

December 4, 2009

Maria Pallante
Associate Register, Policy & International Affairs
U.S. Copyright Office
Office of Policy & International Affairs
Copyright GC/I & R
P.O. Box 70400
Washington, DC 20024

Dear Ms. Pallante:

Please accept my follow up comments in regards to submitted responses that were due November 13, 2009 to the Notice of Inquiry and Request for Comments on the Topic of Facilitating Access to Copyrighted Works for the Blind or Other Persons with Disabilities.

Sincerely,

Dr. George Kerscher
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George Kerscher is Secretary General of the DAISY Consortium, Chair of the ANSI/NISO Z39.86 Specifications for the Digital Talking Book Maintenance Advisory Committee, Senior Officer, Accessible Technology for Recording for the Blind and Dyslexic (RFB&D), Chair of the Steering Council of the Web Accessibility Initiative (WAI), Chair of the EPUB Maintenance working group, and a member of the Board of Directors for the International Digital Publishing Forum (IDPF), which is the standards organization for eBooks.

Within the WIPO Stakeholders Platform, Dr. Kerscher co-chairs the Enabling Technologies working group and co-chairs the Trusted Intermediaries working group.

The views expressed herein are my own and do not necessarily reflect the views of the organizations I am affiliated with.

WIPO Stakeholders Platform

Submitted comments have pointed to the WIPO Stakeholders Platform and to licensing by rights holders to organizations serving persons with disabilities as the proper legal instrument to provide greater access to information by persons who are blind and print disabled. Indeed this is one of the components to a comprehensive solution, but it is only one of the components.

Within the WIPO Stakeholders platform, the Trusted Intermediaries sub-committee is charged to develop a licensing approach that will improve availability of accessible materials to persons who are blind and print disabled. The approach under development is a three year pilot program, which will involve approximately a dozen organizations. The organizations and the publishers have not yet been identified and it remains to be seen if the licenses will be acceptable to both sides. Funding has not yet been secured to progress this pilot, the first step. Those of us on the sub-committee are hopeful that we can work something out through licensing that is acceptable to both publishers and the organizations producing accessible materials, but at this time, there are no agreed upon licenses or legal agreements that we can point to. In addition, many of us believe that the approach would need to work in conjunction with an international copyright exception.

Copyright Exceptions as a Fallback

Even the most optimistic of us recognize that licensing will not solve all the legal issues surrounding the provision of materials. Some of the expected cases where international copyright exceptions are needed are:

1. The international distribution of existing accessible books produced under exceptions: more than 100,000 titles from Bookshare.org and Recording for the Blind & Dyslexic fall into this category. These were not produced under a license and an international copyright exception would clear the way to distribute these through libraries in other countries that serve persons with disabilities.
2. Orphaned works that are under copyright: Having an international copyright exception would allow orphan works where no license can be obtained to be distributed to persons with disabilities.
3. Supplemental materials in support of a commercially available version: We are optimistic that EPUB and DAISY versions, produced by publishers, will be accessible to many persons with disabilities. Yet, figure descriptions and tactile drawings will still be necessary for an equal reading experience. These materials would be produced under exceptions and distributed internationally.
4. Publishers who do not provide a license: While we envision the granting of a license to Trusted Intermediaries to be simple, there is still some work by the rights holder that is necessary. In tight economic conditions, a publisher may not pay attention to anything other than that which

contributes to the bottom line. In those cases where the publisher is unresponsive to licensing, the international copyright exception would need to be used to make the title available.

Global Accessible Library

The monumental work of developing a Global Accessible Library serving persons with print disabilities has been championed by the DAISY Consortium and the IFLA Libraries Serving Persons with Print Disabilities (IFLA-LPD). Its origins can be traced to the first Global Library conference hosted by Microsoft in 2004. The intervening five years have seen technological developments and the growth of DAISY digital publishing in national organizations and libraries.

The vision of the Global Accessible Library builds on a comprehensive approach made up of standards for content (DAISY and EPUB), metadata, licensing, and copyright exceptions.

It is this vision of a Global Accessible Library that is driving both the development of licensing approaches and the need for an international copyright exception.

My personal belief is that an international copyright exception is absolutely needed as we simultaneously develop the partnerships with rights holders and the licensing they are willing to provide.