among the Institutions that built their business model around the current exemption. But they will have an even more vital role once their activities and interests are better aligned with the general publishing industry as well as with the disability community.

Regarding the last point, there is bound to be some resistance from well-established Institutions to too much tampering with the status quo. This is to be expected, as these organizations have long and proud histories of service to people with disabilities, and there is every reason to believe they will continue to play a vital role in the future.

However, the evolution of digital technology and electronic publishing is causing major upheavals in the publishing world, and it would be a mistake to shelter some organizations from change simply due to tradition. If the government sets a clear policy promoting

Mainstream Accessibility, and provides assistance as Institutions adapt and integrate these policies, then the accumulated wisdom and experience of those Institutions need not be lost in the transition. In fact, there is good reason to believe that some of the innovative techniques developed for accessible formats will be taken up by mainstream publishers.

5) *International Instruments*. I do not have a strong recommendation in this area as I do not feel that it is a high-priority for the United States. However, since the issue of an international treaty is being discussed, it is important that the US representatives have a sound and consistent strategy in mind as various options are put forth. If this proposal for a shift in emphasis towards Mainstream Accessibility is to be adopted, then copyright exemptions become less of a priority. Which is not to say that the idea of a treaty doesn't have some merit, but that it should reflect the priorities discussed in this paper.

Summary

I realize that the agenda I am putting forward would require substantial changes in emphasis and priorities from current policies to be successfully enacted. This does not mean I do not have suggestions about how to tweak the existing systems in ways that could provide minor improvements in the availability of accessible materials. But the strain that the spread of new technologies is causing all media-related industries can not help but impact the usually placid world of Institutional Accessibility, and like all publishers in the digital age, they will change, or they will cease to exist. The times call for bold action, not minor tweaks.

The question before the Copyright Office is what direction should government accessibility policy point towards, as these inevitable changes take place? How can government resources help make Mainstream Accessibility a reality for all people with disabilities without unduly undermining the valuable work of Institutions? I hope I have provided a few useful thoughts in this direction.

In closing, I would suggest that <u>the Treaty being proposed for the World Intellectual Property Organization, if unaccompanied by measures promoting a shift in emphasis towards Mainstream Accessibility, can not be considered a progressive effort</u>. While it is understandable that groups represented by the World Blind Union are supporting this measure, it would have the unfortunate effect of increasing the reliance of people with disabilities upon government and non-profit agencies, without any guarantee of increased access. I urge the Copyright Office to consider another, better approach to this problem that would benefit publishers as well as people with disabilities. Thank you.

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