

Achieving Content Accessibility in Communications and Copyright Law

Blake Ellis Reid

Staff Attorney and Graduate Clinical Fellow in First Amendment and Media Law
Institute for Public Representation, Georgetown Law
ber29@law.georgetown.edu | [Bio](#) | [SSRN](#)

“As it is hard to interest those who have everything in those who have nothing, so it requires incessant labor to win champions among the seeing for the sightless.”

-Helen Keller

The goal of promoting the creation and dissemination of accessible versions of copyrighted works that can be fully experienced by people with disabilities poses a unique media policy conundrum. Notions of distributive justice suggest that copyrighted content, particularly mass market content, should be made available in accessible formats so its cultural and societal benefits can be enjoyed by people with disabilities on equal terms. But copyright and communications law—the primary instrumentalities of media policy—have proven ill-suited to fostering ubiquitous content accessibility.

In this work-in-progress, I offer a contemporary account of content accessibility from the perspective of copyright and communications policy. In doing so, I first analyze efforts by Congress and regulatory agencies—primarily, the Federal Communications Commission—to mandate accessibility for copyrighted content, focusing in particular on efforts to make video programming accessible to people who are deaf or hard of hearing with closed captioning and to people who are blind or visually impaired with audio description. In doing so, I review barriers to these accessibility efforts, including First Amendment theories of compelled speech and chilling effects, as well as jurisdictional limitations stemming from rapid technological changes in content creation, distribution, and accessibility mechanisms.

Second, I analyze efforts by people who are disabled and sympathetic third parties to make works accessible without the cooperation of copyright owners. I review barriers to these efforts that have been imposed by copyright law and paracopyright schemes, including the anti-circumvention measures of the Digital Millennium Copyright Act, and consider the shortcomings of domestic and international accessibility reform efforts.

In setting forth these analyses, I aim to provide a framework that comprehensively describes realized and likely potential limitations on both prescribed and permissive content accessibility efforts. In doing so, I hope to lay the groundwork for future work on positive agendas for content accessibility and the unique normative considerations for requiring and permitting accessibility efforts in the context of content.