December 4, 2009

Maria Pallante
Associate Register for Policy &
International Affairs
U.S. Copyright Office

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

Dear Maria:

Google is committed to overcoming barriers to access to reading materials for persons who are blind or have other disabilities. This commitment includes developing new methods of making digital copies of books available to persons with disabilities in Google Books and in other Google services. Google has also developed Accessible Search, a product designed to identify and prioritize search results that are more easily usable by visually impaired users. Google Search helps users find a set of documents that are most relevant, while Accessible Search goes one step further by helping users find the most accessible pages in that result set. Accessible Search tends to favor pages with few visual distractions and pages that are likely to render well with images turned off. Accessible Search is a natural and important extension of Google's overall mission to better organize the world's information and make it universally accessible. It is designed to help those assisting the visually impaired to find the most relevant, useful and comprehensive information, as quickly as possible.

Google also recently announced that the latest release of its Android 1.6 software platform for mobile devices contains new accessibility features designed to make Android applications more widely usable by blind and visually-impaired users. Android 1.6 includes a built-in screen reader and text-to-speech engine which make it possible to use most Android applications, as well as all of Android's default user interface, when not looking at the screen.

Google has worked closely and productively with authors, publishers, and disabled groups, and will continue to do so. At the recent hearing before the U.S. House of Representatives, Committee on the Judiciary, on the Google Book Search settlement, the testimony of blind and other disabled groups compellingly demonstrated the necessity of curing the historical tragedy resulting from the miniscule number of works available to

this community. The effort to rectify this imbalance will not come overnight, and will not come from a single solution. Efforts of public institutions, such as the Library of Congress and other national and international bodies, voluntary agreements among stakeholders, and we believe an international treaty setting forth global norms, are all required in order to accomplish this large, but morally obligatory task.

Voluntary stakeholder agreements, while critical to the success of the task, cannot realistically be expected to solve all problems. The lack of any substantial progress to date, for what is a long-standing problem, is proof of this point if any further proof is required —for example, since 1983, WIPO has periodically published model laws regarding copyright exceptions for persons who are blind or have other disabilities. While we appreciate the concern that proposed treaty negotiations would take place while voluntary measures are being discussed, voluntary agreements or model laws must be viewed as a complement to, and not a substitute for binding international norms: the problems involved with cross-border export and import of works alone render such agreements inadequate on their own, as well as the need to achieve harmonization of minimum levels of access. "Hard," and not just "soft" solutions are required.

Accordingly, Google submits these reply comments in support of the proposal that WIPO's member states consider a new treaty for the blind and other persons with disabilities. At the next SCCR, the United States should formally propose that the SCCR begin discussing the contours of a legally binding instrument to effectively and comprehensively address the clearly enumerated issues of access that the visually impaired community has articulated, one expression of which is the draft treaty prepared under the auspices of the World Blind Union and proposed to WIPO's member-states by Brazil, Equator and Paraguay. In doing so, we do not prejudge what a final treaty might look like, but we do believe that the time for doing so is not only not premature, but overdue. As the ancient Jewish sage Hillel said, "If not now, when?"

In reviewing the initial comments, we are concerned that some of the comments are simply stating opposition to a larger agenda of limitations and exceptions. We believe this is an unproductive approach to solving what is a discrete, long-standing problem that affects a group that needs and deserves the protections of the international community. Solving this problem is not solving or prejudging different, larger problems. The failure of the international community to solve this particular problem may well cause some to question whether the international community is capable of solving, through our copyright system, any problem. Contrary to the concerns expressed by some, we believe that quick action in concluding the proposed treaty – in whatever final form it may take – will send a strong, positive signal that the copyright system can function productively in response to situations where an international response is clearly necessary and in the public interest. Such a treaty will make future debates on other

issues more productive, as well as build confidence in multilateral processes.

We will now address the first two questions set forth in the NOI. Our views on the final two questions set forth in the NOI are obvious from these introductory remarks.

Question Number 1. How Would the Proposed Treaty Interact with U.S. Law? Because our concern is with starting the process of negotiations and developing appropriate solutions and not with the final text, our view is that the United States should not decline to enter into treaty negotiations because there may be a concern that U.S. law may ultimately have to be changed. This was not the approach the U.S. took in considering Berne adherence, the TRIPS Agreement, or the 1996 WIPO treaties, all of which did result in changes to U.S. law, some fundamental. If it were the case that the United States would only enter into treaty negotiations if there was no prospect of changing U.S. law, we doubt our government would be involved in any, or only very few such negotiations. Finally, we note that the U.S. government has articulated on the record at WIPO several times that it believes existing US law already has the necessary provisions to ensure access to works for the visually impaired are facilitated.

The more advisable approach, in our opinion, is to determine whether the proposed treaty as an idea represents good policy, and whether the current proposed draft text is so far from U.S. law that it is unlikely the U.S could ever adhere to a treaty. On the first point, a treaty in our view represents not just good policy, but essential policy. On the second point, we believe principles expressed in the draft treaty is well within the range of either existing law or desirable and obtainable changes to U.S. law if that is required -- – and in any case, in the normal course of negotiations of this kind, the U.S. would be perfectly within its prerogatives to put forward treaty language proposals of its own along with other member states.

Question Number 2. Compatibility of the Proposed Treaty with U.S. Obligations under with International Law

The same concerns expressed in our remarks on the first question apply to the second question as well. There is ample room for crafting relationships between the proposed treaty and existing international law; and in any event, the almost Talmudic objections found in some of the comments seem more intended to find ways for the proposed treaty not to work, than to make it work. To start negotiations, it is not necessary to agree with exact proposed drafting. Rather, what is in the draft text is a starting point for discussions.

We do believe, consistent with other international agreements, that the provisions of the

treaty should represent minimum requirements, and not a ceiling beyond which existing or future laws cannot exceed.

Thank you for the opportunity to submit these comments on this important initiative.

Respectfully,

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