



RECORDING FOR THE BLIND & DYSLEXIC

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

Dear Ms. Pallante:

Please accept the attached 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 published in the Federal Register on March 26, 2009. Recording for the Blind & Dyslexic (RFB&D) welcomes the opportunity to contribute to this important conversation.

RFB&D has been providing accessible educational materials to students of all ages for more than 60 years. Originally begun to assist blinded veterans returning home after World War II, RFB&D is now a national nonprofit volunteer organization serving as the nation's educational library for students who cannot effectively read standard print because of visual impairment, dyslexia or other physical disability. RFB&D produces, distributes, and promotes the effective use of digital audio versions of printed textbooks. RFB&D's accessible-format audio textbooks ensure equal educational opportunities for students with print disabilities.

As a leader in providing accessible educational materials, RFB&D has played key roles in the development of standards for accessible content and legal mechanisms for producing and delivering that content. RFB&D, in collaboration with many other organizations, helped develop the DAISY standard for digital audio files, and worked with Congress on the Chafee amendment to copyright law.

We again appreciate the opportunity to share in this important effort and look forward to future conversations about this topic.

Sincerely,

John Kelly
President & CEO

Recording for the Blind & Dyslexic (RFB&D) Response to Notice of Inquiry and Request for Comments on the Topic of Facilitating Access to Copyrighted Works for the Blind or Persons With Other Disabilities

The following comments seek to respond to the specific subjects of inquiry outlined in the Federal Register Notice.

Experiences of Persons within the United States with Respect to Accessing U.S. Works or Sharing Accessible Copies within the United States

Applicable Statutory or Regulatory Provisions

The Chafee Amendment to Copyright Law has significantly improved the provision of accessible educational content to individuals with print disabilities. Prior to its passage, copyright permissions had to be obtained from publishers for each individual title converted to an accessible format. This onerous process substantially delayed the production of content and the delivery of materials to the covered population. By proactively granting a copyright exception to authorized entities, the Chafee Amendment capitalizes on these entities' many years of experience working with specialized populations to deliver quality accessible content efficiently. The Amendment has also assisted publishers by providing a consistent mechanism for nonprofit and governmental organizations with expertise in accessible content creation to produce and distribute accessible versions of publishers' materials.

One consistent challenge to implementation of the Chafee Amendment relates to the population authorized to be served. The Chafee Amendment defines the eligible population consistent with the Act entitled "An Act to provide books for the adult blind." The implementing regulations for that Act have been interpreted in a number of different ways by stakeholders as the disability environment has evolved. Historically, the eligible population has been limited to those who are blind or visually impaired, and those with certain physical limitations. However, individuals with other disabilities, including learning disabilities, could also benefit from accessible content due to their limitations in processing standard print.

RFB&D supports the position that individuals who cannot read standard print because of a functional disability that affects the ability to read standard print, including those with learning disabilities, are eligible under the physical limitations clause in the definition of the eligible population. Clarifying this definition should be a key goal of future legislative and regulatory efforts.

An additional challenge has been the regulatory definition of "competent authority." Over time, a widening range of professionals have proven qualified to document individuals' disabilities. For example, in schools, education professionals are typically responsible under federal special education law for determining if a student needs accessible content. RFB&D supports the position that competent authorities for persons with reading disabilities should include qualified professionals in the fields of disability services, special education, medicine or psychology. We suggest further guidelines to assist authorized entities in determining what documentation is necessary for each category of eligible disability.

The establishment of the National Instructional Materials Access Center (NIMAC) repository under the Individuals with Disabilities Education Act (IDEA) has created additional confusion. The IDEA language establishing the NIMAC limited the eligible population to those students with Individualized Education Programs under IDEA. This limitation prevents states from providing accessible content through the NIMAC to Chafee-eligible students who may not qualify for services under IDEA. For example, Chafee-eligible students served through 504 plans under Section 504 of the Rehabilitation Act of 1973, cannot receive NIMAC content. This creates longer wait times for these students and a less efficient system for delivering accessible materials. As the federal government examines its legal structure for providing accessible content, correcting this oversight should be a priority.

The Chafee Amendment could also be updated to allow for direct use of accessible content by teachers and other professionals responsible for working directly with Chafee-eligible individuals. The Chafee Amendment currently makes no allowances for the professionals providing training and creating lesson plans around this content to have direct access to these materials. This lack of access limits the effectiveness of technology training and lessens the impact of the accessible content on individuals' success. RFB&D supports allowing limited use of this content by professionals directly responsible for training and teaching Chafee-eligible individuals.

Finally, the federal government should examine legal changes to allow content to be shared with and among authorized entities. Within the postsecondary education community, the agencies that work directly with students with print disabilities frequently obtain and utilize publisher files. In order to prevent further duplication of efforts and increase the efficiency with which materials are provided to students, the law should permit agencies to share this content with authorized entities for addition to their library collections.

Private Sector Initiatives

Because of some of the Chafee-amendment confusion outlined above, publishers are beginning to engage in the creation of a "market model." RFB&D supports the development of such a model to serve those individuals who are ineligible under Chafee but in need of equal access to content in alternative formats.

The development of this market is a collaborative effort between the private and nonprofit sectors based on longstanding relationships. RFB&D works with a number of publishers at the K-12 and postsecondary education levels, including: Addison-Wesley, Houghton Mifflin/Harcourt, McGraw-Hill, Prentice Hall, and SouthWestern. These and other relationships allow us to build our library through access to the titles in greatest demand and free print copies for use in our recording process. Publishers rely on RFB&D and refer individuals to us for that content.

RFB&D sees opportunities for future partnerships with publishers to produce their content in accessible formats, under license, with distribution through both publisher portals and RFB&D's library. This type of partnership combines the accessible content providers' expertise with the distribution channels provided by publishers.

To date, the amount of accessible content created through these avenues is still limited. Without eligible nonprofit and governmental organizations to provide content under the Chafee Amendment, students with print disabilities will struggle to obtain needed materials.

Despite these limitations, some best practices are emerging. Materials are increasingly being created with universal design principles in mind to increase access for individuals with print disabilities. Standards for the creation and delivery of accessible content in educational settings are also emerging from collaborative private sector, nonprofit, and government efforts. The NIMAC and the National Instructional Materials Accessibility Standard (NIMAS) were created from such efforts, with RFB&D playing key roles in both projects. These efforts will serve as the model for expansion of efforts to address critical needs in the postsecondary education market. The Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities, established in last year's reauthorization of the Higher Education Act, holds great promise for producing solutions to address those needs.

Also, nonprofit organizations like RFB&D are increasingly recognizing the need to provide training with the accessible content. RFB&D has developed a program for teachers to incorporate accessible content into their lesson plans and teaching strategies to use with students requiring accessible materials. This web-based service, developed in partnership with CAST, trains educators to use accessible content and specialized devices to incorporate listening as an educational strategy for students.

Library Programs

Recording for the Blind & Dyslexic (RFB&D) has offered accessible content to the Chafee population for over 60 years. Our educational library consists of over 50,000 digitally recorded books, 65% of which are core textbooks, and is focused on providing educational materials used in K-12 and college curriculums nationwide. RFB&D also has an extensive collection of literature and nonfiction works that support an educational curriculum. RFB&D has assisted students in achieving their educational dreams by providing accessible content so that students can compete with their peers.

RFB&D makes use of both physical and digital delivery methods for content. Our AudioPlus books use human readers to digitally record to a CD in DAISY format, providing key navigation by unit, chapter and page levels. RFB&D also provides materials through a downloadable version of our digitally recorded books from a virtual platform. The initial downloadable format was introduced last year, with an additional version due out later this spring. Additionally, AudioPlusText books are produced from the conversion of NIMAS electronic files to a multimedia book on CD, including electronic text, publisher images and synthetic audio synchronized to the text.

These evolving service offerings reflect RFB&D's continuing efforts to respond to the needs of individuals with print disabilities. An emerging market for accessible content is the distance learning environment. Unfortunately, most distance learning materials are not accessible. RFB&D supports the development of accessible distance learning materials and believes that the Chafee Amendment can be extended to the development of accessible digital-only information.

RFB&D works closely with other libraries in these efforts. We list our library collection of accessible books on both the National Library Service online catalog and on the American Printing House for the Blind LOUIS catalog to facilitate easier access for users. Further, RFB&D accepts certification for documentation of an applicants' disability when applicants have an existing NLS membership in order to simplify the application process for RFB&D's library service and collection.

Standardized Formats, Programs and Devices

As discussed previously, the development of NIMAS has greatly improved the efficiency for providing educational content to students and could be a model for future standardization. As efforts are undertaken to bring greater consistency and efficiency to the development and delivery of accessible content, steps should be taken to address inconsistencies in digital rights management (DRM) processes.

Future legislative and regulatory efforts should focus on developing guidelines for a standard schema of copyright protection. This standard would include a program of education on the appropriate use of the accessible materials under the Chafee exemption, an administrative program to prevent abuse, passwords for downloads and fingerprinting and watermarking of digital files for control of the use of the content by the target population. More stringent DRM, such as encryption, could be utilized, but severe drawbacks exist. Such efforts should be undertaken with collaboration among all stakeholders to secure publishers' intellectual property rights without decreasing individuals' access to needed materials.

Experiences of Persons within the United States with Respect to Accessing Foreign Works or Sharing Accessible Copies of U.S. Works with Foreign Persons

Some specialized libraries or agencies serving people with print disabilities abroad have collaborated to create interlibrary agreements to share accessible content. These agreements are critical for eliminating the duplication of titles already available in accessible format. Because the content remains under control of the accessible content libraries, such agreements protect publishers' intellectual property rights and commercial interests, while eliminating their need to respond to multiple requests for licensing for the same titles.

Because the Chafee Amendment has jurisdiction over U.S. distribution only, developing legal mechanisms for international sharing of content should be a priority. The lack of such mechanisms constrains the ability of nonprofit libraries in the U.S. from loaning or distributing accessible content to counterparts in other countries. With only about 5% of the works published annually ever created in an accessible format, the limited resources available should not be wasted on creating the same content multiple times.

The legal impediments to transnational access are the result of different copyright laws in different countries. Navigating the multiple rights that publishers may have to works distributed in other countries can also make obtaining copyright permission without a broader exemption a significant barrier.

With the proper legal mechanisms in place, the technology is available to facilitate greater collaboration. The DAISY standard is an international standard and is used by accessible content producers around the world to create content. Use of the same standard format facilitates the future sharing of content between national accessible libraries for individuals with print disabilities.

Other Comments on Facilitating and Enhancing Access to Copyrighted Works

An important element in the availability of accessible content for the target population is the ability to locate titles needed in the format of the individual's preference. Although several authorized entities currently list their content in online catalogs, a federated search that would allow searching for accessible content across the accessible content libraries is needed. If combined with a request system for unavailable titles, accessible content collections could be improved upon quickly. Such a federated search and identification system would likely require the government's participation to ensure cooperation and consistency.