

**World Intellectual Property Organization
Standing Committee on Copyright and Related Rights (SCCR)
Eighteenth Session
May 25-29, 2009**

United States of America

**Statement on Improving Accessibility to Copyrighted Works for
Blind and Visually Impaired Persons**

As Delivered

**May 26, 2009
Geneva, Switzerland**

The United States acknowledges the great interest expressed at the Seventeenth Session of the SCCR in addressing issues relating to improving access to copyrighted works for blind and visually impaired persons. As promised, and after beginning useful, informative consultations with U.S. stakeholders, the United States has come prepared to begin the process of sharing U.S. experiences in this area, with a view toward engaging in a robust, sustained and productive discussion of this issue.

Our discussions with stakeholders in the United States have been extremely rich and rewarding. Therefore, we would like to share our experience and preliminary observations with other members of the Committee in some detail. At the outset, however, by way of a headline, the U.S. delegation learned that the issue of improving accessibility to copyrighted works for blind and visually impaired persons presents a multi-faceted and inter-related set of challenges and opportunities, including complex issues of law, technology, business, and human and financial resources.

Exceptions and Limitations: The U.S. Experience

The United States approaches the subject of exceptions and limitations to the exclusive rights of authors and other creators with a great deal of experience. Over many years, U.S. courts have developed and progressively refined a sophisticated jurisprudence of exceptions and limitations to the exclusive rights of authors and copyright owners. The U.S. Copyright Act also contains detailed exceptions, among others, for the benefit of blind or other persons with disabilities, libraries, face-to-face teaching, instructional broadcasting and distance education.

In addition, under the important U.S. affirmative defense of “fair use,” U.S. courts have long allowed uses of copyrighted works on a fact-specific, case-by-case basis, when the use is narrowly tailored to fit the demonstrated need. In 1976, the U.S. Congress codified the fair use doctrine, providing a non-exclusive list of four factors as guidance to consider in determining whether a particular use is fair.

U.S. Exceptions for the Blind or Other Persons with Disabilities

Over a decade ago, the United States enacted amendments to our copyright law to establish a limitation on exclusive rights for the benefit of the blind or other persons with disabilities. That provision was amended five years ago in an effort to improve access to educational materials. In broad outline, under Section 121 of the U.S. Copyright Act certain authorized organizations, with the permission of the copyright owner, may make copies (or phonorecords) of previously published, non-dramatic works in specialized formats (braille, audio, or digital text) for the exclusive use of blind or other persons with disabilities.

As we noted in the Seventeenth Session of the SCCR, the United States believes that as a matter of policy and principle, properly crafted exceptions and limitations for the benefit of the blind or other persons with disabilities, while taking into account the rights and concerns of authors and copyright owners, are highly desirable. To better understand and to begin to accommodate the competing interests of multiple stakeholders with respect to the specific issues under discussion in the SCCR, however, the United States also stated that national consultations are required.

The U.S. Consultation Process

Since the last meeting of the SCCR, the United States has launched a domestic consultation process. In recent months, the United States Copyright Office and the United States Patent and Trademark Office held helpful informal meetings or telephone calls with a cross-section of stakeholders to gather information about experiences with the U.S. copyright limitation for the blind or other persons with disabilities. (We use the phrase “the blind or other persons with disabilities” because it is the one referenced in the U.S. Copyright Act and the one with which we are most familiar. The phrase is not defined in copyright law but, rather, is cross-referenced in provisions of disabilities law.)

Among the organizations consulted informally were the Association of American Publishers, the American Council of the Blind, the American Foundation for the Blind, the American Library Association, the Association of Research Libraries, BookShare, the DAISY Consortium, Knowledge Ecology International, the National Federation of the Blind, the National Library Service for the Blind & Physically Disabled, Paramount Pictures, the Royal National Institute for the Blind, the Software & Information Industry Association, and the World Blind Union. Through these preliminary discussions, we learned that stakeholders have a range of nuanced views on the efficacy of current efforts to provide access to copyrighted works, but that all start from the premise that facilitating the availability of accessible formats is important.

On the basis of these preliminary discussions with stakeholders, as well as previous meetings of the SCCR, the Copyright Office and USPTO developed a list of topics to explore further. A Notice of Inquiry was issued to the public in March 2009, requesting

initial comments and reply comments on multiple topics related to the experiences of persons within the United States with respect to (1) accessing U.S. works or sharing accessible copies within the United States, and (2) accessing foreign works or sharing accessible copies of U.S. works with foreign persons. The inquiry included questions about applicable U.S. statutory and regulatory provisions; private sector initiatives; library programs; standardized formats, programs, and devices; and resources.

The Copyright Office and the USPTO also sought comment on some proposed measures to facilitate and enhance access to copyrighted works that might be appropriate for action at the national or international levels (including in cooperation with Member States, WIPO or other mechanisms). Specifically, the Copyright Office and the USPTO requested public comments on the following measures:

- (1) Developing standardized accessibility formats and other technical norms;
- (2) Establishing trusted intermediaries to coordinate resources, eliminate unnecessary duplication of accessible works, and ensure best practices;
- (3) Providing technical assistance, coordination, and educational outreach;
- (4) Promoting market-based solutions achieved through private sector copyright licenses or other agreements; and
- (5) Developing binding or non-binding international instruments, including a treaty that would establish minimum requirements for limitations and exceptions for blind and visually impaired persons.

The inquiry generated thirty-two initial comments and three reply comments from a range of stakeholders, including nonprofit organizations, private companies and interested individuals. Commentators expressed views on general considerations related to accessibility of copyrighted works under existing statutory and regulatory provisions, as well as some specific considerations – for example, those related to the accessibility of instructional materials for students.

Other comments included technical considerations, including formats, programs and devices; resource considerations in various sectors including government, private sector, nonprofit, and philanthropic; library programs; commercial and nonprofit private sector initiatives; the development of standardized accessibility formats and other technical norms; the possibility of establishing trusted intermediaries to coordinate resources, eliminate unnecessary duplication of accessible works, and ensure best practices; proposals to provide additional technical assistance, coordination, and educational outreach; the promotion of market-based solutions through private sector copyright licenses or other agreements; and proposals to develop binding or non-binding international instruments, including a treaty that would establish minimum requirements for limitations and exceptions for blind and visually impaired persons.

Last week, on May 18, 2009, the Copyright Office and the USPTO held a day-long public meeting and invited all interested stakeholder representatives to participate in order to explore topics raised in the comments in greater depth and to allow the direct exchange of views between the stakeholders themselves. Throughout the day, panelists answered questions from the U.S. delegation and engaged in discussion with each other. The Notice of Inquiry, the comments of stakeholders and the transcript of the public meeting are all available on the U.S. Copyright Office website: www.copyright.gov.

Preliminary Observations

Thus far, the United States has confirmed that there are multiple, inter-related challenges when it comes to providing access to copyrighted works for the blind or other persons with disabilities. A mix of highly-complex factors intersect. These factors include the application of copyright law and disabilities laws, but also include economic factors, factors relating to technical standards and formats, factors related to coordination and best practices, and the promise of new technologies and new business models. The United States believes that the analysis of these issues requires a careful, nuanced approach. The United States will continue the consultation process in the months to come and expects to be able to provide additional information in future meetings of the SCCR. At this time, however, we would like to share with other members of the Committee a few preliminary observations from this rich and rewarding conversation.

- First, we learned that the scope of copyright protection is one factor among many that affects the availability of content in accessible forms.
- Second, not surprisingly, we heard that there is a strong preference for content in digital format, not only because it can be easily reproduced and distributed, but because it can be made available with greater functionality.
- Third, from representatives of blind and visually impaired persons, we learned that not all digital formats are compatible and interoperable. Although this problem is being addressed through the promotion of standards (including DAISY Consortium's .xml format), much work remains to be done.

From representatives of rights holders, we gained a deeper understanding of the use of and need for digital rights management (DRM) to prevent high levels of infringement, and the fact that DRM sometimes interferes with access to copyrighted works by blind and visually impaired persons. In national law, the United States has been able to address this problem with a regulatory exception to the prohibition on the act of circumventing access controls.

- Fourth, we gained new insights into the critical issue of the relatively high costs associated with producing accessible copies (a problem that is exacerbated by duplicative production which reduces economies of scale). We learned that the United States produces a great number and variety of accessible products, but that such levels of production are made possible through governmental and/or private

charitable subsidies. The current marketplace reality is that accessible products are expensive.

- Fifth, we took note of the fact that there are willing buyers and willing sellers in the market for licenses to create accessible content. Despite such signs of possible market-based solutions, we also became aware of complicated rights clearance issues, concerns about downstream infringement, and other market conditions noted earlier.

In summary, in our consultations thus far, we have heard wide agreement that rights holders and the visually impaired community must work together in the spirit of cooperation to identify practical projects that will provide sufficient incentives for rights holders to create new business models and to serve broader markets; and

We heard much support for the premise that the blind and visually impaired persons should have full access to new products through collaborative integration of technical standards, formats, and best practices; and

We heard that the existing legal and regulatory provisions already in place require some “care and feeding” as to implementation, to better ensure that practices are efficient and timely, and to allow libraries and other trusted intermediaries to continue to serve members of the blind and visually impaired population, particularly as a safety net for those who are not served in the marketplace.

Thank you.