

Benetech's Comments in response to the

Notice of Inquiry and Request for Comments on the Topic of Facilitating Access to Copyrighted Works for the Blind or Persons With Other Disabilities

April 20, 2009

Summary:

Benetech, a leading Silicon Valley technology nonprofit, would like to make the following major points on the topic of access for people with print disabilities:

1. The Section 121 and Section 107 copyright exemptions have created systems that are delivering reasonable access to people with qualifying print disabilities in the United States. Our Bookshare project offers all students with print disabilities in the U.S. to request the books they need for school and we'll provide them for free, using the copyright exemption and federal Department of Education funding.
2. 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 brouhaha has pointed out to people with disabilities how dangerous it is when their civil rights are easily trampled via assertion of contractual rights.
3. The rest of the world deserves a copyright exemption regime that delivers similar access to what people with disabilities in the U.S. have. And, provisions for export and import could improve access to foreign copyrighted materials for Americans with print disabilities.

Detailed Comments:

A1. Chafee.

The advance of technology has made it possible for Bookshare to serve over 50,000 people with print disabilities on a cost effective basis. By harnessing the volunteer power of thousands, Bookshare uses Section 121 as the legal structure that enables the downloading of hundreds of thousands of accessible books each year. We believe that this exemption is highly successful and hear from many of our users how these books make it possible for them to pursue education and employment on a more equal basis.

A2. Private Sector Initiatives.

We believe that these have been largely unsuccessful in delivering substantial numbers of accessible books. Disability access is often linked with potentially promoting piracy, and technology vendors and publishers have regularly locked people with print disabilities out of the electronic book market. Our paper, the Soundproof Book, talks about the background of this problem. In contrast, with supportive laws in place internationally, successful nonprofit models, such as Bookshare in the US or RNIB in the UK, could be utilized to deliver books to fill the market gap.

A4. Standardized Formats.

We believe that the DAISY format has been hugely successful in advancing accessibility. Almost every piece of adaptive technology that makes text available supports it. The fact that the DAISY format is so closely linked to the commercial publishing industry's standardized formats (such as OeB and ePub), means that it's very easy to turn these commercial formats into DAISY and digital Braille.

A5. Resources

There are insufficient resources to fully solve the accessibility problem. Much of the resources that are employed are used to recreate work that's already done. For example, almost all books being scanned today exist in a reasonable digital form somewhere, but our systems don't encourage the sale of these digital books, or cause the books to be soundproofed: unusable for people with disabilities to gain access. In countries where no legal framework such as Section 121 exists, even an inefficient system is unattainable, with fewer resources brought to bear.

B. Transnational access.

We think that this is a completely broken situation. We see few books coming in or going out of the United States because of the copyright regime's national character. Even between two countries with a similar copyright exemption, cross-border sharing is not allowed in practice. Interlibrary loan and global permission schemes have almost no impact.

Many print disabled students pursue higher education in subjects with strong transnational components such as literature, history, linguistics, spirituality and alternative medicine. These students are often times expected to research and refer to books from other countries and find these are not accessible by them. In India alone there are some special collections and textbooks in all of these topics mentioned above that are referenced by students in AP level classes at the high school level and also by post secondary students. Due to the copyright laws in India these books cannot be made available in an accessible format to the print disabled. One or two hard copies of these rare texts/special collections that are available in the US are preserved by the libraries and cannot be chopped and scanned and made available to these students. This unavailability puts them at a disadvantage when pursuing specialized courses.

C. Possible Actions

C-1 Developing standardized accessibility formats and other technical norms;

We believe that the existing DAISY and ePub standards efforts are strong enough to obviate the need for new standards.. Our experience with DAISY is that it supports almost everything we do and can imagine doing in making books accessible. The international DAISY community and standard are vibrant and responsive to changing needs and capabilities. Our organization has committed voluntary resources to both the NIMAS and DAISY standards efforts because of their value to our mission.

C-2 establishing trusted intermediaries to coordinate resources, eliminate unnecessary duplication of accessible works, and ensure best practices;

In the long term, we believe that mandating equal access through the standard marketplace for digital books is the right solution. Until we get to that nirvana, we believe that trusted intermediaries have and are playing a crucial role. We were pleased that Bookshare has been able to take advantage of Section 121 and our close cooperation with the publishing industry to become a trusted intermediary in the United States. We see eliminating duplicate work and raising quality standard as an essential part of our work.

C-4 promoting market-based solutions achieved through private sector copyright licenses or other agreements;

We think that a compulsory licensing scheme, or public policy forbidding the locking out of people with disabilities from commercial ebooks, would both go a long way to promoting market-based solutions. In the absence of this compulsion, we believe that the track record of the last decade, where accessibility was easy to provide and almost always denied through market solutions, demonstrates that accessibility remains an area of profound market failure.

C-5 developing binding or non-binding international instruments, including a treaty that would establish minimum requirements for limitations and exceptions for blind, visually impaired and other reading-disabled persons.

We are strongly supportive of a binding international instrument that would ensure accessibility, and put accessibility in the hands of communities of disabled people around the world. On a recent visit to Japan, I learned that 9 out of 10 requests for

permissions to publishers there to help the disabled are refused. We need a solution that replicates Section 121 or its equivalent globally, and makes cross-border sharing feasible.

By: James R. Fruchterman, CEO, Benetech