

**Comments
Relating to**

**FACILITATING ACCESS TO COPYRIGHTED WORKS FOR
THE BLIND OR PERSONS WITH OTHER DISABILITIES**

Submitted By

THE SOFTWARE & INFORMATION INDUSTRY ASSOCIATION

to

**THE UNITED STATES COPYRIGHT OFFICE
&
THE UNITED STATES PATENT AND TRADEMARK OFFICE**

April 27, 2009

The Software & Information Industry Association (“SIIA”) appreciates the opportunity to respond to the Notice of Inquiry and Request for Comments published in the Federal Register on March 26, 2009. SIIA files the following comments on behalf of itself and its members.

SIIA is the nation’s oldest and largest trade association representing the software and digital content industries. Our members range from start-up firms to some of the largest and most recognizable corporations in the world. SIIA member companies¹ are leading providers of, among other things:

- business, enterprise and networking software
- software publishing, graphics, and photo editing tools
- corporate database and data processing software
- financial trading and investing services, news, and commodities
- online legal information and legal research tools
- tools that protect against software viruses and other threats
- education software, digital content and online education services
- open source software, and

¹ A list of the more than 500 SIIA member companies may be found at:
<http://www.siiia.net/membership/memberlist.asp>.

- many other products and services in the digital content industries.

The innovative companies that make up SIIA's membership rely upon copyright and other intellectual property protections to protect their copyrighted works from infringement and to serving the marketplace. As a result, SIIA has grappled with important intellectual property issues affecting the software and content industries, such as the issues raised in the Federal Register notice, for many years.

At the same time, SIIA and its member publishers have long recognized the challenges faced by the blind and visually impaired in accessing copyrighted software and digital content, and have a long history of working with organizations that represent the interests of the blind and visually impaired community toward the goal of improving access to their works. Through our efforts with entities like the Section 508 Accessibility Board, and the European Commission, SIIA and our members working constructively and on a collaborative basis to provide the usable tools and services that enable all citizens to participate fully in our information based society. As such, we are familiar with and follow closely global developments for products that enable eAccessibility as well as the relevant policies and laws that address this subject.

SIIA members continue to take steps to meet the goal of making software and digital content products and services accessible to the blind and visually impaired, as well as being at the forefront of providing the usable tools and services that enable all citizens to participate fully in our information-based society. Many SIIA-member publishers work directly with the blind and visually impaired to ensure that the entire community can use their products and services in a format that suits their needs. This includes things like: (i) developing best practices designed to facilitate access to their materials by the blind and visually impaired, (ii) providing technical assistance, coordination and educational outreach, (iii) promoting market-based solutions achieved through private sector copyright licenses or other agreements, and (iv) modifying the form and functionalities of their products and services to make them accessible.

For example, the Access Text project is a program sponsored by the largest higher education textbook publishers. The AccessText Network facilitates and supports the national delivery of alternative electronic textbooks to higher education institutions for students with documented disabilities. Once it becomes fully functional, it will significantly improve the way electronic versions of print textbooks are delivered to campus-based disability student service (DSS) offices from publishers and streamline the permission process for scanning copies of print textbooks when publisher files are unavailable. AccessText will allow campus Disabled Student Services (DSS) offices to more easily and efficiently access alternative texts and materials for students and thus, will facilitate quicker access to content for more students. In our view, this project serves as a good collaborative model for addressing the needs of the blind and visually impaired.

These industry steps and examples are supported by a regulatory and technical standards framework developed over the years to advance the accessibility goal. Regulations include FRA Section 508 and the copyright law's Chafee Amendment, while technical standards include the W3C WCAG and the DAISY ANSI/NISO Z39.86 specifications, among many others.

Of course, technical and other challenges mean that some companies, some types of works and some formats are further along at reaching these goals than others. For example, there have been greater advancements in accessibility for software and digital content delivered over the web. Compatibility and other standards enable screen-reader software to integrate with such web-based offerings in ways that make them usable by the blind and visually impaired.

Admittedly, such integration is not seamless for all software and digital content at this point in time. There remain significant challenges that limit or prevent the compatibility between many software and digital content products and services, the platform and devices through which they are delivered, and the assistive technologies intended to facilitate accessibility. However, software and digital content publishers – often working hand-in-hand with groups representing the blind and visually impaired -- are on a path toward compatibility and accessibility. For example, in many cases publishers will permit licensed customers to use their own software programs and tools to render licensed software and content more usable for authorized users.

In terms of standardized formats, SIIA, its members and key stakeholders are participating in non-governmental and international standard-making efforts to address interoperability and compatibility issues. It would be counter-productive for a governmental entity to begin a new parallel process addressing the same standards issues. Further, because these standards are largely international in nature, the accessing of foreign works of software and digital content should generally not be of concern.

For many of our members, web-based offerings represent a high growth area for their products and services in terms of new users. They have a distinct and significant interest in growing this user base, and that means all users – including those that are blind or visually impaired. No federal mandate or international treaty is necessary to force the software and digital content community to make their copyrighted works available to the blind and visually impaired because the potential profits inherent in serving this market provides more incentive than any legislation or treaty obligation could ever provide.

As for non-web-based offerings, such as print publications, CD-ROM or desktop-resident software, much progress is being made in making these offerings accessible to the blind and visually impaired as well. Many publishers, as well as groups and individuals representing the blind and visually impaired, have found ways to effectively integrate customized/modified screen reader technologies with these products and services. In some cases these efforts may not be as far along as web-based offerings and may not yet be “plug-and-play” ready, but advancements are moving along very quickly in this arena as well and there are many success stories.

For example, Reed Elsevier processes and completes over 2000 requests every year for alternative formats with a turnaround time of only one day. Reed Elsevier will often work with students individually to ensure that they receive a textbook in a format they can use. Many others have followed Reed Elsevier’s lead.

Overall, one of the more significant challenges is the cost of retrofitting offerings for access. Our members generally try to incorporate good accessibility into the first release of a product or

service rather than retrofitting accessibility because it is always more expensive to conduct an accessibility review and to make changes to the code once the offering has been released. Our industry is also cognizant that issues such as the interoperability of tools that enable all citizens to benefit from a robust IT and online environment remain as challenges. It is our view, from our lengthy experience in this area, that working to address those problems through existing collaboration efforts will be more productive and quicker than efforts imposed through a global treaty which may take years, and be out of date by the time they reach fruition.

At this point, we note that the Federal Register notice did not ask for views on a possible copyright treaty on exceptions or limitations for the blind. Consequently, we have not used these comments as a platform for expressing our views on that topic. We understand that the primary, if not sole, purpose of the request for comments is to assist the Copyright Office and Patent and Trademark Office in gathering information about access to copyrighted works for the blind and others with disabilities in preparation for the upcoming May meeting of the World Intellectual Property Organization's Standing Committee on Copyright and Related Rights and, importantly, that any discussion of treaties or legislation in this area is excessively premature.

Nevertheless we do not want our silence on the topic to be construed as agreement that legislation or an international treaty is appropriate at this time. As we noted above, the software and digital content industries have been and continue to work with groups representing the blind and visually impaired to improve access to their software and digital content products and services. However, there is a real danger that these efforts could be adversely affected if WIPO or the any government were to step in and attempt to create and implement copyright-specific mandates or exceptions that bind the hands of these groups.

The two-pronged approach of mutual cooperation and the marketplace – rather than Government intervention – has demonstrated that it is the best way to develop the technological solutions to the specific issues related to facilitating access to copyrighted works for the blind and visually impaired. With each passing day, via the Internet and other digital technologies, the blind and visually impaired are being provided with more options, more alternatives and more opportunities. Businesses, educational institutions and other stakeholders are working in partnership with groups representing the blind and visually impaired to provide a wide range of copyrighted products and services to this previously mostly unreached audience. It would be premature and counter-productive to prescribe in Treaty form the very technologies and market that is facilitating, for the first time in human history, the very accessibility long sought by blind and visually impaired individuals.

Moreover, with technology and business models evolving so rapidly, it would be unwise to attempt to craft a new and potentially complicated framework merely to address concerns that are likely to be addressed more rapidly and effectively by the marketplace than they could be by such a Treaty. The WIPO and governmental decision-making processes are inherently ill-equipped to effectively address the types of issues raised in the Federal Register Notice. These processes are slow and unwieldy. WIPO and its member state governments will not be able to keep pace with the rapid changes in technology – virtually assuring that any standard it codifies is outdated the moment it's printed on the page.

WIPO and its member states understood this dilemma when it enacted the so-called three part test found in article 9 of the Berne Convention and re-affirmed in Article 13 of the Agreement on Trade Related Aspects of Intellectual Property (TRIPs). This test provides the necessary flexibility to address these accessibility issues while not imposing standards that quickly become outdated and prove to be a hindrance.

Government intervention -- in creating, imposing or approving a standard -- is not the solution to these issues. The history of the software and digital content industries has shown that the answer to most technology-based problems lies principally in the stakeholders and the marketplace developing technical and business solutions. The software and digital content industry has worked with the blind community to reach consensus on ways to address numerous accessibility problems in the past. We expect the same with any other outstanding concerns.

In closing, we want to reiterate and stress our willingness to voluntarily work with groups representing the blind and visually impaired to improve access to software and digital content products and services and to thank the Copyright Office and Patent and Trademark Office for soliciting and considering our views. We look forward to working with you and other stakeholders as additional information may be necessary.