November 10, 2009

Benetech's Comments in response to the Copyright Office Notice of Inquiry and Request for Comments on the Topic of Facilitating Access to Copyrighted Works for the Blind or Other Persons With Disabilities

Summary of Comments:

Benetech, a leading Silicon Valley technology nonprofit and operator of the Bookshare online library for people with print disabilities would like to make the following major points on the topic of access to copyrighted works for people with print disabilities:

1. Our CEO, Jim Fruchterman, participated in the drafting process of the proposed World Blind Union treaty under discussion at the World Intellectual Property Organization. We support the treaty and recommend that the United States support this treaty.

2. The main benefit of this treaty will be to extend the benefits of the enlightened approach demonstrated by the United States in adopting the Section 121 exemption, to all people with print disabilities worldwide, through setting global norms around disability access. We think the benefits to society will be especially notable in less developed countries.

3. A secondary benefit of the treaty will be to increase cross-border access and cooperation around accessible materials, reducing the need for duplicative and expensive work. Cross-border importation might well represent the majority of accessible works made available to people with disabilities in many developing countries.

4. The publishing industry consistently fails to make accessible materials available for sale, even when it's possible and there's a high degree of willingness on the part of people with disabilities and schools to pay for such materials. The recent Amazon/Authors Guild dispute has pointed out to people with disabilities how dangerous it is when their civil rights are easily trampled via assertion of contractual rights, when authors demanded the silencing of the read-aloud function on the Amazon Kindle and this function was disabled within a month.

Detailed Comments:

1. How the treaty proposal would interact with existing U.S. law?

   Our objective in drafting the treaty was that it would be compatible with existing U.S. law, especially Section 121. It would extend the benefits of Section 121 to cover

materials created outside the United States, opening up new accessible content to Americans with print disabilities. Article 4(c) on a constrained exemption for for-profit entities is not part of the existing Section 121 provisions, but our belief was that it was drawn sufficiently narrowly to not materially impact the economic interests of rightsholders.

2. How [would] the treaty proposal … interact with existing international obligations of the U.S.?

   The intent of the treaty drafters was to create a proposed treaty that would be consistent with other relevant international obligations of the U.S. Support for the treaty would help implement the relevant provisions of the UN Convention on the Rights of Persons with Disabilities, which has been signed but not ratified by the United States.

3. What are possible benefits or concerns about the treaty proposal, including with regard to the objectives of the treaty proposal, how those objectives could lead to improved access for the blind and visually impaired, and any concerns about the implementation of the proposed treaty provisions in the U.S. or abroad?

   We think the benefits of the proposed treaty are primarily to extend the benefits enjoyed by Americans under Section 121 to people with print disabilities globally. Many, many countries do not have these provisions, and those disability communities are almost completely lacking in access. By having such an exemption as a global norm, and allowing cross-border implementations, we see this as having a dramatic impact on the educational and employment opportunities of tens of millions of disabled people.

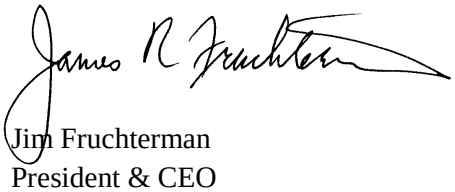
4. What are other courses of action that would facilitate access by ''blind, visually impaired, and other reading disabled persons.''

   Access for people with disabilities is a classic example of market failure. The need is there, but not economically attractive. Looking at progress on this problem, the contrast between countries with exemption environments and those without are striking. With an exemption, the nonprofits serving these disabled communities and the communities themselves have an opportunity to address the issue in the absence of action from the publishing industry. Access to crucial materials is not at the whim of a publisher or author, nor is it thwarted by simple inaction or the increasingly unstable business environment in the publishing industry.

   Some segments of the publishing industry have proposed voluntary action by rightsholders to meet this need. But, this is simply the status quo. If voluntary action was enough, the problem would be at least mostly solved. But, it's not. And, people with disabilities continue to be confronted by the consequences of voluntary action. A

noteworthy recent example is that Adobe Systems, one of the leading vendors of ebook technology, recently launched a new version of their ebook software which was inaccessible to the blind. A voluntary compliance regime means that accessibility can be trumped by any number of players: from technology vendors to authors to publishers, any one of whom by simply not bothering to care about the issue. Do we really want fundamental human rights of people with disabilities to depend on a chain of voluntary action by actors who fundamentally do not have an interest in accessibility?

Sincerely,



Jim Fruchterman
President & CEO