



November 13, 2009

Maria Pallante  
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International Affairs  
United States Copyright Office  
101 Independence Avenue, SE  
Washington, D.C. 20559

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

Dear Ms. Pallante:

Microsoft Corporation ("Microsoft") submits these comments in response to the Copyright Office's Notice of Inquiry and Request for Comments on the Topic of Facilitating Access to Copyrighted Works for the Blind and Other Persons With Disabilities, 74 Fed. Reg. 52,507 (Oct. 13, 2009) ("Notice").

Microsoft commends the Copyright Office and the Patent and Trademark Office for their hard work on evaluating the copyright issues related to making creative works accessible to people who are blind and other persons with disabilities. Both Offices have done an excellent job of gathering experts and important stakeholders to comment and debate the many facets of this issue, legal and non-legal. The materials maintained at the Copyright Office website provide an excellent public record of the discourse so far, and have helped improve the understanding of the complexities underneath the surface of this topic.

### **Microsoft and Accessibility to Copyrighted Works**

Microsoft is the creator and publisher of some of the most successful copyrighted works in history, such as the Windows operating system and Microsoft Office productivity software. For over twenty years Microsoft has maintained a commitment to making our copyrighted works and other technology accessible to everyone, regardless of age or ability. As Microsoft Chairman Bill Gates has said, "Our vision is to create innovative technology that is accessible to everyone and that adapts to each person's needs. Accessible technology eliminates barriers for people with disabilities and it enables individuals to take full advantage of their capabilities."<sup>1</sup>

To fulfill this mission, we have made accessibility one of our core business practices, part of our overall "Trustworthy Computing" efforts. We build accessibility options into our products that enable everyone to personalize their PCs to make them safer and easier to see, hear and use. We also work to ensure

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<sup>1</sup> See "Accessibility at Microsoft", <http://www.microsoft.com/enable/>.

Ms. Maria Pallante  
November 13, 2009  
Page 2

that Windows is compatible with a wide range of assistive technology products, including those designed to increase access to book content for people who are blind and others with disabilities. For example, a Ph.D. student who is blind at Texas A&M University can run the Kurzweil 1000 text-to-speech software and Window-Eyes screen reader software on the Windows platform to make book text accessible.<sup>2</sup>

We also work with the community of developers who build applications for Windows to provide them with guidance, information tools and technologies to develop accessible software for the Windows platform. In these efforts we've worked closely with NGOs and consumer advocacy groups, including many of those who have been active in these proceedings on behalf of people who are blind and print disabled.

In addition to making our products accessible, we have worked to enable the accessibility of digital content that is created using our software. For example, we have collaborated with the Daisy Consortium to create a "Save as DAISY" plug-in for Microsoft Word, which allows users to save their content in the accessible DAISY XML format.<sup>3</sup>

Even as a book publisher, Microsoft has taken voluntary steps for nearly twenty years to provide books in accessible formats. In the early 1990s, Microsoft Press began providing accessible formats for its technical books to Computer Books for the Blind,<sup>4</sup> and currently offers accessible formats through its successor, Reading for the Blind & Dyslexic, Inc.,<sup>5</sup> including some of the most recent titles, such as *Windows 7 Inside Out*. Microsoft Press also recently announced a joint arrangement with O'Reilly Books, which has long supported accessible book formats.

These comments are informed not only by our status as owner of copyrighted works, but also by our being one of the world's largest users of copyrights. As a result, Microsoft has a keen interest in making sure that the national and international copyright systems remain robust and effective in the digital age, for authors, publishers, distributors and users alike. Any solution to accessibility challenges must strike the right balance between removing barriers to making works accessible to people who are blind and others with disabilities in the most efficient way and preserving the important copyright incentives to the creation of books and other works.

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<sup>2</sup> See "Kurzweil 1000 Lets Blind Users Read Printed Materials—Provides Information Bridge for Texas A&M Psychologist" (<http://www.microsoft.com/enable/casestudy/tamu.aspx>).

<sup>3</sup> See "DAISY Consortium's Collaboration with Microsoft Corporation Yields New Tools for Production and Playback of Accessible Multimedia" ([http://www.daisy.org/news/attachments/2009\\_03\\_18\\_Press\\_Release.html](http://www.daisy.org/news/attachments/2009_03_18_Press_Release.html))

<sup>4</sup> See Deborah Kendrick, "George Kerscher: A Pioneer in Digital Talking Books Still Forging Ahead", *AFB AccessWorld* (May 2001) (describing Microsoft Press's involvement with CFBF) (<http://www.afb.org/afbpres/pub.asp?DocID=aw020304&Mode=Print>)

<sup>5</sup> See "Documentation in Accessible Formats for Microsoft Products" (<http://www.microsoft.com/enable/products/docs/default.aspx>).

Ms. Maria Pallante  
November 13, 2009  
Page 3

### **Observations on Removing Copyright Barriers to Accessibility**

It is clear from the deliberations in WIPO and those facilitated by the United States government that there is a strong feeling among several stakeholders that copyright law, particularly the lack of harmonization among national laws on exceptions for the blind, is a barrier to making books accessible to people who are blind and other print disabled persons. This concern has prompted the World Blind Union to propose an international treaty that would try to harmonize such exceptions to help facilitate more efficient flow of accessible books to those who need them around the world. While Microsoft has not yet formed a position on the proposal or its specific provisions, we offer these observations about the underlying copyright issues from our experience in making copyrighted works accessible to those with disabilities.

First, as the NOI and the roundtable discussions from May indicate, copyright law exceptions for people who are blind are not the only issue that affects how accessible books can be made more readily available. The NOI points out some of the other legal and non-legal issues that need to be addressed to improve the situation, such as lack of adequate funding and a need for better coordination among trusted organizations, educational institutions and publishers, to name a few.<sup>6</sup> It is also noteworthy that areas of law outside copyright, such as the Rehabilitation Act and the Individuals with Disabilities Education Act in the United States, also play an important role in improving the availability of accessible books.

Understanding how copyright law fits into an overall solution to this challenge becomes complex when one compares the situation in the book publishing sector to other copyright sectors, which have not seen requests for copyright exceptions to help facilitate the creation of accessible versions of works. For example, in the software sector, copyright exceptions have not been necessary to promote the creation of accessible versions, in part because many of the companies that produce software, like Microsoft, have made building accessible versions of their copyrighted works part of their development practices. Similarly, at the May roundtable, a witness for the motion picture industry demonstrated technology that they are developing voluntarily to make audiovisual works more accessible to the visually impaired.<sup>7</sup> That activity is occurring without any explicit exemption in U.S. copyright law.

To be sure, non-copyright laws like the Rehabilitation Act of 1988 have played an important role in creating incentives for Microsoft and other software companies to build accessible products, so this observation is not offered to say that legal change, including possibly copyright law reforms, should not be part of any solution. Indeed, the Chaffee amendment (17 U.S.C. § 121) has generally been considered a positive development in making accessible books more widely available. This observation

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<sup>6</sup> NOI at 52,508.

<sup>7</sup> Transcript at 98-99 (statements of Fritz Attaway, MPAA)

Ms. Maria Pallante  
November 13, 2009  
Page 4

is only offered to show that practical solutions to these problems have many different parts, some of which may be better than others at providing the most fair and efficient response.

The experience from other sectors like the software industry also highlights the concept that the best solutions to these problems are ones that rely primarily on the voluntary cooperation and collaboration of all interested parties, not specific mandates from the law. As noted above, Microsoft works very closely with NGOs and representatives of persons with disabilities, such as those organizations that have been active in this proceeding. It is the give and take of that engagement, and the valuable feedback and deeper understanding we receive from it, that drives our efforts to improve accessibility of our products. Any legal reform, whether copyright law or otherwise, should be evaluated to ensure that it will promote communication and collaboration among the relevant stakeholders rather than ignore that critical component or, worse, inhibit it.

Another important aspect of voluntary mechanisms is that they help overcome impediments posed by national laws and borders. Where book publishers make available not only accessible versions of their works, but also copyright licenses that allow distribution by third parties in multiple countries, it becomes much easier for organizations like Reading for the Blind & Dyslexic and Bookshare to make the versions available, without the need to consult individual country laws to determine whether distribution can be made. While harmonization of national exceptions would also make it easier for third parties to determine whether distribution is permitted, it is likely that some legal analysis will still be necessary and may continue to impose a cost on the distribution across borders. Licensing can help eliminate these costs if implemented in the right way

Of course, licensing by publishers is a mechanism that has been available for decades, yet it does not appear to have provided an adequate solution to this problem, particularly in the view of the representatives of people who are blind and print disabled. The reticence of authors' and publishers' to license this activity is caused in part by fears that it may lead to infringement or otherwise undermine the economic incentive for the creation and distribution of books. The Association of American Publishers ("AAP") and the Author's Guild, in the context of the proposed settlement of the Google Books litigation, have recently demonstrated the ability to create and license more accessible versions of books. It is important for rightsholders to make openness to licensing the creation of accessible books a priority and ensure that accessible books can be distributed by a wide variety of services throughout the world.

Most importantly, even if national laws and standards were to become more harmonized, the success of efforts to make books accessible around the world requires collaboration among all stakeholders and building a climate of trust that makes all parties comfortable going forward. Part of building a climate of trust is exchanging information about parties' efforts to enhance availability of accessible formats. To

Ms. Maria Pallante  
November 13, 2009  
Page 5

that end, we would suggest two steps that could be taken to help increase the flow of information about accessible versions of books.

First, book publishers should voluntarily make information available to the public about which of their titles are offered in accessible formats, and how intermediaries might contact them to obtain licenses to distribute those formats or additional accessible formats. Such disclosures would be analogous to the Voluntary Product Accessibility Templates (“VPAT”) that Microsoft and other technology vendors provide to inform their customers, government, and the public about how their products meet the accessibility requirements of Section 508, although it is likely that book publishers’ disclosures would not need to be as detailed as a VPAT.<sup>8</sup> By providing this information, publishers would make it easier for voluntary agreements to be reached between them and distributors of accessible formats. In addition, it would provide information to the public about where such voluntary arrangements are not working well, which will help inform deliberations about copyright exceptions at both the national and international level. Where it becomes apparent that publishers are unable or unwilling to make accessible versions available, the case for and contours of an appropriate copyright exception that is effective around the world becomes more clear and easily understood.

Second, in the Section 508 context, Microsoft has worked closely with governments, industry and NGOs in government-to-government dialogues about accessibility issues, under the auspices of the Trans-Atlantic Business Dialogue (“TABD”), industry associations and in cooperation with agencies such as the U.S. Access Board. We have found that these exchanges have helped tremendously in educating government officials and stakeholders about practical solutions to accessibility and allowed for the sharing of best practices. We understand that WIPO has encouraged and sponsored similar dialogues on the copyright issues around accessibility for people who are blind, and we would urge that these efforts continue, whether they are a prerequisite to consideration of a treaty or occur in parallel to discussions of a treaty in WIPO, because such information exchanges will be beneficial to solving the problem in practical and pragmatic ways.

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Microsoft again thanks the Copyright Office and Patent and Trademark Office for providing this opportunity to comment on this important matter, and would be pleased to answer any questions about these comments.

Sincerely,

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<sup>8</sup> See <http://www.microsoft.com/industry/government/products/section508.aspx>



Ms. Maria Pallante  
November 13, 2009  
Page 6

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