

**Submission on behalf of Joint Creators and Copyright Owners
Class 8: Literary Works -- Accessibility**



[] **Check here if multimedia evidence is being provided in connection with this comment**

ITEM A. COMMENTER INFORMATION

The Motion Picture Association, Inc. (“MPA”) is a trade association representing some of the world’s largest producers and distributors of motion pictures and other audiovisual entertainment for viewing in theaters, on prerecorded media, over broadcast TV, cable and satellite services, and on the internet. The MPA’s members are: Netflix Studios, LLC, Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Universal City Studios LLC, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc.

The Alliance for Recorded Music (“ARM”) is a nonprofit coalition comprising the many artists and record labels who together perform, create, and/or distribute nearly all of the sound recordings commercially released in the United States. Members include the American Association of Independent Music (“A2IM”), the Music Artists Coalition (“MAC”), the Recording Industry Association of America, Inc. (“RIAA”), hundreds of recording artists, the major record companies, and more than 600 independently owned U.S. music labels.

The Entertainment Software Association (“ESA”) is the United States trade association serving companies that publish computer and video games for video game consoles, handheld video game devices, personal computers, and the internet. It represents nearly all of the major video game publishers and major video game platform providers in the United States.

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ITEM B. PROPOSED CLASS ADDRESSED

Proposed Class 8: Literary Works – Accessibility

ITEM C. OVERVIEW

MPA, ARM and ESA (“Joint Creators and Copyright Owners”) did not oppose renewal of the existing exemption for circumvention to create accessible versions of literary works distributed electronically and do not oppose this proposal to the extent it is necessary to ensure that the U.S. fully complies with the requirements of the Marrakesh Treaty to Facilitate Access

to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (“Marrakesh Treaty”). Rather, we seek clarification that the “phonorecords” referenced in the petition – but not in the Notice of Proposed Rulemaking’s description of the class of works – cover only audiobooks and do not cover the circumvention of sound recordings of performances of musical works such as those distributed by ARM members.

ITEM D. TECHNOLOGICAL PROTECTION MEASURE(S) AND METHOD(S) OF CIRCUMVENTION

Petitioners American Council for the Blind (“ACB”), The American Foundation for the Blind (“AFB”), Library Copyright Alliance (“LCA”), The American Association of Law Libraries (“AALL”), Benetech/Bookshare, and HathiTrust seek to circumvent technological protection measures that either prevent the enabling of read-aloud functionality or interfere with screen readers or other applications or assistive technologies. They mention specific examples involving encryption technology that may hinder interoperability between platforms or devices, prevent assistive technologies from working, or render the contents of an e-book file inaccessible. They also refer to technologies that may impair the remediation of sheet music available in electronic files.¹

ITEM E. ASSERTED ADVERSE EFFECTS ON NONINFRINGEMENT USES

Petitioners request several changes to the current exemption that allows for circumvention to enable read-aloud functionality for e-books. The Joint Creators and Copyright Owners have not opposed renewal of that exemption for several cycles. The proposed modifications seek to harmonize the existing exemption with the language of the Marrakesh Treaty Implementation Act and to bring the U.S. into compliance with the Marrakesh Treaty. To the extent the proposed changes are consistent with the amendments in Sections 121 and 121A – including the specific limitations and requirements therein –we do not oppose them in light of the U.S.’s accession to the Marrakesh Treaty.

We do seek clarification from the Petitioners and the Copyright Office that the “phonorecords” included in the proposed exemption refer only to audiobooks and do not cover the circumvention of phonorecords in which performances of musical works are fixed. Such phonorecords are not the subject of the Marrakesh Treaty, Section 121, or Section 121A.²

Including sound recordings of performances of musical works would also be inappropriate because the circumvention of phonorecords to obtain access to such performances would be unnecessary, as such sound recordings are generally available on discs or for digital download without technological protection measures. This is an alternative to circumvention. For quite some time, CDs and many downloads obtained from legitimate online retailers have not included access controls. While DRM is used to enable immensely popular subscription services such as

¹ ACB, *et al.*, Class 8 Long Comment at 11-12 (Dec. 14, 2021), https://www.copyright.gov/1201/2021/comments/Class%2008_InitialComments_Accessibility%20Petitioners%20II.pdf (“ACB 2020 Comment”).

² See World Intellectual Property Organization, Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, June 27, 2013, 52 I.L.M. 1312, <https://wipolex.wipo.int/en/text/301016>.

Spotify, Apple Music and others, which provide access to streams and time-limited downloads, it would be inappropriate to allow for such streams and reproductions to be retained permanently – in violation of applicable terms and conditions of service – when unencrypted downloads and discs are available in the marketplace at reasonable prices. Doing so would negatively impact the market for sound recordings and would undermine their value.

F. DOCUMENTARY EVIDENCE

We have included hyperlinks to webpages/documents within the body of this document. We are not submitting any other documentary evidence.

Respectfully submitted:

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