



ASSOCIATION OF
RESEARCH LIBRARIES

**BEFORE THE COPYRIGHT OFFICE
LIBRARY OF CONGRESS**

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

Docket No. E9-6637

**COMMENTS OF THE AMERICAN LIBRARY ASSOCIATION, ASSOCIATION
OF COLLEGE AND RESEARCH LIBRARIES AND THE ASSOCIATION OF
RESEARCH LIBRARIES**

Pursuant to the Notice of Inquiry (NOI) published by the Copyright Office in the *Federal Register* on March 25, 2009, the American Library Association, the Association of College and Research Libraries and the Association of Research Libraries submit the following comments on the topic of facilitating access to copyrighted works for the blind or persons with other disabilities.

The American Library Association (ALA) is a nonprofit professional organization of more than 67,000 librarians, library trustees and other friends of libraries dedicated to providing and improving library services and promoting the public interest in a free and open information society.

The Association of College and Research Libraries (ACRL), the largest division of ALA, is a professional association of academic and research library and information professionals to serve the information needs of the higher education community and to improve learning, teaching and research.

The Association of Research Libraries (ARL) is a nonprofit organization of 123 research libraries in North America. ARL's members include university libraries, public

libraries, government and national libraries. ARL influences the changing environment of scholarly communication and the public policies that affect research libraries and the diverse communities they serve. Collectively, the ALA, ACRL and ARL represent over 139,000 libraries in the United States employing over 350,000 librarians and other personnel.

ALA, ARL and ACRL thank the Copyright Office for conducting this request for public comments and upcoming hearings to better understand and facilitate access to protected works for the blind or persons with other disabilities. We believe that the blind or persons with other disabilities should be afforded the same access to materials as sighted persons. While current copyright law goes a long way in meeting the information needs of the visually impaired, ARL, ACRL and ALA also believe that more can be done to improve and expand access for the blind and persons with other disabilities.

Library Services for the Visually Impaired

Libraries of all types provide access to materials and resources to the blind and persons with other disabilities by employing a variety of technologies and library services, and relying on external resources. In particular, the regional and local libraries affiliated with the Library of Congress' National Library Service for the Blind and Physically Handicapped (NLS) and state libraries that provide access to textbooks for K-12 public schools as a result of the enactment of the Individuals with Disabilities Education Act (IDEA Act) play a significant role. These librarians report overall satisfaction with the federal laws that provide copyright exceptions for the visually impaired and are usually able to meet the needs of the visually impaired that they serve in

spite of the complex process that may be necessary to obtain a specific work in an accessible format.

Oftentimes, librarians at these authorized agencies must navigate a maze of challenges to help meet the needs of visually impaired users. This may involve contacting various online services such as the American Printing House for the Blind, the National Instructional Materials Access Center (NIMAC), and the Louis Database of Accessible Materials to discover if digital files of the requested resource have already been created. Librarians frequently scan and transform materials into accessible formats using a variety of software, coordinate volunteers to make audio recordings of books or other materials, hire Braille translators, and work with school teachers to create accessible supplemental materials for educational purposes. Librarians attempt to avoid duplicative efforts, but sometimes this is unavoidable due to the decentralized nature of serving communities of the blind or persons with other disabilities. To further complicate matters, instructional materials such as tests and workbook materials are not covered by the Chafee Amendment, leading to confusion of whether or not they may be scanned and made accessible. The process is cumbersome and disabled users normally must wait for an accessible copy to be made available. So, while many information needs can be met, the blind or persons with other disabilities do not enjoy the immediate or timely access to works that sighted people enjoy.

Public libraries play a lesser role in providing services, providing customized services for the blind or persons with other disabilities. Examples of such services include delivering materials and accessible devices, enlisting volunteers or employing staff to read materials aloud to the blind or physically impaired, and recording books that

are made available via audio. Finally, many public libraries purchase e-books and audio books that are accessible to the blind or other persons with disabilities.

Coordination with external organizations such as a state library or the NLS to provide access to needed materials is more common. For example, libraries can turn to the NLS to lend materials in accessible formats within the United States. State library programs for the blind and visually impaired work to meet the needs of their state and local users.

In the higher education environment, many colleges and universities have adaptive service centers that help students and researchers gain access to information resources through the use of adaptive technology equipment. Equipment must be used on-site. Centers often partner with libraries to acquire specific titles, and then re-format the work as necessary. It is not common for academic and research libraries to make accessible formats themselves, but libraries often provide adaptive equipment and purchase e-books as well.

Availability of Resources

Only about 5 percent of published books are available in accessible formats for the visually impaired. Some materials are not available at all, particularly scholarly journals, research materials, other professional resources and local history materials. The NLS collection contains primarily bestseller fiction. The IDEA Act limits state libraries' collection efforts to the provision of only textbooks. At the same time, publishers are offering fewer accessible math and science textbooks. In addition, textbooks with images, figures, graphs and formulas are more difficult to convey in some accessible formats. It is

possible to request a particular title in a format that one desires, but it is costly and time consuming, and often results in an abridged version of the original. Moreover, there are a variety of accessible formats that each are tailored to meet different individual needs, limiting the pool of available resources. Accessible formats are not “one-size-fits-all.” In the K-6 environment, Braille is the preferred format so that students learn this specific literacy skill. For those who lose their sight later in life, text-to-speech options may be preferable. Individuals with low vision may only need large print formats. Adults that have had a severe visual impairment since birth may be able to use a variety of formats, but may know and desire newer, feature-rich and navigable formats such as the Digital Accessible Information System (DAISY).

Adaptive Technologies

The technologies libraries employ in support of services for the blind or persons with other disabilities vary in availability, cost and ease of use. For example, the Playaway digital audio book service is a self-contained audio device that holds a single preloaded audio book. The Job Access with Speech (JAWS) is screen reading software and the MAGic system is software that magnifies text. The Open Book software package makes optical character recognition (OCR) scans of text, which in turn enables text-to-speech audio playback. The Kurzweil reading machine assists persons with visual impairments by displaying documents on a computer screen and converts text to speech in real time as the user follows along with highlighted text. Head-tracking software enables hands-free reading for the physically disabled who cannot turn the pages of a print book. Close circuit television (CCTV) magnifies or changes colors to best serve the specific

visual impairments. In addition, some libraries employ technologies such as BookShare that provide free access to digital books and textbooks to students with qualifying disabilities. Mainstream services such as Overdrive provide digital check-out to a collection of audio books. While there is a range of technological tools available to libraries to provide access to works in accessible formats, most libraries cannot support all of these services and many may not utilize such resources due to cost or burdensome coordination efforts.

The rapidly evolving technological marketplace demonstrates that the ability to deliver all types of materials in a more effective and efficient manner is within reach. Technologies such as the Kindle 2 e-book reader's text-to-speech feature could, if permitted by rights holders and Amazon, provide immediate access to a significant amount of literature by individuals who are blind or have other disabilities.

Recommendations and Findings

Librarians are grateful that they can turn to the Chaffee Amendment, the IDEA Act and fair use when meeting the needs of the visually impaired. We recognize that the United States clearly stands apart from other nations in this regard. However, improvements could be made:

1. Eligibility requirements and allowed formats in the Chaffee Amendment, the IDEA Act, and No Child Left Behind should be harmonized, limiting confusion between the various laws.
2. Eligibility requirements necessary to obtain accessible formats need to be relaxed to recognize the growing demographic of people losing sight in their later years.

Identifying large print as an accessible format under copyright law will help to address both the demographic and law mismatch problems. While state educational departments write a clause in their contracts with textbook publishers for large print, because of the Chaffee amendment, many libraries still seek publisher permission. In these cases, only one copy of large print is made available, when schools need several more.

3. Contract law should not be permitted to expand the exclusive rights of copyright holders in a matter that denies information access for the visually impaired. The Kindle e-book reader debacle highlights the extreme approaches author, publisher groups and companies may take to negate copyright law's exceptions and limitations. Certainly, a visually impaired person who lawfully **buys** an accessible book should not be prevented from using its voice aloud features.
4. The needs of visually impaired in foreign countries cannot be met by library interlibrary loan for a number of reasons. The Chaffee Amendment applies only to U.S. citizens and foreign nationals. Many libraries do not have at their disposal technologies to create accessible formats on the fly. Exceptions in Section 108 do not allow libraries to distribute digital formats via interlibrary loan, and librarians in academic institutions rarely receive requests from visually impaired in other countries. In general, librarians rely upon the Chafee Amendment to meet the needs of the visually impaired and do not rely on fair use as they believe the Chaffee Amendment to be the only exception for the visually impaired.
5. An international treaty to provide access to information for the visually impaired should be supported if there are no negative consequences to U.S. law and users.

6. Technological innovations that can improve and simplify access to information for the visually impaired should be encouraged. Publishers should make accessible formats available for purchase such as audio books.
7. The recent confusion and misinterpretation about the rights of users to enjoy and benefit from the reading aloud feature on the Kindle 2 e-book reader highlight the importance of educational programming and outreach by the NLS and in particular, the Copyright Office. ACRL, ARL and ALA encourage the Copyright Office and NLS to become more active in explaining the opportunities and rights available to blind persons and others with disabilities in this emergent and promising technological marketplace.

Respectfully submitted,

American Library Association
Association of College and Research Libraries
Association of Research Libraries