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FACILITATING ACCESS TO COPYRIGHTED WORKS FOR THE BLIND
OR OTHER PERSONS WITH DISABILITIES

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P R O C E E D I N G S

MARIA PALLANTE: Everybody, if we could all sit down and get started we would appreciate it. My name is Maria Pallante. I'm the Associate Register for Policy and International Affairs here at the U.S. Copyright Office. And a special appreciation and thanks to all of you who have traveled here today to be with us.

I would like to give you a quick overview of the day, and then I will introduce the government team sitting up here. And then I will hand it over to Marybeth Peters, the Register of Copyrights, for opening remarks.

If you haven't found the restrooms, you go out the door and make a left. If you haven't found the cafeteria, you go out the door and bear to your right. We're going to go until 10:00 -- we're going to start at 10 with the panel overview, the statements from you. We're going to go until 11:30. We'll probably have a quick break. There's not one on the agenda, but we're anticipating that we'll all need one at that point. And then we'll go again until 1 p.m. and we'll break for

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lunch until 2:30. The cafeteria is open to the public. You're welcome to use it. You're welcome to go outside, as long as you're all back by 2:30.

So, to my left is Michael Shapiro, attorney advisor, U.S. Patent and Trademark Office, and head of the U.S. Delegation for the SCCR. To his left is Neil Graham, Attorney Advisor U.S. Patent and Trademark Office and a member of the Delegation as well. To my immediate right is Michelle Woods, Senior Counsel for Policy and International Affairs here at the U.S. Copyright Office and a member of the Delegation. And Steven Tepp to her right, also Senior Counsel for Policy and International Affairs, U.S. Copyright Office and a member of the Delegation.

Sitting behind us in the corner is -- are Jackie Morales, also from the Patent and Trademark Office, legal staff. And Paula Pinha, who many of you have spoken to on the phone, from the U.S. Copyright Office, legal staff. And buzzing around is Lisa Oates, who is our legal assistant. And, if anybody has any other questions, feel free to grab her.

So, our first panel this morning will focus

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on the existing statutory regime. We'll follow that with a discussion of existing initiatives. And after lunch we'll get to possible actions and solutions to enhance access. And with that I'll turn it over to the honorable Marybeth Peters, Register of Copyrights, who has been Register of Copyrights here since 1994, for opening remarks. Thank you.

MARYBETH PETERS: Good morning. I would like to add my thanks to all of you for coming today. The Copyright Office is extremely pleased to host this public meeting, and I'm happy that we're -- for some of us in a place where we have windows. It makes a difference to me to be able to at least see the light. And I think we're going to be enlightened throughout the day with all of the remarks that you are going to be making.

Obviously the topic is facilitating access to copyrighted works for the blind and other persons with disability. And we very much appreciate that some members of our panel and some of the audience have traveled significant distances to be here today. It is going to be a long day. But, in fact, probably not long

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enough, given the complexity of the legal and practical challenges we will be discussing.

The meeting today is part of a diligent and comprehensive process of fact finding undertaken by my office and the United States Patent and Trademark Office to prepare for the forthcoming meeting of the standing committee on copyright and related rights at the World Intellectual Property Organization. That meeting will take place in Geneva on May 25th to 29th. And member countries will exchange information about national laws and experience relating to access to copyrighted works for the blind.

In recent months the Copyright Office and the Patent and Trademark Office have held informal meetings with stakeholders, including members of the blind community, book publishers. And the whole purpose of those meetings has been to gain a better understanding of the confluence of factors that effect the availability of accessible formats.

From the implementation of the Chafee Amendment and disabilities laws to promote -- or to bring about the promise of technology, and to look at

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some of the frustrations of inadequate resources.

On March 26th we commenced a formal consultation process. There were notice of inquiry published in the Federal Register requesting written comments and reply comments on a wide range of questions.

We thank the many nonprofit organizations, libraries, commercial businesses, and private citizens who took time to write and contribute to the record, including the National Federation of the Blind, the National Library Service for the Blind and Physically Handicapped, the Association of American Book Publishers, the DAISY Consortium, RFB&D, Public Knowledge, Benetech, Accessible Publishing, the American Library Association, Knowledge Ecology International, the Electronic Frontier Foundation, the Software and Information Industry Association, Motion Picture Association and others. These comments form the basis for the meeting today and may be viewed on our website at www.copyright.gov.

We are fortunate to have diverse interests and perspectives at the table today, including authors

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who create books, the book publishers who create viable markets, the libraries who provide critical services to the blind, and the nonprofit entities who adapt works into accessible formats, and organizations who are concerned with the public interest and well-being of those who are not otherwise represented.

As we listen to these esteemed speakers, we will focus on two overarching themes. One, how do people or entities in the United States utilize or share accessible copies of United States works within the United States?

Second, how do people or entities in the United States access foreign works or share accessible copies of U.S. works across borders?

Today we start from the premise that improving the quality, quantity, and timeliness of accessible materials for the blind or other persons with disabilities is an important goal that requires and deserves continuous effort. We invite our speakers to think creatively and collaboratively to this end. And I and my colleagues here all look forward to hearing from all of you. So, thank you, and let's begin. Back to

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you.

MARIA PALLANTE: Thank you, MaryBeth.

Okay. What I'd like to do now is introduce the participants. And on my left going clockwise around the room we have Paul Aiken from the Authors Guild. We have Rashmi Rangnath from Public Knowledge. We have Allan Adler from the Association of American Publishers. We have Scott LaBarre from the National Federation of the Blind. We have George Kerscher from the DAISY Consortium; Brad Thomas, RFB&D; Gary Mudd, American Printing House for the Blind; Ed O'Reilly from National Library Service for the Blind and Physically Handicapped; and last but not least, Peter Chapman from Pearson Publishing.

I will start with Paul for opening statements. You have five minutes. And two points on this, we are being recorded because we will have an audio file on our website with the transcript. There will also be a written transcript. So, please speak clearly and take your time. With that said, you have five minutes, and if you exceed your five minutes, you'll hear a very polite bell. Maybe Paula could

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demonstrate that for us.

(Bell rings.)

MARIA PALLANTE: And, if you hear that if you could please stop talking, we would appreciate it. Because, if we don't get past the opening statements, we won't have time for questions and discussion.

So with that, Paul, why don't we start with you.

PAUL AIKEN: Okay. Thank you, Maria. It's a pleasure to be here this morning and today to discuss this important issue. Let me start briefly with a history of the Authors Guild for those who don't know it. We were founded in 1912 as the Authors League of America. Our mission is to look out for the business, and copyright contractual interests, and the free speech interests of authors. The Authors League soon after its founding became a number of organizations, which you're probably familiar with, the Authors Guild, Dramatists Guild, Writers Guild East and West. We represent book authors and freelance journalists, but primarily book authors. And they publish in every genre, fiction, nonfiction, textbooks, academic authors, are all

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represented in the Guild. And we have more than 8,500 published authors as our members. We're the largest organization of book authors in the United States.

Authors want everyone to have access to books. We always have. It -- authors love readers. It's why we're in the business. For this reason for decades authors donated rights so that braille editions and audio versions could be created for the visually impaired and the print disabled. And then in 1996, of course, the Chafee Amendment gave an explicit copyright exception for such uses. But our donations continue today. There still are clauses in book contracts which says that authors surrender royalties for the blind and physically disabled that go beyond the bounds of Chafee.

However, saying that, we also have economic rights that are, of course, important to us and that we have to protect. And the challenge in moving from print to digital couldn't be clearer. Anyone who reads one of the fast disappearing newspapers knows exactly what's going on. As print moves to digital, it is exceedingly hard to land on a viable business model. Newspapers, it is said, are disappearing in the United States at the

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rate of one per week. Even the New York Times is challenged in this environment. And there are questions about whether it can, in the long run, avoid bankruptcy, which is just a shocking statement for those of us who grew up with newspapers and value them.

Magazines are in an equally difficult position as they move from print to digital. In today's New York Times you can read about WIRED Magazine published by Chris Anderson who knows as much about the digital divide and how to make money as anyone could imagine. He is the one who popularized the concept of the long tail in publishing. And even he is struggling in this environment.

So, this is the environment and the challenge that we face in book publishing. We're making the leap to digital, whether we like it or not. And we've got to land on a viable business model.

A little more context, the history of electronic book rights goes back importantly to 1993, when Random House -- and as now the largest trade book publisher -- issued a new contract, which caused a huge controversy in the industry. We called in a land crab

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on the electronic frontier. And Amazon was essentially taking -- wanted to take all rights for creation of electronic books. It -- we saw the problems immediately with that, as did literary agents and anyone paying attention in the industry. One of the big problems, beyond the meager royalties that Random House was offering at the time, was that Random House wanted to take electronic rights; not just for display, but for multimedia uses, for audio and visual uses. And we saw immediately that there was a conflict with the rights that authors placed with others, with audiobook publishers, with movie producers. These rights are distinct. They're exclusively placed with others. And an electronic book that bundles in with it audio rights would challenge these other contracts that the authors had exclusively placed elsewhere, in which they rely on, in which -- and audiobooks now represents a billion dollar industry, far bigger than the electronic book industry.

So, a compromise was arrived at, and that compromise was that the print book publisher in almost all cases does get eBook rights, but it's the pure text

electronic right, that is --

(Bell rings.)

PAUL AIKEN: -- the right to display -- I'll wrap up in a moment -- the right to display the eBook in digital form. That does not come bundled with any audio or visual rights. Those rights are retained by the author and agent and must be explicitly granted in order for those rights to be exercised -- in order to prevent a conflict with rights that the author may have placed elsewhere. Thank you.

MARIA PALLANTE: Thanks, Paul. Rashmi.

RASHMI RANGNATH: Thank you, Maria. I'd like to thank the Copyright Office for inviting me to be on this panel. I represent Public Knowledge, a nonprofit public interest advocacy organization that represents the public's stake in access to knowledge.

I want to address the issue of mainstream access today. As many in this panel will probably testify and comments submitted in these proceedings reflect, the blind deserve mainstream access, that is the ability to walk into a book store and a buy a book like anybody else, get it at the same time, and

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approximately at the same price as sighted individuals.

We believe that adaptive technologies will enable mainstream access and should be encouraged. Adaptive technologies enable the blind to access eBooks and digital publications at the same time as sighted individuals. With the movement of digital -- with the movement of more books and publications to digital formats, adaptive technologies hold a promise to deliver mainstream access.

The Copyright Office has acknowledged this in its 2003 and 2006 1201 rulemaking proceedings, when it said that the eBook holds tremendous value for the blind, although as an industry -- it needs industry.

The other benefits of adaptive technologies are that they're not constrained by limitations in Section 121, in that anybody can make these technologies, and anybody can access them -- access books using them without qualifying under the definitions of the blind under the Chafee Amendment. They do not violate any copyrights, as they facilitate noninfringing use. Again, the office acknowledged this position in the 2003 and 2006 rulemaking proceedings --

1201 rulemaking proceedings.

The other important benefit of adaptive technology, is that it would overcome the resource crunch which many have said exists in converting books to accessible formats. So, we think that adaptive technologies should be encouraged, and market practices that hinder the use of adaptive technologies should be discouraged. For example, although technology vendors make available products that have features that work with adaptive technologies -- for example, eBooks come with these features -- but they are disabled because of pressures of publishers that features such as text-to-speech interfere with copyrights and audiobook rights. A lot of eBooks come wrapped in DRM that prevent use of adaptive technologies. And the office has provided an exemption in the 2003 and 2006 proceedings to allow the blind to circumvent this DRM in order to be able to access digital publications.

We believe that these exemptions should be made permanent. The DMCA should be amended to allow circumvention, in order to access eBooks and other registered publications. And there should be an

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amendment to Section 1201(a)(2) in order to enable others to market technologies that would enable circumvention. Thank you.

MARIA PALLANTE: Thank you. Allan.

ALLAN ADLER: Thank you. I just want to take a couple of minutes to focus on the two lessons that we tried to draw from the past 13 years of work that I have been involved with on behalf of the Association of American Publishers and its members in the book publishing community, in attempting to meet the needs of individuals with print disabilities.

From the very beginning we've talked about that issue as if we were talking about a homogenous group of people, as if we were talking about a single set of problems to be met presumably with a single set of solutions. And, indeed, the Chafee Amendment was the beginning of the application of a regulatory approach to attempting to deal with these needs. As a regulatory approach that in many ways assumed it was a singular set of problems to be dealt with, and that most of the people who were in need of assistance were dealing with those issues in the same context and in the same way.

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But over the years we have learned that that's clearly not true. We have spent a lot of time dealing with state legislatures, enacting legislation to address this issue. We've spent a fair amount of time working with Congress and Department of Education to address these issues. And we find that, when we're talking about them on different levels of government, when we're talking about them on the one hand in the context of the needs of students who have print disabilities, as opposed to individuals who are not talking about the needs that they have in connection with the academic endeavor but simply as part of their ability to fully enjoy their lives. We're talking about people in different contexts and different circumstances and, therefore, the solutions aren't all the same.

So, one lesson we have learned is that the rapid development of technology and our evolving understanding of human disabilities can quickly change and challenge the basic assumptions underlying even the most carefully crafted regulatory approach to meeting the accessibility needs of individuals with print disabilities. And that leads to assertions that the

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supporting law or regulation is outdated in its scope and should be applied more broadly to effectuate current needs. And we're seeing those calls now in connection with the Chafee Amendment.

But more importantly, over the 13 years, this evolution of technology development, and our understanding of human disabilities, and our approach to defining them has now changed the underlying assumptions that justified the existence of a regulatory approach in the first place. And it seems to point in the direction of moving steadily and surely towards a market-based approach as the best way to deal with these issues.

So, in that context the other lesson we have drawn -- and I hope to have further opportunity to discuss -- is that one-size-fits-all solutions aren't necessary, they aren't appropriate, and they aren't sufficient to meet the accessibility needs of all individuals with print disabilities. And imposing such solutions by regulatory mandates will only delay the introduction of more effective market-based responses.

Thank you.

MARIA PALLANTE: Thank you, Allan.

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Mr. LaBarre.

SCOTT LEBARRE: Greetings. I am here today on behalf of the National Federation of the Blind. In particular I bring you greetings from our president, Dr. Marc Mauer, who has asked me to come here today and speak on behalf of blind and visually impaired individuals in this country.

And it is hard for me, in a situation like this, to sort of keep separate the objective issues and the intellectual issues from the personal. Because I am, indeed, one of the individuals affected by this discussion.

When we talk about copyright, copyrighted materials and getting greater access to them, we are talking about people like me and the people that I represent. And it is a crucial issue for us because there is the old adage that knowledge equals power. And it gets thrown around so much that I think it sometimes loses its potency. But it is, indeed, one of the fundamental truths of being involved in the human experience.

As a class of people, blind people have been

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limited in our access to knowledge and, therefore, our access to power. Technology gives us a framework, a way to access knowledge that we have never previously had. I understand that some complex issues of copyright, and legality, and protection of intellectual property arise out of technology. However, for us the issue is quite simple, we insist upon access to as much information and knowledge as possible. And we will work very vigorously to confront any artificial barriers to accessing that knowledge.

And I look forward to the discussion today about specifically how we can, perhaps, develop a flexible, regulatory scheme that would protect intellectual property, yet give us the access that we demand and deserve.

It would be ironic that, with the evolution of technology that has the promise of bringing so much more to our fingertips, that the same technology would be used to limit and restrict our access to knowledge, and, therefore, our access to power.

So, I want to thank the Copyright Office and all the other governmental entities that are sponsoring

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this today for allowing us to participate, and allowing the voice of the blind be heard.

MARIA PALLANTE: Thank you, very much.

Dr. Kerscher.

GEORGE KERSCHER: Thank you, very much for having me here today. The DAISY Consortium is made up of libraries and organizations worldwide who provide services to people who are blind and print disabled. And I do come with a worldwide perspective.

There's a fundamental, a principle that I think will help guide things along, and that's that we envision a world where people with disabilities have access to information and knowledge at the same time and without additional costs.

We've used the term, the same book at the same time at the same price. And that really does kind of sum it up. We are absolutely committed to working hand-and-glove with publishers as partners. We want to see the mainstream market solution. We also believe that there's a need for a copyright exception to make sure that materials are available in all sectors.

The same book is a loaded term, because we

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want to be able to have full function access -- a fully accessible book, not something that is crippled or partially usable. We want to be able to use the same features and functions as the nondisabled population enjoy. And we've been burned in this respect, because companies have come out with product and it's -- doesn't work for people with disabilities. And their marketing department will hang the term accessible on top of it, accessible this, accessible that. It has maybe one or two accessibility features, and yet their marketing department is very good at selling these things. And it -- they convince the general population that this is, indeed, accessible to everybody when it's not. So, same book, we need full functionality.

The Chafee population that's being served today is based on the physical disabilities. And what we're finding in our society, and many of the comments that have come in are talking about people with learning disabilities that need to be served. I believe that the functional disability should be referenced. If people have a disability that prevents them from effectively using print, then they should be allowed to access

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information under the copyright exceptions. I think this is just one of the fundamentals of equality that we believe in in the United States. So, I'd like to see us move in that direction.

The specialized formats is one of the items that is brought up. And the DAISY Consortium has worked on developing modern technologies and techniques. And we're seeing the DAISY technology being moved into things like the epub standard. So, the DAISY XML and the DAISY navigation model is sitting there in the commercial products in digital publishing. And remember that we have the goal of the same book at the same price at the same time. So, we're using technology strategically to make sure it's accessible to everybody to -- so the formats that should be allowed are those that are universally designed and accessible to people with disabilities. Those may be adopted by the mainstream community. And that would be great, because it gets us closer to our goal and our principle of equal access.

So, the epub specification was developed by the publishing community and technology companies. And

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many of us in the disability community were there. We were committed from the beginning to accessibility. And built into the standard are statements that the -- this information is intended to be rendered by user agents, reading systems in the best way that's most palatable for the person with the disability. That might be through refreshable braille. We know that many of the displays have large character fonts. And, of course, text-to-speech is one of those options. And all of those have been --

(Bell Rings.)

GEORGE KERSCHER: -- anticipated in the epub standard. We know that the Authors Guild is selling recording rights, but the fundamental rights of access to the information, I think, should be preserved, and text-to-speech should be an option that's available to all people reading eBooks. Thank you.

MARIA PALLANTE: Thank you. Mr. Thomas.

BRAD THOMAS: Good morning, I'm Brad Thomas with Recording for the Blind and Dyslexic. And I just want to thank the Copyright and Patent Offices for including us in this conversation. We're excited to be

here, and look forward to this dialogue.

I want to speak briefly for a moment about the Chafee Amendment specifically and a couple of technical issues that we've experienced with the implementation of the Chafee Amendment, and then speak more broadly to issues of copyright exemptions and the like.

As most of you know, RFB&D was heavily involved with many other organizations in the mid 90s in crafting and implementing the Chafee Amendment. And we believe that it's been a huge success in facilitating access to accessible materials for blind, visually impaired, and other print disability populations.

Prior to the Chafee Amendment, copyright permissions had to be acquired in an individual process that was quite onerous on the publishers and on RFB&D, and created significant delays for individuals who needed the materials unnecessarily.

Passage of the Chafee Amendment, however, granted us and other authorized entities proactive access to these permissions, greatly expediting the availability of materials to individuals that needed

them. And we've worked very carefully with the publishing community and disability advocacy organizations to implement the Chafee Amendment in a way that guaranteed access to individuals who legitimately are eligible and have need of these materials, while protecting the legitimate rights of authors and publishers.

There have, however, arisen two particular issues related to the implementation of the Chafee Amendment that I would like to address. The first is the area of the eligible population. And we believe that that area is in need of significant clarification. And, of course, I'm talking about the eligibility of those with learning disabilities under the Chafee Amendment. We have certainly taken the position that certain students with learning disabilities qualify under the physical limitations clause based on our understanding from the research that learning disabilities are based on physiological impairments. Obviously we believe that research backs up that interpretation, and we believe that these individuals have a legitimate need for accessible

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content, particularly in the case of K-12 students where their access to that content is guaranteed by other federal laws. But we certainly acknowledge that this is a gray area. We've worked carefully with other stakeholders to address this, but I believe clarification from the appropriate entities would be useful.

The second area is the area of competent authority, in other words, who has authority to certify a student or other individual as having a print disability. Similarly we believe that the requirement that a medical professional certify someone with a reading disability is not supported by the research, and that clarification would, again, be useful in this circumstance. Again, it creates conflict with other federal laws, for example, IDEA, where educational professionals are primarily responsible for identifying students with special needs and determining what accommodations are appropriate. So, bringing copyright law into line with those federal civil rights statutes would be an important part of this process.

I also want to speak more broadly now about

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the existence of the copyright exemption and calls for significant changes to it. I want to be very clear, RFB&D is greatly encouraged by the development of market-based approaches, to facilitate wider access to these materials for individuals with special needs, where -- we have been in discussions with publishers, with authors about how RFB&D can be partners with them as they approach this issue. And we believe that great promise is out there. But I also want to be clear that I think there will always be, or for the foreseeable future at least, be a need for RFB&D and other organizations like ours.

While great strides have been made in facilitating access in a broader sense from the publishers, much work still needs to be done. And much work even still needs to be done from the number of smaller publishers that are in existence that don't have the same technical capacity.

(Bell rings.)

BRAD THOMAS: And then one other quick comment, I believe that organizations like RFB&D can draw on our history of working with these populations to

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ensure that access to the materials lead to meaningful outcomes, and that access is not just an empty promise. Thank you.

MARIA PALLANTE: Thank you, very much.

Mr. Mudd.

GARY MUDD: Thank you, Maria. Good morning, and on behalf of the American Printing House for the Blind, we appreciate the opportunity to speak before the group today.

I wanted to touch on a little history, as well as our mission, before we make any comments. In 1879 the Congress passed the Act to Promote the Education of the Blind and designated the American Printing House for the Blind as the official supplier of textbooks and other materials. Eligible students include all students in the United States who meet the definition of blindness, and who are working at less than college level.

Today there are approximately 59,000 students registered with the Printing House. And Congress appropriates funds under this act that allows the state and -- to acquire textbooks and other educational

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materials from APH.

After -- or APH works directly with service providers, teachers, who assist students in developing the skills they need to cultivate literature, and to access text, tactile graphics, and other educational content in accessible formats. APH's educational experience and research affirms the continued need for embossed braille and tactile graphics in textbooks.

In pursuing our mission of providing accessible educational materials to K-12 students, APH is deeply grateful for the Chafee Amendment. Excuse me. Since 1996 the Chafee Amendment has been hugely beneficial to us in providing accessible textbooks, especially in braille, to students who are blind.

The amendment and idea to 2004, to permit large type, has only expended -- expanded our appreciation for the Chafee Amendment for reproducing elementary and secondary textbooks.

Students with visual disabilities need timely materials. They also need materials that truly provide access to the complete educational content in an appropriate format. This prescriptive approach could

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include hard copy braille and tactile graphics, the large print, refreshable braille displays, and audio. We too believe and are excited about the technology of the day. But we also are -- want to keep a focus on the delivery and production of braille, because many, many students still use braille. Thank you.

MARIA PALLANTE: Thank you.

Mr. O'Reilly.

ED O'REILLY: Yes. Thank you for inviting us. I'm from the National Library Service for the Blind and Physically Handicapped, part of the Library of Congress. We've been busy providing books since 1931 to a population of blind, visually impaired, and physically handicapped users patrons who must duly register.

We model ourselves specifically -- explicitly after a decent, middle-sized public library we like to say. And we also like to say that we provide for the recreational and informational needs of our patrons. That means on the whole we don't serve students. Students, of course, are welcome to use our materials, but we don't do textbooks. We leave that to sister organizations. We don't do technical, scientific, and

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academic material.

We at the present time produce about 2,000 audiobooks annually in something, like, 2 million copies, and additionally about 600 braille books. That's probably a low number by the standards of the gentleman to my right. And we don't know what to say about that at the moment. I, too, think that the braille initiatives should be promoted and that we should do whatever is possible to encourage braille literacy.

Meanwhile we're in the midst of a massive change from audio cassette technology, analog technology, to digital audio. We have just launched what we'd call in-house our prelaunch test. It's the final massive test of something like 5,000 machines, among a select group of libraries, before the implementation of mass production of these. The early -- first -- this is just literally days since these have been issued, and we've gotten some very, very positive news so far. We anticipate some negative feedback. And that's what the test is for, of course, because we don't want to go to mass production, 26,000 machines a month

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for the first year with built-in imperfections. That would be silly.

We are at the present time wrapping our books in DRM. And they're heavily encrypted and password protected. And we are also committed at the present time to human voice renditions of books.

Our eligible population is one that we are not -- we do not require -- we do not ask technological sophistication. So, computer delivery is something that we are making available of digital books, but we're not requiring it. The machines are easy to use. And anecdotal evidence has suggested that people are finding them simpler and more accessible than our very accessible C1 analog cassette machine.

This is a fascinating and fluid time. And I'm here as much to be educated as to supply any information that I can. Thank you.

MARIA PALLANTE: Thank you, so much.

Mr. Chapman.

PETER CHAPMAN: Good morning. My name is Peter Chapman. I'm a product director for eBook platforms at Pearson Education in Boston. As such I'm

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really a technologist with responsibilities to develop some of the broad digital technologies Pearson provides to its customer base.

For those of you unfamiliar with Pearson, we are the world's leading education publisher in K-12 and higher education. Our imprints include Scott Foresman and Prentice Hall. Pearson is also the publisher of Penguin Books, the Financial Times, and the Economist Magazine amongst others.

Pearson appreciates the Copyright Office's invitation to attend this hearing. And being the last speaker on the panel, I'll just make a very brief statement on my company's behalf.

My company's message to the Copyright Office and the audience is quite simple and echoes that of some of the preceding speakers. We simply believe that the existing statutory provisions work against the development of a robust market model. Despite the well-minded intentions of its original framers, the Chafee Amendment has at times been used by a variety of organizations to pick and choose from millions of dollars worth of content, and without compensation to

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the original publisher, or seller, or otherwise give away access to product to users, some of whom may be of only questionable eligibility.

Through our long time involvement in working to create solutions for the students with disabilities, we have come to believe that, while it was a functional model in the predigital and prelearning disabilities expansion, the Chafee exemption now stands between publishers and the development of a robust market model.

Educational publishers such as Pearson now labor under NIMAC Regulations whereby millions of dollars are invested in creating a format that is not immediately student user ready. The NIMAC Regulations also stand between publishers and the development of this true market model that would better serve the needs of students in the future.

So, it is for these reasons that Pearson Education does not support the extension of the terms of the Chafee Amendment beyond the borders of the United States. Thank you.

MARIA PALLANTE: Thank you. And the good news is we're ahead of time. So we have more time for

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discussion.

I'd like to turn to my three colleagues who have immediate questions. We'll start with Steven Tepp who has a question about resources, and then we'll move to Michelle Woods who has a question about DRM, and then to Michael Shapiro who has some questions about market public/private partnerships. So, Steve ...

STEVEN TEPP: Thanks, Maria. It may be more than one question, but not too many, I hope.

I would like to spend some time exploring the market economics of accessibility. It's evident from the written comments that we've received that there are issues on both the supply side and the demand side.

With regard to the supply side, I note Mr. Tinsley's comments from the American Printing House for the Blind seemed to speak for everyone when he wrote his comment, inadequate resources effect every level.

Similarly Mr. Fruchterman of Benetech and Bookshare concluded that, quote, there are insufficient resources to fully solve the accessibility problem.

That lack of resources appears to be exacerbated by the relatively high cost of producing

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accessible works, and duplicative production efforts which there -- which then compete for the relatively small demand for those works.

Dr. Mauer of the National Federation of the Blind provided an example of this when he wrote in his comment that many of the books in question are of such limited interest that the effort to produce them twice has the practical result of having them be unobtainable for someone who would like to read them. Recently a student reported that getting a transcribed copy of a mathematics text cost him \$2,500.

So, the first set of questions I'd like to ask the entire panel is, in light of that rather grim picture, do any of the organizations that provide works in specialized formats do so at a profit? Do any breakeven? Why is that? And I guess I -- like I said, I invite anyone on the panel who would like to address that, but probably first the organizations that actually do provide accessible works.

MARIA PALLANTE: And let's just do this, if you do want to comment, if you could just raise your hand and we'll write your name down and from time to

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time we'll all out the names. So, we have Mr. LaBarre, and Mr. Mudd, and Mr. Thomas. Okay. We'll start with that.

Mr. LaBarre.

SCOTT LEBARRE: I can't precisely speak to the cost of providing materials, because the role of the National Federation of the Blind is not directly to produce these accessible texts. However, our members, and therefore the consumers of such services, know how difficult it has been traditionally to get materials put into an accessible format. The more technical the area, such as mathematics, of course, the higher the cost. I remember very well how difficult it was always to get the math text I needed into braille in a timely fashion. That is why, in my opening remarks I made the comment that it would be a tragedy really that, with the way that technology can fix this problem, that the same technology be used to shutoff access.

The recent issue involving the Kindle 2 is a primary example. We have a ready-to-use platform where a blind person in the same exact manner could go and get the device, order a book, and have access, as

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Mr. Kerscher said, at the same time -- same book, same time, same price. Yet that access, in many regards now, has been shutoff due to the argument that copyright is infringed. And, so, I think that what we have to keep in mind is, that the high cost of producing books in accessible formats is coming down. And we have to make sure that we do not create barriers that allow technology to put books more easily into braille, more easily into text-to-speech, et cetera.

I know, and I'm sure Recordings for the Blind and Dyslexic and others would like to speak to this, but traditionally the costs have been high. And these organizations do not operate at a profit. The Library of Congress, obviously, does not operate at a profit. It is a -- it is our public library. And it is an expensive public library, in the sense that it has to do a lot more work to bring books to a person like me than other libraries need to do. And, of course, because of the very high costs of so doing, not the same volume of books is available to me as to others.

MARIA PALLANTE: Okay.

Mr. Mudd. Thank you.

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GARY MUDD: Thank you. Let me speak a little bit to the fact, we are as well a nonprofit 501(c)(3). Let me talk a little bit about the production of a braille textbook. And we'll use math, again, for instance, because Scott talked about it as well. Math and science are some of the hardest and most difficult materials to transcribe into braille. We usually start with a digital copy of the book. But the real expense comes with the editing and transcribing of braille, which is -- takes a human brain still. And, unfortunately, what it does is that someone has to interpret what the author has intended to teach, what concept. Many times you get visually much more quickly, but we have to transcribe into a meaningful, useful, tactile graphic. And that is probably the most expensive part of creating a book. And, as many of you know, textbooks are becoming more and more visual. So, we have to transcribe that concept into a meaningful tactile graphic that kids can use.

True translation programs has -- have helped us tremendously in transcribing a book from a digital form into a braille form, but it's still the pictures,

the charts, the graphs that take that human brain to interpret; and, therefore, understand how a braille reader best learns with tactile graphic that needs to be used in the book.

I don't know whether that answers your question, Steve, or whether that further complicates things. But that's just some of what goes into the transcription of a digital book into a useful braille learning tool.

STEVEN TEPP: Okay. Thank you. It does certainly go to answering why the costs are so high, at least with -- specifically in regard to braille editions of math and science textbooks.

If you could add anything as to the overall economics of the market, that is can you sell the copies you produce at a breakeven point, or -- you know, and if not how do you continue to operate?

GARY MUDD: Oftentimes what happens is we work with a network of transcribers nationwide. And sometimes the finished product, the digital to braille textbook, can -- or at least, if it's paid for with state funding -- for instance, Texas, they choose --

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they believe that the laws tell them to keep it within the state boundaries. We pay transcribers for the transcription and then we use that transcription to duplicate the copies.

What has happened over the years, especially in braille, is that in the -- well, let's say 50 years ago before digital, many books that we transcribed into braille were duplicated and sent throughout the country. The first copy of a book was adopted by several states and then duplicated, which kept the price fairly low.

Today with sight-based decision making there are many more titles needed. So, the same effort needs to go into -- even those digital delivery has helped tremendously -- transcribing it into a useful braille learning tool with tactile graphics has kept the price relatively high, as well as the number of copies. We do no longer make 500 copies of a book, which can drive the price -- or keep it down. Now oftentimes we make just one, two, three copies of a book, which keeps it fairly expensive.

Does that help clear up -- if I can answer

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anymore.

STEVEN TEPP: It does, thank you.

MARIA PALLANTE: And I believe Mr. Thomas wanted to say something about cost and resources.

BRAD THOMAS: Sure. And I can make it quick. It's certain we are a nonprofit as well and certainly are not breaking even or, obviously, producing a profit with our efforts. Similar to what you've heard elsewhere, it is an expensive proposition, new technology surrounding text, but also recording techniques are bringing the cost down, but it's hard to foresee a future where a breakeven point or a profit point could be realized by us. I mean, I assume it's theoretically possible, but it would be cost prohibitive for the end user and would certainly violate our spirit of being a nonprofit.

MARIA PALLANTE: Okay. I've got Allan Adler and then Dr. Kerscher, if anybody else want -- and then Mr. Aiken. Allan.

ALLAN ADLER: Well, I just wanted to point out that, when you're talking about the issue of the adequacy of available resources it's, again, a

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contextual issue that differs depending upon the circumstances you're discussing it. When we're talking about the regulatory approach that was ushered in under the Chafee Amendment, it was not surprising that that amendment was adopted by Congress with a basic understanding that the immediate beneficiaries were going to be the National Library Service, the American Printing House, and the Recording for the Blind and Dyslexic, all of which were -- over the years have received appropriations from the Federal Government in support of their work, as you might expect with a regulatory approach.

But that always -- that hasn't always worked in other sectors. For example, in leading up to the IDEA Amendments of 2004, when we were working with a broad array of advocacy groups for the disabilities community, one of the notions was, that part of the problem in getting timely access for students at the elementary and secondary school levels, which is a very highly centralized process with respect to how instructional materials actually are selected and purchased for that group. The fact was that you're

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still dealing with a situation where, if in the end immediate need is going to be served under the Chafee Amendment by, for example, scanning a textbook so that that book can be used with text-to-screen translation software, the scanning of it is something that is being done in a just-in-time fashion, which means it's not scheduled, it's not something that necessarily can be accounted for in budgetary considerations in advance. Especially because we were told that students can't be tracked with respect to their need from one grade to another because there are problems with that, apparently, under civil rights laws.

When you shift your focus to higher education, which is a much more decentralized process with respect to how instructional materials are gathered, the problem becomes even worse. Because there every student ultimately is responsible for acquiring whatever books the faculty member of a particular course says are required reading. And that array of books, by definition, is going to be far more diverse than the array of books that are used at the elementary and secondary school level. And that may include novels,

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and works of popular nonfiction, as well as a wide variety of other works, some of which have difficulty in terms of how they're reproduced.

Now, part of the idea of the IDEA Amendments was that we wanted to move away from this patchwork quilt of state law requirements, some of which ask publishers for files in off-the-shelf electronic formats, like Microsoft Word. Or some of them even would prefer if the publisher gave them an ASCII file. And the problem with that, of course, was that an ASCII file is something that the publisher would first have to create out of its own production files by stripping down the kind of tagging activity that had created a more sophisticated and versatile file. And the publisher has no use for that file after creating it. And, when that file is used as the source file for conversion in order to create -- recreate the work in specialized formats for use by people with print disabilities, the expense involved in retagging an ASCII file is extraordinary, because it's very laborious.

So, in the education context, when you're talking about the availability of resources and you're

relying upon the regulatory approach to supply the needs of students with print disabilities, it shouldn't be surprising to anyone that resources are scarce and less than desired there, as indeed they are in just about every other aspect of the educational endeavor.

MARIA PALLANTE: Well, thank you.

Dr. Kerscher, you had your hand raised and I'd like to hear what you have to say in general. But if you could start by responding to what Allan just said about standards and formats. I don't think there's anybody in the room that knows more about that than you.

GEORGE KERSCHER: So, in terms of reducing the cost of making the alternative formats, and thinking about our long-term goals of the mainstream model, publishers have traditionally had one product print. And, so, they've optimized their production processes for that one single product. Now that the digital world is upon us, they have more than one product to produce. And they're reengineering their product processes.

So, if we can integrate into the production flow what publishers do, standard operating procedures that will accommodate needs for accessibility, then one

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of the byproducts of that can be accessible versions of the books. And publishers have the -- you know, once they have the information in a semantically rich XML form, which is the way most publishers are -- they're trying to get there, then the transformations that can be done are automated. And this is no longer needing to go to ASCII and things like this. So, that could all be facilitated by helping publishers modify their production processes. They could then feed that information -- that content into libraries serving people who are blind and print disabled. I'll call them trusted intermediaries at this point. They can also produce successful products themselves for sale, which is where we want to get to.

I think that braille is going to take some hand work for a long time. If it's simple, we can highly automate that production process. But if it's math, and science, and tactile graphics, there's going to be quite a bit of manual work.

Of course, the exceptions there -- copyright exceptions that are available can be used in most cases. But even here I think that the melding of

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publisher processes working hand-and-glove with organizations serving people with disabilities is the right place we want to get to.

And I think that the copyright exceptions, and working with publishers, are the right space to be in. I don't see that a copyright exception is opposed to a mainstream model. I think they can work -- both work together. And people with disabilities depend on their libraries to get the information they need. People with disabilities trust those libraries, and working with publishers to build products for sale is where we want to be.

MARIA PALLANTE: Thank you. Before we move to Paul, Steve, are you -- do you have any follow up for anybody who has spoken so far?

STEVEN TEPP: I'm going to ask a couple more questions after we're done with this --

MARIA PALLANTE: Okay.

STEVEN TEPP: -- line of thought. But I'll hold them for now. Thanks.

MARIA PALLANTE: Then we'll go to Paul Aiken and then back to Allan Adler.

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PAUL AIKEN: Thank you. Mr. LaBarre brought up the Kindle 2, which I want to use to illustrate how the emerging eBook technology and text-to-speech can be used to create a real opportunity for trade books anyway -- it doesn't really address textbooks -- a real opportunity to really drive down the cost of providing audio versions.

Again, this is -- this would be using the Chafee Amendment in a creative but a justifiable way we believe. And that would be to allow users with Kindles to -- who have certified print disabilities to go to the websites of some of the organizations around the table here, members only websites, and activate their Kindle so that text-to-speech would always be on. It would be an override.

Right now what's going on with Amazon and its Kindle 2, is it has two operating systems, with a text-to-speech always on, the second, apparently is in beta testing with text-to-speech that can be selectively disabled where contractual rights call for that.

What we would like to see is a method where Version A is available to users with certified print

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disabilities, and it would be simply a matter of verifying that, activating your Kindle, text-to-speech would be available to all those who have print disabilities who have the Kindle, or who have a similar device that might be developed by Sony or someone else.

We think this is a simple matter technologically. It could be ready before Amazon has its blind accessible Kindle ready. Right now the Kindle is not accessible for the visually impaired -- for many of the visually impaired, because there's no braille keyboard, there's no audible menu commands. And this has tremendous advantages for everyone, including making immediately available to the blind hundreds of thousands of books at a very low cost and driving down the cost for all users.

MARIA PALLANTE: Thank you.

Allan, do the publishers agree with the Authors Guild on that?

ALLAN ADLER: Well, the publishers, I think, agree that -- with the Authors Guild to the extent that there are a thicket of contract issues involved with respect to figuring out exactly what the publisher can

do with a book in terms of distribution and the particular forum involved.

But actually I wanted to just tie onto something that George said before about the need for transition within the publishing community, because that's another important area from which to perceive the question about adequacy of resources. As George said, publishers have had to keep one foot firmly planted in the traditional area of print publication, because that still is without question their primary market. Despite the hyperbole of a few years ago, eBooks and audiobooks combined have not amounted to even, I think, one percent of the current market for publishing in the commercial sector.

And, so, when you're talking about having to retool in order to be able, for example, to meet the requirements of an XML based format for producing these materials, as the IDEA Amendments required, we were told and we had hoped that, if we had a uniform approach, a uniform standard, a uniform file format, it would speed the ability of publishers to transition. It would also lighten the level of work that had to be done by those

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who would be using the authority of Chafee to create specialized formatted versions out of the source files provided by publishers. But it hasn't all worked out that way. Publishers have not done the transitioning as quickly as we had hoped. And, in terms of the ability of those who were supposed to use XML based source files, files based on the NIMAC Standard, we found that their learning curve didn't keep up. And you're now giving a fairly sophisticated format to people who were used to using ASCII files, or Word files, and are not really able to use NIMAC files.

And then finally I'd also like to say that there's an important point about the diversity within the publishing community itself. We all know that publishing is a sectorial community, so, education publishing is different than trade publishing, and both of those are very different than professional and scholarly publishing. But you also have to look at the range of economic situations of publishers. It's hard to get really accurate statistics on this, but according to the Census Bureau in 2006, there were over 3,000 separate firms that called themselves book publishers in

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this country. Well over two-thirds of them had fewer than ten employees. So, you have to understand the level of size. You're talking about something that requires a certain amount of expense, in terms of the ability not only to set up a business; but, if you have to convert a business, if you have to transition your production facilities in which you've already invested. For some members of the publishing community this is more difficult than others.

MARIA PALLANTE: Okay. Dr. Kerscher, coming from your platform of same book, same time, same price, could you respond to Paul Aiken's suggestion that the Authors Guild work with certified websites so that certified Chafee users can have text-to-speech functional?

GEORGE KERSCHER: Well, this is a call for a national registration of all people with disabilities. And, you know, for example, Recording for the Blind and Dyslexic, we have a registered user base. You know, they're library cardholders. So, everybody would -- in the United States with a disability would have to register with RFB&D and then get access to the Kindle.

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I don't know if we want a national registry of all people with disabilities. That seems pretty outrageous to me.

A lot of people want to use the feature, they have problems admitting that they have disabilities. I know when I was, you know, starting to use a cane it was embarrassing and it took me a long time to accept my disability.

Older adults many times will never accept that they've got a disability. They can't read any longer. They just say, oh, I'm not blind, I just can't read anymore. You know, and we saw in the recent statistics from Kindle users they're over the age of 50. The Whispernet, which is drop dead easy to use for people to get the books, they don't have to go through a computer. I mean, that's huge. People could transition easily into using text-to-speech when they need to.

Forcing them to register as having a disability seems onerous. It also seems to reduce the uptake of eBooks. eBooks have been long -- for a long time trying to compete toe-to-toe against print books, and print books, you know, the display is very good.

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So, Kindle has got an okay display, so does the Sony e-Reader, but it still can't match a tree book.

The -- we want to have eBooks compete with the features and functions that digital technology enables, automatic lookup of words, text-to-speech, any size font you want. And to start taking away features and restricting that technology would reduce adoption of a nascent industry.

MARIA PALLANTE: Okay. Thank you, very much. It's almost 10 to 11. So, Steve, if it's okay with you I'd like to switch gears and talk about DRM and we can circle back. Does that work for you?

STEVEN TEPP: Okay.

MARIA PALLANTE: Yeah.

STEVEN TEPP: Can I ask one more?

MARIA PALLANTE: Sure. You can ask one more.

STEVEN TEPP: I want to try and bring the discussion back to close full circle before we get too far afield, so, I appreciate your indulgence.

It sounds to me like we're hearing two models about how to work with -- between publishers and the community that needs the accessible content.

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One is to have the publishers produce it in-house in a form that can be used like the XML. The other conceivably is to have some sort of licensing arrangement where organizations like the American Printing House for the Blind, or the RFB&D or others can receive the content and produce it themselves subject to some sort of licensing arrangement. And I'm wondering if -- you know, the reason I asked the questions about the market condition is to find out, is -- and this is my bottom line question -- is there a viable market in which either of those scenarios can produce a working economic system for the voluntary private sector production of accessible works?

MARIA PALLANTE: Mr. Chapman, do you want to take that one?

PETER CHAPMAN: I was listening carefully as you asked the question trying in my mind to say, do I have an answer to that? And I think simply put, I don't have an answer. My own company is working on something called HTML book, which in the second panel I'll be displaying. And one of the questions that we have is, is -- what is the viable market for it? And the simple

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answer is, we don't know.

So, we have plans -- and, again, we'll talk about this further in the second panel -- have plans to roll it out in a measured fashion, and then we will have a better answer. But just like any other company, we can't heavily invest in expensive new technology and process, as was pointed out by Mr. Kerscher earlier, without some assurance that it's going to produce a reasonable return on our investment. So, I don't know.

MARIA PALLANTE: Okay. Well, it does set us up nicely for the second panel.

Does anybody else want to respond to that?

Mr. LaBarre.

SCOTT LEBARRE: Very briefly. I think I'm going to respectfully suggest that this is the wrong analysis and the wrong question.

MARIA PALLANTE: At the wrong time.

SCOTT LEBARRE: And -- well, perhaps, yes, if we keep that framework. This is not a matter of expense or cost, this is a matter of civil rights. This is a matter of being able to participate fully in an integrated fashion in our society. I'm not saying that

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cost doesn't matter, but cost cannot be the matter.

BRAD THOMAS: Can I add to that very quickly?

MARIA PALLANTE: Sure.

BRAD THOMAS: And this is what I was getting at a little bit in the quick wrap up of my comments. We're sort of approaching it in a cold calculation of access, which in the area of education -- which is where we're primarily focused -- is really the opposite of where special education law is going. Special education law has evolved, especially with the last iteration of IDEA in 2004, from focusing solely on getting students the accommodations they need, to determining whether or not those accommodations are leading to meaningful outcomes. In other words, if access is great, but if access doesn't lead to anything else, then it's rather meaningless.

So I think, in whatever discussion about models that we have, we need to keep in mind that organizations like ours, like APH, like others, have an expertise here that is a value-add beyond simply getting materials into student's hands. We want to make sure, of course, that first and foremost they have the

materials, but beyond that that they know how to use the materials to maximize their education, and that their teachers in particular have the knowledge to use those materials appropriately.

MARIA PALLANTE: Okay. Michelle, the floor is yours.

MICHELLE WOODS: Great. I'd like to turn to a topic that was raised in a number of comments, and was also mentioned, Miss Rangnath, by you during your opening remarks. And that is the question of digital rights management applied to eBooks, and specifically the 1201 -- Section 1201 eBook exemption that already exists. There are a number of proposals and comments to make that exemption permanent, or to extend it to the distribution of tools to circumvent digital rights management or DRM.

And what we're interested in learning today is more detail about evidence that supports a need there, a need to go beyond the existing exception to add these additional elements. What kind of evidence is there that, at this point, the DRM on eBooks has interfered with providing access for the blind and other

persons with disabilities?

So, I guess I would direct this question initially to the representatives of Public Knowledge and NFB, because those organizations commented on this issue. But we'd certainly be interested in hearing anyone else on the panel about what kind of evidence is out there that there's a need in this area?

RASHMI RANGNATH: Well, the representatives for the blind are better positioned to say how eBooks has actually interfered and not allowed them access to DRM -- I mean, to the eBooks. But the Copyright Office has also observed that a large number of eBooks are wrapped in DRM and do not permit access to the 2003 and 2006 proceedings. And everyone here has testified about lack of access to the blind and how the blind cannot access books and other publications in the same manner, and to the same extent as the rest of -- as sighted individuals can. So, that proves a need for doing whatever we can to enable such access. And, if circumventing DRM is an easy way out and overcomes some of the limitations in Section 121, then adopting laws and regulations that would enable such access is a good

thing.

SCOTT LEBARRE: And I would add that it is truly an ironic situation when a text in one way or the other is produced in an electronic format. And because of -- the DRM screen reading software, for example, doesn't work. And, therefore, I can't get access, or a blind person can't get access. And that's why I believe we would support the permanency of the exceptions in this regard.

And it -- this is obviously something that needs further discussion and would have to go through a process, but it's just -- it is one of -- it's just wholly ironic, when the book is there and you could use it, but because of the DRM you can't.

And I guess another point, too, is, it's this notion that by -- that some people bring to the table, that using some sort of assistive technology is a different kind of intellectual process -- or intellectual property that has to be dealt with separately. Using such assistive technology, for example, or text-to-speech, it is our access. It is our way of putting our eyes on the object.

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MARIA PALLANTE: All right. Let's take a list for Michelle. So, I've got Mr. Chapman. Who else wanted to speak? Dr. Kerscher. Oh, I'm sorry, Allan, were you first? So, I've got Allan, Mr. Chapman, Dr. Kerscher, anybody else? Okay.

ALLAN ADLER: AAP I think took the position back in 2003 that the 1201(a) proceeding really was mixing apples and oranges when it was be talking about accessibility in the context of the use of technological protection measures by copyright owners and when you're talking about access for people with print disabilities. And we had pointed out to the Copyright Office at that time that Congress had already dealt with the issue of access with respect to people with print disabilities in the Copyright Act by the enactment of the Chafee Amendment. And the rules of the consideration of the 1201(a) proceeding under the DMCA were that we were supposed to be looking at the question of whether or not the prohibition against circumventing access controls under that statute was adversely affecting the use of a class of works. The Copyright Office, I think in its attempt to do good in this area,

basically had to distort its own interpretive rules for that proceeding by changing it into a question of looking at a class of users, rather than a class of works.

Digital rights management technology is still necessary for some types of distribution of works, but not others. And the marketplace is the only place where you can find out the extent to which that is going to evolve. For example, with respect to audiobooks, for some reason or another audiobooks recently have largely foregone the use of DRM technology without any kind of negative result, in terms of increased -- unauthorized reproduction and distribution of works in those forms.

With respect to eBooks, I don't think that the market has demonstrated that that would necessarily be the case with eBooks without the use of DRM. We're finding eBooks, in terms of unauthorized websites and peer-to-peer file sharing are using eBooks. eBooks themselves we have to remember are not the technological product of publishers, but they're the technological product of publishers collaborating with hardware and software manufacturers. And at the moment the hardware

and software manufacturers are in battle with each other for proprietary dominance. So, eBooks have not been able to rise to the level of consumer acceptance that we otherwise thought they might, because you do not yet have a situation for consumers with the use of an eBook as seamless, transparent, and interoperable. As long as you still have to worry whether a particular author's work is available in a particular format that will play on a particular device, you're not going to really be thinking of that product as a substitute for the work in print form.

So I think that, while we recognize there are problems with accessibility that are caused by digital rights management technology, particularly in connection with the eBook.

One of the things that I pointed out in the 120 -- 2003 DMCA proceeding was, that that can be viewed as a competitive factor in the marketplace. Whether or not a publisher, whether or not an author chooses to make the work available in that form so that it is accessible through the use of read aloud functionality, is something that consumers can decide is a good or bad

thing.

But to decide that you're going to have to require that either you forego DRM technology but still put those products into the marketplace -- which places at least some publishers at risk of seeing their investment reduced by unauthorized reproduction distribution -- or whether you're going to mandate what kind of DRM technology can be used and how it can be used, specifically with respect to literary works being distributed in electronic form. I think is, again, a product -- a byproduct of the regulatory approach that probably we would be able to see reduced, if we moved away from the regulatory approach to a more market-based approach for making these types of products available.

MARIA PALLANTE: Mr. Chapman.

PETER CHAPMAN: I'd like to echo some of the statements Mr. Adler just made. You talked earlier about the diversity across the publishing industry, Pearson, my company, is a very large company. We have diversity within the company. We represent trade, we have textbooks, higher ed, K-12, international and U.S. And within my own company there is that same diversity

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of opinion as to how we should approach DRM. In some cases, perhaps, it's very important, and in others it isn't. And one of the things that I need to do as a person who's involved with creating the platform on which our eBooks will be produced, is I now pay more attention than I ever did to the blogosphere. And I religiously now read a lot of the comments on the Kindle. And some of them are very well-informed, many of them are foolish. But there is a common theme amongst many of them, and that is what a wonderful opportunity this is going to be for us to not pay for our textbooks. In other words, inability to pirate textbooks. And the sophomoric analysis goes, I mean, like the eBook -- the reader costs 4 or 500 dollars, my textbook costs 4 or 500 dollars per semester, therefore, I'm all set. I'll just get one of these.

I think many of you are aware that the Kindle allows, under certain circumstances, the right to copy off the Kindle onto another device.

So, even if the eBook was intended only for those with disabilities, which we would clearly support, there is certainly the opportunity for it to leak into

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the broader market. And you only need to look at some of the other industries, like the recording industry, to know that things can rapidly deteriorate. And that hasn't happened yet, but we're mindful of that. And that's why it's an important issue to us.

MARIA PALLANTE: Mr. Kerscher -- or Dr. Kerscher, sorry.

GEORGE KERSCHER: DRM is a complicated issue. And the ability to crack a viable lawful copy of an eBook that I cannot use because of the DRM, I could crack it, and I have done that.

But we are trying -- we in the disability community, in the libraries, all the trusted intermediaries who have the potential to write such software have not done so, because we want to work hand-and-glove with the publishing community and not disrupt the ecosystem that's evolving. So, we've not implemented the nuclear threat. And that's kind of what we refer to it as, is the implementation of that exception.

We're trying to work on interoperable DRM. We're beginning to see -- now that Kindle has got deals

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with the iPhone, the Adobe Digital Editions is using the same DRM on the Sony e-Reader. And Adobe has a DRM software kit that would allow interoperability. These are all within a proprietary system. But what we have to have are user agents reading systems, either PC based or hand-held, that will allow a person with a disability to use it effectively. So, sharing the certificates or keys with different devices that could render the content in an appropriate way. We have to get to the point where we can interchange information on various devices, trusted, you know, devices that are paying attention to the digital rights management.

I think we have to have that kind of system somewhere and -- until we get to the DRM free market, which is where, you know, I think a lot of people would like to see us. O'Reilly is not doing DRM on their books. And there are many times a leader in this regard. But I know that many publishers feel that it's not yet time for DRM free materials. Thank you.

MARIA PALLANTE: Okay. I have a question. I -- Mr. Martin Ningo (ph) of Accessible Publishing filed extensive comments. He couldn't be here today. He

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said, government policy over the years has favored institutional accessibility at the expense of mainstream accessibility, with a result that more emphasis has been given to nonprofit and government-produced materials, rather than creating the right economic incentives for books to be issued in accessible formats by the original publisher.

So, in the next panel we'll ask the content producers, what are the right economic incentives? That's not for this panel. But my question really is we've heard a range of the Chafee Amendment is working beautifully, the Chafee Amendment is working fine, but from here forward we should focus on market. And even, I believe, Mr. Chapman, that the Chafee Amendment has lived its purpose.

So, I invite anybody to kind of comment on that general theme about the existing regulatory provisions for the next few minutes. We'd like to hear more about that.

Allan.

ALLAN ADLER: Well, let's go back for a minute and look at the Chafee Amendment in 1996 when it

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was enacted. The Chafee Amendment was enacted in 1996 primarily with the objective of being able to eliminate one of the things that added to the amount of time it would take for people to be able to obtain literary works in specialized formats that would serve accessibility needs. And, so, by eliminating the need to obtain permission from the copyright owner for reproducing these works in specialized formats, of course the question also came up -- although it was not dealt with specifically in the statute -- does that also mean that in addition to eliminating permission, you're also eliminating any right to compensation? And basically that is the way it has worked. Although I note that in many instances, particularly in dealing in the educational environment, people think that it is fair to purchase, for example, a textbook, or to purchase another book that's been assigned for curriculum reading before one is going is to use that book either to be scanned or to otherwise be retrofitted in some way to meet the needs of a specialized format aversion. The problem is, is that we had concepts that in 1996 have evolved. And they've changed the way the

law works entirely.

For example, when we talked about specialized formats, what was inherently understood about this specialized format, indeed the concept of the specialized format, that it was a form of the work that could be used by somebody with print disabilities that would not be used by someone without those disabilities in the marketplace. Because typically you required special equipment in order to be able to use any of those specialized formats. Whether you were talking about cassette tapes, or digital text, or braille. So, we've moved away from that notion now. Because I think it's pretty clear, as technology has evolved, we're coming to see that -- I would venture that the preferred format today is some version of a digital talking book, typically based on the DAISY Standard, but now even based on the NIMAC Standard, something that for the publishing community is coming increasingly an uncomfortably closer to what a commercial eBook or a commercial audiobook provides. So, we've moved away from the concept of specialized format.

We've also moved away from the concept that

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was understood in 1996 as to who -- exactly what was the definition of the population that was supposed to benefit from this copyright exemption. That population was defined in terms of the print disabilities community as that population had been defined for the National Library Service under existing statutes and regulations.

What we've now seen, however, is constant pressure to evolve towards a broader population, not print disabilities, but a population with learning disabilities. Depending upon whose estimates you look at, in any event, are exponentially larger than the population that was understood in 1996 to constitute the print disabilities community.

Now, that's an important fact, because an inherent principle of the Chafee Amendment, an underlying premise, was that there really was no marketplace for specialized formats. It was noted in testimony by the Register at that time that braille was something that was almost entirely subsidized by the government. It wasn't produced by private entities in any kind of a commercial capacity. And the same thing

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was true for the other specialized formats that were specifically identified in the Chafee Amendment and contemplated as the kinds of things that required special equipment to use, and would not be used by ordinary consumers.

But now as we move, not only to a change in the population, of an exponentially larger population that could, in fact, constitute a market -- a legitimate, viable market for accessible books to be produced in the first instance; and as we've moved towards a specialized format that no longer requires specialized equipment in every instance to be utilized but, in fact, can be utilized and even might be attractive to be utilized by ordinary consumers. You have to ask the question of whether or not the regulatory approach, and the framework, and the underlying premise of that approach in the Chafee Amendment still have general validity, especially such that you would want to extend them for application overseas.

MARIA PALLANTE: Thank you.

Mr. O'Reilly, could I ask you to explain to

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us in a little more detail about the population that you serve? Are they folks that are happy with specialized equipment and are set in their ways, or are they a potential market, are they a mixed crowd, who are they?

ED O'REILLY: Well, I think you'd get a number of different answers to that depending on who you ask. And I think we have -- our information is -- what word could I use -- imprecise. But our sense is that our readership on the whole is about, I think, 65, 70 percent over the age of 60 or 65. Our readership is, generally speaking, technologically unsophisticated. Our readership is, generally speaking, close to indigent, and perhaps would not constitute any kind of a market on that basis.

I think we also make a distinction between dyslexia that is organically caused, as against a psychological issue of -- I -- I'm sorry, I'm out of my depth in the ins-and-outs of dyslexia. But that's the -- that's the way it's formulated. Am I answering your question?

MARIA PALLANTE: Yeah. And, Mr. Thomas and Mr. Mudd, feel free to jump in. But really we're just

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trying to understand the patrons.

GARY MUDD: I think part of what we need to understand is that we don't fit in a box. There aren't -- well, at -- Allan mentioned earlier, there's no one answer to this question. Students who are -- that we deal with, the K-12 population, they're becoming much more savvy with computers. And like George, you know, he can access pretty much, with technology, whatever he needs to because he's an expert user. There are still kids who need braille, who need to be taught with braille and then move into technology for getting more information.

Those of us who are blind or visually impaired typically are happy with any way we can get information, and that could be in braille, it could be with downloading from Bookshare RFB&D. We typically use all kinds of ways to get our information. And none of us can fit in that one box that answers all the questions about -- yeah, we're happy with NLS, we're happy with RFB&D, we're happy with getting braille. We just want access to information. And we do want to protect the intellectual property of the authors and the

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publishers. We don't want anything for free. And I don't know whether that helps. Again, Maria, is that addressing --

MARIA PALLANTE: Yeah. No --

GARY MUDD: -- the question you had?

MARIA PALLANTE: Absolutely. Dr. Kerscher and then Mr. Thomas.

GEORGE KERSCHER: The libraries are potential customers for the publishers that have an accessible product. Right now you can't buy accessible books. So, Recording for the Blind and Dyslexic has to manufacture it. And there's, as we've learned, high cost associated with that manufacturing process. There was -- if the -- you -- if the library could buy it, add it to their collection like a regular library buys a book, there would be no reason for them to spend money manufacturing it.

So, the copyright exception is there for those titles where we cannot purchase it. And we want to see the -- we hope that the publishers are going to see this emerging market and universally design the product so it's going to work with a whole host of

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different people with and without disabilities and we'd add those titles to our collection.

So, in fact, as our libraries continue to use the copyright exception to make books accessible that would not otherwise be accessible, we also become a market for the publishers as they create accessible content.

MARIA PALLANTE: Thank you, very much.

BRAD THOMAS: Can I --

MARIA PALLANTE: Oh, I'm sorry, Mr. Thomas --

BRAD THOMAS: That's okay.

MARIA PALLANTE: -- and then Mr. Aiken.

BRAD THOMAS: Just very quickly, I -- we don't see it as an either-or proposition. And I think this has been articulated already. We certainly believe that a copyright exemption will need to continue to exist. We believe that we have value-add to the process. We believe that we have a technical expertise that, while is developing rapidly within certain segments of the publishing industry is not, as we've heard, yet completely viable.

With that said, we certainly recognize the

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need for mainstream access as you cited originally, and think that we have an important role to play in that and would like to be a part of that evolving process.

MARIA PALLANTE: Okay. Paul.

PAUL AIKEN: Thank you. Yeah, we don't think any changes need to be made to the law, no new regulatory exceptions are needed. And partly because the proposal we've -- we made earlier, which would make DRM'd books accessible using modern devices to the blind and visually impaired, and respecting our legitimate markets at the same time.

To Dr. Kerscher's assertion that we're proposing establishing a national registry, this is just untrue, we're not. There's an existing framework under Chafee, and our proposal is to leverage that. And this is not a network of -- you know, of faceless bureaucrats, these are trusted intermediaries. A lot of nonprofits set around this table are involved. It's decentralized. There already is an existing list. We would -- those people would be entitled to an additional benefit as a result of having their certifications.

So, we think it's a elegant, and simple, and

inexpensive solution to providing access for hundreds of thousands of books within a very short period of time to the blind and visually impaired.

MARIA PALLANTE: Dr. Kerscher, did you want to respond to that?

GEORGE KERSCHER: Thank you. Reading my mind. I would benefit by that. But there's -- the majority of people who need to use this technology would not be registering. So, you'd be forcing them into a situation to use a mainstream technology that it was designed -- the eBook specification was designed to be used with text-to-speech and is being turned off, is -- amounts, to me, turning off a fundamental human right to access information.

So, I see that we've got a rights conflict here between the recording rights that have been sold and the fundamental human right to access the information that I've paid for.

MARIA PALLANTE: Paul, maybe you could speak a little more about contracts perspective, because obviously you're dealing with existing contracts and emerging business models, and they're all coming

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together. But is there any thought about how this might change over time contractually?

PAUL AIKEN: Sure. And I do want to point out, again, that the existing contracts still do have the exception in them so that authors do donate rights, as they have for decades, to allow braille and audio versions be created without royalties being paid to authors.

You know, but potentially those could be -- those exceptions could be expanded contractually, but that will take discussion from a lot of people figuring out exactly how to do that in a way that does not disrupt the market.

We have to bear in mind that we're at the dawn of this market. This is -- we're just beginning. And the worst thing we could do is to come in with a new regulatory framework that could impede the market and prevent market-based solutions from answering many of these problems. And we think the answer is instead to look to contracts, to talk to the people who are around this table and workout something that works for everyone that can be implemented contractually.

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MICHELLE WOODS: Just a quick follow up with Mr. Aiken. And that was you had mentioned Amazon. Did you say Amazon is developing an accessible version of the Kindle 2, or that they would need to? I just wanted to clarify the situation with that technology.

PAUL AIKEN: Right. So, there's two parts to the accessibility. One is the physical accessibility of the device itself. And what we've heard -- I haven't had it verified -- but what we've heard is that they are developing an accessible version of the device itself, presumably with a braille keyboard and audible menu commands.

The other side is the software side and, of course, that part has been solved. There's a version of Kindles operating system that permits text-to-speech. And apparently there's another version in -- that's in beta testing right now that would allow selective turning off of text-to-speech where it's contractually required.

MARIA PALLANTE: Okay. I've got Miss Rangnath, followed by Dr. Kersch. And we're getting towards 11:30, so, if anybody else wants to speak on

this panel -- Allan, Mr. LaBarre -- raise your hand now or you're out of luck. Okay.

RASHMI RANGNATH: I just wanted to point out that, when we talk about rights and audio rights, we should be mindful of the fact that these rights may not be copyright rights and they may not be -- they may not -- publishers and authors might not have these rights.

The Copyright Office has observed in 2003 that the audio rights and eBooks were private performance right, which is not covered by -- which is not the right given to the copyright owner. So, we have to be mindful of that limitation when we're talking about marketplace and what rights implicated, and what damage is being caused to the publisher.

GEORGE KERSCHER: The Kindle 2 is accessible to some people with disabilities right now. And we've seen that some students with disabilities at higher ed have found a few of their books in the Amazon collection. But people who are blind, the -- all the controls are visual. So, a portion of the disabled population can use the Kindle. And, in talks with

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Amazon, their intent was, and they've blogged about, making the rest of it accessible.

And now with the Kindle DX, the bigger one that they've announced targeted toward education, boy, I would think, if they don't make those controls accessible they're going to run into a lot of controversy.

MARIA PALLANTE: Thank you. Mr. LaBarre, you have the last word for this panel.

SCOTT LEBARRE: I just wanted to --

MARIA PALLANTE: Oh, I'm sorry, you have the next to the last word for this panel.

SCOTT LEBARRE: Fine.

MARIA PALLANTE: Followed by Allan Adler.

SCOTT LEBARRE: I have the penultimate word, I guess.

The -- it appears -- obviously when Chafee was adopted, we didn't have the current reality of the emerging technology, and e-text to the degree we have now. But, as we wrote in our comment submitted by Dr. Mauer, we believe that correctly interpreted Chafee Amendments do apply to e-text. However, we also agree

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that that needs to be clarified and, perhaps, with some sort of regulatory guidance.

We also believe that the issue of -- regarding what kinds of organizations can produce these books is, perhaps, another issue that needs to be clarified. The whole idea of having a primary mission, clearly somebody like RFB&D has a -- it is their mission. But it could be argued that, when a disabled student services office on a college campus is attempting to convert a book into electronic format for a student, that would constitute a primary mission of that particular entity. So, maybe there needs to be some clarification in that regard.

MARIA PALLANTE: Okay. Thank you.

And, Allan.

ALLAN ADLER: Well, I just wanted to follow up on a comment that Scott made before where he was talking about the cost issue should not be paramount in determining how people who have print disabilities are able to have their needs for information served. And I agree with that, but I think cost comes into it in the sense that on the one hand we hear Ed O'Reilly saying

that he thinks the population he serves is probably -- is largely one that might not be able to afford universal designed products that are -- have built-in accessibility in the marketplace.

On the other hand, I assume that the controversy over Kindle 2 indicates that there is, in fact, a market out there. And there are ready and waiting consumers who have print disabilities who wanted to be able to purchase the Kindle 2 and make full use of all of its capabilities.

So, the question that comes back to us -- and I just didn't want to leave the subject of the Chafee Amendment without this -- is ultimately whether or not we can move forward fully into a market-based universal designed product environment while you still have a lingering regulatory approach, in the form of an exemption to the Copyright Act, that explicitly authorizes certain people to be able to reproduce and distribute copies of the work without permission or paying compensation, as long as those copies meet the definition of specialized format. And at that point is an eBook a specialized format? Because it certainly

provides the needs of accessibility. Is a digital talking book under the DAISY Standard a specialized format which now can be reproduced?

Obviously, if that's the case, then one can readily see the problem from the publisher's perspective in making the investment in producing those versions as a product for the marketplace, when there still is a regulatory exemption that allows people to freely reproduce and distribute them in competition.

MARIA PALLANTE: But, Allan, to the extent that the publishers are not distributing all books that are available in that format, is the regulatory scheme not important?

ALLAN ADLER: Well, I mean, you know, it may well be -- you may always need it as some sort of a safety net, even when -- if you had a full-blown marketplace working with accessible universal design products. But we're talking here about why it is that publishers haven't been able to achieve that kind of marketplace. And I'm simply submitting to you that part of the problem is the continuing existence of this regulatory approach that says, there's an exemption to

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copyright that will let people reproduce and distribute copies of those very works, those universally designed accessible works.

MARIA PALLANTE: Thank you. We are out of time on this panel. We are going to take a ten-minute break. So, if everybody could be back at 11:40 we would appreciate it. Thank you.

(Pause in proceedings.)

MARIA PALLANTE: If we can take our seats. Government folks, if you could come back. You're wonderers.

Okay. We have two new panelists. Let me introduce them. We have Carrie Russell from the American Library Association, Association of College and Research Libraries, and Association of Research Libraries. And we have Fritz Attaway from the Motion Picture Association of America. And we have lost Rashmi Rangnath from Public Knowledge and -- anybody else? That's it. Okay. Great. So, we lost one and gained two.

And this is the second panel. And we're very interested in market initiatives, exciting things that

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are happening in the nonprofit and the commercial worlds. And we have two demonstrations.

I guess I'd like to ask, if you could raise your hand if you would like to make an opening statement in connection with this panel, especially asking the folks who have already made an opening statement this morning. Could you raise your hand if you'd like to do that? Certainly Carrie, George -- okay. Carrie, George, Gary -- yeah, it's obviously -- Brad.

Okay. Let's do this, let's start with Carrie, George, and Gary, and then we'll have -- we will then have Fritz do his demonstration, followed by Pearson Publishing.

So, Carrie, five minutes.

CARRIE RUSSELL: I'll be brief, because I know we have the demos and everything. I just want to -- the Library Associations want to thank the Copyright Office and the Patent Office for conducting this study. We think it's very important and a good sign that our agencies want to be prepared when they go in to talk about any expansions of these laws at the national or international level. We really appreciate it.

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The way we approached this, because there was not that much time to kind of find out what the realm of possibilities were out there, was that we just did a really quick and dirty and interview kind of process with as many people as we could, librarians who work for specialized agencies, librarians who work in public libraries, academic libraries, and then also with reading and -- reading impaired people, people that cannot -- do not have accessible formats.

And, so, I -- going through this process -- because there was not enough time -- it really pointed out to me that we need to really talk more with the users of these products and these formats, because there is so much that we do not know. If we're going to build a market for new formats, I think you -- it's just amazing the changing demographic of people out there that might be using these products. And, if we had the time, I would just love it if we had a time to do a study of all the people out there that are affected by this. That was my big learning.

The librarians overall that I talked to are grateful -- very grateful that they can turn to the

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Chafee Amendment, the IDEA Act and fair use when meeting the needs of the visually impaired.

They expressed a great concern that, please don't take the Chafee Amendment away from us, when told that the library -- that the Copyright Office was going to study this issue. They just thought they had come so far with the Chafee Amendment, even though it was a problem, just please don't take it away.

I have a few comments that were in my recommendations. First of all, the eligibility requirements and allowed formats in the Chafee Amendment, the IDEA Act, and the No Child Left Behind Act should be harmonized. There's a lot of confusion. How far the Copyright Office or the Patent Office can go to fixing that problem, I don't know. But there's a great deal of confusion about what's allowed and what's not allowed. And these laws are in conflict.

Eligibility requirements necessary to obtain accessible formats need to be relaxed to recognize the growing demographic of people losing their sight in later years. There's a huge, huge population of older people that are losing sight. Even large print formats,

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which are sometimes allowed and sometimes not allowed, would go a long way in helping these people.

Contract law we believe should not be permitted to expand the exclusive rights of copyright holders in a matter that denies information access to the visually impaired. We think that the whole Kindle activity is -- highlights kind of an extreme approach to deny the visually impaired, same time, same access, same book, same price. Certainly these are individuals that want to buy -- that are buying the book so that they should certainly be able to use it.

And we'd like to also recommend that, in your report from these proceedings, that the Copyright Office reiterate the fact that fair use -- the rights of fair use are not effected by the Chafee Amendment. That people -- specialized libraries aren't the only ones that can make specialized formats. Depending on the situation at hand and the forefactors, librarians at any institution be -- should be able to make an accessible format at the request of the user. And that's all I'll say for right now.

MARIA PALLANTE: Thank you, Carrie.

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George.

GEORGE KERSCHER: Okay. So, I think we've already -- getting to the point where the copyright exceptions and trusted intermediaries working together can be two concepts living harmoniously. The W3C is the standard-setting body for the Internet. And what -- the approach that they've taken is with three sets of guidelines for accessibility. One is regarding the content -- the web content accessibility guidelines on what constitutes the actual information.

The authoring tool guidelines, which is for manufacturers' tech companies that help people make their products accessible right out of the box. So, Adobe InDesign is widely used in the publishing industry. It's not the only thing that's used. But working with Adobe -- Adobe has just joined the DAISY Consortium. And we're very pleased to see that and want to work with them. They do have a Save as DAISY XML in their latest release. It's pretty primitive. We need to work with them that -- but that should help us. So, all of the authoring tools need to be producing accessible content and -- to make it easy on the

publishers.

And then, finally, the user agent accessibility guidelines, so that the reading systems that are out there, like the Kindle wouldn't -- the next time the Kindle comes out wouldn't come out with controls that weren't accessible. Digital Editions from Adobe is not accessible. And that's a software application that should be accessible. All of these reading systems should be -- the guidelines on how to create user agents should be there. So, those are some techniques that other industries have done and I think can be applied in the publishing field.

MARIA PALLANTE: Thank you.

Brad. We'll go in order here.

BRAD THOMAS: Okay. Sure. I'll make this very quick. I just wanted to highlight, I think all -- most, if not all of you, are familiar with RFB&D and what we do. I think, actually, Lauren -- the individual who did not give a last name apparently but submitted comments to this request -- put it best. She said, "Being able to listen to audiobooks, RFB&D recordings, et cetera, was a lifesaver when I was a student from 7th

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grade to a senior in college. The ability to listen to textbooks, novels for classes helped tremendously in my success at school."

We have a long history of meeting the needs of the print-disabled community, and are very much dedicated to continuing that.

We are focused on educational content. Our online library has 50,000 digitally recorded books, 65 percent of which are core textbooks for the education community, which is the bulk of the work that we do. The bulk of our materials are human recorded digital audio files in DAISY format, providing key navigation tools by unit, chapter, and page levels.

We deliver those files through multiple platforms, CD, and increasingly downloadable through our web-based platforms. We have traditionally not done as much work with electronic text, but that is changing as technology and the marketplace is evolving. And we're very excited about moving more forcefully into that market.

And also collaboration has long been an important part of our work with APH and NLS in our

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collaboration in -- between certification efforts and our libraries. And I think I'll leave it at that and I'll just move on.

MARIA PALLANTE: And, Gary.

GARY MUDD: I -- excuse me -- I won't reiterate all of what I said earlier, but we -- some of the collaborative efforts that Brad mentioned earlier that we are engaged in, the Louis database of accessible materials. We have -- which is a federally-supported national database of more than 196,000 books in accessible format. Now that means braille, audio, large print for use by blind and print disabled. Louis is a -- it's a type of union list, as it provides catalog information of materials for -- with over 170 agencies.

Louis has -- it's a two-fold purpose. One is to make the books easier for those who need them to find them; and the other is to reduce and try to eliminate duplication of effort. If a student in California needs a book and a transcriber is to -- is beginning to transcribe that book, they usually will put an intention on so that some other transcriber in another state won't start the book. So, we try to help with that.

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NIMAC, APH has developed and managed the National Instruction Materials Access Center, NIMAC, with the -- which Congress designated in, what, IDEA 2004. NIMAC houses more than 16,000 electronic files of textbooks and related print core materials in a specialized file format. These files are used to produce accessible formats for students at the elementary and secondary school levels.

We also have a database of tactile graphics so that commonly used tactile graphics in textbooks can be downloaded by transcribers from wherever to use that basic tactile graphics to build on for the books they are transcribing. And we have images -- commonly-used images that are available to those transcribers, so that the resources can benefit the most people and the students the best way we possibly can. So, that's kind of --

MARIA PALLANTE: Thank you, very much.

Fritz, you should feel to give an opening statement and then move into your demonstration.

FRITZ ATTAWAY: Actually I'd like to do it in reverse order.

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MARIA PALLANTE: Oh, okay.

FRITZ ATTAWAY: Most of what I've heard so far today has related to the print media, and I'm going to change the focus a little bit for a few minutes and talk about movies and other audiovisual works, which are made available to the blind by way of audio description. And I'd just like to show you a short clip of the "Bee Movie", which has been audio described by Paramount Pictures, just so everyone knows what I'm talking about. So, roll it, please.

(Movie played.)

FRITZ ATTAWAY: I think you get the idea. I wanted to show this because I think it illustrates a number of points.

First of all, obviously, video description -- or audio description is a way of providing access to movies and other audiovisual works to the blind. It is something that can be done and is being done. I'm advised that most major releases are audio described for the blind.

Secondly, I think it illustrates that audio description is complex, it's time consuming, and it

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requires considerable skill to do; and it is, therefore, expensive. So, there's a cost factor involved.

Thirdly, it's a process that requires considerable creative judgment. It's clearly speech that's protected by the First Amendment, and it cannot be compelled by government. And for that proposition I would cite Pacific Gas and Electric Company versus California Public Utilities. Under our First Amendment speech cannot be compelled, so, that's a consideration.

Finally I think this clip illustrates that there are many creative, technological, financial, and other challenges involved in providing access to audiovisual works to the blind. Copyright is not among these challenges, or if it is, it's relatively insignificant.

And I will save further remarks on proposals for copyright exceptions and limitations for the next panel. But I'll just stop there today.

MARIA PALLANTE: Okay. Thank you. And I'm sure we'll have some questions for you about what we just saw, but let's go to the second demonstration. And, Peter, again, if you'd like to do a five-minute

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statement as well, you're welcome to do that.

PETER CHAPMAN: I'm still Peter Chapman. I still work for Pearson. I'd like to, in a minute, take an opportunity to very briefly demonstrate to the Copyright Office and other attendees of the panel a new technology which Pearson has developed, which we call HTML book. It is an HTML based eBook viewer which is designed to allow assistive technology to easily read the book to a student who cannot utilize either Pearson's other eBook viewers or those from our competitors.

A couple of points, it's worth reminding the attendees today, which is probably obvious, and that is through many years of providing digital solutions, the industry has learned a lot about presenting content from our customers who do not have disabilities. For example, despite its original design for the hearing impaired, captions on television are yet -- are used by a far greater audience than the visually impaired, which ranges from English language learners to people in noisy environments. I can speak from personal knowledge of this, my wife, having been born outside the country,

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learned her English watching soap operas and reading them, of course, with the closed captioning.

My point is this, many consumers wouldn't have benefited if the government industry had mandated a unique and separate system to deliver TV specifically for the hearing impaired. Pearson believes that solutions that work well for those with disabilities are, in many cases not all clearly, also going to benefit those that don't. This morning's conversation about the Kindle I think was a very good example of that.

Students with disabilities, however, provided the impetus for creating the new HTML book technology I'll show you in just a second. However, we at Pearson really aren't clever enough to know absolutely all the ways students are going to use the Pearson HTML book. And we will learn along with the industry.

This HTML is a complete digital version of the textbook. Our development -- internal development team worked very hard to make this product compatible with third-party assistive technology. It contains all the textbook content and nothing else that hinders

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working with other vendors who want to utilize it.

Unfortunately I don't have any assistive technology with it, so, for those who are visually impaired today, you won't be able to hear it. Pearson itself doesn't make those technologies, but we have built this to work with those technologies.

So, I'd like you to flip the switch. There we go. Obligatory picture of my kids. Okay. So, what I've done is just launched a standard browser. This happens to be Firefox. I happen to be running on a Macintosh. And this is the MaGruder American Government Textbook. It's a brand new version of the textbook. It -- I think it's just being launched now, if I recall correctly. It's an eighth-grade textbook. And it is the HTML book version of it.

So, there's a number of things that we've done to try to make this as useful as possible to the audience we intended. First, as you look at the very top, you'll see that it has a Pearson logo, but it does not have a fancy logo of the book. And being a publisher we tend to put those in all the time. In this case we felt it really didn't add anything to it, so, we

made it just a generic logo not to interfere with anything.

And you notice at the top here there's a button -- and, by the way, these are all tab accessible -- it says skip directly to the table of contents. So, by clicking that you can -- it inserts the cursor to the table of contents. So, again these third-party readers will be able to take great advantage of that. There's a second button here that says skip directly to the main content. And that positions the cursor to the beginning of the content. In this case the cover page is showing, so, it will make more sense when I show other pages.

If you go a little further down, you notice the book is created very vertically. And, just as a smaller side for those of you who understand K-12, especially K-6 textbooks, that's not normally the case. I think that was brought up by an earlier speaker, in that textbooks, for better or for worse, are becoming much more visually oriented. And they tend to have lots of breakup boxes, or textbooks that often displays across two pages.

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So -- and this is a point I may want to come back to later in the remarks when we talk about the Kindle -- some of those devices are not especially well suited to take the standard eBook -- or the standard textbook and display it electronically. This HTML book has actually done a bit of reflow work and reformatting to make it work as well as possible.

So, the next line here has a change text size option. And, of course, by clicking on the plus it makes the font larger, by clicking on the minus it makes the font smaller. And we can show and hide the table of contents. A lot of the -- the Kindle, if I remember correctly, does not have a table of contents. So, in a textbook environment -- you know, in a novel that probably doesn't make the least amount of importance, being a textbook it's crucial.

You notice also at the top here I can enter a page number. So, I can jump directly to Page 20 by typing in 20 and pressing go. And I've jumped now in the display to Page 20. Again -- and not to knock the Kindle, because Pearson supports the Kindle, but just to point out differences -- I don't believe that the Kindle

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has a go-to page, okay, go-to capability. So, if you think of a typical classroom environment where the teacher says, okay, let's all turn our books to Page 17, that's something very viable in this model. It may not be viable in other products. And you also have the ability to linearly jump through pages by clicking the right or left arrows.

So, now I happen to be on Page -- I think it's 22 -- and you'll see that the text is there. And it also creates a cookie crumb trail. So, if you're referring to the table of contents, I mean, you hit one, Chapter 1, Section 3, and I can back up by clicking on the table of -- on the cookie crumb and scrolling up and down.

And I'll just flip through a few more pages. And, of course, that change text size still works here, too, so, if you need a larger sized text it works very nicely.

Going over to the table of contents for a second, it has the standard expand, collapse metaphor that everyone is familiar with. So, I've expanded Unit 1 and then I can expand skills handbook and click right

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on writing. And now I've jumped into a particular portion of the text.

The images are embedded in a linear fashion. So, unfortunately I can't compare -- contrast this with a printed book. I should have brought it to show. But it has the same text, it has the same photographs. But the page layout that is on the printed page will be altered to work appropriately within this technology.

So, this is technology that we have pretty much finished. Tom Starbranch, who sits behind me, is actually one of the key managers for it. And we're going to be making this selectively available for some of our -- starting with high school titles -- in 2009 and kind of work our way into the market. I guess that reinforces the point I made earlier today --

(Bell rings.)

PETER CHAPMAN: -- about edging our way into the market to understand what the market needs are.

MARIA PALLANTE: Thank you, very much. I have a question for Fritz, and then my panel I'm sure has some follow-up questions as well.

Fritz, what were the -- what were the

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incentives for the motion picture companies to, as I understand it, create these audio versions -- alternative audio versions of the movies voluntarily?

FRITZ ATTAWAY: The incentive is that it's the right thing to do. It's certainly not something that is a significant -- or any revenue source that I'm aware of. My understanding is that the studios over the years have worked with a number of groups that represent the blind. I think WGBH has been involved in audio description. And they do it because it's the right thing to do.

MARIA PALLANTE: And are they -- they're available in theaters?

FRITZ ATTAWAY: Yes.

MARIA PALLANTE: And is that it, or are they distributed as DVDs?

FRITZ ATTAWAY: Some are distributed in DVD, but I'm told that not many movies are available -- are video described on DVDs for a number of reasons, one of which is simply lack of demand. Also at one time shelf space was a factor. I think that's becoming much less so as compression techniques allow more and more

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material to be put on a DVD. I think that's something that requires more work. Personally I would like to see more movies available in -- with video description on DVDs.

MARIA PALLANTE: Thank you. You're looking very thoughtful, Mr. Shapiro.

MICHAEL SHAPIRO: Nothing in particular on this.

MARIA PALLANTE: Michelle.

MICHELLE WOODS: Thanks. Well, I thought maybe a good first question for this panel, since this is the panel on initiatives, would be just to kind of open up the floor to ask what initiatives there are out there, either that you're aware of, or that your organizations are a part of, in terms of providing more accessible materials to the blind and other persons with disabilities. And here I think we are talking both about commercial marketplace initiatives and also nonprofit or library-based initiatives.

So, is there anyone who would like to tell us a little bit about some initiatives?

MARIA PALLANTE: Carrie.

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CARRIE RUSSELL: For the most part there aren't any initiatives at the higher-education level with academic libraries. There aren't any special initiatives in the public libraries. The K-12 school libraries work very closely with the existing agencies. And they managed to get many of their needs met.

I think that, if you are at college campus, you'll see that -- just the way things are divided up, there's adaptive technologies like divisions that serve people that have handicaps, and only tangentially will work with the library. Sometimes the library may have a adaptive equipment, but a lot of times they don't.

Public libraries, I think they generally believe that they do not have a role in serving the visually impaired, unless they have a specific, like, division. Like, there are some really exemplary programs, DC Public, Cleveland Public Library, they have a very -- you know, very well thought-out plan. They serve many, many people. But many of the libraries that I talked to that are public libraries think that they're -- lawfully they -- they're not allowed to make certain formats for the blind. They don't think that they're

allowed to, and that they have to turn that request over to an authorized agency.

So, I would say that there's not too much going on in the schools and -- I mean, in the public libraries and the academic libraries.

MARIA PALLANTE: Allan, I'd like to ask you, what are the right economic incentives for publishers these days to move to a more market-based approach?

What is it that publishers need?

ALLAN ADLER: It's a very difficult question to answer, in part because, as I said before, membership of AAP is a good example of the sectorial nature of publishing. And what might work for trade publishers, for example -- whose works were chiefly at issue in the dispute over the Kindle 2 -- is not necessarily the same thing that's going to work for educational publishers or professional and scholarly publishers.

I think part of the problem here is that there is, unfortunately, no mandate in the marketplace for the kind of shift in media that we saw, for example, with respect to motion pictures, or to music, where there was a situation where the DVD came along and

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completely supplanted VHS tapes, for example. Because not only did they provide a sharper, clearer picture, but they had enhanced storage capability, which allowed more material to be put on the product that would be distributed in the marketplace.

Similarly with music, we watched as a succession of media not just came along to supplement, but to supplant what came before it. And you don't see people much today using 8-track tapes or cassette tapes. And very shortly, according to my friends in the music industry, the CD is probably going to go the way of its predecessors, as people get their music almost exclusively through a downloading model.

So, for publishers who for 400 years have essentially had a format for the literary work that actually was quite successful. It's durable, it's portable, relatively cheap. They are having to gamble on the extent of their investment in digital formats and whether or not that's going to meet the tastes, as well as the needs of consumers in the marketplace for reading materials.

As I've said, I think in the last eight years

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or so, some of the earlier hyperbole about what people thought was going to take off with respect to eBooks simply didn't come about. And there are a lot of reasons for that. As I said, the eBook isn't a product that is put together simply by a publisher and put out into the marketplace. It's a product that is a combination of hardware, and software producers, as well as the publisher and ultimately the author's work. And, unfortunately, as long as there's still proprietary dispute and combat in the marketplace for dominance as to which formats are going to continue to predominate, whether we're going to be dealing with a particular type of dedicated reading device, or whether the preference is going to be for people to read eBooks on PDAs, or their iPhones, or on PCS. Frankly from the publisher's perspective, eBooks remains a pretty uncertain proposition in the marketplace. And the kind of investment that we've been talking about to transition one's production facilities away from what was primarily designed to produce print on paper book, now to produce something in digital form and what does -- what that transition should be, how you set up a production system

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that's designed to produce works in digital format still remains a matter of uncertainty to many publishers in different sectors, because they simply don't know if the marketplace is ready to accept those versions.

So, it's really -- I mean, I'm not trying to be evasive, I can't tell you that there is a list of three, or four, or five particular things that I think would create incentives for publishers.

I know that, again, the existence of a regulatory framework based on a copyright exemption does give them pause about how much they can commit to the idea of universal design products in digital formats, as long as there exists legal authority for people to widely reproduce and distribute those copies without permission or payment.

MARIA PALLANTE: I'd like to get to Michelle's question. Thank you, Allan, and -- okay. Dr. Kerscher, if you could wait for just one minute, you'd like to respond to Allan, I gather? I'd like --

GEORGE KERSCHER: Two points, but, yeah.

MARIA PALLANTE: Okay. If we can come right back to you.

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I'd like to ask Mr. O'Reilly to tell us what initiatives are underway at the National Library Service? How are you embracing new technology? How have you arrived at that point to make the decisions that you've made? And how are you serving your patrons in new ways?

ED O'REILLY: Right. As I mentioned in the earlier panel, we've just shipped 5,000 proprietary digital talking book machines to eight test libraries, along with a little starter kit of, I think, 52 digital books that will be circulated among a small number of patrons for -- who are known by the libraries to be active readers, and interested in their libraries and their reading, committed to it. And we'll be collecting feedback on that prior to the go ahead on true mass production of these machines. And Plextor Limited in Japan is our contractor.

In addition, in tandem we've been building a -- we call it BARD, the braille and audio reading download. We have a -- I think about 15 -- sorry, the numbers have escaped me. There are several thousand books -- digital books online available to patrons who

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are heretofore been using the human stream to download these. And I think there are a couple of other commercial machines that Icon that maybe one of you -- what's the other one?

GARY MUDD: Braille Plus.

ED O'REILLY: Braille Plus. Sorry. Yeah, of course. That can need NLS books.

In the very near future we expect to integrate web braille, which is a web-based contracted braille book system with the audiobooks to have a unitary system. Patrons will be able to download braille books, or audiobooks, or both, and use them with the appropriate equipment.

Yeah, that's --

MARIA PALLANTE: Okay.

ED O'REILLY: -- taken up a lot of our energy.

MARIA PALLANTE: Thank you, very much.

ED O'REILLY: Okay I -- may I say one other thing?

MARIA PALLANTE: Yeah.

ED O'REILLY: People have no -- no one has --

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I'm concerned about this text-to-speech proposition, because I know a lot of our patrons have been unhappy with synthetic speech and want human voice renditions of books.

And our -- as I said, our -- that might be perfectly fine with a -- oh, an auto repair manual, or a law book, say. But for a -- or recreational reading, Michael Connelly and Danielle Steel and so on, synthetic speech is not altogether happy.

And I also wanted to say, I think this is the post-modern era, and we're supposed to be engaged in fluidity and fragmentation. And I think that's probably what we're ultimately looking at. I wouldn't object to the withering away of the National Library Service, provided the people who use it who may be indigent, or immobile, or remote, or reclusive, or computerless, are served in some fashion in the model -- the traditional model of a free library service. Thanks.

MARIA PALLANTE: Thank you. I have Dr. Kerscher, followed by Mr. LaBarre, followed by Mr. Thomas.

GEORGE KERSCHER: I tested the Pearson

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product in development. Good work. Terrific. I believe that was generated from the NIMAC files, the DAISY XML files. I think that's right. A lot of work went into the features and functions and how it worked, but the actual transformation was from an XML file set; am I right?

PETER CHAPMAN: Yes.

GEORGE KERSCHER: So, future products are -- will not require the amount of research and development to make the next book. You've learned a lot, and the process will become more automated. I don't know how much hand work goes into it, but hopefully that can be -- a lot of that can be automated. Are you optimistic there?

MARIA PALLANTE: Yeah, please.

PETER CHAPMAN: I recall your conversation from this morning about the need to automate processes, and I couldn't agree with you more. The way to drive down costs is to automate the processes and reduce this, quote, hand work. And that's what we need to do, is as we retool ourselves -- I think as you pointed out -- from a print environment to a digital and print

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environment, the need to have very efficient processes whereby for the most it generates a file format compatible with this HTML book, it is the issue to us. Because it right now is an added cost to us, and it is an uncertain market in terms of recovering that cost.

So, if we were to bear a multidollar per page cost with uncertain revenue opportunities, that just is not a viable business model for us.

GEORGE KERSCHER: So, the -- in the same way of thinking about the XML transformations that need to take place, I'm told by publishers that are part of the International Digital Publishing Forum, that they are exclusively shipping epub to their distributors. So the variety of proprietary systems are all getting the same content feed from the publishers in the epub format.

So, yeah, there's variety there and it's -- you buy one epub reader and you can use certain kinds of content. But the feed from the publishers is the same XML source content. So, that's very optimistic.

But I did want to respond to Allan's concern that, if there's a copyright exception, that this accessible HTML version that Pearson will sell would be

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taken by an authorized entity and distributed freely, I don't think it's ever happened, to my knowledge. And I don't know why that -- an organization, a trusted intermediary, would do that. I'm -- I just -- I don't understand that argument. It may be a fear but, you know, I don't see that as a -- something that should keep people awake at night.

ALLAN ADLER: Can I answer his question?

MARIA PALLANTE: Please. Go ahead.

ALLAN ADLER: I mean, George, one of the reasons why it's a matter of concern, frankly, is because I think people are beginning to find out the sophistication of what a digital talking book actually embodies at this point. And we had the problem, for example, with implementation of the NIMAC Standard, and the NIMAC Repository Center under the IDEA Amendments of 2004, where certain groups wanted to qualify as authorized entities to be able to have access to those files.

One thing that was problematic for us was we said, sure, I mean, to the extent we know the major authorized entities, which would be the folks sitting

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around this table plus Bookshare, that that would be something that possibly could work, if somebody was willing to take responsibility for any others who wanted to step forward and qualify as third-party authorized entities. And we quickly learned that that was beyond the capability of the American Printing House as the host of the NIMAC Center. We learned from the Department of Education's Office of Special Education that they didn't want the responsibility of determining who is or who is not legitimately an authorized entity. Nor did anyone want the responsibility of ultimately, once these groups were designated as qualifying to use those files, to monitor their activities, to make sure that ultimately they followed the rules and regulations in the guidelines.

So, we're hearing that no one wants to take responsibility for a concept that is easily expandable, and for which there will be incentives for it to expand, to introduce additional third parties who will say, we would like to serve as an authorized entity under the Chafee Amendment.

GEORGE KERSCHER: So, may I?

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MARIA PALLANTE: Yeah, please.

GEORGE KERSCHER: So -- okay. I'm with ya.

So, the idea of a trusted intermediary, that concept is in need of care and feeding for the development so that publishers will be happy with organizations that are good citizens, that report and do all the things that would be defined within, you know, a trusted environment, to facilitate this flow of XML information that can be transformed.

That thing then -- that level of trust has not been established and it creates that fear of copies flying everywhere without concern.

ALLAN ADLER: But, again, and it's because it's part of a regulatory approach for which people say there is scant additional appropriations for them to do what is necessary, or they just simply disembowel having the jurisdictional responsibility.

So, for example, if you want to move forward with a trusted intermediary approach, then building on a question Maria asked in the last panel is: Why wouldn't you do that through a licensing relationship between the producer of these materials and the trusted

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intermediary, rather than the trusted intermediary gaining its authority under a copyright exemption, when the rest of the regulatory framework around it isn't it place to ensure that that person is, in fact, a bona fide, authorized entity; and that its conduct, once it has access to these materials, will comport with the regulations.

GEORGE KERSCHER: But they're not mutually exclusive and you -- you know, if -- you do need to have the trusted relationships with the organizations, and also the many publishers who do not have the will or capabilities to make accessible versions to play with the trusted intermediaries. You still need that exception available.

ALLAN ADLER: So, I mean, we're working with them now -- in answer to Maria's question before when she asked about the incentives for a market-based approach to this -- that doesn't mean that publishers aren't currently doing a variety of things. As I said, publishing is a sectorial industry where different publishers have different perspectives on this.

So, just to give you an example of three

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things. Recently some two dozen publishers announced that they have signed agreements with Bookshare to provide, over the next few years, tens of thousands of their books, their backless books to Bookshare so that those will be available in accessible forms. That includes publishers like Random House, HarperCollins, Scholastic, Hachette, O'Reilly, Perseus Books, and Townsend Press, but clearly it doesn't include others who, for whatever reason, have decided that they're not interested -- at the moment at least -- in that kind of a relationship.

Similarly in the wake of the announcement about the Kindle 2, there was recently the introduction of the Kindle DX, as you know, which was touted as being able to hopefully be used, not only for newspapers, but also specifically for textbooks. And in that same announcement you had leading textbook publishers, Cengage Learning, John Wiley and Sons, and Pearson, who together comprise about 60 percent of the higher education textbook publishing industry, have agreed that they're going to provide their books through the Kindle. But, again, the others who comprised that other

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40 percent apparently, for whatever reason, aren't there yet.

So, there is a diversity here. The marketplace is producing results. It's doing it in different ways, depending upon how these different players, who are in competition within their own spheres, see it in their best interest to come forward now.

And I would suggest to you that, again, the only reason they're not yet seeing it fully in their best interest to come forward with a universally designed product that incorporates accessibility at the get go and put that out into the marketplace, is because they don't have a full understanding of how that is likely to go forward in the face of a continuing regulatory approach based on a copyright exemption.

MARIA PALLANTE: Thank you. Mr. LaBarre and then Mr. Thomas.

SCOTT LEBARRE: Thank you. You know, civil rights have never been accomplished or achieved by operation of the market and never will be.

With respect to the comments regarding IDEA,

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I think that our perspective is, it's not been an issue of the trusted intermediaries, it's really been an issue of compliance of the publishers to create the files. And even more of a problem has been the local educational agencies not complying with the law. And that is from our perspective.

And then I want to take this time to talk about initiatives of the National Federation of the Blind in this area. And I guess this goes with the theme of removing the epidermis of your favorite or least favorite domesticated animal. In other words there are many ways to get that accomplished.

We come at this from a variety of perspectives. We believe firmly in advancing technology and sort of trying to take away the arguments about whose copyright is it and just get direct access to whatever it is.

For example, I speak of the KNFB Reader, which is a hand-held cell phone that can snap a picture of a page and read it out loud. And it's virtually instantaneous now. The cost of which keeps coming down.

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We are, of course, involved in the Reading Rights Coalition involving the Kindle 2. But that's not just relevant to the Kindle 2, it's relevant to a wide variety of access to literacy. Because that's what we're talking about here, it's access not just to the book, but it's access to literacy and what literacy brings.

We are involved with the effort of the Louis Braille Commemorative Coin. Why is that important? That promotes braille literacy. We know that one of the reasons that people can make the argument -- although I don't accept it -- but make the argument at least, that, you know, braille is too expensive, et cetera, is that not enough people read braille. The more people that read braille, perhaps, the more the cost can come down. And we believe braille is a part of literacy for the blind; and, thus, the literacy program connected with the sale of the Louis Braille Commemorative Coin. As most people know Louis Braille was born 200 years ago, and the striking of this coin celebrates that birth.

And, finally, I guess I'm just sick and tired of the idea that, you know, all these things that are

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being done for the blind are special, or exemptions, or exceptions, or whatever. I really like what Dr. Kerscher has been talking about, in terms of we've got to think about this from a universal design angle. And we just have to do it and make a commitment to it. Because publishers don't -- the book's got to start somewhere. And in these days the book does start in a technological form.

You know, after you get the manuscript from the author, who usually does it now on a computer, but not all of them, of course, but a lot of them do now. And you will see that more and more. There is a digital copy. And the more we think about universal design, and the more we just make it happen, the less there will be of this argument about cost.

MARIA PALLANTE: Thank you. Mr. Thomas and then Mr. Aiken.

BRAD THOMAS: Sure. I just wanted to talk briefly about new initiatives underway at RFB&D. Mr. O'Reilly referred to the human audio versus synthetic speech discussion. And RFB&D does continue to be dedicated to human audio. One of the commentors to

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this request talked a little bit about the importance of understanding toning, and inflexion in speech, and the different capabilities that human audio provides in that area.

We are expanding and changing fundamentally, really, our delivery platforms for that. And I spoke a little bit about this earlier. Mr. Adler referred to the evolution away even from CDs now. And we've seen that within the last year. We've introduced two different downloadable versions of our services. And already within that year I was told last week, I think, that nearly half of the books that are requested from us are already via the downloadable formats. So, we're certainly seeing that.

The downloadable formats offer more flexibility than the CDs. One of the versions of our formats plays on a Windows Media platform, so, no specialized playback equipment is required. And then for portability it's downloadable on any -- or most commercially-available MP3 players. So, we're really removing some of the cost barriers and portability challenges.

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And then the other thing to add is, you know, having made the statement of our dedication to human audio, we certainly recognize the increasing importance of text-to-speech technology. Clearly there's a high degree of flexibility with that format, and we're moving into that area as well and expanding, as part of availability for those formats.

MARIA PALLANTE: Thank you. Paul.

PAUL AIKEN: Yeah, I want to bring up one quite large private initiative with respect to accessibility. And that's the settlement of our class-action lawsuit against Google. I'm sure you've all heard of. If approved it will make tens of millions of out-of-print books available, not just to those who can read in a traditional manner, but also readers with any sort of print disability. The settlement commits to making the electronic text to be available in conjunction with screen enlargement, voice output, and refreshable braille displays. This is -- you know, this is revolutionary. This would bring an enormous volume of works and make them accessible to the blind, the equivalent of several large academic libraries and

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shouldn't be ignored in this context.

MARIA PALLANTE: Thank you. Does -- yes, Mr. Chapman.

PETER CHAPMAN: Two quick points, one going back to the NIMAC issue. We intend to sell the HTML book. And, of course, we also intend to price it in line with our other eBooks. So, we don't intend to significantly discount it nor significantly raise its price. But it makes obvious sense that we can't sell it if there's an alternative distribution which is for free. And while we are willing to sell it directly or sell it with partners, we can't compete when the alternative doesn't cost anything.

The second point I want to jump on, the actor recorded audio bandwagon a minute ago. We have the ability to -- in Pearson we use both synthesized and actor recorded audio. And I profess no specialized knowledge here, other than to talk with my literature teams constantly. And it is they're uniform decision to go with actor recorded audio, especially at the younger grade levels, especially in literacy, for what should be obvious reasons. It just produces a better learning

experience.

The other thing that struck me, which surprised me, is I would have thought that synthesized audio is much less expensive. It turns out that may not be true. In some circumstances it probably is, in some circumstances it isn't. Because you have to presynthesize the audio. And there -- even the state of the art of synthesized audio, is not good enough for textbooks in many instances and it has to be tweaked, and that's hand work. And by the time you've done that, the cost differential between that and hiring an actor and getting a polished recording is less than you would think, less than I thought.

BRAD THOMAS: Can I ask one quick question about --

MARIA PALLANTE: Please.

BRAD THOMAS: -- that point? If you're doing charts and graphs as well and you're going back and adding human narration of those charts and graphs, I mean, does it make more sense to do the human audio on the front end than the synthetic speech, and then go back in and add the human audio descriptions of the

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charts and graphs, or is that not really a consideration?

PETER CHAPMAN: The way that -- I'm in the midst of releasing some audio textbooks in the next couple of months. And there's a complicated process. But fundamentally you start from the print ready PDFs, that which goes to the book, to go to the publisher. And that information is given to a company that we use and they record the audio. They have a polished actor probably rehearse the script and read it. That produces an audio MP3 file and an XML file. That XML file is then merged back with the PDF file and that produces the book in our case. So, all that must be done before the book is released. It's a process that happens beforehand. And whether you hire an actor to record that audio, or you feed it into one of the synthesizer devices which produces a synthesized audio, it doesn't really matter. You have to merge that audio, be it synthetic or actor, with the text -- with the PDF and by this XML. So, I don't think it matters.

But my point earlier was that it turns out that the synthesized audio is not good enough and

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typically has to be tweaked, at least in our industry --
in our part of the industry.

MARIA PALLANTE: Mr. Mudd, and then
Dr. Kerscher, and then Allan.

GARY MUDD: Thank you. I just wanted to
bring us back from where I stand, and that's speaking up
for the braille art tactile learner. I love the digital
audio that's out there, whether its synthesized or human
voice. It's another way to access information. But
please don't do harm to braille, because to the tactile
learner -- and there are many of us out there -- Peter,
for instance, you -- was that a geography book that you
showed?

PETER CHAPMAN: It was government.

GARY MUDD: Government. Okay. Just to
emphasize the tactile. It -- let's say the State of
Texas, if it's typically -- if it's just an audio
description of the State of Texas, I'm subject to your
interpretation of what that state looks like. But if
it's a tactile representation, I know what it looks
like. So, those things need to be kept in mind with all
the digital talk. And I love it, I appreciate it, and I

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think we definitely need to explore that to the full extent, but please don't forget about braille.

MARIA PALLANTE: Dr. Kerscher.

GEORGE KERSCHER: So, the doctoring of the text files we're processing with a TTS engine can be very time consuming and expensive. That's not taking place on the Kindle 2. They're just doing pretty much a raw dump. And, yes, they did go back and fix up Barack Obama's initiation. But to do that for many, many, many of the words, and there are some things that they're not going to do, but that might be done by a publisher who's going to produce a textbook that's using TTS. So, that's one of the really good points.

There's a couple other initiatives that -- just to let you know about. There's a group called CourseSmart, coursesmart.com. It's funded by publishers, I believe. And they have, like, 6,300 college titles. The problem is that they're all inaccessible. There is no requirements for accessibility going into that. And it's a -- not a product that a blind person could use, or most people with disabilities, so, that's real sad.

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The DAISY Consortium is the maintenance agency for the ANSI/NISO Standard, that's the official term ANSI/NISO Z39.86. And we're undergoing a revision to the standard. And we do want to add video to the standard. And we want to expand the XML that could be used to make it more flexible and easy for publishers to use whatever XML they have in-house, and not require them to use just one flavor of XML.

And then we're also providing the open source tools for the automatic manipulation. And this year we're coming out with a interactive authoring tool that would help in the audio production. And it's open source and we'd love the participation of everybody in that. We're severely constrained financially in doing what we can, but trying to focus strategically on the technologies that will give you the biggest bang for your buck.

MARIA PALLANTE: Thank you for that information.

Mr. Adler, and anybody else?

ALLAN ADLER: Yeah, I just -- two comments.

One was I didn't want one to leave hanging an impression

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that some people might have gotten from Scott's comments about publishers not cooperating with NIMAC. In an article published in the Educator earlier this year by the staff of NIMAC at the American Printing House, there's this quote, the response from publishers has been greater than we ever expected, with over 70 publishers currently working with us, and over 12,000 file sets submitted in just our first 20 months of operation. The reality is, is not that there isn't enough input of files coming from publishers, it's that they do not have the capability of being able to handle that many files coming in as quickly as they have been coming in, and being able to establish and verify the accounts of the authorized users to come and use those files.

And then just in the area of initiatives, I wanted to mention that, again, noting the sectorial nature of the industry and the needs of people in a particular context on the ground, we are in the process of launching the beta version of something called Access Text Network, which is a joint project resulting from an agreement between the Association of American Publishers

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and the Alternative Media Access Center set up by the Georgia Board of Regents and the University of Georgia. And this is going to greatly expedite the ability of colleges and universities' DSS offices all around the country to be able to find out where textbooks that are needed in electronic files for use to create alternative formats are available.

And, in fact, even though we are -- as I said, we're only in the process of the beta launch late this spring, already we're finalizing membership agreements with the DSS offices and academic publishers. And the database is importing over 300,000 book titles that are used in academic courses at colleges and universities across the country.

So, this is an example where, again, perhaps it's not the market-based approach based on universal design, but it's an approach that has been welcomed by the DSS offices on college campuses all across the nation because it suits their immediate needs and it fits with their immediate needs. But, again, it plugs into the regulatory approach based on the copyright exemption in doing so.

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MARIA PALLANTE: Dr. Kerscher.

GEORGE KERSCHER: So, the Access Text provides a link between the disabled student service officer and the publisher who has some kind of files to give them, and then the DSS office has the responsibility to manufacture the book in an accessible form and turn it over to the students. So, they're not getting completed books, they're getting the data --

ALLAN ADLER: Right.

GEORGE KERSCHER: -- for the manufacturing of the books.

ALLAN ADLER: Right.

MARIA PALLANTE: We have about 10 minutes. Do any of my colleagues have questions?

STEVEN TEPP: Sure.

MARIA PALLANTE: Steve.

STEVEN TEPP: I'll come back to you, Mr. Adler.

ALLAN ADLER: Uh-huh.

STEVEN TEPP: You, in your written comments, refer to the relatively positive development of a relationship between publishers and Bookshare. And in

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particular you referenced as part of that developing partnership the Seven Point Digital Rights Management Plan. So, I think a lot of what we're talking about today is trying to encourage those sorts of partnerships. So, I was wondering if you could spend a few moments telling us what was unique or, if not unique, at least significant in the magic that made that relationship develop as well as it did, and what we can do to foster a repetition of that set of events vis-a-vis publishers and other organizations?

ALLAN ADLER: Well, as I've indicated in my statement before by mentioning the trade publishers who are working with Bookshare, there aren't many members of AAP and many members of the publishing community who think that Bookshare has been organized in a fairly responsible manner as an authorized entity under the Chafee Amendment. And they have worked with Bookshare to develop the processes, both for their volunteer agreements involving the scanning of works into digital form, as well as the agreements that they have with their subscriber membership, who for a nominal fee get access on an annual basis to the full library of

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Bookshare, which now I believe something around 40,000 works and is exponentially increasing annually.

But there are some members who are weary of Bookshare despite all of this. Particularly educational publishers are concerned about Bookshare's desire to expand its work beyond US borders. And Bookshare has been commendably cautious about doing that but nevertheless it's fairly ambitious to do that.

STEVEN TEPP: What's -- so, can I interrupt you for a second? Let's drill down a little bit.

ALLAN ADLER: All right.

STEVEN TEPP: What specifically is the concern about expanding beyond US borders, and how is that distinct from a relative lack of concern about within the US?

ALLAN ADLER: Well, because we don't know that Bookshare is able to handle the responsibility of dealing with questions that arise about how those materials are used once they are, in fact, transmitted outside the United States; and whether or not it feels that it has the responsibility, indeed, to monitor the use of those materials pursuant to these agreements.

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And, even if they do, whether they actually can enforce their agreements in other countries where the infrastructure may be different, where the basic laws, both of copyright and with respect to contract may be very different than those in the United States.

But recently we've had a fairly good relationship with Bookshare, despite all the bumps, is that right from the outset they indicated that they understood the concerns of the publishers about both making sure that their works were not subject to a wide spread unauthorized reproduction and distribution so that they would compete with them. And they also understood, very importantly, that book publishers often don't have the full rights to be able to make works available in digital formats.

One of the issues that came up with IDEA Legislation, for example, was the fact that we needed a separate amendment to the Chafee Amendment in order to protect publishers from copyright infringement liability, if, in fact, they provided the electronic files in the NIMAC format that were required by that legislation. So, we don't have that kind of protection

at the moment, the publishing community, for providing these materials in digital format for anything other than the IDEA purposes. But nevertheless there is a risk.

The people at Bookshare understood that and they recognized that for certain kinds of works where, perhaps, the publisher didn't have digital rights to the images, or illustrations, or other portions of the work apart from the literary work itself, that those works could not be put into the system under the same terms as what other works to which the publishers had the full rights to exploit.

MARIA PALLANTE: Okay. We're getting very close to the -- to 1:00, and I wanted to give Michelle the floor one last time before we close for lunch to --

MICHELLE WOODS: Thanks.

MARIA PALLANTE: -- wrap it up.

MICHELLE WOODS: I'd like to circle back to DRM we were talking about in the prior panel, and, Dr. Kerscher, in particular some of the comments you made in your written submission about concerns with prevention of legitimate use of materials by the target

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disabled population. You then gave some suggestions about guidelines being established to encourage education on proper use of materials, administrative steps to prevent abuse, passwords for downloads, and fingerprinting and watermarking of files to control the use of content by the target disabled population. And suggested that those might be -- I believe if I'm reading this correctly -- an alternative to the use of DRM and strong encryption. And I wondered if you could elaborate a little more on your thoughts about what these alternatives might be and how they might improve accessibility.

GEORGE KERSCHER: The -- what I outlined is what Jim Fruchterman and Bookshare are using in their Seven Point Plan. And the DAISY Consortium came out with a position statement about this, favoring best kind of approach over actual hard core encryption. Right now Recording for the Blind and Dyslexic uses hard core encryption, so does the Library of Congress. So, I've got books that I can't use on any other device except the -- a particular device that I might use.

So, it's absolutely legitimate use. It's my

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player and -- but I have to use a particular player to use it and I can't move it in between different reading systems. So, I've got -- there's for example, DAISY Reading Systems on cell phones now. And it would be very convenient to take that content and move it over to my cell phone and play it, but that cell phone device is not -- does not support the encryption.

So, the watermarking and fingerprinting of content provides a mechanism to track materials, if we find that it's abused. But to wholesale encrypt everything, it prevents legitimate use. I think especially in the schools it could be very torturous for teachers to have one player, one book associated with it, as opposed to having something that was more flexibly used with a variety of different hardware and software devices.

MARIA PALLANTE: Well, thank you, very much. I think with that we're going to end the morning. It's been extremely comprehensive and very helpful to the government panel. I know, Paul, you need to go back to New York promptly. Thank you for the Authors Guild for coming. And for everybody else I hope you will join us

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promptly at 2:30 for possible actions to facilitate and enhance access.

(Pause in proceedings.)

A F T E R N O O N S E S S I O N

MARIA PALLANTE: Good afternoon, and to those of you who were here this morning, welcome back. I'm Maria Pallante from the U.S. Copyright Office. My colleagues up here at the table are Michael Shapiro from the U.S. Patent and Trademark Office and the head of the U.S. Delegation. To his left is Neil Graham from the Patent and Trademark Office as well. To my right, Michelle Woods and Steven Tepp, both senior counsel for Policy and International Affairs here at the Copyright Office.

And like this morning, Paula Penia (ph) will be timing your statements as we open. Please keep them to five minutes. And if you exceed five minutes you'll hear the bell, and that's your queue to wrap up. We have a lot of time this afternoon, so there's always the possibility that we'll finish early. We're optimists up here. However, take all the time you

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need. We have until 5:15 if necessary.

So the topic of course is Possible Actions to Facilitate and Enhance Access to Copyright at Works for the Blind or Other Persons With Disabilities. We really hope that you will hit on a number of different topics, including developing standardized accessibility formats and expand on some of the things we learned this morning; establishing trusted intermediaries going forward to coordinate resources; eliminate unnecessary duplication of accessible works and ensure best practices; providing technical assistance, coordination and educational outreach; promoting market-based solutions achieved through private sector copyright licensing or other agreements; and developing binding or nonbinding international instruments, including a treaty that would establish minimum requirements for limitations and exceptions for the blind, visually impaired and other reading disabled persons.

I'll introduce the participants. Starting to my left, we have Jamie Love from Knowledge Ecology International. We then have Carrie Russell from the American Library Association of Colleges and Research

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Libraries and Association of Research Libraries -- a lot of libraries, Carrie -- Allan Adler from the Association of American Publishers, Scott LaBarre representing the National Federation of the Blind; Keith Kupferschmid from Software and Information Industry Association; George Kerscher from the DAISY Consortium; Rashmi Rangnath from Public Knowledge; Gary Mudd from the American Printing House for the Blind; Danny O'Brien here from the Electronic Frontier Foundation; Fritz Attaway from the Motion Picture Association of America; and Peter Chapman from Pearson. Jamie, we'll start with you if you'd like to give a five-minute opening statement.

JAMES LOVE: Thank you. Well, Knowledge Ecology International is an NGO. We have an office in Geneva, we have an office in Washington, D.C. And we think there are several things to be done to make things better, but one thing I'd like to talk first about is the proposal by the World Blind Union to have a treaty for improved access for blind, visually impaired and other reading disabled persons.

The proposal by the World Blind Union was

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something that we had an opportunity to work with the World Blind Union, some of the people in the panel here, like George Kerscher, people in the DAISY Consortium and Bookshare, America Library Association - - a lot of people in other countries were involved in this exercise to sort of look at what might be done at the international level to make it easier to facilitate the importing and exporting of works which are done in accessible formats. And I think in our written comments we submitted some information or some submissions that both went to the issues of standards, but also went to the issues of language issues and sort of the distribution of language.

I think for over 20 years, IFLA with Libraries and the World Blind Union has been asking the international community to make it easier to share works which are created in one country with people who have reading disabilities in a different country. Now, this morning, I believe you had a pretty impressive tutorial on how expensive and difficult it is to create works that are accessible and how many different types of needs there are. I mean, some people need Braille,

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some people may need a variety of different things.

MARIA PALLANTE: Jamie, I think that may be your Blackberry interfering with your microphone.

JAMES LOVE: Oh, is that right? I'll put it away. Good call. I'm not really a long-time Blackberry person, so I wouldn't have thought about that.

And there's never enough. There's never enough copies that are made available. There's never enough money made available to do things. There's never enough economic incentive for things on the one hand. So the idea of creating a system where if works are created in the United States that are accessible, they could be shared with somebody who, if it was an English document in some of the 60 countries where English is an official language, or if it was one of the countries like the half of Europe -- the 34 percent of Europe which speaks English as a Second Language -- that there could be more sharing of documents. And that Americans such as my mother-in-law who went blind at the end of her life and was a native French speaker, could get access to works that were -- she was used to

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reading things in French, and that was just completely closed off to her at the end of her life, and I think that was unfortunate. So I think that having a global system that has import and export is really kind of an important idea.

Another feature of this proposal I thought was really important, was in the U.S. you have an authorized identity, the Chafee Amendment and some of the educational things which are focused very much on non-profit institutions, the authorized entity approach. And in the World Blind Union proposal, I think that's embraced as the idea of something every government really needs, is a core and a backbone of a system of exceptions. But they also had the idea that there could be a somewhat less broad exception that would apply to commercial entities to create opportunities for businesses to provide products and services that would meet certain needs in cases where a publisher wouldn't really have done, wouldn't have made accessible work available in those limited cases.

So for example, we have this case where the Kindle -- and I've got a copy of the Kindle here, and I

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have a book on here that has reading disable on it from Toni Morrison where you can't turn on the text to speech -- the idea, if a person doesn't really make available something that is accessible and there's not an accessible copy in some way, there's no barrier -- that the exception would come into effect in those cases.

I really think that the case of the Kindle -- I think I'm probably short on time so I'm going to wind up right here -- is a shocking and appalling case. That you've got a technology which is mainstream, that this has 250,000-plus titles available, and the policy so far by Random House and by the author scale is to de-engineer the accessibility, to take what is a standard accessibility thing, which is text to speech and make it so it doesn't work -- like this book on it I have from Toni Morrison and all of Adonis Books. It does allow you to change the font size. There's a key for it. You can make it big, you can blow up the print. That hasn't been disabled yet -- but this other thing.

And I think like --

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MARIA PALLANTE: Jamie?

JAMES LOVE: -- the contracts -- the final thing I'd say is just that I think that a contract that says that you cannot make text to speech should not be an enforceable contract in the United States. Thank you.

MARIA PALLANTE: And everyone, please keep in mind, you'll have plenty of time later on to get back into the points that you don't get to make in your opening statement. Carrie?

CARRIE RUSSELL: I'd like to reserve my comments -- what I want to talk about right now is the International Treaty, because that's where I think we have the most input. As Jamie said, the American Library Association was involved with the meetings that were held with World Blind Union about developing an international treaty, and I think that they're absolutely to be commended for all the work that they've done.

When I was in those meetings, I learned a lot of stuff about just the incredible inequities across the world. And I'm a librarian, and for me, reading is

so central to having a successful life, and I think that everybody should really be able to read. So anything that we can do to enable that I think is very, very critical. So we do support an international treaty, but I have to also mention that in terms of the people that I talked with, librarians are afraid, are concerned that anything that would happen internationally might impact what they have already now in terms of Chafee.

And we know that international treaties are supposed to be -- this is just the minimum -- but so often minimums become maximums. Minimums becoming poured through a three-step test and then all of a sudden things are not as strong as they were before. So that would be our primary concern, but we do endorse the treaty. And I can talk more about that as we go through the question and answer.

MARIA PALLANTE: Thank you very much. Allan?

ALLAN ADLER: (Off mic).

MARIA PALLANTE: Okay. Thank you. Scott LaBarre?

SCOTT LABARRE: I'm sure precedent is being

set here, but I'm going to reverse it. I guess in this topic area, we feel that there would be a lot of benefits from an international treaty or some form of modification. Certainly, if it's a sound treaty like the proposal that's been worked up, it would help make the argument in this country even stronger for a pro access point of view.

Of course, secondly there is great benefit to sharing books across borders. Blind people in this world live largely in poverty. It's a lack of education, lack of literacy, lack of power that we discussed -- or I discussed this morning. And the more we can promote literacy throughout the world through access to books, I think it only raises the class to a higher status.

And finally, maybe an international treaty, if it addressed the DRM issues and the anti-circumvention issues, would be very hopeful to get around some of those issues and establish some norms. So I think there's a great benefit in this, and I hope the process continues to move forward.

MARIA PALLANTE: Thank you. Keith?

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KEITH KUPFERSCHMID: Thank you for having me here today. As our name implies, the organization I represent, the Software and Information Industry Association, we represent software companies and digital content companies. I heard somebody talk about their members struggling to sort of cross that digital divide. Well, that's something all of our members have done. They wouldn't be members of SIIA if they hadn't already done that. They make digital product, digital content software which of course is digital. They as well as SIIA itself, have long recognized the challenges faced by the blind and visually impaired in accessing copyrighted software and digital content and have long worked with these organizations that represents the interest of the blind and visually impaired community toward the goal of improving access to these works. With entities like the Section 508 Accessibility Board and the European Commission, SIIA members have worked constructively and on a collaborative basis, to provide usable tools and services that enable all citizens to participate fully in the information-based society.

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We have also, as well as our members, have also worked directly with the blind and visually impaired to ensure that the entire community can use the software products and digital content products and services in formats that do meet their needs through things like developing best practices and technical assistance and educational outreach, as well as promoting various market-based solutions that we've gone into I think in some of our comments, and significantly modifying the functionality and form of the specialty software products to make them more accessible.

Of course, there's no doubt -- it was just talked about this morning -- that some types of works and some types of formats are further along in reaching these goals than others. That should come as no surprise. For the companies that I represent and the type of works, there are certainly greater advancements in accessibility for those products that are offered over the Web rather than those that come in CD-Rom. Largely because of screen reader technology, we understand that that's certainly not seamless and

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there's some issues surrounding that, but it certainly has come a long way.

And the one thing I want to add to my hopefully brief comments is that in reviewing the comments, I was a little surprised really by at least what I perceived as a lot of agreement among some comments. And I think that -- unless I'm 'getting something wrong here -- if you look at the number of reply comments that were filed, there weren't a whole heck of a lot, which is pretty unusual for a copyright office proceeding.

To me, we can't overlook that. It seemed like there was a lot of agreement. I'll exclude certain issues like DRM and the Chafee from that, because there certainly were disagreements there, but in terms of the goals that we all had in mind, the best way to achieve these goals, which seemed to be an overwhelming support of sort of market-based solutions, market place solutions, and the numerous issues, several issues that stand in the way of achieving those goals -- quite frankly, only one of which is copyright. It seemed like I'm just a little out of my element here, because

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it seemed like more the issues that stand in our way are not really copyright-based at all.

It became clear that there were a lot of areas that were at least in broad context agreement, and it also became clear that these are pretty complicated issues. I mean, in surveying our members there was really no one expert. We might have someone who there are very complicated issues related to technology, copyright, interoperability and compatibility, to things like capacity building and accessibility. And it seemed to be very, very complex issues and it seemed like certainly those are issues that we need to focus here in the United States in getting our house in order certainly before we brought our problems outside of the United States and from what I understand, certainly things are a lot more difficult and a lot more complex. So if you were to come to me and say, gee, what's the best way to solve these problems, I don't think an international treaty would have been at the top of my list. That's it.

MARIA PALLANTE: Thank you. Dr. Kerscher?

GEORGE KERSCHER: Daily Consortium is made up

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of libraries and organizations from around the world. The major libraries are full members. They also make up representatives of the IFLA -- it was called the Section for the Blind and they just changed their name. I think it's for the Handicapped at this point, so it merged a couple of sections.

But I believe that this group can make up a backbone of trusted intermediaries that could work with an international copyright exception that would have immediate huge gains to organizations and people throughout the world. So it was the IFLA World Blind Union and DAISY that have been talking with WIPO for a number of years now, and how the treaty got promoted to where we have it right now.

The way I envisioned this working is we first of all need to have a way to move an exception that allows us to move content across a national border. The kids up in Canada are crying for the books that we have here in the United States, and we cannot give it to them. And it's very hard to say I'm sorry, we don't have a copyright law that allows us to give this to the CNIB, Canadian Institute for the Blind and have them

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provide it to you.

But the way I envision this working is that a good citizen like the Recording for the Blind and Dyslexic or Bookshare, would work with a good citizen in Canada -- CNIB -- that distributes content legally under their copyright exception. What we need to be able to do is move the book from RFB&D to CNIB. We both use the same format. The DAISY format is being used throughout the world, so that's good. The players, it's the same players that are used throughout the world. And RFB&D would be able to move it to Canada, to any country that we had a trusted relationship with. So there's a series of trusts that's going on here.

We would want to make sure that when we provided a copy to CNIB for legal distribution in their country, that it would go no farther. We do expect that we'd recover some fees to help us cover our costs of production. We would like to have a similar relationship with RNIB and other libraries. Similarly, we'd love to get titles that CNIB produced and RNIB produced, all within a network, a trusted network where

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everybody's gaining.

So in the developing world, there's very few titles. We've had a Developing Countries Program in DAISY. We've established focal points in a whole variety of different countries -- in Thailand, India, Bangladesh, many, many other countries. The minimum requirement that they're saying to start a library in a country is 1,000 titles. And many of these organizations have sufficient funding to produce 80 to 100 or 200 titles a year, so it's going to take them at least five years before they've got a collection that's worthy of starting to distribute legally within their country. The copyright exception would allow many of the industrialized countries to help these organizations out, build a collection that would have huge immediate benefits. We want to work cooperatively with the publishers, help them produce accessible content that we could buy, and they could sell in any country. But we have to have this exception to provide us with the ability to start sharing content between fine organizations throughout the world. Thank you.

MARIA PALLANTE: Thank you. Rashmi?

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RASHMI RANGNAT: Thank you, Maria. Thank you for having me on this panel. I want to talk about two issues today. The first one is market-based solutions to increase access and the second one is of an international treaty establishing minimum requirements for facilitating access to the blind.

The first issue. We believe that market-based solutions are important and that they should be encouraged. Oftentimes they permit entities to overcome some of the limits of the Section 121 exception who qualifies as an authorized entity, who qualifies as a blind person, and what qualifies as an accessible copy.

However, the market is not the answer to all the problems. As a study published by WIPO and referenced in the Federal Register Notice mentioned, creating accessible copies is expensive, and publishers will not undertake the responsibility to create these copies if they feel like the investment does not justify return. As the WIPO study noted, this may be the reason for positing the number of accessible copies that are available; hence, the need for continued

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acceptance to copyright law to enable accessibility to a wide number of works. In addition, past behavior has shown that commercial entities are not always sensitive to the needs of the blind. They have actively thwarted technologies that would allow access. The Kindle is an example -- everybody has referred to the Kindle. DRM is used in a way that does not allow adaptive technologies to work with publications. Even the Copyright Office has -- these claims of harms to right are based on dubious claims to rights which even the Copyright Office in its 2003 rulemaking noted, may not be available to the copyright owner.

The second issue is that of an international treaty establishing minimum requirements for limitations and exceptions. We believe that such a treaty is important for two reasons. First it would harmonize important (indiscernible: 24:05) and facilitate easier movement of accessible copies.

Some of the reasons for the inability to import and export may be that accessible copies are made by specialized entities under limitations and exceptions to copyright law; therefore rights in the

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copies may not be exhausted, and moving them across national borders may divert an infringement of copyright. Further, laws in different countries are not uniform, and importing a copy into one country may be beyond the scope of exception under which it was made in the exporting country.

Second, an international treaty would offer guidance to countries to craft limitations and exceptions to copyright law. The current international copyright regime provides extensive rights to copyright owners, and it is difficult for many countries to devise limitations, and studies published by the WIPO have noted this. As one study published by Judith Sullivan points out, international conventions do not seem to have been drawn up with the legislator delegating exceptions to copyright in mind; therefore, an international treaty is essential. Further, an international treaty would reconcile the copyright regime with other international instruments -- for example the Universal Declaration of Human Right, which requires access to knowledge to be considered a fundamental human right, which states are obliged to

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secure for their citizens. Thank you.

MARIA PALLANTE: Thank you. Mr. Mudd?

GARY MUDD: Thank you again, Maria, for inviting us on the panel. The American Printing House for the Blind, we are participating members of the DAISY Consortium. We operate the NIMAC, the National Instruction of Materials Access Center. However, we are somewhat restricted with the funding that comes from the U.S. Congress through the Department of Education to serve the population of American citizens, American visually impaired students. That being said, there's a part of us that wants to be a good world citizen and believe in literacy for all people because it does raise all of us up. However, the practical side being a good citizen of the United States, sort of makes us think that maybe we should try to get it right in the United States before we try to export it. Thank you.

MARIA PALLANTE: Thank you. Mr. O'Brien?

DANNY O'BRIEN: Thank you as well for giving us the opportunity to speak on this panel on an important topic. I'd like to sort of side-step the

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discussion of the international agreement and concentrate on one of the other areas of discussion in this panel, which is about technical norms, open standards, and other ways that we can further enhance access. In particular, I'd like to as a group concerned with both individual rights and the possibilities of new technology, to bring into scope some of the other ways that innovation can be driven in this area and the ways in which digital technology enhances not only access but the tools that provide access.

There's a wider area of involvement here that we see in other domains, sort of highly distributed collective efforts that have led to Wikipedia, Lennox and other tools. We see some of that power in the communally-driven success of Bookshare, but I think also we see this as a future promise in making reading accessible. And I would like to emphasize the key point here, which we believe that individuals in the disabled community, as those best placed to determine their own accessibility needs, should be empowered to personalize the presentation of copyrighted works that

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they access, as well as be given the opportunity as everyone else is in the digital world, to innovate new presentation forms, which they can share with other members of their community and, given the context in which we discussed this, the world.

We feel empowering to say we'd use these in this way is not only the most effective route to meaningful access to works, the widest range of reading disabled, but also has beneficial effects for everybody in the digital creative echo system. To illustrate this, let me give an example from the rich history of individuals with disabilities' involvement in the history of modern technology. I know that there's one particular format that almost all of us use, mainly because I read how to get here using it, which is Adobe's portable document format, or PDF.

One of the technologies used to convert the previously accessibility and friendly PDF into a form readable by screen readers and other assistive devices was PDF to HTML, which was developed by a computer scientist who I believe now works at Google, Karthik Raman. He is himself blind. Transforming PDF to the

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Web's native open and interoperable HTML makes PDFs easier to read by Raman and his fellow blind users, but it also makes PDF documents easier to access by all Internet users. That code that Raman wrote is the code that allows Google -- which I heard described by one technologist as perhaps the most powerful blind user on the Internet -- to read text and PDF in an accessible format and make it searchable for all of us.

Transforming PDFs in this format makes them accessible to everyone. The technologies that most widely benefit the disabled community are those which provide the widest range of transformations of this original text. And this is because there's no universal fix for accessibility. For instance, one user may be more comfortable reading the work on a normal screen but at a much larger font size. A dyslexic user may benefit from changes in the foreground and background colors of text. A blind user may be able to read at the same speed as a sighted individual, as long as they are empowered to run text to speech utilities at a far faster rate than the average spoken speech, or indeed the default text to

speech settings on devices like the Kindle.

In short, copyright law needs to provide visually impaired users with access to works in formats that give them the ability to transform these works for their lawful users and an environment that facilitates disabled users creation and access to tools which they can adapt for their specific needs. We believe that there are two requirements for that, and I'll keep this short because it's in our comments and also I'm short on time.

Those two requirements are within the domain that we've been discussing of the exemptions, the formats that should be available, open formats. DRM by its very design locks down content to a set of pre-authorized and predicted uses, and a transect of transformations that may not best serve the needs of visually impaired users and other reading disabled users. And most importantly for us, it leaves no room for vital innovation by the visually impaired community.

Secondly, the Copyright Office already recognized in its 1201 exemption rulemaking where works

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are unavailable in open formats, persons should be able to circumvent, but not every person blind or not, is a TV Raman. So everyone needs to benefit from the tools built by such individuals. So we feel that exemption should be widened to include the prohibitions in 1201(a)(2) and (b). I'll end there.

MARIA PALLANTE: Thank you. Mr. Attaway?

FRITZ ATTAWAY: Thank you. In the notice initiating this proceeding, the Copyright Office listed a number of actions that might facilitate greater access to copyrighted works by the blind, and most of them I think are worth pursuing. Most of them relate to voluntary efforts resulting from good faith dialogue among the stakeholders to reach meaningful solutions that will in fact facilitate greater access to copyrighted works by the blind. The one possible action that I don't think will produce meaningful results is an international instrument, whether it be binding or non-binding. In most instances, copyright is not the primary impediment to facilitating access to the blind. In the case of movies, I don't know that it plays a role at all, but certainly it's a small role.

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So a copyright treaty is not going to solve the problems that you are trying to address.

Secondly, the existing international treaties, copyright treaties, provide huge, broad flexibility for member states to provide limitations to national copyright laws for purposes such as providing access to the blind. Any international norm setting in this area is likely to be counterproductive. I very much agree with Ms. Russell that an international norm is likely not only to set minimum exceptions and limitations, but it's likely in effect to set maximum. And in an age where technology is moving as fast as it is today, that is certainly not a good idea. Further, a debate on international treaty is likely to divert attention away from much more meaningful activities aimed to address this issue.

Finally, I'd like to address the elephant in this room, and that is that for a number of people on this panel, the needs of the blind are not their primary focus. Their primary focus is to use this issue as a tool to advance a much broader agenda to eliminate DRM. And that is not a solution that in the

Capital Reporting Company

long run is going to advance the interest of blind people; whereas I think there are legitimate issues that blind people have with DRM. Eliminating DRM is not the solution. It is improving digital rights management technologies that can provide greater access to the blind while allowing copyright owners to retain control over their works with respect to the vast majority of people who copyright owners depend upon to create the incentive to produce. Those who are opposed to DRM envision this fantasy world where all copyrighted works are made available in the clear for anyone to use, and miraculously somehow people out of the goodness of their heart are going to compensate copyright owners when they use these works for other than non-infringing purposes.

That is a total fantasy world. It doesn't exist and will not exist, and to try to create this world will absolutely destroy any incentive to create copyrighted works and to distributed copyrighted works -- not only to blind people but to all people. The solution is not to attack DRM; the solution is to improve DRM so it accomplishes our goals of maintaining

Capital Reporting Company

incentives to create and at the same time allowing blind people and others who legitimately want to use copyrighted works for non-infringing purposes. Thank you.

MARIA PALLANTE: Thank you. Peter?

PETER CHAPMAN: Protecting intellectual property in the digital era is both an expensive and complex undertaking. Pearson has devoted significant legal and technological resources in an attempt to manage infringement, especially in Asia. We've come to realize, though, that this will be an ongoing struggle for us, and the stakes are very high to Pearson, to other education publishers as well as our intended consumers. That is why we believe that reliance on trusted intermediaries is a concern. Do not believe that publishers can always rely on third parties, especially internationally, that may not have the requisite technological skills, financial resources and motivation necessary to control distribution and to prevent global piracy of digital files.

Pearson works hard to create superior quality learning materials. Investment required is often in

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the tens of millions of dollars for any new K-12 program imitative. If we cannot reliably count on the legal protection of our intellectual property, that investment is put in jeopardy and could cause publishers like ourselves to rethink future investments, ultimately creating a situation where students could be deprived of our best possible solutions.

As we've discussed earlier today, we comfortably work with many third parties who create solutions that because of the uniqueness of their offerings and file formats are not subject to widespread piracy. However, we remain wary of the expansion of the definition of eligible populations who may request more mainstream technologies that we are attempting to sell into the market in competition with free offerings. Thank you.

MARIA PALLANTE: Thank you. Okay. We obviously have a lot of subtopics to cover, and I think what the Panel would really appreciate is if any or all of you could give us a little more information about how accessible books travel across borders today, what

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are the business models and any other information that you may have. Carrie?

CARRIE RUSSELL: I know we were asked early on by you, Maria, about interlibrary loan -- does interlibrary loan from academic universities or public libraries, schools -- does that serve the need for the international people? No, it doesn't. Interlibrary loan offices report that they very, very rarely get a request from someone from another nation that's looking for an accessible copy. In addition to that, they would think that they wouldn't be able to do that in terms of sending an electronic accessible copy, because that's usually what the people want. We have nothing in the law under interlibrary loan that gives us the idea that we can send digital copies, so librarians are hesitant to do that. And even if librarians could, they don't have the technology necessarily to create digital copies on the fly.

So the interlibrary loan, existing interlibrary loan arrangements are not at all helpful, and it's especially a problem for students in higher education because as we've heard, their needs are much

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more varied. You can't plan for them. There's not like a set core of materials that people are going to want. The agencies as I understand also, feel very restricted in terms of aiding international requests because they're limited to citizens of the United States or foreign nationals. So you're not going to find any way to meet the needs that way at all.

I want to thank Fritz for agreeing with me, but it gives me an opportunity to clarify my position a little bit. We do support an international treaty, but we want to keep in mind that WIPO is -- it's an environment where we've fought for many years to keep fair use in our country. We realize that we have the best copyright law; we just want to ensure that that stays the same and that we wouldn't get anything less from a treaty. We also support what Dr. Kerscher has been talking about and the use of trusted intermediaries. I think that publishers, inventors, they can trust the trusted intermediaries. If you couldn't, you would have sued them by now. They've all been very trustworthy and done a good job in following the copyright law and not been crazy pirates or

anything like that. Thank you.

MARIA PALLANTE: Thank you. And again, I think although we're very interested in forthcoming solutions, for this particular question, what happens today? What are all the things, all the steps -- maybe is the way I should put it -- that need to happen for a book to be made accessible, a movie for instance, if you want, today under what business models? Does it happen at all? Are there licensing schemes in place? What can we look to for some experience in this? Dr. Kerscher?

GEORGE KERSCHER: Scandinavia is the only example that I know of where they're moving titles across. Their languages are different, but they can understand each other. And the libraries are trading amongst themselves -- I'll give you 200 titles, you give me 200 titles -- and their libraries are growing as a result of that. It's pretty informal. I believe they're doing this with the full knowledge of the publishers in the region. And that's the only thing I know of. I know that Sweden has come to Recording for the Blind and Dyslexic and asked to -- licensed to --

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we'll pay you some fees. And we've not been able to give those titles to the Swedes. As a result, they've had to spend \$2 million a year duplicating the same books, the production that we've had to do.

RNIB has come to RFB&D with a standing offer for higher education materials, and we've never been able to fulfill that request. They've said, we'll clear copyright with the publisher. And we've said, we still don't have the right to hand a title over to somebody in another country. There's nothing that grants us that right. So it's been almost zero in terms of looking to what has worked.

MARIA PALLANTE: Thank you. Michelle?

MICHELLE WOODS: Well, one area where we - one is whether there is some experience we can look to but frankly we haven't heard of it yet, is with respect to public domain works -- is there any model of accessible domain works being made available across borders or internationally that we could look to -- both as a way to kind of assess that there is demand and then also to just look at what the mechanisms are that are being used to transfer those works cross-border.

Capital Reporting Company

GEORGE KERSCHER: Can I go?

MARIA PALLANTE: I have Dr. Kerscher, then followed by Mr. Love.

GEORGE KERSCHER: So we have about a half a million titles from Google that are out of copyright. There are still some rights associated with it for the metadata that they've used. But they're making them available, and they're closing downloads to certain domains, IP domains, based on the copyright law in their country. They're just starting to do this. The Sony e-Reader has a half million available that you could download. The Sony e-Reader website is not accessible. It uses -- I'm not sure what it uses, but it's totally not accessible. But I have had people download the titles for me and provided those titles, gave them to me. They're in the epub format.

So that is happening right now. We've got the domain, globallibrary.org. We've registered that, and we're going to explore taking books that are in the public domain and putting them into DAISY and making them available, but we haven't had the financing to do that as of yet, and we're trying to do that on a

voluntary basis.

MARIA PALLANTE: Let me follow up with you, since you mentioned the financing word. If you had all the financing in the world, what would be your five-year plan?

GEOGE KERSCHER: Thanks for preparing. Okay. I think that standards and technology are fundamental - - we got to nail those down. We got to get the publishers to participate in the standards development instead of having them outside. O'Reilly has just put somebody on our working group for the revision of the standard, but I really want to encourage publishers to participate in that so that the standards are being built, so it's something that they want to use.

I'd love to see the tools and the technology, the training materials, to help modify, to teach publishers about what accessible publishing is all about, how it works, to put standard operating procedures in their publishing processes so it just becomes automatic. I think that rather than all the money in the world, finding a market model that works - and I think that having libraries serving people or

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blind or print disabled purchase titles from the publishers would sustain the production of those materials. And I'm not saying that the libraries are the only ones buying them, but the libraries would be one of many. I think other libraries, individuals, schools, would start buying accessible content.

What we hear from the higher education in this country is, please, just let me buy the accessible version, and they're never to be found. Schools put a heck of a lot of money into disabled student services to manufacture these titles that they can't get otherwise. And the titles they're manufacturing are not top quality. They're doing the bare minimum job of providing something to the student, but it's not equal, it's not a powerful reading experience, and it really should be -- it should be equal. So I think I'd be looking at changing, trying to reinforce the entire infrastructure, helping publishers and the people who know about creating accessible books, to work together, bring them together, and build an ecosystem that's mutually beneficial and can survive for centuries.

MARIA PALLANTE: Thank you very much. That

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was as solid and impromptu answer on a five-year plan as we could have hoped for. And I have Jamie and Rashmi, but before I do that, Carrie, could you respond to the proposal that maybe libraries could help support an infrastructure and a market by becoming customers of accessible formats?

CARRIE RUSSELL: Yes. I'm going to -- it's one thing when you're making like a policy decision -- we'd certainly want to participate in that because we want everybody to be able to read and make things easier for students and the public. But putting it into action, it could become another one of those unfunded mandates where we might not be able to be successful at actually doing it. But if we did have the funding, I think libraries are core and they are in every community, and they can serve many, many people that do not even know about the other specialized services that may be available.

MARIA PALLANTE: Thank you. Jamie?

JAMES LOVE: First, I hope at some point we're given an opportunity to respond to Fritz's comment.

MARIA PALLANTE: You could do it now if you'd

like.

JAMES LOVE: He referred several people being here that didn't really care about access for disabilities having some hidden agenda about DRMs. And if he wants to -- because I think it cast dispersion on -- certainly I felt like it was sort of -- some people might have interpreted that he was directing that in our direction -- maybe he did; maybe he didn't. And if he has the courtesy to be more specific with respect to our organization, I would encourage him to do so, but it certainly doesn't really describe our interest in the matter, and it doesn't even describe our interest in the issue of digital rights management, which I don't quite understand.

The treaty that's been proposed is designed in such a way that the beneficiaries of the treaty that are using it would have to provide assurances that the works would only be used for the beneficiaries under the treaty. The way that's done in the United States under the exception, which was described extensively this morning, is for the use of DRM technology. I think DRM technology is used by all of the specialized

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entities in the United States, and I think it's just something they have to do in order to fit within the national regime here.

So if you're really -- maybe you're advocating getting rid of the Chafee Amendment or something like that. But the Chafee Amendment allows people to create work through entities that may become available. Now, we certainly think that everyone who is focused on these issues should not try and tie it into broader agendas about copyright exception limitations, intellectual property rights and other areas, patent agendas or anything else. It should just really be on people that have reading disabilities, period, and it should either go forward or fail on that basis. And I think the larger strategic issue is really the enemy of good policy in this area from our point of view.

Now, in terms of a transporter movement of books, Bookshare has indicated that they have licenses, voluntary licenses from publishers for about 4,000 works that they provide across borders outside the United States. It's unfortunate that Bookshare isn't here because I think they have experience in this area,

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and as Allan mentioned this morning, they have ambitions to do more. They would like to do more, they said in their written submissions. And it's our hope that they and other groups would be very involved.

Now, in our comments, we reported on a case where a Columbia organization contacted the CNIB in Canada to create a mechanism to share the digital library that both institutions have for places. But it was rejected by the Canadian library officials because they felt that the national exception in Canada didn't allow them to share with Colombia. If you look at the Judith Sullivan report on the Latin American situation, she found that only nine Spanish-speaking countries have specific laws benefiting visually impaired persons. And if you read Judith Rios's (ph) survey which was submitted in the comments, you'll see one of the barriers in developing the transporter shipment has been either the lack completely of any limitation exceptions in many countries -- which is really unfortunate.

In some of the countries reported, like number of works in Braille in Nicaragua, 56; number of

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works -- this is another country up here - very tiny numbers of works in most Latin American countries in some of these particular formats. It's really completely shocking. Bookshare is -- if a treaty comes into effect that liberalizes the import/export, it would be up to the United States in implementing its obligations under the treaty and other countries to do it in a way that was appropriate. You wouldn't just I think give a green light to everybody to do everything; you would implement it in such a way that you protected the rights of the publishers as the case right now is.

A lot of people have pointed out that there have been no abuses that anybody can point to in the Chafee Amendment. This is an area really -- if you want to find abuses, look at Hollywood. Hollywood, every time they come out with a new movie, it ends up on the Internet before it's in the theaters -- from their own system. They're less trustworthy than the people doing works for the blind. I think there's actually more empirical evidence that they have a harder time managing the security of their copies than the people that are working on Access to the Blind.

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This is an area where good people that have a proven track record are just trying to basically address an appalling inequity globally. And it won't happen unless the Obama Administration supports it and leads.

MARIA PALLANTER: I have Rashmi and if there's anybody else in line, and then Allan and then Danny. Okay, Rashmi. You were on the list awhile back. Did you?

RASHMI RANGNATH: No.

MARIA PALLANTE: Then Allan.

ALLAN ADLER: The main reason you're not hearing much in the way of experience with respect to foreign access to accessible works here in the United States is of course because the Chafee Amendment, like other aspects of copyright law, has no extraterritorial effect. It's one of the reasons why the good conduct that is reported on the part of companies like Bookshare continues to exist because they're aware of that. And the only real rationale for an international treaty is essentially to get around the lack of extraterritorial effect.

But if you consider that usually international

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treaties, particularly in this area, in the area of international property -- and we're not talking about a treaty that's going to be ending a war or some other violent conflict -- we're talking about a treaty that is designed to deal with questions of harmonization of conduct and rules for behavior. That usually comes into play when there already is an extensive consensus that leads to the idea that you can in fact achieve a harmonization, because most people are approaching the issue from the same general perspective, about what is considered to be the appropriate rules and the appropriate conduct involved.

I think as I've suggested to you, in terms of the evolution of the Chafee Amendment over the last 13 years, there's at least a significant part of the community in the United States that believes that what we've seen in the evolution of technology, what we've seen in the evolution of the study of human behaviors going into the question of what constitutes learning disabilities, is an indication that the Chafee Amendment is no longer the Chafee Amendment as we understood it -- or at least in terms of what people

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would like to export on an international level, it will not be what we've understood the Chafee Amendment to be as it was originally created and the purposes it was supposed to serve.

So again, I don't think that there is a consensus to be able to sort of enshrine in an international instrument that indicates in fact that people have reached this core level of agreement. We see this problem for example with respect to the issue of textbooks. Textbooks in the United States are published regularly to a chorus of criticism that they cost too much. So then when textbook publishers also engage in the export of international additions of their textbooks, which are priced to the markets in which they expect to do business, we hear from the American consumer that somehow the American consumer, the student is being gouged at home in order to serve these interests abroad, because they simply don't understand the idea of building international markets.

If you're going to be able to deal with the issue of accessibility in the same way, you're also going to have to take into account different levels of

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infrastructure, different levels of capability for essentially absorbing this kind of technology and these kinds of models, including the models of trusted intermediaries abroad, under circumstances that raise a good many questions as to whether or not that's a reasonable assumption to make.

I think one of the problems that we're having here in talking about internationalizing standards is that we haven't even reached an agreement on national standards in this area. And the irony of course, would be that generally speaking, in order to harmonize these standards on an international level, we would probably reduce rather than raise the standards that already apply in the United States in applying them internationally. That's something that I think generally would be viewed as unacceptable. Certainly within the community that I represent, it's not the best way to try to address this problem abroad.

MARIA PALLANTE: Thank you. I have Danny, George and then Rashmi -- but Allan, I have a follow-up for you.

ALLAN ADLER: Sure.

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MARIA PALLANTE: One way we have been thinking about this as a Panel is that there are kind of two sets of materials that the publishers put out into the world. One are the works that are already being distributed worldwide, or regionally to the general public, and then the other set of materials are those that maybe aren't distributed very far to begin with. So looking at the first set, where you're already distributing in another country, could you speak to us a little bit about how the exceptions in other countries might work? For example, a trade book that's published in the U.S. that's then licensed to say a UK publisher, if there's a blind person in the UK, how does that work? Do they get access or don't they, and if so, how?

ALLAN ADLER: Well, generally speaking, when you talk -- that's another difference among the sectoral areas of publishing. Trade publishers, generally speaking, don't hold copyright in their work. What they acquire from the author who creates the work who originally holds copyright and usually continues to hold it, is whatever exclusive license they need in

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order to be able to serve that part of the global market that they choose to serve. So in the United States, the author of a book typically will give to the publisher the right to publish the print version in the English language in North America. It's a geographic territorial limitation. Usually the rights -- especially if they involve another language -- will go to a publisher in that other country where that language is spoken. And so the American publisher doesn't really deal with that issue at all.

To the extent that you're talking about the question of providing for accessibility, you gave the example of the UK, so we'd be talking about a common language. But I think the question would be, what's the nature of the license that was acquired by the UK publisher with respect to that particular work? I would suspect that it probably -- well, indeed almost certainly -- would be the same thing; not copyright, but a very specific exclusive license in order to be able to publish that work within the United Kingdom -- or perhaps within the Commonwealth nations.

MARIA PALLANTE: So there's a sublicense to

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make the work available to the general public, but is there any way for RNINB or Bookshare or someone else to make that work available, in accessible formats? It's to a place where you have already published it in general.

ALLAN ADLER: To someone outside the country?

MARIA PALLANTE: Yes.

ALLAN ADLER: Not that I'm aware of.

MARIA PALLANTE: Okay. Let's get back to our list -- I'm sorry. Danny and then George and then Rashmi.

DANNY O'BRIEN: I'm going to do the classic moment in a long list like this of answer a question that was many, many minutes ago, which was to discuss the nature of the export of public domain materials. To go back to my original point about the possibility of communal and collective effort, one of the largest repositories of accessible public domain works is Project Guttenberg. I don't know how many works that they've worked together to produce now, but I do know that I have a DVD of them. And if anybody knows the story of the nature of DVDs, that's an awful lot of

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ASCII.

I also know that one of the issues that limits the export of that content -- and there really aren't that many, because once it seems to be in the public domain and once it's in a format like ASCII, it's simply a matter of putting it up on a website and it propagates. But I do know that one of the things that pushed the Eldrick (ph) case was the subset of public domain -- materials that are in public domain in the United States but not necessarily of jurisdictions.

So I think this just goes to Carrie's point, which is that I think that there can be dangers that one ends up creating maximums or minimums from maximums in these situations. But that's something that exists prior to the treaty. The problem with exporting public domain works is that there's no consistency about the nature of those works and the legality in other areas. And because the default, when you're distributing content online, is to distribute to the world, if you're in a situation where you have to make a decision to block as we've heard Google has to block certain books, that actually becomes a cost. So the

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inconsistency between laws ends up being an argument for not producing that material at all.

I don't want to spend too much time on the DRM issue that Fritz brought up, largely because I think that rather -- it's very hard to discuss it without sounding like that is the particular obsession that we have, and I don't think that's true. I mean, the one thing that I would point out is as Allan mentioned, is that these days it's a given commercial understanding that one doesn't need DRM to have a commercial market. The music industry has switched to a no-DRM model over the last few months, and as Allan mentioned himself, audio books appear to be switching to that same context. And George Kerscher mentioned that he sees markets moving towards a DRM free content.

So if we are discussing DRM, we should discuss it in the context if there are being commercial markets and non-commercial markets where DRM is not important. And I think one of the things we should say here is that if we are employing DRM, if we are requiring DRM as a nature of these treaties in this area, I think it behooves us to try and find evidence one way or the

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other than that this is a risk. And there are ways of doing that. I know a number of people have suggested fingerprinting or tracking in some way. We already have trusted intermediaries which we don't have in other environments who have an obligation to track and check these things. So this is a good environment to see whether this is really a case, a problem -- but we know already that it is a problem in providing viewable formats.

Finally, just as a general point, I do think we should be careful that we don't perfect the enemy of the good here. I think that there is clearly a demand for content that is commercially expensive to produce and would be desirable in this area. But what we're mainly dealing with here with, I think, is a profound market failure in the general availability of these works. If it really costs us so much money to produce 50 works at a high standard, then perhaps we should consider a wider attempt as Scott said, to just do it, just produce content that we can convert into the simplest formats and see if that can lead commercial production as the demand and the distribution systems

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begin to build up to cope with that very simple content.

MARIA PALLANTE: Thank you. I know Michelle has a follow-up question for you, but let me just get my list straight. Hold on, Allan. I've got George, Rashmi, Allan -- anybody else want to get on the list here? Jamie? Okay, Michelle?

MICHELLE WOODS: Thanks. I just wanted to follow up on the Project Gutenberg point and ask if you have any information at all about how much these accessible formats actually are used for the benefit of blind or other persons with disabilities. Is there any information out there that can kind of demonstrate to us interest in that, or any way we could measure that?

DANNY O'BRIEN: You know, one of the ways that we could do this going forward -- and I don't have Net access, so I can't see -- I know that one of the things that's a natural result of Project Gutenberg is that these formats are converted into standard eBook formats. And perhaps one of the ways we could do this, and perhaps this already happens, is to work with Project Gutenberg to put the DAISY-formatted works

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available as well and basically do a sample in that way; like point people to Project Gutenberg and see how that patent emerges. I'm sure that's something they'd be very happy to coordinate with -- although I don't speak for them, I should say.

MARIA PALLANTE: George?

GEORGE KERSCHER: Trust intermediaries are the caretakers of copyright. This is a little bit of an aside, but I'm the guy who told Michael Hart he couldn't scan and convert everything, that it was illegal. And I had to explain him the copyright law. That was 1991.

MARIA PALLANTE: Thank you for doing that.

GEORGE KERSCHER: And he was very upset with me. But Allan was talking about not having consensus. Okay. So where do we have consensus? Well, we've got RFB&D, National Library Service, Bookshare, all using the same format for the distribution of content. We've got the DAISY XML and the navigation model being incorporated into the eBook standard, and the DAISY Consortium has been announced as call for comments becoming the maintenance body for the epub standard.

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We've got Google, who is distributing in the epub format, and we've got the publishers distributing epub to their distributors.

So that's a lot of agreement. Then we've got all the libraries around the world who are providing legally material; they're all using the DAISY standard in the same format. We have started a Global Library Project where we're investigating all the different issues associated with the legal sharing and distribution of content across national boundaries. We're looking at the federated search issues, we're looking at the copyright issues, the business models, how we can involve publishers in this, and what are the technological aspect safeguards for this.

So there's huge consensus, and it may just be in the United States that there's this jostling for and competition -- everybody wants to own the whole market. But there is huge consensus worldwide moving forward toward a copyright exception that would work.

MARIA PALLANTE: Thank you. Actually, would you explain to us a little more about the Global Library Project?

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GEORGE KERSCHER: So it's jointly -- we've got four people from IFLA Section for the Blind in the new name, and four from the DAISY Board. And that's the oversight group that are running this project. Then it's been divided up into four different working groups -- and we're just in the first year of this, so we're just setting up our strategies in how we're going to work. But one of the big ones is what is the business models that are going to be effective and working? And so that's just getting going.

We've been inviting publishers to join the DAISY Consortium. It's \$1,000 a year to be part of what we're doing and contribute to the standards development. But we've not seen a big move toward that. It's been more in the library and the education sector where we've seen people joining, but it's an open door policy.

MARIA PALLANTE: And the goal, is it to serve the general public? The library project would --

GEORGE KERSCHER: The Global Library is looking at people with disabilities throughout the world, so we're looking at how that would work to serve

people with disability.

One of the issues is going to be the identification of content in particular formats that work for people with disabilities, because we know that some formats that are going to be made commercially available will work for some disability groups but not for all. A deaf-blind person is not going to be able to use an audio book, but a deaf-blind person would be able to use an eBook or full text and full audio multimedia book. So these are some of the issues that would be addressed. Also, if the book does have text, then it could be used with refreshable Braille.

So there's a lot of different issues in serving people with disabilities that are not normally considered in the design of mainstream systems.

MICHELLE WOODS: Just one follow-up on that, and I'm wondering whether the Global Library Project, or if not that project perhaps some other effort that you're aware of, has an initiative just -- and it sounded like there might be something like this -- just to compile information, a database, an extensive list, of some type of all of the accessible works that are

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out there available at this time in different formats that might be useful to people with various different types of needs and capabilities. Is there any type of international effort to compile that information?

GEORGE KERSCHER: Analysis of the different formats that are in use today and how useful they are?

MICHELLE WOODS: Well, not just the formats but then what works are available, so somebody could look up and say, well, actually, in Canada this work is available. And then one could look into, is there the ability to license or other ways to make it available. But just in other words, a centralized database or system for finding out what accessible works in various formats are available?

GEORGE KERSCHER: That sounds like a federated search to me, that that would be the kind of thing that would identify what the formats are in, what are the jurisdictions it could be made available in, if there are interlibrary loan fees or exchange fees or something, what are they, how can it be done. It would be the way to find the information about what's available.

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MICHELLE WOODS: And is that available now?

GEORGE KERSCHER: No. Google has joined the DAISY Consortium and they know a little bit about searching. We hope that they could help us. But all of this is work that's being done with literally no funding, and we get together when we can at other conferences. So you tack on a day here, day there to get things moving along. And it's all part of the night job that people have. So it's voluntary work groups associated with activities of the DAISY Consortium.

MARIA PALLANTE: Okay. We have a list of people, but Michael, you had a follow-up?

MICHAEL SHAPIRO: Just to put a finer point on Michelle's fine question. When reading through the comments, I was looking obviously for what might be called actionable policy items. And one of the commentators mentioned a kind of very diffused concept of a national registry of accessible works -- and I think Michelle might have had that in mind.

But as I kind of browsed deeper and deeper into the comments, I thought that we really had kind of

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a head start on this. Even today we learned that RFB&D Library, I think there's 50,000 digitally recorded items; the American Printing House for the Blind, I think we earlier heard, 196,000 books; Bookshare -- I missed that. Later on, we heard about the Access Text Network that is about to be launched -- could have 300,000 titles.

So it sounds like at least one of the steps in this process - and this is kind of a many element process to enhance accessibility -- is to begin to build the kind of database here in the United States that would allow us at least to locate accessible materials. So if you could pull that out a little bit more for us, that would be great.

GEORGE KERSCHER: The Louis database I think was the reference -- when you said 196,000 titles?

MICHAEL SHAPIRO: Yes. Not right.

GEORGE KERSCHER: That doesn't exist, but the database -

MICHAEL SHAPIRO: Clarification on that.

GEORGE KERSCHER: So RFB&D uploads our list to the Louis database, and Library --

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PETER CHAPMAN: (Off mic). We have 170 agencies that (indiscernible: 1:17:44).

GEORGE KERSCHER: So it's in the United States, the central place to go to, to find out who's got what.

PETER CHAPMAN: It's not international.

GEORGE KERSCHER: Right.

MICHELLE WOODS: But am I correct in understanding that there are some limitations to what - - that there could be accessible works that would not be loaded into that database, because it's actually pretty much limited to works that are available under the Chafee Amendment, or is that an incorrect understanding?

GARY MUDD: You know, I can't be sure about that. I think that under the Chafee Amendment, yes. But a lot of times it's state-driven. Like I mentioned earlier, the State of Texas, they have titles that they make available for the State of Texas by the State of Texas, and they stay in the State of Texas. But the ones that make up the 196,000 titles from the 170 agencies are all either audio, large print, or in

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Braille.

GEORGE KERSCHER: And commercial titles are
not --

GARY MUDD: Not trade books, generally not.

GEORGE KERSCHER: Yeah, but not - commercial
titles that are accessible are not included.

GARY MUDD: No.

GEORGE KERSCHER: But there aren't many, so
there wouldn't -- but it would be good to add that.
And I'm probably confused about who uploads whose
information to this database.

MICHAEL SHAPIRO: Well, if there's any way in
follow on comments to begin to clarify this, we'd be
most appreciative.

GEORGE KERSCHER: Can I speak for a second?

MICHAEL SHAPIRO: Sure.

GEORGE KERSCHER: Can I bring my colleague,
Tom, up for a second?

MARIA PALLANTE: Actually, is it on this
point?

GEORGE KERSCHER: Tom has all the information.

MARIA PALLANTE: Okay. Then we have Rashmi,

Allan and Jamie to follow.

THOMAS STARBRANCH: The Louis database, to my knowledge, includes things that are not there just because of the Chafee Amendment. So some publishers use that as their repository to distribute works to people with reading disabilities. And we often give permission to release those materials as well.

MICHAEL SHAPIRO: Thank you.

MARIA PALLANTE: Rashmi?

RASHMI RANGNATH: I wanted to address the point of harmonization and how back-up consensus will mean that an international treaty cannot be negotiated. Well, a lot of international copyright treaties did not represent consensus among countries. The TRIPS did not. There was a TRIPS Council that monitored whether countries had actually amended their laws to come into compliance with TRIPS, and then there was flexibilities that were given to developing countries, they were given time to come into compliance with TRIPS.

The point I'm trying to make is that in this area, the need for harmonization is to ensure that copies can be exported and imported. The reason that

might not be happening is because as Allan mentioned, the territorial nature of copyright law, but not because there is no desire or there is no need to export accessible copies. It is not against the purpose of copyright law to make these copies accessible, and having a treaty that will guide countries and develop a consensus about how copies can move across borders will help in the movement to cross borders. That's the point.

MARIA PALLANTE: Rashmi, I have a follow-up for you. For countries that don't have an exception currently, don't have our experience or our history in working through this issue, and having an exception bubble up from the ground up the way they certainly do in this country, are there other ways to provide guidance?

RASHMI RANGNATH: Other than a treaty?

MARIA PALLANTE: Yes.

RASHMI RANGNATH: I guess that desire to have an exception should come from within, and then they would follow models that have developed in other countries -- depending on how much resources they have

to be able to develop their own models. That should not prevent countries who are at a stage where they really want to exchange copies to be able to do that. I mean, you saw a number of case studies in the Sullivan report where different countries and specialized entities in different countries have talked about how they cannot get accessible copies from other countries, but they really do want to get copies. And these are agencies who are the trusted intermediaries that everyone is talking about. A treaty facilitating such movement would be important for them.

MARIA PALLANTE: Okay. I just want to make sure I understand, because I think I just heard two separate thoughts. One is that to the extent another country has an exception that's similar or somewhat similar to the Chafee Amendment, there's an immediate need and there should be some facilitation of moving accessible books across borders -- but for those countries that are not remotely at that stage yet.

RASHMI RANGNATH: Right.

MARIA PALLANTE: What we're really trying to get at here I think as the Government Panel, is what

role is there for us, for WIPO, internationally, private sector, public-private partnerships, to provide that kind of guidance that you identified?

RASHMI RANGNATH: I am not sure what can be done. I think that a treaty will help them fashion an amendment if they want to have an amendment in their domestic law. Beyond that, I'm not sure how I can answer your question.

MARIA PALLANTE: Let's go to Allan, and then Jamie and then to Michael.

ALLAN ADLER: Yeah. I just wanted to comment on two things, but before I just forget it, to mention, in connection with your discussion about a database, it is hoped that fairly soon -- and Gary can correct me if I'm wrong about this -- but it's hoped that fairly soon the NIMAC and Louis databases will be searched in coordination together, which will greatly expand the amount of material that ultimately will be contained as a result of -- it's now already capable.

I just wanted to go back to two things. One was Danny's comment about DRM. I think he gave a more optimistic translation of my comments than I offered

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myself. What I was trying to say was that in markets like the audio book, where people have found evidence, market-based evidence, that they don't seem to face a problem in the absence of DRM, that's all well and good. There are obviously other markets where that just hasn't proven to be the case. And there are other business models -- for example, looking at a different side of the publishing community that deals with journals -- where the ability to go online was predicated on the use of DRM, and the whole system continues to operate based upon the ability to use DRM. If you didn't use DRM, you couldn't have online subscriptions to journals.

But then my comment about George's view, when we're talking about consensus. George is a giant in the world of standards, and it doesn't surprise me that he tends to see things through that prism of standards. But standards isn't the only issue that we're dealing with when we talk about the need for consensus and its current absence. The best example I can give you of that is is that again, the IDEA Amendments in 2004 were enacted after four years of planning by a very broad

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coalition that included in addition to the AAP, the NFB, AFB and all of the other various well-known advocacy groups for the disabilities community.

And one of the two pillars of that concept that eventually became the IDEA Amendments was the idea of eliminating the patchwork quilt of file format standards by the introduction of a uniform national standard -- the IMAS. The fact of the matter is that that was going to require preemption of contradictory state or local requirements of formats. But given the views of the State of Texas, there was no preemption. And the fact is that today, since the enactment of the IDEA Amendments of 2004 -- which is only five years later -- my school division reports to me that we have seen over 150 separate legislative or contract or regulatory proposals on the state level, continuing to propose different formats to be required of publishers for books in those jurisdictions.

So what's happening here is when you ask the question, Maria, about what's the role for government, for the U.S. government in this area, it's fine for the U.S. government to be looking outward internationally

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and seeing whether or not it's possible to extrapolate some of our experience here and some of the value of our experience here and see what it can do there. But look back, okay. We haven't changed the fact that the states and local governments are continuing to legislate, continuing to issue their own contradictory requirements in this area. And if you think an international treaty is going to mean anything to the states or local governments in the United States, it simply won't.

MARIA PALLANTE: Jamie?

JAMES LOVE: Thank you. On this issue of DRM, in our point of view there's DRM and there's DRM. And I think it's unfortunate that it just kind of gets all compressed into a single term. There's a lot of things that people accept very much, like watching Netflix and paying for it and having to have a password and abiding by the rules -- or an online thing, like Westlaw or something like that, paying the money to have it and having a password-type thing.

People might also get kind of upset, though, if they can't do a cut-and-paste to the text or they

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can't do other things. And a lot of these are fights over what rights that consumers traditionally had in paper products. They were able to make private copies, they were able to sort of use things in their research and clip and annotate things, and they're fighting, and there's some - so there's a range of battles about how DRM, where it's appropriate or not appropriate and what kinds of DRM really, really annoy people as opposed to things that they think are less, or sort of don't cross the line -- and highly context specific.

So I just wanted to get that out on the table, because I think the authors have a point. I think that livelihoods really are at stake. I think that rampant privacy in the digital world is a legitimate problem, and I don't think consumers have done enough to speak up on behalf of creative communities and basically defend the legitimate concerns they have. I agree with what Peter Weiner (ph) said in Slashdot last week about it last week. He's an author and a friend of mine, and I think he was absolutely right that things are really -- there's a problem there. And I don't really want to minimize it at all, because I think it is legitimate.

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And I don't think this is really, should be seen as an attack on that. And I think to the extent that these trust things are important, I think that everyone is ready to go on that front.

Now, in terms of the treaty thing, oh, well, can we do a treaty for people who are disabled or blind, despite massive evidence of an absolute book famine -- I mean, just an absolutely appalling human rights violation in developing countries, and even across the border -- even if you look at the situation in Canada or something like that, let alone go to Kenya or Bolivia or some places like that. Can we do it? Well, we seem to be able to do treaties. Public Knowledge mentioned the TRIPS agreement. There was the '96 treaties which were done in about two years -- the WTC and WBT, when they sort of basically -- the decision was really ready to go ahead. They've been talking about this problem in import-export for about 20 years at WIPO and they've gotten nowhere so far.

The Broadcast Treaty, MPA was all over the Broadcast Treaty, even though the United States had never signed the Rome Convention. They wanted us to

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sign a treaty to bring a set of rights that they couldn't get through to U.S. Congress, but they went basically to WIPO to try and promote a set of economic rights that didn't exist in this country. ACTA is on a fast track. It's a secret proceeding. There's basically no real transparency to the actual negotiating text.

So when it comes to sort of can-do attitude about things, here you've got a thing where consumers are involved and people are disabled. And I'd like to see some of that can-do attitude that you can solve problems, that every time right owners basically speak up and call politicians, they seem to get a lot of attention. And we'd like to see the same amount of priority and attention in this particular area. Now, the reality is if you permit this norm setting at WIPO and you permit import and export, the bottom line is, Americans will get access to foreigners, and foreigners will get access to U.S. work. If you don't do the treaty, Americans will not get access to foreign works and foreigners will not get access to U.S. work. That's what this is about. It's about whether or not

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these accessible copies -- and it's not just about digital text. And the kind of things that a DAISY format does requires a lot of marking up of the text, identifying chapters and headings and things that allow navigation. And the way that a person can see can use a document. And people have mentioned how expensive it is to make a lot of these Braille copies. This is really about expanding access or not expanding access, and if the Obama Administration doesn't lead, it's not going to happen.

Now, I know that Brazil has now announced that they're going to table the World Blind Union text at the end of this month and the SSCCR. And they've appealed to a number of countries and they've written a lot of countries to support them in doing so, and they will have co-sponsors in that endeavor that will take place very soon. So the WBU texts will become the Brazil texts or the Brasilia text plus whoever joins them. It should be the Brazil-United States text. That's what it should be. It should not be a fight between developing countries and Americans on this thing. The United States should align itself with

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those countries and it should go in together into that proceeding and get rid of this North-South debate on this issue and really make this a common cause to basically address a really important human rights problem.

MARIA PALLANTE: Thank you, Jamie. Fritz, you're next, but we are actually going to call a break. It's 4 o'clock. We've been sitting for 90 minutes. So if everybody could be back at 4:15 and Fritz, you'll be first when we return.

MARIA PALLANTE: Okay. Thank you so much -- on the home stretch. I know it's been a very long day, and we just wanted to reiterate how much we appreciate everything that we have been told and everything that you've taken time to explain to us today. And with that, Fritz, you're up.

FRITZ ATTAWAY: Just a very quick point on harmonization. It should be recognized that there is a degree of harmonization in the Berne Convention, and that is member states can do basically whatever they want in terms of providing exceptions and limitations, so long as they meet the three-part test. So there's

tremendous flexibility already in the Berne Convention.

And then the second point I want to make is that if international harmonization to facilitate access to copyrighted works by the blind is desirable, I think that the discussion I've heard today, particularly from those who are actually engaged in trying to achieve this objective, suggests that WIPO is not the right forum. Because even to the extent that copyright is an issue, it is certainly only one among many that faced the blind in achieving this goal. There are technological issues, economic issues, there are a number of issues far outside the scope of WIPO that have to be addressed in order to make a solution meaningful.

So if it is decided that international harmonization is desirable, I would suggest that a different forum be found where all of the issues involved in this problem can be addressed, not just copyright, which is at best only one of many and in many instances, certainly with respect to audio-visual works, a tiny issue.

MARIA PALLANTE: Michael, do you want to

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follow up on that?

MICHAEL SHAPIRO: Sure. Thank you, Fritz, and I at least wanted to pick up on part of your comment, because even before the break I felt the kind of inherent need to clarify a bit this international framework for exceptions and limitations. And Fritz gave me the segway. Of course, under the Berne Convention, as we all know, there is long-standing framework under which countries may tailor their exceptions and limitations to advance national, cultural and economic information policymaking. Indeed, the very exceptions that we operate under the U.S. Copyright Code and the Fair Use Exception and even our Section 121 are reflections of the very latitude that is given countries to craft these exceptions to meet their own policies.

So I do want to make that clear, and thank you, Fritz, for introducing that point. But I wanted to revert back to a point that Maria made earlier, and it might have kind of glossed a little bit into the background and maybe didn't elicit a full response. And I think it's an important one, and that is -- and this

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is notwithstanding Fritz's point -- what in our discussions for example in the Standing Committee might we do to promote the kinds of exceptions and limitations, maybe even short of a treaty, that would begin to facilitate these cross border movements.

I'm thinking in particular that, as you all know, between peaks of norm setting, from time to time WIPO has been very helpful in periods of guided development where technical assistance and legislative assistance and discussion do provide that kind of give and take with countries. And I guess another element of the question is, we'd be very curious to know about specific instances of impediments in the national policymaking process, where countries are not taking advantage of the full range of exceptions and limitations that the Berne Convention framework already gives them. So that's my question to you all. Anybody want a bite of what could be done.

MARIA PALLANTE: Michael, if I could just interject a minute. We have two people who have to catch flights, so Scott, I had promised a couple of minutes to give some remarks as he runs to catch his

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flight, and Peter, I didn't know if you had to leave right now or not -- you're good?

Scott, the floor is yours for a few minutes.

SCOTT LABARRE: Well, Michael, I don't have an answer to your last question, so I'll duck out on that. But I have a few things in sort of conclusions. First of all, I appreciate the opportunity to be here on behalf of the National Federation of the Blind and your willingness to take these comments now. I do need to get back to Denver for a meeting tomorrow morning.

With respect to a lot of the arguments that Allan has been making today and others of a similar mind, respectfully, a lot of them seem to be kind of slippery slope arguments, talking about possible nightmare situations that have not really occurred, even though under the current system, copyright infringement certainly could have been going on, and could have been going on in a good way. Secondly, with respect to all the discussions regarding IMAS and NIMAC and all the problems that have sort of arisen, certainly there are some. But let us keep in mind that that has not really been in effect except for the last

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couple of years in terms of real implementation. Are there budgets to be worked out? Yes, but does that mean it's not worth pursuing or doing or fixing and using as a model? Going into the future, I don't think so.

And finally, the idea about whether there are other alternative ways other than a treaty to address some of these things, I would think so. I would think there could be all kinds of bilateral, multilateral, trilateral agreements, sharing of experiences to start dealing with the issues. But I really do urge our country to be a leader in this and to set the framework for a treaty and make it happen. Because it has to happen; we just got to go do it. So that's it.

MARIA PALLANTE: Okay. Thank you very much.
Safe flight back.

SCOTT LABARRE: Thank you.

MARIA PALLANTE: And back to Michael's eloquent question. Keith, you were on the list. Did you want to take that question?

KEITH KUPFERSCHMID: I don't think I have an answer for that very difficult question myself. I

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wanted to address some things that I think honestly Fritz beat me to the punch a little bit about. Under the Berne Convention and the TRIPS Agreement there is this three-part test, and under that test that's where we have the Chafee Amendment, 121 -- Section 121. And there's really nothing as far as I can see, preventing any other country, any other region, from adopting that same type of approach. I don't know if the folks around this table or other folks have been sort of pushing that approach internationally - and to sort of clarify FA's or my comments earlier -- with regard to international treaty or harmonization, I'm not necessarily opposed to it; I just don't see what it gets us. I think there's so many other issues on the table. And as I said before, as Fritz said earlier, copyright is just one of those issues, and there are many, many other issues and there's many other things that folks around this table and other folks here, who couldn't be here, could be doing.

And let me just give one example of that -- at least for the industry I represent, the software and digital content industry -- and maybe this somewhat

gets to Michael's question a little bit. Many of those files are actually written in a few mostly open-source software programming language, like Java, Perl and Ruby. But those open source programs generally do not include accessibility in their design suite. And it's possible certainly those folks in the room, and especially those supporting a treaty, one of the things we could be doing could be helping design features in open source code that programmers, designers, can incorporate into their software programs. Since they use these open source programming languages, why not create accessibility features or functionality that can make their products accessible. And that's a sort of one example that has honestly nothing to do with the treaty that certainly could be done. I think there are many things like that, if we all sat around the table, came up with a list of things that all the interested stakeholders here could be doing a little bit more.

MARIA PALLANTE: Thank you, Keith. I have a question about right of first publication and best practices. So earlier Rashmi had said that at least to the extent where there's another country that has an

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exception in place, like the United States with respect to sharing accessible books across borders, those exceptions should be able to speak to each other -- if I could paraphrase. And I guess the question is, if a publisher is already making work available, they've already selected to publish a work in a foreign country other than the United States, who's the right party to make the work available? And I'll ask both the publishers and anybody else who wants to jump in to respond to this, from both sides of the coin. Starting with Allan. Jamie, you're on the list. Anybody else want to jump in, if you could raise your hand. George? Keith?

ALLAN ADLER: Of course, that's going to depend in some cases at least on specific circumstances of the legal framework within a given country. And the best example I can give you is China. At the moment, U.S. publishers are not fully free to publish works in China unless they essentially have a Chinese partner for purposes of publication. That's part of the price you pay for market access into that particular market. There are a number of other countries --

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MARIA PALLANTE: Allan, just for ease of the example, though, if we could stick to say the UK or Canada. Let's keep it close.

ALLAN ADLER: I guess I would say if it were -- you would either think that if you're talking about trade publishing, where as I said, what is given is an exclusive license. So you're not talking about the copyright owner being the U.S. publisher. In that instance, I don't know that the U.S. publisher would necessarily have the right to authorize the accessible version of the work to be published in the UK. Part of that would depend upon whether the rights that the U.S. publisher obtained from the author included digital rights. It's the same issue we've been sort of talking around in this whole context.

MARIA PALLANTE: Sure.

ALLAN ADLER: It is the reason, as I said, that with the passage of the IDEA Amendments, we needed to amend the Chafee Amendments to get specific protection for publishers who would have otherwise been held as infringing for allowing the digitization of material that they didn't control the right to.

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MARIA PALLANTE: And we understand the complexity of contracts, but I think for the trade book, I think what we're trying to get to is, what kinds of best practices do you need? What kinds of incentives do you need? If you're already making the work available to the general public, to also make it available in an accessible format. And Rashmi, please feel free to jump in as well.

RASHMI RANGNATH: Well, I'm not professing to be an expert on how copyright law exceptions or incentives for publishers should be tailored to make works available. We're simply saying that if they're not making works available, then exceptions within the law should allow works to be available to the blind, and where works cannot move across borders and different markets are not served by publishers with accessible copies, those entities that are responsible for creating accessible copies should be able to send it across borders to where they're needed.

MARIA PALLANTE: So if I understood that correctly, if the publisher's not making it accessible, then a nonprofit or a trusted intermediary should be.

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RASHMI RANGNATH: Or whoever else that -- national law or consensus indicates is the best person or best entity to make the work available -- should be able to make it available.

ALLAN ADLER: Maria?

MARIA PALLANTE: Yes, Allan.

ALLAN ADLER: If I understand the question, the only way in which you have a cross border issue is if you have the U.S. rights holder authorizing this in the UK. If the U.S. rights holder has authorized publication of the work in the UK, then it would seem that if the UK rights holder deals with the issue of accessibility, you're not dealing with a cross border issue.

MARIA PALLANTE: Indirectly you are.

ALLAN ADLER: But only in --

MARIA PALLANTE: It's the fact pattern that we're interested in learning more about, but I think we have Jamie and we have George, then we have Keith.

JAMES LOVE: I'm happy to go after George.

MARIA PALLANTE: Okay. George?

GEORGE KERSCHER: Okay. So if the book is

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published in the United States and produced in an accessible form, and it's also wanted in the UK, the point is we're trying to avoid both organizations in both countries manufacture the same thing. And what we need is the mechanism to get the book over to RNIB, and they distribute under their copyright exception legally. That's the vehicle we need.

MARIA PALLANTE: And I think we understand that. You've made that point before. I think one of the questions we had was does it matter to you that the publisher has not already published that -- chosen to publish that work to the general public in that country?

ALLAN ADLER: Can I just speak to this? Maybe George can clean it up for me. We discussed this extensively. When we had this experts meeting last summer, this was a really huge issue that was debated. Because the Europeans in the green paper were very much pushing a model of limitations and exceptions that they come into play when there's a market failure, when there's a lack of a voluntary license or something. And it was basically that model. And some of the

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European groups were very keen to sort of go down that road, because they're very keen to get back by the European Commission.

In the United States with the Chafee Amendment, you had a lot of groups that have had a bad experience with arguing about whether or not something was available in a recently equivalent form, and in going to the negotiations and the hassle. So there's a conflict, and it was sort of a huge conflict actually within the room. And Judith Sullivan was part of this conversation, the WIPO consultant. And the way it was resolved in the conversation was that the nonprofit exception, such as is done on the Chafee Amendment, would be embraced with the American system, which was no permission, a very broad exception -- it's just a lot of freedom of the specialized entities basically using created works on the one hand. And then if there was a -- but to the extent that you move beyond that specialized entity, then you would have that test, is the work recently available and identical in a largely equivalent format for access. That's the first part of it.

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The second part of it has to do with, is it published or not published in a country, or what does that really mean? And that was an issue that we kind of really went back and forth on. And it was probably the most frustrating thing for people in the room to kind of deal with that issue. And so the resolution was -- and I think it was the right resolution -- was to say, the condition of the export and the import is that the copy has to be -- it said that the person had lawful access to that work or a copy of the work.

So basically, what people decided was that it would have to be lawful in the country of import for it to be authorized under their own laws. And so if they didn't consider the work a lawful import because it had never legally been published, then you couldn't do it. But if for whatever reason --

MARIA PALLANTE: So if a publisher does not publish a work in India, nobody is suggesting that an Indian nonprofit should be able to make that work into an accessible format and distribute it?

GEORGE KERSCHER: No, the lawful access applied to everybody, nonprofit -- in terms of the

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import-export it applied to -- it would apply to in terms of the minimums. The lawful access was something that everyone felt captured everything you'd want it to capture. That is to say, the point is not to use the exceptions to rewrite other fundamental rights, but more --

MARIA PALLANTE: I think you're talking about all the different ways that a work can make it into a foreign country, and I think what we're asking is something more along the lines of right of first publication and whether that would be somehow overridden by a nonprofit saying, well, the publisher didn't choose to make it accessible in this country or even publish in this country, so we're going to take on that for the greater good.

GEORGE KERSCHER: Well, if India decided to give rights to people who are blind that they didn't give to people that were sighted, I personally wouldn't lobby against that, but I'd be kind of surprised if that's the way it took place. I think that the bigger interest people had was that it would be left up to national discretion as to what constituted a legal work

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in that country. It was not like a super right that was being granted, it was the idea that you were facilitating trade where everything else was otherwise on the up and up from a legal point of view.

Now, if you have a better phrase, then has lawful access to the work -- everyone has a very open mind. That's what came --

MARIA PALLANTE: Well, I think we're mindful of first publication and maybe Allan, could you speak?

ALLAN ADLER: I think we were - well, I won't say unfortunately -- we were part of this. But when Congress amended the Copyright Act in 1993 to provide that the fact that a work is unpublished is only a consideration of the fair use calculus, I think it set up basically the criteria for essentially the vast dilution of any meaning in the right of first publication. And it certainly wouldn't surprise me if in the United States at some point we ran across the idea of people saying that fair use should allow them to publish a work not published in the United States for the commercial market provided that they're only publishing it for purposes of people who have an

accessibility issue.

JAMES LOVE: This isn't a disability issue, this is just a question you have about copyright in general.

MARIA PALLANTE: And we definitely don't have enough time to talk about fair use in 20 minutes. Keith, you were next?

KEITH KUPFERSCHMID: Let me answer your initial question and then your follow-up question if I can, if I understand it correctly at least. Answer your initial question in two parts. One, depends on whether we're talking about the first release of something or retrofitting. If we're talking about the first release of a particular software product or digital content product, in many cases our members companies will do their best to make sure that includes the accessibility functionality. If we're talking about retroactive --

MARIA PALLANTE: Keith, just interject. So that's a sort of best practice for your industry?

KEITH KUPFERSHCMID: Yes, yes, yes. In terms of retrofitting software, digital content, it's a very

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different story. As I think a lot of people talked about in this Panel and earlier, oftentimes the cost is disassociated with retrofitting -- whether we're talking about software or digital content -- is many times more than the original costs, and therefore is really not a viable business model. So if you're talking about, well, who's going to bear that cost, well, then, it just doesn't make any sense for the publisher to do that. They'd be out of business pretty darn quickly if they did.

So really, you're talking about whether we're talking about retrofitting or whether we're talking about incorporating good accessibility into the first release of a product. So that's one area. Then you talked about, you asked a question about what incentives do my publishers need. And I wish I had come up with this idea myself -- I read it in one of the comments and I don't recall whose comment it was, but somebody in their comments talked about the fact that the Chafee Amendment was sort of more of a stick and that maybe we need a carrot type of approach to give publishers some sort of tax break in order to

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incentivize them to --

MARIA PALLANTE: Stimulus package?

KEITH KUPFERSHC MID: Yes, exactly, exactly.

And I thought that was at least worth certainly trying out there, and I think that certainly would give the necessary encouragement and incentive for publishers in certain areas to incorporate the accessibility functionality into their products. And I think the last issue you brought up was -- if I understand this correctly -- is what happens if the original is not made available in that particular country. And then you really open up I have to say a can of worms - not only forgetting about right of first publication, which you've raised, but also a whole bunch of other issues that have to do with different - especially when you're talking about software, which liability issues and things of that nature - which a lot of times are very good reasons that accompany, or a publisher is not entering a particular market. Heck, they already have the product.

And so there's a very good reason for that and all of a sudden if just making that product in a

particular country might all of a sudden subject them to some liability, I know with regard to software companies where they rely on licenses quite a bit, all of a sudden maybe the laws in that particular country are a little bit different and they have an equivalent of a first sale doctrine and maybe all of a sudden you've inadvertently kicked in the first sale doctrine even though they've never actually sold in that particular country. So that's also another consideration.

MARIA PALLANTE: Yes, Danny?

DANNY O'BRIEN: Just very quickly just to again shift this to the other context. I think there's interesting comparison with these kind of conundrums and the possibility of being able to take a legal copy and transform it into a viewable or acceptable format. And in those sort of cases, you sort of neatly sidestep this issue because what you're dealing with there is a lawful copy as Jamie says, in that particular context. And you are granted a permission to render that into an accessible format. Now, that limits given that there's a limit to how much a commercial eBook can be turned

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into a perceptible format. But we're much closer to that situation now where there's a growing and rising eBook backdrop than we were when we were talking about trying to convert books into an accessible format.

And that sort of gets around this problem by just moving this idea of what's a legal copy, who has liability, into the area of being able to make a personal copy that's perceptible.

MARIA PALLANTE: Michelle?

MICHELLE WOODS: Yes. Just getting back to the objective of this whole day has in part been for us to go to WIPO and report, and then there may well be discussion about what WIPO can do in this area. And I understand there are views for and against working on a treaty, but putting that aside, what else would you like us, if we had the opportunity, to ask WIPO to get involved on this issue? What else would you like us to ask WIPO to do? Are there things WIPO can do in terms of training, in terms of helping with standardization of formats, developing technical norms, maybe helping to train and develop trusted intermediaries in countries that don't have them? Those are just some

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suggestions. Are there ideas that you have for us and for WIPO about what WIPO could do across the spectrum of what we've talked about today?

MARIA PALLANTE: If you could raise your hands. I have Dr. Kerscher, I have Carrie, Jamie. Okay. George?

GEORGE KERSCHER: Okay. SO one of the things that has resonated with me was Peter's statement about, he doesn't know these libraries. And I understand that. You don't want to give the keys to the kingdom to people you don't know. So the relationships haven't been established.

I know these people, and I trust their organizations, but you don't. So perhaps one of the things that could be done is to establish a mechanism for existing trusted intermediaries who want to work together to model it, to do it on a small scale. I don't know how many libraries, but if there's a way under a provisional treaty or -- I don't know -- a way to authorize the movement of content across national boundaries, establish the policies, procedures, best practices, protection, invite publishers to view the

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process and become comfortable with the trusted intermediaries that -- everybody knows RFB&D and Bookshare and Library of Congress here and that's great, but once you get outside the United States, you don't know those people. So maybe we could help there.

Of course, I was helping Alicia Wise (ph) draft a proposal where we talked about the software development training materials for publishers to help them in their publishing process. The amount of money that was being asked of WIPO to do this was pretty small. But those kinds of things would help a lot. Pearson's a big company and got a lot of resources, they're getting it together. The smaller publishers, they don't understand, if we could help them with their publishing processes, provide training, tech support, website, forums to ask questions, those kinds of things, that would help, and develop the best practices with the people who are willing to develop it and then share that information in the industry, I think all of those things are great ideas.

MARIA PALLANTE: Thank you for that very constructive suggestion -- sort of pilot project.

Carrie?

CARRIE RUSSELL: I agree completely with what George just said. I think that we can help other countries by being models for them. The three-step test I think for many people, is a lot tinier, a tinier allowance than Michael believes that it is. So I think we need to help people in other countries realize that the three-step test can help them establish -- if this is possible -- can help them establish exceptions in their country like we have. I think encouraging people to do that, I think that because of how countries -- countries seem to be much more hesitant. I think we know this is true, to initiate any exceptions. So somehow they think the three-step test is very, very small.

MARIA PALLANTE: Jamie?

JAMES LOVE: Well, there was a long time when the World Blind Union was trying to get WIPO to do some model legislation on exceptions for the blind. One issue that you come up with on something like that is that that itself can become a negotiation. And so, it's not always possible to avoid having a negotiation.

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If anything that's really going to be important it's going to be controversial. I'm just saying as a practical matter.

One of the initial model laws they had was something that did not include for example, the Chafee Amendment. I didn't really hear the United States complaining about the model law because it didn't have the liberal Chafee Amendment provision. I was a little disappointed not to see American negotiators sticking up for American traditions in the model law in WIPO -- that would have been good. And maybe you can insist that if there is model legislation, it is as liberal as the Chafee Amendment as is released in nonprofit institutions. That would be very patriotic. That would be good.

Another thing would be, in terms of the pilot projects, I think that most people see the pilot projects as really a constructive and useful things. I know that the World Blind Union, DAISY and other people have worked very hard on this trust-building, and with the publishers to sort of have some trust-building exercises. I see these things as operating in parallel

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with discussions about other norm setting things because at the end of the day, they won't work unless you have figured out the details of these trust-making things. And I don't see why you'd want to wait for either thing. Both of them are going to take a while, and if you think the books before were dead slogan in the UK Right to Read campaign is important, you might get going now on some of these things.

Now, there is a big issue of can you export under limitations and exceptions. And a pilot project to violate a law or treaty is good. I'm all for it. Don't get me wrong. Some people might not be quite as enthusiastic about that end of things. And so if you want to have like a temporary suspension of treaty obligations or national laws, that's interesting, too. Now, you might just - if people don't know if you can do a copyright exception across borders, you might just go to -- instead of WIPO you might go to the WTO. They did that on the Doha Declaration. They had this problem of exporting drugs for medicine across borders and they had a separate declaration on November 14, 2001 in Doha where they clarified that they would find

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a solution, and two years later they did on that topic.

Maybe some people here would rather see the World Trade Organization instead of WIPO and having you say something about what the trip does or does not say about the three-step test as it relates to this problem. I think that might be actually something to think about if you're looking around for things to do other than to go to WIPO. That seems to me at the root of the problem about whether you can import and export across borders.

The other thing is that WIPO -- the proposal WBU and that will be tabled by Brazil, calls for a database of available works by WIPO. Actually, Michael talked about this earlier -- it's Article 10 in the WBU proposal. And actually I think that would be a very useful thing for WIPO to do, for a couple of reasons. It would make it very transparent about what the landscape of accessibility was, and it would promote the interest of publishers that are trying to make accessible works in both the nonprofit and the for profit fields. So if Pearson wants to advertise it as successful works, if the Bookshare wants to advertise -

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- if anybody has an accessible work, I think that would be good. And that's something that WIPO could do without a treaty. They could set up such a voluntary database.

MARIA PALLANTE: Thank you, and I feel compelled to say if it wasn't clear that the United States government was not suggesting that we voluntarily violate a treaty but rather that we somehow have a facilitating role in a pilot project that might be a voluntary business model between publishers, libraries, technologists, et cetera.

JAMES LOVE: There's voluntary licensing that's taking place right now, and it doesn't require WIPO. Bookshare's doing it already, and there's conversations year-in, year-out, month end and month end. It shouldn't be a bad face smokescreen and kind of like a strategy to deter people from WIPO doing its job, which is dealing with intellectual property norms by turning a work agenda at WIPO on copyright limitations and exceptions on a negotiation session with the publishers, which arguably should be taking place outside of that UN agency -- unless you want the

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UN to start supervising all the negotiations of all your licensing contracts. That would be interesting. I think we should consider that.

But if it's about setting intellectual property norms and not about managing Random House, maybe you've got the wrong job. The other thing you might ask is you might ask the President of the United States, Obama, who disabled text to speech on those books about two weeks ago through Random House, and Vice President Biden, who did the same thing, that that sets a very bad example. And when he lines up with the Pope and Mother Teresa and they all disable their books so people who are blind can't get access to them on Kindle, I think that really shows the gap between what's happening on the ground and what should happen on the ground.

MARIA PALLANTE: Okay. We're approaching 5 o'clock, so at this time I'd like to ask my colleagues on the Panel if they have any final questions? Neil, Michael, Michelle, Steve? And now, to the participants, does anybody have any final concluding remarks? I've got Mr. Mudd, Mr. Adler, Mr. Love.

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Okay. Carrie, the floor is yours -- Gary?

GARY MUDD: I just wanted to make a correction to something I said earlier. Allan asked if the Louis database and the NIMAC repository were working together, were searchable together. I said yes, it is this summer that they will be searchable, and that's why I wanted to correct that. Thank you.

MARIA PALLANTE: Allan?

ALLAN ADLER: Well, I just wanted to finish by, we've been talking about this treaty that apparently is going to be tabled at the meeting but we haven't really talked much about it. This treaty contains a provision on circumvention of technological measures, it contains a provision on often works for commercial uses -- this is pretty far-reaching stuff that as far as I can tell, goes way beyond the issue of whether or not we can provide accessible versions of American works outside American borders.

It just seems to me that our government -- meaning no disrespect to the Panel of course, because you weren't in that particular segment of the government -- but our government in the form of the

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U.S. Congress has pretty much left the publishing industry and the other stakeholders here to flounder around with this issue. Which is why as I say, in the past 13 years we've devoted as much time working on state and local legislation as we have on federal legislation, and now we're being asked to consider an international treaty. I don't think that the issue of ensuring cross-border access to accessible versions of works is at this stage of the process, a sufficient justification for moving away from all of the unresolved work that's still left in trying to develop consensus -- harmonization if you will, beyond just standards on these issues in the way they're addressed here in the United States.

It's pretty clear to me that publishers -- I see this within my own organization's membership -- make their own decisions about what to do with this based on what they think is appropriate and good for them in the marketplace. Many of them have decided, as I said, to work with Bookshare. Others are working through other means. We know that there is some voluntary licensing across border that these publishers

have agreed to.

I really think we should be seeing more of that continue to percolate in finding ways in which we can continue to develop those efforts before we reach out to something that is so far beyond anything that we've accomplished here in the United States and anything that's likely to meet the requisites for participation by other countries who've accomplished even less on this issue than we have here.

MARIA PALLANTE: Thank you. Jamie?

JAMES LOVE: Well, I look forward to Allan's endorsement that the U.S. pull out of the active negotiations, because all of these foreign distractions are obviously overtaxing our ability to solve domestic issues. But I mean, the reality is is that Allan's organization and Fritz's organization are hyperactive through the USTR, through bilateral trade pressures, through FDA negotiations, regional negotiations, unilateral actions through the World Customs Union, through the act in a million different ways, to have international norm setting activity in areas that they think are in the interest of the publishers to enforce

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and expand their rights.

Now, I think that -- they're businesses. They have a reason to do that. People that have reading disabilities, that can't even read a book, in other countries, countries that have like 100 books in Braille available to them or something like that -- they also have rights and they have interests. And they're going to expect that there be some attention to their needs as well. IN fact, I think they've been underserved for the past two decades.

And so this sort of idea that the domestic agenda is so important you can't do the international - - well, just fire all your international lobbyists, because they are really, really making a lot of work for us, too. Let's just call truce on all the international negotiations for a while. But that's not going to happen. I wish it would happen, but it's not going to happen. So I think that realistically, international policy is not just about the giant big powerful corporations that control this town. It's for ordinary people. It's for people who are powerless and weak, because in politics sometimes they're given a

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voice by some political figures that think they count.

MARIA PALLANTE: And Carrie, the last word?

CARRIE RUSSEL: I just wanted to given the maze of Chafee and everything else that is out there, the new technologies, I just want to commend the existing federal agencies that are working with the blind and visually impaired, the Recording for the Blind and Dyslexic, the National Library and the American Printing House -- they do an excellent job given what they have, and they're very dedicated workers. And their librarian agents throughout the states have been really amazing people to talk to.

MARIA PALLANTE: Thank you for that. Okay. Well, that concludes our day. Again, on behalf of the Copyright Office and USPTO, we are very grateful for our time and the comprehensive remarks that were made here today. The transcript, both written and audio, we're hoping will be on our website, copyright.gov, later this week. And with that, I'd like to turn it over to Michael Shapiro, who is of course the head of the U.S. Delegation, for some concluding remarks.

MICHAEL SHAPIRO: Thanks, Maria. At the end

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of a long and I think enormously productive and stimulating day here in beautiful Washington, D.C., I've been asked to say a few words of where we've been and where we are and where we will be going or might be going at the international level. At the 17th Session of the Standing Committee on Copyright and Related Rights at WIPO, we had a very stimulating discussion also of exceptions and limitations broadly, including exceptions and limitations for the blind and visually impaired. And at that meeting, the U.S. Delegation promised that we would come back home and begin a series of consultations with all of the stakeholders whose equities and interests touched on this important issue. And when I said that, I was very hopeful that the discussions would be productive and stimulating. I think as a first round, this session far exceeded my expectations. I've enjoyed every minute of it. I've learned a great deal.

So what's going to happen next? Next week the U.S. Delegation will leave Washington and go to Geneva for the 18th Session of the Standing Committee on Copyright and Related Rights. And at that session, we

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will provide a briefing on what we've learned from the public comments, the reply comments, and today's discussions. We will do so with the hope that we will stimulate a discussion in that forum and learn from other delegations as well, because we firmly believe that in this discussion it's so important to begin them at home where the voices of all stakeholders can be heard. And we want to learn from our other colleagues what they're learning as well.

Finally, we expect to provide this additional information, and we assume that this will be the beginning of a conversation that will advance this important topic. That's where we are.

MARIA PALLANTE: Thank you, everybody, and for those of you that have traveled, safe travels.

(Whereupon, at 5:01 p.m.,
the proceeding was concluded.)

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CERTIFICATE OF COURT REPORTER

I, NATALIA KORNILOVA, the office before whom the foregoing hearing was taken, do hereby certify that the witness whose testimony appears in the foregoing pages was recorded by me and thereafter reduced to typewriting under my direction; that said hearing is a true record of the proceedings; that I am neither counsel for, related to, nor employed by any of the parties hereto, nor financially or otherwise interested in the outcome of this action.

NATALIA KORNILOVA

NOTARY/COURT REPORTER

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