

Copyright's Role in Disability Law

Blake Reid

The accessibility of copyrighted works for people with disabilities has attracted significant recent attention from scholars in the wake of the implementation of the Marrakesh VIP Treaty. While the attention to the Treaty is welcome and important, the copyright literature is missing a holistic framework for understanding the role of copyright law in facilitating and inhibiting the accessibility of copyrighted works to people with disabilities in the broader set of disability civil and human rights regimes.

This article aims to fill that gap by illustrating the role of copyright law in the accessibility of copyrighted works through two comparative case studies of U.S. disability law: the long-running efforts to make books accessible to people who are blind or visually impaired through the provision of Braille and other accessible format texts, and the parallel efforts to make video programming accessible for people who are deaf or hard of hearing through the provision of closed captions.

The article uses these case studies to make several observations about copyright law's role in the substantive fulfillment of disability rights: copyright's routine failure to provide incentives for the creation of "born-accessible works," the sweeping role of fair use under the *HathiTrust* decision, the clarifying and extending roles of specific exemptions and limitations such as the Chafee Amendment, the additional role of the Marrakesh Treaty's cross-border provisions, and the ongoing need for exemptions and limitations in an accessibility landscape that will be increasingly dominated by machine learning and other artificial intelligence approaches. The article concludes with a normative framework for the accessibility of copyrighted works, proposing accessibility requirements and incentives for copyright registration, extended registration incentives and requirements, and extended copyright exceptions and limitations that broadly cover the accessibility of all categories of copyrighted works to people with all types of disabilities.