

Before the
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of Facilitating Access for the Blind or Persons With Other Disabilities

Comments of Public Knowledge

Public Knowledge submits these comments in response to the Copyright Office's Notice of Inquiry published at 74 Fed. Reg. 13268 on March 26, 2009. Public Knowledge is a public interest advocacy organization dedicated to ensuring that consumers have access to information contained in copyrighted works on fair terms. We commend the Copyright Office for inviting public comments and holding a hearing on the important issue of facilitating access to copyrighted works by the blind or persons with other disabilities.

Introduction

One fundamental purpose of U.S. copyright law is to enrich the lives of the public by promoting access to works containing information and entertainment. Because the blind and the visually impaired need and deserve access to these works just as much as sighted individuals, copyright law and related laws should not impose barriers that prevent the blind and the visually impaired from accessing works under copyright. As one representative for the blind observed, "there's nothing [the blind would] like better than to be able to go to [their] local bookshop and buy the electronic version of the latest book by [their] favorite author on the day it's released and at the same price as the printed version. Or the newspaper."¹ However, current market practices do not enable the blind and the visually disabled to realize this dream. Works made available in accessible formats are distributed by specialized organizations that are dedicated to serving the needs of the blind². These works are expensive to produce and therefore the universe of literary works available to the blind is limited³.

In addition to market practices, limitations imposed by the law may also be responsible for this situation. Converting standard works to accessible formats implicates the

¹ Francisco Javier Martínez Calvo, *Technological Advances Benefiting Visually Impaired People*, p.5, (English version by Margaret Clark) (November 3, 2003), http://www.wipo.int/edocs/mdocs/mdocs/en/digvi_im_03/digvi_im_03_francisco_mart_nez_calvo.pdf, (delivered at the World Intellectual Property Organization Information Meeting on Digital content for the Visually Impaired)

² See World Intellectual Property Organization [WIPO], Standing Committee on Copyrights and Related Rights, *Study on Copyright Limitations and Exceptions for the Visually Impaired*, SCCR/15/7, (February 20, 2007) (prepared by Judith Sullivan), http://www.wipo.int/edocs/mdocs/copyright/en/sccr_15/sccr_15_7.pdf [hereinafter *Study on Copyright Limitations and Exceptions*].

³ Calvo, *supra*, note 1, at 2-3.

reproduction and distribution rights of copyright owners. In the United States, Section 121 of the Copyright Act⁴ permits organizations dedicated to serving the blind to make these works accessible to the blind. However, the section limits the entities that can make accessible copies and limits the formats in which these copies can be made available. In addition, the section still allows publishers to be held liable for making digital copies of their works available to those who make accessible copies for the blind. Access to these digital copies should reduce the cost of producing accessible copies.⁵ These limitations of the law, combined with the expense involved in making accessible copies, has greatly reduced the number of works available to the blind. Although adaptive technology would solve a number of these problems, the use of digital rights management (DRM) frustrates these efforts. In order to address this problem, the Copyright Office should call for changes to laws and market practices that prevent adaptive technologies from working with digital works made available in standard formats.

Representatives for the blind and visually impaired explain that the ability to import and export accessible copies across countries would reduce costs and result in greater availability of accessible works⁶. Yet laws in a number of countries prevent importation of accessible copies.⁷ The United States has one of the largest collections of accessible copies, which should be allowed to benefit the blind and visually impaired in other parts of the world. At the World Intellectual Property Organization (WIPO), the Copyright Office should urge changes to laws of other countries so that accessible copies can be exported from the U.S. to these countries.

1. The Copyright Office should advocate for changes to laws and market practices that prevent adaptive technologies from working with works distributed in standard formats

Generally, works in accessible formats are made after the production and publication of works in standard format for use by sighted individuals. Making works in accessible formats (such as Braille⁸, audio books⁹, and large print books) is expensive,¹⁰ leading to delays in their production and distribution.¹¹ In addition, these expenses result in publishers making a very small percentage of such works available.¹² Many of these

⁴ 17 U.S.C. § 121 (2007)

⁵ *Study on Copyright Limitations and Exceptions, Supra*, note 2, at 72.

⁶ *Study on Copyright Limitations and Exceptions, Supra*, note 2, at 70 and 119.

⁷ *Id.* at 60-62

⁸ Braille is a reading-writing system using relief characters for blind people, based on the sense of touch. Calvo, *Supra*, note 1, at 3.

⁹ Sound recordings normally read by a narrator. *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² World Intellectual Property Organization [WIPO], Standing Committee on Copyrights and Related Rights, *Automated Rights Management Systems and Copyright Limitations and Exceptions*, at 32, SCCR/14/5, (April 27, 2006) (prepared by Nic Garnett), http://www.wipo.int/edocs/mdocs/copyright/en/sccr_14/sccr_14_5.pdf. [hereinafter *Automated*

shortcomings can be overcome with the use of adaptive technologies—hardware or software products that convert characters that appear on a computer screen into accessible formats like Braille displays, digital speech, or enlarged text.¹³ Use of adaptive technologies reduces costs associated with conversion to accessible formats and distribution of content.¹⁴ One significant advantage of adaptive technology is that disabled readers need not depend upon publishers or specific authorized organizations to provide the text. Anyone, including individuals and for-profit entities, may develop and market adaptive technologies that can work with digital works made available in standard formats. As more sources of information move to digital formats, adaptive technologies would allow the blind to access the same amount of information as sighted individuals at the same time.

In fact, many technology companies have expressed an interest in and have actually designed technologies that would enable users with visual impairment to access digital works on the same basis as those without disabilities¹⁵. For example, Adobe had formatted its eBook to be compatible with adaptive technologies.¹⁶ However, these access features have been disabled at the bidding of publishers who claim that the feature interferes with their right to market audio rights in their books.¹⁷

However, the vast majority of books are not available as audio books or in any other accessible format.¹⁸ Accessible books would therefore not be competing with any existing product market. The blind should not be denied their basic right of access to information to preserve a speculative profit margin.

In order to ensure access to an array of works, the Copyright Office has acknowledged that the blind and the visually impaired have a right to access eBooks and has permitted them to circumvent technological protection measures that prevent adaptive technology from working with eBooks.¹⁹ The Office should recommend to WIPO adoption of similar provisions that call for exemptions in domestic laws of member states that will permit circumvention of technological protection measures that prevent adaptive technologies from working with works in standard format. In fact, such exemptions should be permanent rather than being based on a U.S.-style renewable exemption. In this regard, Public Knowledge endorses Article 6 of the World Blind Union's proposal.²⁰

Rights Management Systems]

¹³ Calvo, *Supra* note 1, at 2.

¹⁴ *Automated Rights Management Systems, Supra* note 12, at 31.

¹⁵ *Id.*, at 29-33.

¹⁶ *Id.*, at 29.

¹⁷ *Automated Rights Management Systems, Supra* note 12, at 32.

¹⁸ *Id.* at 32-33.

¹⁹ LIBRARY OF CONGRESS, COPYRIGHT OFFICE, RECOMMENDATION OF THE REGISTER OF COPYRIGHTS IN RM 2002-4; RULEMAKING ON EXEMPTIONS FROM PROHIBITION ON CIRCUMVENTION OF COPYRIGHT PROTECTION SYSTEMS FOR ACCESS CONTROL TECHNOLOGIES 64-82 (2003), <http://www.copyright.gov/1201/docs/registers-recommendation.pdf>

²⁰ World Blind Union Proposal, WIPO Treaty for Improved Access for Blind, Visually Impaired

By advocating for these changes, we are not suggesting that the Copyright Office should not consider other means to increase access. Many have suggested co-ordination and better harnessing of the abilities of trusted intermediaries, such as libraries, to make works accessible²¹. These measures may indeed increase access to works. Yet use of trusted intermediaries may create delays in creating licensing schemes and ensuring access to all works to which sighted people have access. Rather than relying upon sui generis works adapted for the visually impaired, adaptive technologies create the possibility that any digital work could be read by the blind. Therefore, trusted intermediaries, or any other means to increase access should not be viewed as the sole solution. Rather, the Copyright Office should advocate for all creative solutions, including facilitating the use of adaptive technologies as discussed above.

2. *The Copyright Office should advocate for harmonized international legal standards that would facilitate exporting accessible copies from the U.S. to other countries*

Representatives of the blind and visually impaired explain that the ability to move accessible copies, and the intermediate copies made in the course of their preparation, across jurisdictions would reduce the cost of providing access to these works.²² However, laws of many countries prevent importation of copies of works made without permission of the copyright owner.²³ Because most accessible copies are made under exceptions to copyright rights and not with the permission of the rights holder, often exportation or importation of these copies are considered illegal.²⁴

Organizations in the U.S. have vast collections of accessible material²⁵ and organizations in a number of countries have expressed concern about their inability to import these copies. In a world where only 5% of published books are available to the blind or visually impaired in accessible formats²⁶, facilitating greater access to the collections in the U.S. and other developed countries would improve the situation for the visually impaired. In order to accomplish this, the Copyright Office should advocate for a change in copyright laws in other countries to facilitate easier importation of these copies. To the extent that there is doubt whether accessible copies can be exported from the United States,²⁷ the law

and Other Reading Disabled Persons, (Draft October 16, 2008), http://www.daisy.org/news/news_detail.shtml?NewsId=458, (follow hyperlink “DAISY 2.02; then click on “content.html”).

²¹ *Study on Copyright Limitations and Exceptions*, *Supra* note 2, at 123-125.

²² *Id.*, at 74 and 119.

²³ *Id.*, at 60.

²⁴ *Id.*

²⁵ *Study on Copyright Limitations and Exceptions*, *Supra* note 2, at 77, 79.

²⁶ Calvo, *Supra* note 1, at 3.

²⁷ *Id.*, at 78 (explaining that the Recording for the Blind and Dyslexic (RFB&D), a U.S. educational library hosting a significant collection of recorded textbooks, has been advised that it cannot export these books under existing U.S. law).

should be clarified to state that exportation of accessible copies is permitted.²⁸

Conclusion

The foregoing comments suggest a few solutions to problems faced by the blind and visually impaired in accessing literary works. The problems of access to copyrighted works however extend beyond literary works to other works such as audio visual works, which also deserve to be addressed. In seeking these comments, the Copyright Office has initiated a process which we hope will result in solutions to the problems faced by the blind and visually disabled.

Respectfully Submitted,

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