



August 24, 2018

via e-mail

Kevin Amer

Senior Counsel for Policy and International Affairs

Anna Chauvet

Assistant General Counsel

United States Copyright Office, Library of Congress

**Re: Docket No. 2017-10
2017–2018 Section 1201 Triennial Review
Proposed Class 2—Disability Services
Notice and Summary of Ex Parte Communications**

Dear Mr. Amer and Ms. Chauvet,

On Wednesday, August 22, Jonathan Band, counsel to the Library Copyright Alliance (LCA) (in person) and Blake Reid, counsel to the Association of Transcribers and Speech-to-Text Providers (ATSP) (via telephone) met with Kevin Amer, Anna Chauvet, Regan Smith, Nick Bartelt and Mark Gray of the Copyright Office about the above-referenced matter. This letter summarizes that meeting per the Office’s guidelines for ex parte communications on the matter¹

The Office requested clarification about software used to add audio description to video. Different vendors and disability services professionals use different approaches, but one possible method is using software such as the National Center for Accessible Media’s Caption And Description Editing Tool (CADET) to locate and timestamp pauses in the audio track of a video to develop a written script that can then be recorded by a voice actor and added as an audio track to the video.² Most approaches share in common the development and voice recording of a script and addition of the recording as an audio track to the video.

Mr. Band and Mr. Reid also clarified several points:

- While some non-captioned and/or non-described videos may be re-released under some circumstances with captions and/or description, that practice does not occur with all videos (particularly with respect to audio description, which remains rare on commercial titles). Moreover, the subsequent release of a captioned or described version of a video and does not obviate the need for

¹ <https://www.copyright.gov/1201/2018/ex-parte-communications.html>.

² CADET Documentation: Describing, <http://ncamftp.wgbh.org/cadet/help/describing.html>.

educational institutions to caption or describe inaccessible archival content on which teachers and students rely.

- There is no evidence on the record to support the speculation of opponents that the exemption, if granted, could be used for the purpose of facilitating copyright infringement. Procuring the services of a disability services office to circumvent a technological measure to attain access to a video in an educational context would be an absurdly convoluted approach for someone seeking to engage in infringement, particularly given that doing so would exclude them from the protection of the exemption and expose them to additional liability under provisions of copyright law other than Section 1201.
- Granting the proposed exemption will not only ensure that the civil rights of students with disabilities are vindicated by ensuring that they can view educational video content on equal terms, but will benefit all students by ensuring that educational institutions and teachers do not withdraw video from use because they cannot make it accessible out of fear of exposure to copyright liability.
- As we noted in our reply comments and at the public hearing (in which opponents of the exemption chose not to participate), ATSP and LCA remain amenable to reasonable limitations on the exemption to ensure that it is used only for legitimate efforts to make videos accessible in educational contexts.
- We acknowledged the video industry's efforts to make videos accessible both voluntarily and in compliance with regulatory initiatives and expressed our hope that the need to circumvent will decrease over time as copyright holders make their video libraries more readily available from the outset in accessible formats.

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Please don't hesitate to contact me if you have any questions.

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Respectfully submitted,

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CC:

J. Matthew Williams, Counsel to AAP, MPAA and RIAA