

(A) not be reproduced or distributed in the United States in a format other than an accessible format exclusively for use by eligible persons;

(B) bear a notice that any further reproduction or distribution in a format other than an accessible format is an infringement; and

(C) include a copyright notice identifying the copyright owner and the date of the original publication.

(2) The provisions of this subsection shall not apply to standardized, secure, or norm-referenced tests and related testing material, or to computer programs, except the portions thereof that are in conventional human language (including descriptions of pictorial works) and displayed to users in the ordinary course of using the computer programs.

(c) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a publisher of print instructional materials for use in elementary or secondary schools to create and distribute to the National Instructional Materials Access Center copies of the electronic files described in sections 612(a)(23)(C), 613(a)(6), and section 674(e) of the Individuals with Disabilities Education Act that contain the contents of print instructional materials using the National Instructional Material Accessibility Standard (as defined in section 674(e)(3) of that Act), if—

(1) the inclusion of the contents of such print instructional materials is required by any State educational agency or local educational agency;

(2) the publisher had the right to publish such print instructional materials in print formats; and

(3) such copies are used solely for reproduction or distribution of the contents of such print instructional materials in accessible formats.

(d) For purposes of this section, the term—

(1) “accessible format” means an alternative manner or form that gives an eligible person access to the work when the copy or phonorecord in the accessible format is used exclusively by the eligible person to permit him or her to have access as feasibly and comfortably as a person without such disability as described in paragraph (3);

(2) “authorized entity” means a nonprofit organization or a governmental agency that has a primary mission to provide specialized services relating to training, education, or adaptive reading or information access needs of blind or other persons with disabilities;

(3) “eligible person” means an individual who, regardless of any other disability—

(A) is blind;

(B) has a visual impairment or perceptual or reading disability that cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or

(C) is otherwise unable, through physical disability, to hold or manipulate a book or

to focus or move the eyes to the extent that would be normally acceptable for reading; and

(4) “print instructional materials” has the meaning given under section 674(e)(3)(C) of the Individuals with Disabilities Education Act.

(Added Pub. L. 104–197, title III, §316(a), Sept. 16, 1996, 110 Stat. 2416; amended Pub. L. 106–379, §3(b), Oct. 27, 2000, 114 Stat. 1445; Pub. L. 107–273, div. C, title III, §13210(3)(A), Nov. 2, 2002, 116 Stat. 1909; Pub. L. 108–446, title III, §306, Dec. 3, 2004, 118 Stat. 2807; Pub. L. 115–261, §2(a)(1), Oct. 9, 2018, 132 Stat. 3667.)

Editorial Notes

REFERENCES IN TEXT

Sections 612, 613, and 674 of the Individuals with Disabilities Education Act, referred to in subsecs. (c) and (d)(4), are classified to sections 1412, 1413, and 1474, respectively, of Title 20, Education.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–261, §2(a)(1)(A), inserted “in the United States” after “distribute” and “or of a previously published musical work that has been fixed in the form of text or notation” after “literary work”, struck out “, nondramatic” after “previously published”, and substituted “accessible formats” for “specialized formats” and “eligible persons” for “blind or other persons with disabilities”.

Subsec. (b)(1)(A). Pub. L. 115–261, §2(a)(1)(B)(i), inserted “in the United States” after “distributed” and substituted “an accessible format” for “a specialized format” and “eligible persons” for “blind or other persons with disabilities”.

Subsec. (b)(1)(B). Pub. L. 115–261, §2(a)(1)(B)(ii), substituted “an accessible format” for “a specialized format”.

Subsec. (c)(3). Pub. L. 115–261, §2(a)(1)(C), substituted “accessible formats” for “specialized formats”.

Subsec. (d). Pub. L. 115–261, §2(a)(1)(D), added pars. (1) and (3), redesignated former pars. (1) and (3) as (2) and (4), respectively, substituted a period for “; and” at end of par. (4), and struck out former pars. (2) and (4) which defined “blind or other persons with disabilities” and “specialized formats”, respectively.

2004—Subsec. (c). Pub. L. 108–446, §306(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 108–446, §306(1), redesignated subsec. (c) as (d).

Subsec. (d)(3), (4). Pub. L. 108–446, §306(3), added pars. (3) and (4) and struck out former par. (3) which read as follows: “‘specialized formats’ means braille, audio, or digital text which is exclusively for use by blind or other persons with disabilities.”

2002—Pub. L. 107–273 substituted “Reproduction” for “reproduction” in section catchline.

2000—Subsec. (a). Pub. L. 106–379 substituted “section 106” for “sections 106 and 710”.

§ 121A. Limitations on exclusive rights: reproduction for blind or other people with disabilities in Marrakesh Treaty countries

(a) Notwithstanding the provisions of sections 106 and 602, it is not an infringement of copyright for an authorized entity, acting pursuant to this section, to export copies or phonorecords of a previously published literary work or of a previously published musical work that has been fixed in the form of text or notation in accessible formats to another country when the exportation is made either to—

(1) an authorized entity located in a country that is a Party to the Marrakesh Treaty; or

(2) an eligible person in a country that is a Party to the Marrakesh Treaty,

if prior to the exportation of such copies or phonorecords, the authorized entity engaged in the exportation did not know or have reasonable grounds to know that the copies or phonorecords would be used other than by eligible persons.

(b) Notwithstanding the provisions of sections 106 and 602, it is not an infringement of copyright for an authorized entity or an eligible person, or someone acting on behalf of an eligible person, acting pursuant to this section, to import copies or phonorecords of a previously published literary work or of a previously published musical work that has been fixed in the form of text or notation in accessible formats.

(c) In conducting activities under subsection (a) or (b), an authorized entity shall establish and follow its own practices, in keeping with its particular circumstances, to—

(1) establish that the persons the authorized entity serves are eligible persons;

(2) limit to eligible persons and authorized entities the distribution of accessible format copies by the authorized entity;

(3) discourage the reproduction and distribution of unauthorized copies;

(4) maintain due care in, and records of, the handling of copies of works by the authorized entity, while respecting the privacy of eligible persons on an equal basis with others; and

(5) facilitate effective cross-border exchange of accessible format copies by making publicly available—

(A) the titles of works for which the authorized entity has accessible format copies or phonorecords and the specific accessible formats in which they are available; and

(B) information on the policies, practices, and authorized entity partners of the authorized entity for the cross-border exchange of accessible format copies.

(d) Nothing in this section shall be construed to establish—

(1) a cause of action under this title; or

(2) a basis for regulation by any Federal agency.

(e) Nothing in this section shall be construed to limit the ability to engage in any activity otherwise permitted under this title.

(f) For purposes of this section—

(1) the terms “accessible format”, “authorized entity”, and “eligible person” have the meanings given those terms in section 121; and

(2) the term “Marrakesh Treaty” means the Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities concluded at Marrakesh, Morocco, on June 28, 2013.

(Added Pub. L. 115-261, §2(a)(2), Oct. 9, 2018, 132 Stat. 3668.)

§ 122. Limitations on exclusive rights: Secondary transmissions of local television programming by satellite

(a) SECONDARY TRANSMISSIONS INTO LOCAL MARKETS.—

(1) SECONDARY TRANSMISSIONS OF TELEVISION BROADCAST STATIONS WITHIN A LOCAL MARKET.—

A secondary transmission of a performance or display of a work embodied in a primary transmission of a television broadcast station into the station’s local market shall be subject to statutory licensing under this section if—

(A) the secondary transmission is made by a satellite carrier to the public;

(B) with regard to secondary transmissions, the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals; and

(C) the satellite carrier makes a direct or indirect charge for the secondary transmission to—

(i) each subscriber receiving the secondary transmission; or

(ii) a distributor that has contracted with the satellite carrier for direct or indirect delivery of the secondary transmission to the public.

(2) SIGNIFICANTLY VIEWED STATIONS.—

(A) IN GENERAL.—A secondary transmission of a performance or display of a work embodied in a primary transmission of a television broadcast station to subscribers who receive secondary transmissions of primary transmissions under paragraph (1) shall be subject to statutory licensing under this paragraph if the secondary transmission is of the primary transmission of a network station or a non-network station to a subscriber who resides outside the station’s local market but within a community in which the signal has been determined by the Federal Communications Commission to be significantly viewed in such community, pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976, applicable to determining with respect to a cable system whether signals are significantly viewed in a community.

(B) WAIVER.—A subscriber who is denied the secondary transmission of the primary transmission of a network station or a non-network station under subparagraph (A) may request a waiver from such denial by submitting a request, through the subscriber’s satellite carrier, to the network station or non-network station in the local market affiliated with the same network or non-network where the subscriber is located. The network station or non-network station shall accept or reject the subscriber’s request for a waiver within 30 days after receipt of the request. If the network station or non-network station fails to accept or reject the subscriber’s request for a waiver within that 30-day period, that network station or non-network station shall be deemed to agree to the waiver request.

(3) SECONDARY TRANSMISSION OF LOW POWER PROGRAMMING.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), a secondary transmission of a performance or display of a work embodied in a primary transmission of a television