

**Before the
U.S. COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, DC**

In the Matter of)
)
Facilitating Access to Copyrighted)
Works for the Blind or Other Person)
With Disabilities)
)
Notice of Inquiry and)
Request for Comments)

COMMENTS OF NATIONAL PUBLIC RADIO, INC.

Introduction And Summary

National Public Radio, Inc. (“NPR”) hereby submits its Comments in the above-captioned proceeding regarding a proposed treaty to facilitate access to copyrighted works by persons with print and other sensory disabilities.¹

NPR is an internationally acclaimed producer and distributor of noncommercial news, information, and entertainment programming. A privately supported, not-for-profit membership organization, NPR serves a growing audience of 27.5 million Americans each week in partnership with more than 900 independently operated and programmed noncommercial educational (“NCE”) radio stations. With original online content and audio streaming, NPR.org offers hourly newscasts, special features and archived audio and information. NPR Labs conducts laboratory and field testing to identify, evaluate, and advance the application of innovative technologies in support of the public service mission of NPR and its member stations.

¹ *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*, 74 Fed. Reg. 52,507 (Oct. 13, 2009) (“*Notice of Inquiry*”).

NPR's interest in this proceeding starts with a longstanding commitment to serving the sensory-disabled community. Many NPR member stations have transmitted local radio reading services for many years, enabling print-impaired listeners to receive news, information, and culture through the reading of newspapers, magazines, books, and other printed materials. NPR Labs is now in the process of developing the digital HD Radio[™] technology to extend the reach of these services and also to bring about "captioned" radio for the hearing impaired. These services are dependent on an exemption in the Copyright Act, permitting certain entities, including NCE stations, to perform nondramatic and certain dramatic works for the intended audience. 17 U.S.C. § 110(8), (9).

As both a user and a creator of copyrighted works, NPR appreciates the important social benefits associated with protecting copyrighted works and facilitating access to such works for print- and other sensory-disabled persons. We also recognize the difficulty of achieving an appropriate balance between the two, especially in the context of a proposed international treaty to create a categorical exception to copyright protection crossing a wide range of national legal systems. Indeed, it may be that access is better facilitated through private and other non-legal means, or by seeking changes at the national level, but we encourage the U.S. Delegation to maintain an open approach. Exempting uses of copyrighted works to facilitate access to such works requires careful consideration, but it need not impair the reasonable interests and expectations of copyright owners, and it is an objective of profound importance.

Discussion

I. Other Copyright Act Limitations In Addition To The Chafee Amendment Have Been Essential To Preserving And Promoting Access To Copyrighted Works For Print- And Other Sensory-Disabled Persons

While much of the Notice of Inquiry and the prior fact gathering in this proceeding have concerned the so-called Chafee Amendment,² it is important to consider other provisions of the Copyright Act that facilitate access to protected works. In particular, the Act exempts the performance of literary works as part of a transmission designed for and primarily directed to print or hearing impaired persons. 17 U.S.C. § 110(8), (9). NCE radio stations are among those authorized to transmit such performances, and many NPR member licensees have transmitted such services for decades. NPR, through its NPR Labs, is also pioneering the development of the HD Radio technology to extend these services in a fundamentally new way and, for the first time, to offer captioned radio. While the future of digital radio technology looks bright, preserving ready access to otherwise protected works will be essential to assuring the availability of these important, life-line services.

The first radio reading service, the Minnesota Radio Talking Book, was established in 1969 in association with Minnesota Public Radio.³ Involving the on-air reading of newspapers, magazines, and books, radio reading services soon spread to other areas as local community groups and NCE radio stations began offering their own services. Today, these services are

² *Notice of Inquiry*, 74 Fed. Reg. at 52,508; *Notice of Inquiry and Request for Comments on the Topic of Facilitating Access to Copyrighted Works for the Blind or Persons With Other Disabilities*, 74 Fed. Reg. 13,268, 13,269 (Mar. 26, 2009). The Chafee Amendment permits authorized entities to reproduce and distribute certain literary works in specialized formats for use by blind or other persons with disabilities. *Notice of Inquiry*, 74 Fed. Reg. at 52508. See 17 U.S.C. § 121.

³ See www.mnssb.org/allages/commcenter/.

offered through a variety of means, but most commonly via the subcarrier ("SCA") frequencies of NCE radio stations.⁴ As a result, one must use a special SCA receiver to access a radio reading service. Consistent with the limitations set forth in Section 110 of the Act, these receivers are provided to individuals upon proof of a vision impairment.

For public radio, service to unserved and underserved audiences has long been central to its mission.⁵ Radio reading services are one of public radio's significant efforts to serve the needs of an underserved audience. Scores of NPR Member stations operate radio reading services for the reading of everything from local and national news to grocery store promotions. For instance, Tri States Public Radio has operated a reading service for more than 30 years, and more than 100 community volunteers participate each year.⁶

With the ongoing transition to digital HD Radio, new opportunities to serve the sensory-disabled are now possible. HD Radio technology allows individual stations to transmit multiple channels of content, including variable combinations of broadcast, voice-grade, and data services, including at very low bitrates. Because HD Radio technology also supports addressability, it is now possible for a station to use a main channel instead of a subchannel to transmit radio reading services. This, in turn, would permit a blind or other print-disabled listener to receive the service with a standard HD Radio receiver, which would substantially improve the quality of reception and promote the general availability of these services to their

⁴ "A subcarrier, known also as Subsidiary Communications Authority or SCA, is a separate audio or data channel which is transmitted along with the main audio signal over a broadcast station." <http://www.fcc.gov/mb/audio/subcarriers.html>. See 47 C.F.R. §73.293.

⁵ In enacting the Public Broadcasting Act of 1967, Congress declared that "it is in the public interest to encourage the development of programming that . . . addresses the needs of unserved and underserved audiences." 47 U.S.C. § 396(a)(6).

⁶ See www.tristatesaudio.org/about.asp.

intended audience.⁷

Recognizing the tremendous service potential of the HD Radio technology, NPR has devoted considerable resources to making radio more accessible to people with sensory disabilities.⁸ The National Institute on Disability and Rehabilitation Research ("NIDRR") of the Department of Education has provided NPR, through NPR Labs, with a multi-year grant to examine ways of making radio more accessible to both the print- and hearing-disabled communities. As part of the grant, NPR Labs has been working with Towson University, iBiquity Digital Corporation, Harris Corporation and others on developing the practical tools necessary for allocating a portion of the digital bitstream to the offering of radio reading services.

Also as part of the NIDRR grant, NPR has developed and demonstrated the first live, over-the-air captioned radio for the hearing-impaired. The first demonstration took place at the Consumer Electronics Show in Las Vegas in January 2008.⁹ Last fall, NPR coordinated the first radio captioned election night broadcast coverage to groups of hearing impaired "listeners" in five cities around the country via NCE radio stations, WTMD in Baltimore, WGBH in Boston,

⁷ Historically, SCA receivers have been produced by specialty manufacturers because the market for them has been relatively small, and receiver quality has tended to suffer.

⁸ See DAB Second R&O, 22 FCC Rcd. at 10376 (encouraging NPR to continue testing HD Radio as it affects those with sensory disabilities).

⁹ Subsequent demonstrations were held at the National Press Club in Washington, D.C., the North American Broadcasters Association Annual General Meeting, the National Association of Broadcasters convention, the National Council on Disability Board, and the Deaf and Hard of Hearing Consumer Advocacy Network board meeting. The demonstration unit remains in continuous display and operation at NPR Headquarters in Washington, D.C. See generally <http://www.nprlabs.org/research/accessibleradio.php>.

KJZZ in Phoenix, KCFR in Denver, and WAMU in Washington, DC.¹⁰ NPR intends to commence continuous captioning of its news programming as soon as funding is identified to support the costs of live captioning.

With the emergence of HD Radio revolutionizing the transmission of these targeted services for the sensory-disabled, there will be a continued need for a copyright exemption for the foreseeable future. Radio reading services are highly decentralized and largely managed and staffed by community volunteers. Having to clear rights for a broad and diverse range of newspapers, magazines, books and other printed matter would be administratively impractical, even assuming cost were not an issue. These services provide an information life-line for many people who have limited access to information otherwise, but who often cannot afford to pay for commercially marketed information services. Of course, these services also provide access to works that are simply unavailable in formats accessible to the sensory-disabled.

II. Whether Through A Treaty Or Other Means, A Commitment to Facilitating Access to Copyrighted Works For Print- and Other Sensory-Disabled Persons Is Essential To Ensuring Such Access

The treaty proposed by the World Blind Union follows the same basic approach embodied in the Chafee Amendment and the Section 110 exemptions by promoting access to copyright works specifically for the print and hearing impaired but otherwise promising to protect the work from further exploitation.¹¹ The potential benefits associated with establishing an international copyright exception could be enormous, but there are sufficient differences

¹⁰ See <http://www.npr.org/about/press/2008/102118.CaptionedRadio.html> (accessed November 7, 2008).

¹¹ See Proposal by Brazil, Ecuador and Paraguay, Relating to Limitations and Exceptions: Treaty Proposed by the World Blind Union (WBU), submitted at the World Intellectual Property Organization Standing Committee on Copyright and Related Rights (SCCR), 18th Session, May 25-29, 2009, available at http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=122732

between the proposed treaty and domestic U.S. law to warrant caution so that copyright interests are adequately protected.

The proposed WBU Treaty differs from the Chafee Amendment and Section 110 in several important respects. First, and for obvious reasons, the Treaty would establish an international regime exempting copyrighted for the specified use. Second, the Treaty appears to exempt all categories of copyrighted works rather than specifically designated ones. *Compare* WBU Treaty, Article 4 *with* 17 U.S.C. §§110, 121 (nondramatic and certain dramatic works).

Third, the Treaty does not specify who may engage in the authorized exploitation of works. By contrast, the Chafee Amendment authorizes the reproduction and distribution of certain literary works by an "authorized entity," which is defined to mean a nonprofit organization or governmental agency that has a primary purpose to provide related services to blind or other persons with disabilities. 17 U.S.C. § 121(a), (d). Section 110 authorizes transmissions through the facilities of a governmental body, a NCE station, a radio SCA, or a cable system, in the case of nondramatic literary works, 17 U.S.C. § 110(8), and via a radio SCA, in the case of certain dramatic literary works. 17 U.S.C. § 110(9). Performances under Section 110 also must be made without any purpose of direct or indirect commercial advantage. 17 U.S.C. § 110(9).

The latter two differences, in particular, are significant. Exempting anyone to exploit any work subject only to the limitation on the ultimate end user creates a not insubstantial risk that works may be diverted to unauthorized users and uses. By relying on "trusted organizations" and, in the case of radio reading services, exempting only performances of specified categories of works, the current Copyright Act exemptions limit the likelihood of unauthorized uses and

("WBU Treaty").

provide greater accountability in the event such uses were to occur. WIPO consideration of the draft WBU Treaty should therefore consider whether changes should be made to limit who may engage in the exempted activities to ensure greater accountability.

There may be other reasons why the WBU Treaty framework is insufficiently protective of copyrighted works, especially as the means of disseminating information and content grow more varied.¹² Alternative approaches, such as the WIPO Stakeholders' Platform,¹³ may strike a better balance between the competing objectives of protecting copyrighted works and facilitating access through exceptions and limitations. It is important to remain undaunted by the challenge of resolving these issues, however, because the need for print- and hearing-disabled persons to be able to access copyrighted works is unquestionable.

Indeed, a number of organizations that focus exclusively on providing access to copyrighted works for print- and other sensory-disabled persons have previously testified to the importance of promoting such access,¹⁴ both domestically and internationally.¹⁵ With the U.S. and European "baby boomer" generation now reaching retirement age,¹⁶ the number of persons

¹² Whether a treaty is the best means of facilitating access to copyrighted works for the print and hearing impaired depends on how well a defined copyright exception can be adapted to different national legal regimes.

¹³ *See Notice of Inquiry*, 74 Fed. Reg. 52509.

¹⁴ *See, e.g.*, Comments of the National Federation for the Blind, at 1 (filed April 21, 2009) ("Access to information is among the most important needs that blind people have.").

¹⁵ *See* Comments of Recording for the Blind & Dyslexic, Inc., at 4-5 (filed April 21, 2009).

¹⁶ In the United States, the number of persons 65 years old and older is expected to double by the year 2040. <http://www.census.gov/population/www/projections/summarytables.html> (Projections of the Population by Selected Age Groups and Sex for the United States: 2010 to 2050). *See also* Phillipson, Biggs, Leach, and Money, "Baby Boomers And Adult Ageing: Issues For Social And Public Policy," *Quality in Ageing*, September 2007 (concerning the "baby boom" phenomenon in European countries).

with hearing or visual loss is also expected to climb rapidly.¹⁷ While some may possess the financial means to pay to access copyrighted works, many others will not. Many copyrighted works simply are not available in accessible formats. Specialized services, such as radio reading services and audio description, will therefore remain an essential life-line to local, regional, and national news, information, and culture. Accordingly, we encourage the Copyright Office and the other members of the U.S. Delegation to vigorously pursue its expressed view that "as a matter of policy and principle, properly crafted exceptions and limitations for the benefit of the blind or other persons with disabilities, while taking into account the rights and concerns of authors and copyright owners, are highly desirable."¹⁸

¹⁷ See Desai, Pratt, Lentzner, and Robinson, "Trends in Vision and Hearing Among Older Americans," Centers for Disease Control and Prevention March 2001, *available at* <http://www.cdc.gov/nchs/data/ahcd/agingtrends/02vision.pdf>.

¹⁸ See Statement on Improving Accessibility to Copyrighted Works for Blind and Visually Impaired Persons, as Delivered by the United States of America before the World Intellectual Property Organization Standing Committee on Copyright and Related Rights (SCCR), 18th Session, May 26, 2009 (available at <http://www.copyright.gov/docs/sccr/statement/us-intervention.pdf>).

Conclusion

We heartily support the efforts of the U.S. Delegation in pursuing the important policy and principle of promoting access to copyrighted works for print- and other sensory-disabled persons while protecting the rights and reasonable expectations of rights holders.

Respectfully submitted,

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